

PURCHASE ORDER TERMS AND CONDITIONS

These terms and conditions (these "Terms") are issued on behalf of the Service Partners company identified on the purchase order as the "buyer" (which will be referred to as "us," "our" or "we" in these Terms). These Terms will apply to all purchase orders issued to you as the seller for parts, goods, materials and services ("Supplies"), whether written, faxed or electronically transmitted to you. These Terms, purchase orders and other associated purchasing documents that may apply in particular transactions will be valid without signature if issued by us through our computer system or other electronic means. These Terms can be found at www.service-partners.com. These Terms may hereafter be revised, from time to time, by us. If we do so, we will post the revisions on this web site. General revisions to these Terms that are made after the effective date shown on a purchase order are binding on both of us.

1. Acceptance.

1.01 Applicable Terms. Any purchase order we issue is our offer limited to these Terms and those terms reflected on our purchase order. Our issuance of a purchase order is not an acceptance of any offer to sell or quotation you may have provided to us. Any reference to your offer to sell or quotation is solely for the purpose of incorporating the description and specifications of the Supplies ordered to the extent that such description and specifications do not conflict with the description and specifications on the purchase order we issue.

1.02 Formation of Contract. Any conduct by you that recognizes the existence of a contract pertaining to the subject matter of a purchase order will constitute your acceptance of our purchase order and all of these Terms. Any terms or conditions proposed in your acceptance of this offer that add to, vary from or conflict with any of these Terms are deemed to be material and are hereby objected to and rejected. If our purchase order is deemed an acceptance of your prior offer, then our issuance of a purchase order will constitute an acceptance of such offer subject to the express condition that you agree to any of these Terms that are additional to or different from any terms and conditions in your offer. You acknowledge that except as otherwise provided in these Terms, our purchase order, together with these Terms (as they may be amended from time to time as set forth in Section 1.03 below), constitutes the entire agreement between us with respect to the subject matter of such purchase order. In order to expedite our transactions, you will be deemed to have so agreed and acknowledged unless you expressly notify us to the contrary in writing within five (5) days of your receipt of our purchase order.

1.03 Changes to Terms. Except for general revisions to our Terms we may make from time to time, any change to or waiver of any of these Terms binds us only if it is in a separate writing signed by our highest ranking purchasing executive.

1.04 Additional Terms; Compliance with Policies. You agree that if the Supplies include construction, installation or repair services on our premises, the Supplementary Terms and Conditions for Purchase Orders Issued for Construction, Installation or Repair Work to be Performed on our Premises, also available on <http://www.mascopurchasing.com/>, will also apply to your provision of the Supplies. You further agree that, if the Supplies include the provision of services on any Masco or Masco affiliate property, you will be bound by the Contractor Safety & Environmental Policy available on www.mascopurchasing.com, and will execute the accompanying Contractor Acknowledgement prior to performing such services.

1.05 Electronic Signature. Unless we otherwise expressly agree in a separate writing, our electronic signature shall not constitute acceptance of your terms and conditions.

1.06 Earlier Agreements. Written agreements entered into with you relating to the Supplies, such as a Non-Disclosure Agreement, Bailment Agreement, Long-Term Supply Agreement, Consignment Agreement or Rebate Agreement are referred to as "Earlier Agreements." If any such agreement is in effect as of the date of issuance of a purchase order, it will continue to apply after a purchase order has

been issued. The provisions of any such Earlier Agreement shall be construed, to the extent possible, as consistent with these Terms and as cumulative; provided, however, that if such construction is unreasonable the terms and conditions of any such Earlier Agreement shall control unless otherwise set forth on the face of the purchase order or in a writing signed by the parties

2. Purchase and Sale.

2.01 Purchase of Supplies. You will provide the Supplies as shown on our purchase order. If no quantity is indicated, we will issue releases to specify the quantities and types needed and delivery locations, times and dates. The releases will indicate the extent to which we are committed to make purchases from you.

2.02 Forecasts. We may provide you with estimates, forecasts or projections of our future volume or quantity requirements for the Supplies which are for informational and planning purposes only and are not binding on us. We make no representation, warranty, guaranty or commitment of any kind or nature, express or implied, regarding any volume projection.

