

Terms & Conditions of Purchase

- 1. OFFER; ACCEPTANCE.** These Standard Terms and Conditions of Purchase are part of the purchase Order from Buyer, Vari-Wall Tube Specialists, Inc., Vari-Wall Automotive, Inc., Vari-Wall Sports, Inc., Vari-Wall Technology, Inc. ("Buyer"), to Seller for the purchase of goods and services ("Supplies") from Seller, which purchase order ("Order") constitutes an offer from Buyer to Seller to purchase Supplies from Seller. This Order does not constitute an acceptance of any offer or proposal made by Seller. Any reference in this Order to any offer or proposal made by Seller is solely to incorporate the description or specifications of Supplies in the prior offer or proposal, but only to the extent that the description or specifications do not conflict with the description and specifications in this Order. Seller's written acceptance, Seller's commencement of any work under this Order or any other conduct by Seller that recognizes the existence of a contract with respect to the subject matter of this Order constitutes Seller's acceptance of the Order, including the Standard Terms and Conditions of Purchase. As such, these Standard Terms and Conditions of Purchase are referred to herein interchangeably with the subject "Order." Any additional or different terms and conditions proposed by Seller, whether in Seller's proposal form, acknowledgement form, invoice or otherwise, are unacceptable to Buyer, are expressly rejected by Buyer and shall not become part of this Order. The terms of this Order are exclusive and this Order can be modified only in the manner described in Section 26.
- 2. INVOICING AND PRICING.** The price of Supplies includes storage, handling, packaging, freight, insurance, transportation, and all other expenses, costs and charges of Seller, unless Buyer agrees otherwise in writing in this Order. All invoices under this Order must reference the purchase order number, amendment or release number, Buyer's part number, Seller's part number where applicable, quantity of pieces in the shipment, number of cartons or containers in the shipment, Seller's name and number, bill of lading number and any other information required by Buyer. Buyer may return to Seller incorrect invoices or related documents. Payment will be made against correct invoices and documentation on the payment terms specified in this Order. The total price includes all freight, duty and tax, except for any value added tax (VAT) imposed by a non-USA jurisdiction, which must be shown separately on Seller's invoice for each shipment, and Buyer shall not be liable for any business activity taxes or taxes on or measured by net income, including without limitation the Michigan Single Business Tax. Seller represents and warrants that the prices will be no less favorable than those which Seller presently, or in the future, offers to any other customer for the same or similar goods or services for similar quantities. If Seller offers a lower price for the same or similar goods or services to any other customer during the term of this Order, then Seller will immediately offer Buyer the same price on the same terms and conditions as offered to the other customer.
- 3. SALES TAX EXEMPTION.** Buyer certifies that Supplies purchased under this Order and identified as industrial processing are eligible for state and federal sales tax exemption under the federal identification number indicated on the face of this Order or otherwise provided by Buyer.
- 4. PRICING TO REMAIN COMPETITIVE: PRICE REDUCTION BEST EFFORTS.** (1) Seller shall assure that the Supplies remain competitive in terms of price, technology, design and quality with similar goods available to Buyer. If, in the reasonable opinion of Buyer, the Supplies do not remain competitive, Buyer, to the extent it is free to do so, will advise Seller in writing of the area(s) in which another product is more competitive with respect to price, technology, design or quality. If, within thirty (30) days, Seller does not agree to immediately sell the goods at a competitive price, or, if applicable, with comparable technology, design or quality, Buyer may terminate this contract and purchase from another supplier without liability to Seller. In consideration for this provision, provided that Seller complies in full with this provision, during the term of this Order, Buyer will not exercise its rights under Section 20 ("Termination for Convenience"), except for terminations due to program cancellations or modifications. (2) Buyer and Seller will use their best efforts to implement cost savings and productivity improvements to reduce Seller's costs, with the understanding that the savings (after financing) will be shared as follows: (i) Savings resulting from ideas generated solely by Buyer (including savings resulting from the reduction in the content of the Supplies) shall be for the sole benefit of Buyer and (ii) savings resulting from ideas generated by Seller shall be shared equitably as agreed upon by the parties or as required by Buyer's customer.