3. Changes. We may change our purchase order for the Supplies at any time without penalty, but with written notice to you. Some examples of these changes include changes to quantities, destinations, specifications, drawings, designs, or delivery schedule. You will make all changes we request. You may not make any changes on your own without first obtaining our consent in writing. You will promptly notify us in writing if a change will significantly affect cost or time for performance, and if you seek an adjustment in cost or time of performance, you will provide substantiation of your claim. We will equitably determine any adjustment in price or time for performance resulting from such change after receipt of documentation from you in such form and detail as we may direct.

4. Prices and Payment Terms.

4.01 Prices/Payment Term. Our purchase order will show the applicable prices and payment term. We will, however, have the benefit of any more favorable prices or terms contained in an Earlier Agreement.

4.02 Price Warranty. You may not supply against any purchase order Supplies priced higher than those last quoted or agreed upon without our prior specific written authorization, which must be included with your invoice. We reserve the right to cancel and return to you at your cost any Supplies where the price has been increased without our prior written approval. You warrant that the prices for the Supplies sold to us under any purchase order are not less favorable than those currently extended by you to any other customer for the same or like Supplies in equal or less quantities.

4.03 Currency. The price stated in our purchase order will be in United States currency. If a different currency applies, it will be shown on our purchase order or other written notice we deliver to you. Except as expressly provided on our purchase order, the price will include all applicable taxes and duties, and all tooling and transportation charges. Deliveries will be made without charge for boxing, packaging, crating, carting, or storage unless we otherwise specify.

4.04 Price Reductions. Notwithstanding the prices set forth on our purchase order, if your established price for any item upon the date of delivery will be lower than the price shown on this order, we will have the benefit of such lower price. We will also receive the full benefit of all discounts, rebates, and other favorable terms of payment customarily offered by you to your customers.

4.05 Discounts. If the terms of our purchase order entitle us to a discount, the discount period will begin on the later of the date the invoice is received by us or the date we take delivery of the Supplies. If an adjustment in pricing is necessary for any reason, then the cash discount period will commence on the date we receive a corrected invoice.

5. Shipping, Packaging and Delivery.

5.01 Choice of Carrier. We will have the right to specify the carrier and the method of transportation to be used to ship any Supplies. A packing slip will accompany each shipment. If no such slip is forwarded, the count or weight made by us will be conclusive.

5.02 Time of the Essence. Time and quantity of delivery or rendering of Supplies is of the essence. You are required to achieve 100% on time delivery and quantity performance. Deliveries will be made during regular business hours in the quantities we specify unless we otherwise notify you. We will not be required to make payment for Supplies delivered to us that are in excess of quantities specified in our delivery schedules, and at our option, we may notify you to make arrangements, at your cost, for the return of excess quantities of Supplies.

5.03 Completion of Delivery. Delivery will not be deemed to be complete until we actually receive and accept the Supplies. Whenever you have knowledge that delivery may be delayed, you will immediately give us written notice. Acceptance of any part of an order will not bind us to accept future shipments nor deprive us of the right to return Supplies already accepted.

5.04 Title and Risk of Loss. Title and risk of loss will remain with you until you have delivered the Supplies, in a completed state, and we have inspected and accepted them at the location specified on our purchase order. You will bear the cost of return shipments with title and risk of loss passing to you upon our delivery to a carrier.

5.05 Failure to Make Delivery. If your acts or omissions result in your failure (or a potential failure) to meet our delivery requirements, we may require a more expeditious method of transportation for the Supplies than the transportation method originally specified. You will then, at our sole option, (i) promptly reimburse us the difference in cost between the more expeditious method and the original method, (ii) allow us to reduce payment of your invoices by such difference, or (iii) ship the Supplies as expeditiously as possible at your expense and invoice us for the amount that we would have paid for normal shipment.

6. Delivery of Nonconforming Supplies.

6.01 Delivery; No Inspection. You will deliver only Supplies that conform in all respects to the requirements of a purchase order and these Terms. Although we are not required to do so, we or our representatives, customers or licensors (or their representatives) may inspect the Supplies ordered under a purchase order during any stage of their manufacture, construction, preparation, delivery and completion. We may reject any Supplies for defects or defaults revealed by any such inspection, analysis or subsequent manufacturing operations even though we may have previously accepted such Supplies.

6.02 Notice of Nonconformity. If the Supplies are nonconforming, we will inform you, orally or in writing, about the nonconformity as soon as reasonably practicable after we have discovered it.

6.03 Right to Cure. If the Supplies are parts, goods or materials, you will be permitted to re-work, replace or otherwise remedy a nonconformity in the Supplies as long as: (a) the nonconformity has been discovered after delivery of the Supplies but before we have started to use them, (b) the remedial work will not cause any delay in our operations, including the production process, or cause us to incur any additional costs, and (c) the cure can be completed by the deadline we establish. If the Supplies are in the form of services, at our option we may permit you to re-perform the services, or we may have the services performed by a third party or perform the services ourselves, at your expense.

6.04 Our Options. If we determine in good faith that the remedial work cannot be done within the limits of Section 6.03, we are entitled to: (a) reject the nonconforming Supplies, return them to you and, at our option, request redelivery of conforming Supplies, or (b) retain them and either repair them ourselves or request you to do so, on or off-site. In any event, you will bear the risk and expense of the remedial action undertaken by either one of us.

6.05 Costs Incurred by Us. You will be liable for all direct, incidental and consequential damages, losses, costs, and expenses we incur resulting from your failure to deliver conforming Supplies or to comply with the shipping and delivery or our other requirements, even if you have cured such failure.

6.06 Payment for Nonconforming Supplies. Payment for nonconforming Supplies will not constitute acceptance of them nor will it limit or affect any of our rights.

7. Warranties.

7.01 General Warranty. In addition to any warranties that you may have provided with the Supplies, you warrant that the Supplies will (a) be new and free from defects in material, and workmanship, fully merchantable and of good quality, (b) be in conformity with any specifications, drawings, samples or descriptions that may have been furnished by either party and approved by us, and (c) comply with all applicable laws of the countries in which the Supplies have been manufactured or assembled or are to be used.

7.02 Service Warranty. You warrant that any services included in the Supplies will be performed in a workmanlike and timely manner and will conform to the highest industry standards.

7.03 Intellectual Property Warranty. You warrant that the sale and use of the Supplies supplied by you pursuant to any order will not infringe or violate any United States or foreign patent, trade secret, trademark, service mark or copyright.

7.04 Additional Warranties. You further warrant that (a) you know of our intended use and expressly warrant that all Supplies covered by any purchase order will be fit and sufficient for the particular purposes we intend, (b) the Supplies will be free from defects in design to the extent furnished by you or your subcontractors, even if the design has been approved by us, (c) you have good title to all Supplies, free and clear of all liens and encumbrances, and you will transfer such title to us, and (d) the Supplies will be in conformity with all other representations or warranties made by you or the manufacturer. Upon our request, where applicable, you will provide a complete waiver and release of all liens relating to the Supplies covering all labor and materials for which a lien could be filed.

7.05 Survival of Warranties. Your warranties will survive any inspection, delivery, acceptance, or payment by us. Acceptance of all or any part of the Supplies will not be deemed to be a waiver of our right to cancel or return all or any part of the Supplies or reject any services due to their failure to conform, or due to the discovery of latent or patent defects, or due to a breach of warranty.

7.06 Certificate of Conformance. At our request, you will furnish a certificate of conformance to the attention of our Quality Assurance Manager, stating compliance to the specifications for the Supplies and all purchase order requirements.

7.07 Warranty Period. For Supplies installed or used in our products, the warranty period begins on the date the Supplies to be incorporated into the product are delivered to us (or a third party designated by us) and expires on the date on which the period of the warranty provided by us for such product ends.

7.08 Recalls. In the event that we voluntarily decide, or the Consumer Product Safety Commission or other federal, state or local agency ("Government Agency") issues an order pursuant to any consumer protection law that requires us, to recall, replace, repair or make refunds with respect to all or part of our products included within the Supplies (a "Recall"), you will cooperate with us and assist in any such Recall as and when we request. If a Government Agency initiates any inquiry or investigation relating to the Supplies or similar goods you manufacture or supply, which investigations, in your opinion, are reasonably likely to result in a recall of the Supplies, or, if you discover any issue that could affect our product or our reputation in a negative manner (even if such issue would not result in an action by a Government Agency) you will notify us immediately and take reasonable steps to resolve the matter without exposing us to any liability or risk.