- 5. QUANTITIES; DELIVERY.** (1) Quantities listed in this Order as estimated are Buyer's best estimate of its requirements for Supplies from Seller for the contract term specified in this Order. Buyer is required to purchase only those quantities identified as firm orders in material authorization releases, manifests, broadcasts or similar releases ("Material Authorization Releases") or other orders delivered by Buyer to Seller in connection with this Order. Buyer may purchase additional quantities of the listed Supplies at the prices set forth in this Order pursuant to the Material Authorization Releases. (2) Delivery of Supplies shall be F.O.B. Buyer's designated facility. The risk of loss passes from Seller to Buyer upon delivery to Buyer's designated facility, unless otherwise agreed to in writing by Buyer. (3) Time and quantities are of the essence under this Order. Seller agrees to 100% on-time delivery of the quantities and at the time frame specified by Buyer, as set forth in this Order and related Material Authorization Releases, unless otherwise negotiated and agreed in writing by the parties. Failure to meet agreed delivery and quantities shall be considered a breach of this Order, and Seller shall pay to Buyer any damages or expenses imposed upon or incurred by Buyer. (4) Buyer may change the rate of scheduled shipments or direct temporary suspension of scheduled payments, neither of which entitles Seller to modify the price for Supplies covered by this Order. (5) Buyer is not obligated to accept early deliveries, late deliveries, partial deliveries or excess deliveries. (6) Quantities or weights required against this Order will in all cases be per Buyer's current material delivery schedule; this order does not give any commitment to quantities, weight or materials except as shown by buyer's material delivery schedule or as otherwise provided in the Order.
- 6. PREMIUM FREIGHT; RELATED COSTS.** (1) Seller pays all premium freight costs over normal freight costs if Seller needs to use an expedited shipping method to meet agreed upon delivery dates due to its own acts or omissions. Seller pays any costs incurred by Buyer, including costs charged by Buyer's customer(s) to Buyer, as a result of Seller's failure to comply with shipping or delivery requirements. (2) Buyer is not liable for premium freight costs, unless specifically agreed to in advance, in writing, by Buyer.
- 7. PACKAGING; MARKING; SHIPPING; DISCLOSURE; SPECIAL WARNINGS OR INSTRUCTIONS.** (1) Seller agrees to: (i) properly pack, mark and ship Supplies in accordance with the requirements of Buyer, the involved carriers and the country of destination, (ii) route the shipments in accordance with Buyer's instructions, (iii) label or tag each package according to Buyer's instructions, (iv) provide papers with each shipment showing the purchase order number, amendment or release number, Buyer's part number, Seller's part number (where applicable), number of pieces in the shipment, number of containers in the shipment, Seller's name and number, and the bill of lading number, and (v) promptly forward the original bill of lading or other shipment receipt for each shipment in accordance with buyer's instructions and carrier requirements. (2) If requested by Buyer, Seller will promptly provide Buyer with the following information in the form requested: (i) a list of all ingredients in Supplies, (ii) the amount of all ingredients, and (iii) information concerning any changes in or additions to the ingredients. (3) Before and at the time the Supplies are shipped, Seller will give Buyer sufficient warning in writing (including appropriate labels on all Supplies, containers and packaging) of any hazardous material that is an ingredient or part of the Supplies, together with any special handling instructions that are needed to advise carriers, Buyer and their employees how to take measures to prevent bodily injury or property damage while handling, transporting, processing, using or disposing of the Supplies, containers and packaging. Seller agrees to comply with all federal, state, provincial and local laws and regulations pertaining to product and warning labels. (4) Seller will reimburse Buyer for any expenses incurred as a result of improper packaging, marking, routing or shipping. (5) In no event will shipping documents attached to or contained in the shipment display pricing information or any of Buyer's proprietary information.
- 8. INSPECTION; NON-CONFIRMING GOODS/SERVICES; AUDIT.** (1) Buyer may enter Seller's facility to inspect the facility, Supplies, materials, and any of Buyer's property covered by this Order. (2) Buyer's inspection of Supplies, whether during manufacture, prior to delivery or within a reasonable time after delivery, does not constitute acceptance of any work-in-process or finished goods. Buyer's acceptance, inspection or failure to inspect does not relieve Seller of any of its responsibilities or warranties. Nothing in this Order releases Seller from the obligation of testing, inspection and quality control. (3) If defective Supplies are shipped to and rejected by Buyer, the quantities under this Order will be reduced unless Buyer otherwise notifies Seller. Seller will not replace reduced quantities without a new order from Buyer. (4) In addition to other remedies available to Buyer, (i) Seller agrees to authorize return, at Seller's risk and expense at full invoice price, plus transportation charges, within one (1) working day of Buyer's notification and to replace defective Supplies as Buyer deems necessary, and/or (ii) Buyer may have corrected at any time prior to shipment from Buyer's plant Supplies that fail to meet the requirements of this Order, and (iii) Seller will reimburse Buyer for all

reasonable expenses that result from any rejection or correction of defective Supplies. (5) Seller will document corrective actions within a commercially reasonable period after receipt of a defective sample and will take whatever measures necessary to correct the defect. (6) Payment for “nonconforming” Supplies is not an acceptance, does not limit or impair Buyer’s right to assert any legal or equitable remedy, and does not relieve Seller’s responsibility for latent defects. (7) Upon reasonable notice to Seller, either Buyer or Buyer’s customer may conduct a routine audit at Seller’s production facility for the purpose of quality, cost or delivery verification.

9. TOOLING. The provisions of this Section apply only to tooling orders. Buyer shall have access to Seller’s premises, prior or subsequent to payment, to inspect work performed and to verify changes submitted by Seller against this Order or amendment. The price set forth in this Order or amendment shall be adjusted so as to credit Buyer in the amount, if any, by which the price exceeds Seller’s actual cost as verified. Seller further agrees to retain all cost records for a period of three (3) years after receiving final payment of the charges. All tools and equipment are to be made to Buyer’s specifications (or, where directed by Buyer, those of Buyer’s customer). Exceptions are to be covered in writing on this Order or in writing from the manufacturing engineer.

10. PAYMENT. (1) Payment shall be made as set forth in this order (or any related document(s) made part of this order). (2) If not otherwise specified, Buyer’s payment will be made net sixty (60) days following Buyer’s receipt date of the supplies. (3) Buyer may withhold payment pending receipt of evidence, in the form and detail requested by Buyer, of the absence of any liens, encumbrances, or claims on supplies provided under this order. (4) Payment will be made in U.S. dollars unless otherwise agreed by the parties in writing.

11. CHANGES. (1) Buyer reserves the right to direct changes, or to cause Seller to make changes, to drawings, specifications, samples or descriptions of supplies. Buyer also reserves the right to otherwise change the scope of the work covered by this Order, including work with respect to such matters as inspection, testing, or quality control. Seller agrees to make any requested changes promptly. Seller agrees to notify Buyer within ten (10) days after receiving notice of a change if Seller expects that the change results in a difference in price or time for performance. Buyer can request additional documentation from Seller of the need for a different price or time for performance. After receiving all requested documentation, Buyer may, at its discretion, equitably adjust the price or time for performance. If Seller does not provide timely notice to Buyer that a requested change may result in a difference in price or time for performance, the parties agree that the Buyer’s requested change did not affect the price or time for performance. (2) Seller will not make any changes in the supply’s design, processing, packaging, marketing, shipping or date or place of delivery except at Buyer’s written instruction with Buyer’s written approval.

12. WARRANTIES. (1) Seller expressly warrants and guarantees to Buyer, to Buyer’s successors, assigns and customers, and to users of Buyer’s products, that all supplies delivered to Buyer will: (i) conform to the specifications, standards, drawings, samples, descriptions and revisions as furnished to or by buyer, (ii) conform to all applicable laws, orders, regulations or standards in countries where supplies or other products incorporating supplies are to be sold, (iii) be merchantable and free of defects in design (to the extent designed by Seller), materials and workmanship, and (iv) be selected, designed (to the extent designed by Seller), manufactured or assembled by Seller based upon Buyer’s intended use and benefit and sufficient for the purposes intended by Buyer. The foregoing warranties are in addition to those available to Buyer by law. (2) If Buyer intends to bring a claim against Seller for breach of warranty under this order, Buyer will provide Seller with a written claim indicating: (i) the existence and nature of the breach of warranty, and (ii) the amount of the actual or anticipated warranty loss.