7.09 Your Recall Responsibilities. If Supplies are the subject of a Recall, whether initiated by us, you or a Government Agency (including the issuance of safety notices), you will be responsible for all matters and costs (including our internal costs due to employee time devoted to undertaking and managing the Recall, overhead, warehousing, etc.) associated with the Recall, including, but not limited to: (a) consumer notification and contact; (b) all reasonable expenses and losses we incur in connection with such Recall (and, where applicable, any products with which the recalled Supplies have been packaged, consolidated or commingled), including but not limited to refunds to customers and transportation costs; and (c) initial contact and reporting of the Recall to any Government Agency having jurisdiction over the affected Supplies.

8. Compliance with Laws.

8.01 Compliance with Applicable Law. In connection with the manufacturing and sale of Supplies or the furnishing of services included in the Supplies required by our purchase order, you will comply with all (i) emission and labeling standards set forth in Sections 93120-93120.12, Title 17, California Code of Regulations (the CARB Airborne Toxic Control Measure) with respect to composite wood products and (ii) regulations and provisions of the country of origin, the Fair Labor Standards Act of 1938, as amended, all Occupational Health and Safety Act regulations, and any other applicable foreign, federal, state, or local law or regulation, including, without limitation, those relating to the environment, labor conditions and the rights of employees generally, and in any way affecting the provision, manufacture, assembly, labeling, purchase, importation, transportation or sale of Supplies in connection with our order.

8.02 Hazardous Materials. All hazardous materials supplied by you must comply with all applicable government regulations, and you will provide appropriate Material Safety Data Sheets prior to the first shipment of Supplies to us. Upon our request, you will provide us with access to and copies of any data, materials or other information that relate to the Supplies, their composition or any component or any materials or substances used in the Supplies or in connection with their production. You will notify us of any inherent hazard related to any material incorporated in the Supplies that would expose anyone to hazard during handling, transportation, storage, use, resale, disposal or scrap.

8.03 Compliance Programs. We have various labor, environmental, social compliance and other programs and policies ("Service Partners Policies") that apply to our suppliers. In addition, certain of our customers and licensors have programs and policies that apply to us and our suppliers ("Customer Policies"). The Service Partners Policies are available under the heading "Service Partners Purchasing Terms and Conditions" and the subheading "Supplier Business Practices" at www.service-partners.com. We will inform you of any requirements of any Customer Policies that are additional to the Service Partners Policies. You agree to comply with, and will cause your suppliers to comply with, the Service Partners Policies and any applicable Customer Policies.

8.04 Your Representations. You represent that when you deliver the Supplies, you have complied with the requirements of this Section 8 and upon our request, agree to sign any confirmation of such compliance required by our customers or licensors as a condition or their agreements with us. Our customers, our licensors, their representatives and we have the right to retain independent third parties to audit you and your suppliers for compliance with the provisions of this paragraph.

9. Disclosure/Use of Information.

9.01 Our Intellectual Property. All specifications, drawings, notes, instructions, engineering notices, technical data, and equipment referred to in our purchase order or supplied by either of us in connection with our purchase order are incorporated into our purchase order by reference. You agree that this, together with all information we disclose to you or to which you have access, is our confidential and proprietary information and you will not reproduce, extract, use, or disclose it to others without our prior specific written consent. You will supply all specifications relating to materials incorporated into the Supplies at our request.

9.02 Your Obligations. You will also take reasonable steps to safeguard our confidential and proprietary information from unauthorized access and disclosure. Any information, writings or inventions derived by you or your agents from our information are hereby assigned to us by you, and you warrant that you have the right to do so. We shall have the right at no additional charge to use or incorporate all or portions of material found in your literature and reproduce your literature, such as operating and maintenance manuals, technical publications, prints, drawings, training manuals and similar supporting documentation and literature and you will advise us of any updated information relative to the Supplies.

9.03 Return of Intellectual Property. Upon demand by us or upon completion by you of your obligations under any purchase order, you will return to us all confidential and proprietary information provided by or us or on our behalf and you will not retain any copies, summaries or extracts of all or part of the information.

9.04 Disclosure of Your Intellectual Property. Any information that you disclose to us with respect to the services to be rendered or the design, manufacture, sale, or use of the Supplies will be deemed to have been disclosed as part of the consideration for this order, and you will not assert any claim against us by reason of our use of such information you disclose. Without our express written consent, you will not disclose to any third party or permit any third party to use any Special Tooling as defined in Section 11 below, samples, over-runs, rejected parts or scrap produced or used by you in connection with this order (collectively, the "Remaining Product"), all of which you agree will be considered confidential.