13. REMEDIES. (1) The rights and remedies reserved to Buyer in this order shall be cumulative with and additional to all other or legal or equitable remedies. (2) Buyer will notify Seller if: (i) any supplies fail to conform to the warranties set forth in Section 13, (ii) Seller fails to comply with or breaches any of Seller’s representations in this Order or any of the Terms and Conditions of this Order, or (iii) Seller (or its agents, employees, or subcontractors) commits any other negligent or wrongful act or omission. (3) At Buyer’s request, Seller will reimburse Buyer for any incidental or consequential damages caused by non-conforming supplies, including but not limited to cost, expenses and losses incurred directly or indirectly by Buyer or its customer(s); (i) in inspecting, sorting, repairing or replacing the non-conforming supplies, (ii) resulting from production interruptions, (iii) conducting recall campaigns or other corrective service actions, or (iv) resulting from personal injury (including death) or property damages caused by the non-conforming supplies. Consequential damages include professional fees incurred by Buyer. (4) If requested by Buyer, Seller will enter into a separate agreement for the administration of processing of warranty chargebacks for non-conforming supplies and will participate in and comply with any warranty reduction or related programs of Buyer or (to the extent directed by Buyer) Buyer’s customer(s) that relate to the supplies. (5) in any action brought by Buyer to enforce Seller’s obligation to produce and deliver supplies under this order, the parties agree that Buyer does not have an adequate remedy at law and Buyer is entitled to specific performance of Seller’s obligations under this order.

14. INDEMNIFICATION. (1) To the fullest extent permitted by law, Seller will defend, indemnify and hold harmless Buyer, Buyer’s successors, assigns and customers (both direct and indirect) in which supplies are incorporated and dealers and users of the product sold by Buyer against any and all claims, damages, liabilities, or expenses (including attorney’s fees and other professional fees, settlements and judgments) arising out of or resulting in any way from any defective supplies, or from any negligent or wrongful act or omission of seller, or seller’s agents, employees or subcontractors, or any breach or failure by Seller to comply with Seller’s representations or other Terms and Conditions of this order. Seller’s obligation to defend and indemnify under this section will apply regardless of whether the claim arises in tort, negligence, contract, warranty, strict liability or otherwise except for claims that arise as a result of the sole negligence of Buyer. (2) If Seller performs any work on Buyer’s or Buyer’s customer(s)’ premises or utilizes the property of Buyer or Buyer’s customer(s), whether on or off Buyer’s or Buyer’s customer(s)’ premise: (i) Seller will examine the premises to determine whether they are safe for the requested services and will advise Buyer promptly of any situation it deems to be unsafe; (ii) Seller’s employees, contractors and agents will comply with all regulations that apply to the premises; (iii) Seller’s employees, contractors and agents will not possess, use, sell, transfer or be under the influence of alcohol or unauthorized, illegal or controlled drugs or substances on the premises; and (iv) to the fullest extent permitted by law, Seller will indemnify and hold Buyer and Buyer’s customer(s) (and their respective officers, directors, employees, agents, successors and assigns) harmless from and against any and all liability claims, demands or expenses (including attorney’s fees and other professional fees, settlements and judgments) for damages to the property of or personal injuries to Buyer, its customer, the respective employees or any other person or entity if the claims arise from or in connection with Seller’s work on the premises or Seller’s use of Buyer’s or Buyer’s customer(s)’ property, except for any liability, claim, or demand arising out of the sole negligence of Buyer or Buyer’s customer. (3) Buyer shall have the right to participate in the selection of counsel to defend it in any such claim in which Buyer is joined with Seller and shall have the right to select counsel of its sole choosing if it is necessary that Buyer have independent counsel not common with counsel for Seller. Buyer may also retain separate counsel at its expense to participate in the defense of any such claim, which shall not relieve Seller of its obligation to provide and pay for Buyer’s defense of any such claims.

15. INSURANCE. Seller shall maintain insurance coverage for the Supplies in amounts as may be reasonably requested by Buyer or (to the extent directed by Buyer) Buyer’s customer(s). Seller will furnish to Buyer a certificate showing compliance with this requirement or certified copies of all insurance policies within ten (10) days of Buyer’s written request. The certificate will provide the Buyer (and, if applicable, Buyer’s customers) will receive thirty (30) days prior written notice from the insurer of any termination or reduction in the amount or scope of coverage. The existence of insurance does not release Seller of its obligations or liabilities under this Order.

16. COMPLIANCE WITH LAWS. Seller, and any Supplies supplied by Seller, shall comply with all applicable laws, including rules, regulations, orders, conventions, ordinances or standards, that relate to the manufacture, labeling, transportation, importation, exportation, licensing, approval or certification of the goods or services, including laws relating to environmental matters, wages, hours and conditions of employment, subcontractor selection, discrimination, and occupational health or safety. This Order incorporates by reference all clauses required by these laws. All materials used by Seller in the Supplies or in their manufacture shall satisfy current governmental and safety constraints on restricted, toxic and hazardous materials as well as environmental, electrical and electromagnetic considerations that apply to the country of manufacture, sale or destination. Seller will indemnify Buyer against and hold Buyer harmless from any liability claims, demands or

expenses (including attorney's fees and other professional fees, settlements and judgments) relating to Seller's noncompliance, and the provisions of Section 14 are hereby incorporated by reference in this regard.

17. CUSTOMER REQUIREMENTS. Seller agrees to comply with the applicable terms and conditions of any agreements ("Customer Purchase Order") received by Buyer from a third party ("Customer"), in which Buyer agrees to supply to Customer, or incorporate into goods supplied to Customer, Supplies purchased by Buyer from Seller. Buyer may supply Seller with information regarding the Customer Purchase Orders, but Seller shall be responsible for ascertaining any terms and conditions contained in Customer Purchase Orders that may affect Seller's obligations under this Order. Seller will do everything within its control to enable Buyer to meet the terms and conditions of the Customer Purchase Orders. If this Section conflicts with any other Section in this order, the provisions of this Section shall govern at the sole option of Buyer.

18. INSOLVENCY. This Order may be terminated immediately by Buyer without liability to Seller if any of the following (or any other comparable) events occur, and Seller shall reimburse Buyer for all costs incurred by Buyer in connection with any of the following events, including but not limited to all attorney's and other professional fees: (1) Seller becomes insolvent, (2) Seller files a voluntary petition in bankruptcy, (3) an involuntary petition in bankruptcy is filed against Seller, (4) a receiver or trustee is appointed for Seller, (5) Seller needs accommodations from Buyer, financial or otherwise, in order to meet its obligations under this Order, or (6) Seller executes an assignment for the benefit of creditors.

19. TERMINATION FOR BREACH OR NONPERFORMANCE. Buyer reserves the right to terminate all or any part of this Order, without liability to Seller, if Seller: (1) repudiates, breaches or threatens to breach any of the terms of this Order, including Seller's warranties, (2) fails to perform or threatens not to perform services or deliver Supplies as specified by Buyer, (3) fails to make progress so as to endanger timely and proper completion or delivery of Supplies and does not correct the 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 Buyer specifying the failure or breach, (4) sells or offers to sell a substantial portion of its assets used for the production of Supplies for Buyer, or sells or exchanges or offers to sell or exchange an amount of its stock or other equity interests that would result in a change in control of Seller, or (5) fails to remain competitive with respect to quality, technology, delivery and pricing of the Supplies. Seller shall notify Buyer within ten (10) days after entering into any negotiations that could lead to the situation specified in subsection (4) above; upon Seller's request, Buyer will enter into an appropriate nondisclosure agreement related to information to be disclosed to Buyer in relation to such transaction.