9.05 Return of Intellectual Property. Upon completion of an order (unless we have submitted other orders to you for the same products) or termination of the relationship, or at any time upon our request, you will (i) provide us with at least thirty (30) days' prior written notice of your intent to destroy all Remaining Product, (ii) destroy all Remaining Product unless otherwise directed by us and to the extent directed by us, and (iii) provide us with a certificate of destruction executed by one of your officers, which certificate will specifically describe the quantity and nature of each product destroyed and the manner of destruction.

9.06 Our Design. If the Supplies specified in a purchase order are peculiar to our design either as an assembly or a component part of an assembly, or they bear our trademark or other identifying mark, they will not bear your trademark or other designation, and similar material will not be sold or disposed of to anyone other than us.

9.07 Separate Confidentiality Agreement. We may have or may in the future enter into a separate agreement with you relating to confidentiality or non-disclosure. The provisions of any such agreement shall be in addition to those contained in this Section 9.

10. Excuse of Performance.

10.01 Excusable Events. Neither of us will be liable for a delay or inability to perform directly due to an excusable event. The following events shall be excusable events: acts of terrorism, war, riots, insurrection, civil commotion, fire, flood, earthquakes, storm, and embargo; provided that excusable events do not include delays or nonperformance of your subcontractor or supplier whether or not their inability to perform is caused by an excusable event as set forth in this Section 10.01. Excusable events do not include shutdowns for equipment maintenance, equipment breakdown, or the inability to acquire raw materials, energy, parts, or any other item required to manufacture or provide the Supplies at the prices prevailing before the occurrence of the excusable event.

10.02 Notice. The party claiming an excusable event will provide the other party with written notice of both its occurrence and its termination as soon as practicable.

10.03 Our Options. In the event of an excusable event, we may, at our option, acquire all finished Supplies, work-in-process, and raw materials produced or acquired for the Supplies under a purchase order. We will also have the option to cancel the affected purchase order in whole or in part or delay the delivery of any Supplies covered by such order without liability.

11. Our Tooling and Property.

11.01 General. This Section governs our tooling and all other property owned by us and our affiliates. Tooling includes all tools with accessions, modifications and repairs, equipment, drawings, manufacturing aids and replacements of the foregoing furnished by us, either directly or indirectly, or acquired or manufactured by you for use in the performance of an order ("Special Tooling").

11.02 Special Tooling and Bailed Property. Unless otherwise provided in an order, Special Tooling and any other property owned by us that is placed in your possession or control for your use in connection with the Supplies ("Bailed Property") will be (i) our property, (ii) plainly marked or otherwise adequately identified by you as our property, (iii) safely stored separate and apart from your property, and (iv) maintained in such a manner to prevent its unauthorized access or disclosure. You will use Special Tooling or Bailed Property solely in connection with the production of Supplies.

11.03 Acquisition of Special Tooling. You will design and fabricate, rework or acquire Special Tooling that fully conforms to the specifications and other requirements of our purchase order. Special Tooling must be capable of producing any volume projections for the Supplies for the life of the part. Your warranty for Special Tooling is the same as for the Supplies.

11.04 Ownership of Special Tooling. We will become the sole owner of all Special Tooling as soon as it is fabricated or acquired by you, even if you have not yet been paid for it. In any dispute involving ownership of the Special Tooling at any other stage of its completion, there is a presumption that we are the sole owner of the Special Tooling. As a precaution against any adverse claims, you grant us a security interest in the Special Tooling to secure any progress payments advanced against the Special Tooling and a right to title and possession of the Special Tooling. You authorize us to file a financing statement showing you as the debtor/bailee and us as the secured party/bailor with respect to any Special Tooling.

11.05 No Rights or Liens. Special Tooling and Bailed Property are in your possession or control as a bailment from us. You acknowledge that you are a bailee at will of Special Tooling and Bailed Property. You have no property interest or other rights in Special Tooling or Bailed Property nor any power to transfer any rights or grant a security interest in either of them to a third party. To the fullest extent permitted by law, you waive any and all rights you may have to claim a lien or encumbrance of any kind whatsoever with respect to Special Tooling and Bailed Property. Upon your failure to deliver the Special Tooling or Bailed Property at our request, without posting any bond, we will be entitled to, and you agree to allow us entry onto your premises to retrieve the Special Tooling or Bailed Property, and not to oppose our request for any equitable relief that may be available to us to obtain possession of the Special Tooling or Bailed Property.