20. TERMINATION FOR CONVENIENCE. (1) In addition to any other rights of Buyer to cancel or terminate this Order, Buyer may, at its option, immediately terminate all or any part of this Order at any time and for any reason by giving written notice to Seller, and notwithstanding the existence of any event of force majeure as defined in this Order. (2) Upon receipt of any notice of termination, and unless otherwise directed by Buyer, Seller will: (i) terminate promptly all work under this Order, (ii) transfer title and deliver to Buyer the finished Supplies, the work in process, and the parts and materials that Seller produced or acquired in accordance with the terms and conditions of this Order and which Seller cannot use in producing goods for itself or for others, (iii) verify and settle any claims by subcontractors for actual costs made unrecoverable by the termination and ensure the recovery of materials in subcontractor's possession, (iv) take actions reasonably necessary to protect property in Seller's possession in which Buyer has an interest until disposal instruction from Buyer has been received, and (v) upon Buyer's reasonable request, cooperate with Buyer in transferring the production of Supplies to a different supplier. (3) Upon termination by Buyer under this Section 20, Buyer's obligation to Seller will be to pay without duplication: (i) the Order price for all finished Supplies that conform to the requirements of this Order and were not previously paid for, (ii) Seller's reasonable actual cost of work-in-process and the parts and materials transferred to Buyer in accordance with subsection (2)(ii) above to the extent such costs are reasonable in amount and are properly allocable or apportionable under generally accepted accounting principles to the terminated portion of this order less, however, the sum of the reasonable value or cost (whichever is higher) of any goods or materials used or sold by Seller with Buyer's written consent, and the cost of any damaged or destroyed goods or material, and (iii) Seller's reasonable actual costs of carrying out its obligation under subsection (2)(iv). Notwithstanding anything to the contrary, Buyer shall have no obligation for and shall not be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, tooling, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, finished goods, work-in-process or raw materials that Seller fabricates or procures in amounts that exceed those authorized in the Material Authorization Releases, or general and administrative burden changes from termination of this Order, unless otherwise expressly agreed to in writing by Buyer. Buyer will make no payments for finished goods, services, work-in-process or raw materials fabricated or manufactured by Seller in amounts in excess of those authorized in delivery releases nor for any undelivered goods that are Seller's standard stock or that are readily marketable. (4) Buyer's obligation upon termination under this Section 20 shall not exceed the obligation Buyer would have had to Seller in the absence of termination. (5) Within thirty (30) days after the date of termination under this Section 20 (or such shorter period as may be required by Buyer's customer), Seller will furnish to Buyer any termination claim, which shall consist exclusively of the items of Buyer's obligation to Seller that are listed in subsection 18(3) above and sufficient supporting data to permit Buyer's audit, and shall thereafter promptly furnish such supplemental and supporting information as Buyer shall request. Buyer or its agents shall have right to audit and examine, before or after payment, all books, records, facilities, work, material, inventories and other items relating to any termination claim of Seller. (6) Buyer will not have any obligation under Section 18(1), (3), (4) or (5) above if Buyer terminates Buyer's obligations under the Order because of a default or breach by Seller.

21. FORCE MAJEURE. Any delay or failure of either party to perform its obligation shall be excused if, and to the extent that it is caused by an event or occurrence beyond the reasonable control of the party and without its fault or negligence, including, but not limited to, acts of God, actions by any governmental authority (whether valid or invalid), embargos, fires, floods, wind storms, explosions, riots, natural disasters, wars, sabotage, acts of terrorism, labor problems (including lockouts, strikes and slowdowns), inability to obtain power, labor, equipment or transportation, or court injunction or order, provided that written notice of such delay (including the anticipated duration of such delay) shall be given by the effected party to the other party as soon as possible after the event or occurrence (but in no event more than ten (10) days thereafter). During the period of such delay or failure to perform by Seller, Buyer, at its option may, at its option: (i) purchase supplies from other sources and reduce its schedules to Seller by such quantities, without liability to Seller, (ii) have Seller deliver to Buyer at Buyer's expense all finished goods, work in process and parts and materials produced or acquired for work under this order, (iii) have Seller provide the supplies from other sources in quantities and at times requested by Buyer at the price set forth in this order. In addition, Seller, at its expense, shall take such actions as are necessary to ensure the supply of supplies to Buyer for a period of at least thirty (30) days during any anticipated labor disruption or resulting from the expiration of Seller's labor contract(s). If requested by Buyer, Seller shall, within ten (10) days of Buyer's request, provide adequate assurances that the delay shall not exceed thirty (30) days. If the delay last more than thirty (30) days or Seller does not provide adequate assurance that the delay will cease within thirty (30) days, Buyer may immediately terminate this order without delay.

22. INTELLECTUAL PROPERTY. Seller agrees: (1) to defend, hold harmless and indemnify Buyer, its successors and customers against any claims of infringement (including patent, trademark, copyright, industrial design right, or other proprietary right, or misuse or misappropriation of trade secret) and resulting damages and expenses (including attorney's and other professional fees) arising in any way in relation to the supplies contracted, including such claims where Seller has provided only part of the supplies. Seller expressly waives any claim against Buyer that such infringement arose out of compliance with Buyer's specification, (2) that Buyer or Buyer's subcontractor has the right to repair, reconstruct or rebuild the specific supplies delivered under the order without payment of any royalty to Seller, (3) that parts manufactured based on Buyer's drawings and/or specifications may not be used for its own use or sold to third parties without Buyer's express written authorization and (4) to the extent that this order is issued for the creation of copyrightable works, the works shall be considered "works made for higher"; to the extent that the works do not qualify as "works made for higher," Seller hereby assigns to Buyer all right, title and interest and all copyrights and moral rights therein.

23. TECHNICAL INFORMATION DISCLOSED TO BUYER. (1) Unless otherwise agreed to in writing by the Parties, no information disclosed in any matter at any time by Seller to Buyer will be deemed secret or confidential. (2) Seller agrees not to assert any claim (other than a claim for patent infringement) against Buyer,

Buyer's customers or their respective suppliers with respect to any technical information that Seller has disclosed or may disclose to Buyer in connection with the supplies covered by this order. (3) Seller may not release or disclose Buyer's technical information to any third party without the express written permission of Buyer.

24. SELLER'S PROPERTY. Unless otherwise agreed to by Buyer, Seller, at its expense, shall furnish, keep in good condition and replace when necessary all machinery, equipment, tools, jigs, dyes, gauges, fixtures, molds, patterns, and any items other than Buyer's Property that are necessary for the production of supplies ("Seller's Property"). Seller shall insure Seller's Property with full buyer and extended coverage insurance for its replacement value. If Seller uses Seller's Property to produce goods or services, similar to supplies for other customers, including aftermarket customers, such goods or services shall not incorporate any of Buyer's logos, trademarks, trade names or part numbers. Seller shall not disclose or imply in its marketing efforts that these goods or services are equivalent to those purchased by Buyer. Seller grants to Buyer an irrevocable option to take possession of and title to Seller's Property that is special for the production of supplies under this Order upon payment to Seller of its net book value less any amounts that Buyer has previously paid to Seller for the cost of these items, provide, however, that this option does not apply if Seller's property is used to produce goods that are the standard stock of Seller or if a substantial quantity of like goods are being sold by Seller to others.

25. LAW; FORUM SELECTION; CONSENT TO PERSONAL JURISDICTION AND VENUE. (1) This Order is to be construed according to the laws of the State of Ohio. Any actions or proceedings by Buyer against Seller arising from or under this Order may be brought by Buyer in any court(s) having jurisdiction over Seller or, at Buyer's option, in court(s) having jurisdiction over Buyer, in which event Seller consents to personal jurisdiction and venue in such court(s). (3) Any actions or proceedings by Seller against Buyer arising from or under this Order may be brought by Seller only in court(s) having jurisdiction over Buyer.

26. ENTIRE AGREEMENT; MODIFICATIONS; NO IMPLIED WAIVER. (1) This Order, together with the attachments, exhibits, supplements, or other terms of Buyer specifically referenced in this Order, if any, constitutes the entire agreement between Seller and Buyer with respect to the matters contained in this Order and supersedes all prior oral or written representations and agreements. This Order may only be modified by a written amendment executed by authorized representatives of each party or, in the case of changes within the scope of Section 12, by purchase order amendment issued by Buyer. (2) The failure of either party at any time to require performance by the other party of any provision of this Order shall in no way affect the right to require performance at a later time, nor shall the waiver of either party of a breach of any provision of this Order constitute a waiver of any later breach of the same or any other provision of this Order.

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