11.06 Possession of Special Tooling and Bailed Property. You will keep Special Tooling and Bailed Property in your possession and control in good condition, fully covered by insurance, free of liens and encumbrances and will replace them when lost, damaged or destroyed. If part of the fabrication, modification, repair or refurbishment of the Special Tooling or Bailed Property requires you to transfer possession to a third-party, you will inform us in advance in writing with the identity of the third-party contractor and the location of the Special Tooling or Bailed Property and obtain our prior written permission.

11.07 Return of Special Tooling or Bailed Property. All Special Tooling and Bailed Property will be immediately transferred as we may direct at any time. If you make any unauthorized transfer of Special Tooling or Bailed Property, or you or your suppliers or subcontractors fail to deliver possession to us upon demand, you will reimburse us for any costs we incur in having the Special Tooling or Bailed Property returned to us or moving it as directed by us. You will cooperate with us in removing the Special Tooling from the location of any third party.

11.08 Third Party Claims. You will defend and indemnify us for all costs incurred, including reasonable attorneys fees, in connection with any claim that challenges our sole right, title and interest in Special

Tooling or Bailed Property brought by any third party claiming any right or interest in the Special Tooling or Bailed Property through you.

11.09 Tooling Costs. The price of Special Tooling will not exceed the actual costs of acquiring the Special Tooling from a third-party contractor or your actual costs of fabrication of the Special Tooling. You will adhere to our procedures in effect at the time for submitting requests for reimbursement for Special Tooling costs. All requests for reimbursement for Special Tooling costs are subject to our review, approval and audit

12. Termination for Cause.

12.01 Breach. We reserve the right to cancel all or any part of a purchase order, without liability, if you: (a) repudiate or breach any of the terms of such order, including your warranties, (b) fail to perform as specified by us, or (c) fail to make progress so as to endanger timely and proper delivery of Supplies, and, if capable of cure on a timely basis, do not correct such failure or breach within ten (10) days (or such shorter period of time if commercially reasonable under the circumstances) after receipt of written notice from us specifying such failure or breach.

12.02 Change of Control. We may terminate a purchase order, in whole or in part, upon written notice to you if you experience a change of control or a sale of a substantial portion of your assets.

12.03 Insolvency. If you become insolvent or if a petition under any chapter of the bankruptcy law is filed by or against you or if you make a general assignment for the benefit of creditors or if a receiver is appointed for you, we may terminate any purchase order and take possession of the Supplies in whatever stage of completion they may be, immediately obtain custody of all proprietary and confidential information and all Special Tooling or Bailed Property, and contract with or employ any other person or persons to finish the Supplies and collect from you any additional expenses or damages that we may incur. In each case, you will be liable for all costs incurred by us, including those for attorneys and other professionals.

12.04 Option to Terminate Due to Excusable Event. We may terminate a purchase order in whole or in part due to an excusable event upon written notice to you as described in Section 10.03. In the event of an excusable event, we may, at our option, acquire all finished Supplies, work-in-process, and raw materials produced or acquired for the Supplies under a purchase order.

12.05 Effective Date of Termination. Termination under this Section will be effective on the date of our written notice of termination unless the written notice specifies another date.

12.06 Amounts Payable by Us upon Termination. In the event of a termination under this Section, we will pay you, subject to Section 12.07, for any unpaid Supplies (including Special Tooling) previously delivered and accepted that fully conform to the requirements of the purchase order, and undelivered finished Supplies we choose to purchase in our sole discretion. We may also, at our option, acquire all finished Supplies, work-in-process, and raw materials produced or acquired for the Supplies under a purchase order.

12.07 Amounts Payable by You. You will be liable for all direct, incidental and consequential losses, costs and expenses incurred by us resulting from your failure to comply with any of the requirements of a purchase order (even if you have subsequently cured such failure) or from our termination under this Section 12. Termination under this Section or payment by us of amounts set forth above do not relieve you of this liability.

13. Termination at Our Option.

13.01 Termination. In addition to any other rights we have to cancel or terminate any purchase order, we may at our option immediately terminate all or any part of a purchase order, at any time and with or

without any reason, by giving you written notice. Because of the commitments we have to our customers, you may not terminate a purchase order at your option.

13.02 Effective Date. Termination under this Section 13 will be effective on the date of our written notice unless the written notice specifies another date.

13.03 Amounts Payable to You. Upon such termination, we will pay you the following amounts without duplication: (a) the order price for all Supplies that have been completed in accordance with a purchase order and not previously paid for; and (b) the actual cost of work-in-process, parts and materials incurred by you in furnishing the Supplies to the extent such costs are reasonable in amount and are properly allocable or capable or being apportioned under generally accepted accounting principles to the terminated portion of such order; less, however, the reasonable value or cost (whichever is higher) of any Supplies, parts or materials usable or salable by you with our written consent, and the cost of any nonconforming, damaged or destroyed Supplies, parts or material.

13.04 Limitation on Costs. We will make no payments for finished Supplies, work-in-process or raw materials fabricated or procured by you in amounts in excess of those authorized by current purchase orders or releases nor for any undelivered Supplies that are in your standard stock or that are readily marketable. Payments made under this Section will not exceed the aggregate price we would have paid for finished Supplies that would be produced by you under delivery schedules outstanding at the date of termination.

13.05 No Other Liability. Except as provided in this Section, we will not be liable for and will not be required to make payments to you, directly or on account of claims by your subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, and general and administrative burden charges from termination of any order.

13.06 Submission of Claim. You will furnish us, within thirty (30) days after the effective date of any termination under this Section 13, your termination claim, which will consist only of the items set forth in this Section. Your claim must include sufficient supporting data to permit us to verify and substantiate the claim. We may audit your records, before or subsequent to payment, to verify amounts requested in your termination claim. If our audit determines that we have overpaid you, you will immediately refund the amount of the overpayment to us.

14. Your Obligations on Termination.

14.01 Your Obligations. Upon expiration or termination of a purchase order, you will (a) take all actions necessary to protect or transfer possession of any Special Tooling or Bailed Property in your possession or in the possession of your supplies or subcontractors, (b) cooperate with us to help avoid production disruptions, (c) terminate all orders and subcontracts related to the Supplies, and (d) cease all work under the purchase order unless we otherwise direct.

15. Indemnification.

15.01 Your Indemnification Obligation. To the fullest extent permitted by law, you will indemnify, defend, and hold us and our affiliates, subsidiaries, associates, directors, officers, employees, and agents (collectively, the "Indemnified Persons") harmless against and from any and all claims, lawsuits, judgments, losses, product recalls, civil penalties or actions, costs, liabilities, damages, and expenses (including attorneys' fees) incurred or to be incurred (collectively, "Claims") which may be made or brought against us to the extent it is alleged that the Supplies or the use of the Supplies caused or will cause: (a) the death of or injury to any person or damage to any property which resulted or is alleged to have resulted from any acts or omissions by you, your employees and agents, or from the Supplies or their use; (b) your or the Supplies' failure or alleged failure to comply with any of your warranties, guarantees, or representations contained in these Terms or otherwise; (c) a Claim in connection with any promotional or advertising matter, guarantees, warranties, labels, and instructions furnished by you or submitted to you by us to the extent they were approved by you; (d) subject to Section 10.05 below, infringement of any

patent, design, trade name, trademark, copyright, trade secret, or any other right or entitlement of any third party; or (e) any environmental, property and toxic tort claim, lawsuit, judgment, loss, civil penalty or action. You also agree to defend, indemnify and hold us and our affiliates, subsidiaries, associates, directors, officers, employees, and agents harmless for any alleged independent act of liability by us arising or alleged to have arisen out of the sale or use of the Supplies, except to the extent that any such independent act is the primary proximate cause of the occurrence complained of.

15.02 Right to Defend. If you should fail to assume your obligations hereunder within 14 days of your receipt of our notice of such Claim, including your obligation to diligently pursue and pay for the defense of any indemnified Claim within such time, we will have the right, but not the obligation, to proceed on our own behalf to defend ourselves and to thereafter require from you reimbursement and indemnification for any and all reasonable costs and expenses (including reasonable attorneys' fees).

15.03 Notice. You will provide us with written notice within 14 days of the receipt of any evidence that an alleged independent act by us may have been the primary proximate cause of the Claim. We will give you reasonable prior notice of such Claim and permit you to control the defense of the Claim. Notwithstanding the above, we shall have the right, but not the obligation, to participate as we deem necessary in the handling, adjustment, or defense of any such Claim, at our own expense. We will each cooperate with the other in the handling, adjustment, or defense of any such Claim.

15.04 Settlement. Notwithstanding Sections 15.02 and 15.03, neither of us shall enter into any settlement or compromise of the claim for the benefit of the other without the express written consent of the other.

15.05 Infringement Claims. We will not consider you in breach of Section 15.01(d) if you: (a) procure the right to continue to manufacture and sell the Supplies free of any liability for infringement or violation; or (b) replace or modify the product, at your sole expense, with non-infringing Supplies of equivalent or improved functionality.

15.06 Work Performed on Premises. If you perform work on our or our affiliates' premises or utilize our property, whether on or off our premises, you will indemnify and hold the Indemnified Person harmless from and against any Claims for damages to the property of or injuries (including death) to Indemnified Persons, their employees, your employees or any other person arising from or in connection with your performance of the work or use of the Indemnified Person's property.

16. Setoff.

16.01 Direct Setoff Rights. In addition to any right of setoff provided by law, all amounts due to you will be considered net of indebtedness of you and your subsidiaries and affiliates to all Service Partners subsidiaries and affiliates. We may deduct such amounts without any other prior notice.

16.02 Basis. We will be presumed to have acted in good faith if we have a commercially reasonable basis for believing that you or one of your subsidiaries or affiliates is liable for the amount of the debit. A debit may include professional fees and other costs.

17. Remedies.

17.01 Our Rights. The rights and remedies reserved by us in these Terms will be cumulative and in addition to any other rights or remedies provided by law or equity. Our liability to you arising out of or in connection with a purchase order, regardless of the form of the cause of action, will in no event include penalties of any kind or description, or incidental, consequential, special or indirect damages. Any claim for relief must be commenced within one year after the cause of action accrues.

17.02 Waiver. Our waiver of any such right or remedy will not affect any right or remedy subsequently arising under the same or similar clauses. Such a waiver will not operate as a waiver of such clause or

condition. A waiver of nonperformance under a purchase order must be in writing and will apply only to the specific instance addressed in the waiver and to no other past or future nonperformance.

17.03 Costs. We will be entitled to recover costs and reasonable attorneys and other professional fees in the enforcement or defense of any rights under a purchase order.

17.04 Limitation on Our Liability. Under no circumstances will we or our affiliates be liable for consequential, incidental, indirect, special punitive, or other damages, whether foreseeable or not, based on your claims or claims of any party claiming by or through you.

17.05 Your Attempted Limitation of Liability. Any attempt by you to (a) disclaim any theory or grounds upon which we or our customers might recover against you, (b) disclaim any kind or class of damages which we or our customers might recover against you, or (c) establish contract time limitations periods within which we or our customers are obligated to assert claims against you, are rejected by us and will not be effective.

18. Assignments.

18.01 Assignment by Us. We may assign any benefit or obligation under any purchase order upon written notice to you.

18.02 Assignment by You. Any purchase order we issue to you is in reliance upon your personal performance of the obligations imposed. You agree not to assign a purchase order or delegate the performance of your obligations without our specific written consent. Any such assignment or delegation without our previous written consent, at our option, will be deemed a cancellation of the purchase order. Any consent to an assignment that we may give will not be deemed to waive our right to recover from you and your assigns for any claim arising out of a purchase order.

19. Continuing Obligations; Severability.

19.01 Continuing Obligations. The obligations of each party under the following Sections will survive the expiration, non-renewal or termination of a purchase order: Sections 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 20 or 21.

19.02 Severability. Any term or condition that is declared unlawful or unenforceable by a court of competent jurisdiction will not apply. The unenforceability of any such term or condition will not affect the enforceability of any other term or condition.

20. No Third Party Rights; Advertising.

20.01 No Third-Party Rights. No term, condition or right in or arising under any of the Terms or otherwise relating to the purchase of the Supplies gives or creates any third-party beneficiary rights or any other rights whether in law or equity to any person or entity other than you and us.

20.02 Advertisement. You will not, without first obtaining our specific written consent, in any manner advertise, publish, or disclose to any third party that you have contracted with us to furnish the Supplies covered by a purchase order except as specified or required for completion of an order. Your breach of this Section will permit us to cancel the order in addition to any other rights and remedies we may have as provided by law.

21. Governing Law.

21.01 This purchase order will be construed and interpreted according to the laws of the state appearing in our address on the applicable purchase order, without regard to the laws regarding conflicts of laws. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Terms.