



STANDARD TERMS AND CONDITIONS OF PURCHASE
For items purchased by Orscheln Products L.L.C.

1. Scope:

- a. Each purchase order, together with these Terms and Conditions (collectively, "Purchase Order") is an offer by Orscheln Products L.L.C. and/or its applicable affiliate or subsidiary ("Buyer") to the party to whom such Purchase Order is addressed and such party's applicable affiliates and subsidiaries ("Supplier") to purchase the goods and/or services (collectively, "Goods") described therein, and it shall be the complete and exclusive statement of such offer and agreement.
 - b. The following documents are incorporated into and shall be part of the Purchase Order: (i) prints, drawings and specifications for the Goods; (ii) any written agreement between Buyer and Supplier which provides therein that it shall be part of the Order; and (iii) Buyer's policies provided to Supplier by Buyer as a part of Buyer's new supplier packet or as individual documents. As used herein, the term "Buyer's policies" includes any statement of work applicable to the Goods, quality assurance documents, logistics guidelines, packaging specifications, and supplier manuals, including but not limited to amendments or modifications to Buyer's policies as may be implemented by Buyer during the term of the Purchase Order. Buyer's policies may be obtained by contacting Buyer's assigned purchasing representative
 - c. Buyer may, provide Supplier with certain information regarding the applicable Buyer's customer's terms and conditions in individual Purchase Orders, including but not limited to government requirements and regulations. It is Supplier's responsibility to determine if, and how, the Buyer's customer's terms and conditions may affect Supplier's obligations to Buyer and Buyer's customer, and ensure Supplier's compliance with all such additional terms and conditions.
 - d. Supplier acknowledges that Buyer may periodically update or revise these Standard Terms and Conditions by posting revisions on its website, and any of these actions will be incorporated into, and become part of these Standard Terms and Conditions without further action by Supplier or Buyer. Buyer will make reasonable efforts to notify Supplier of any revisions or modifications, but Supplier acknowledges and agrees that adherence to such amendments, modifications and revisions shall be Supplier's responsibility.
- 2. Acceptance of Purchase Order:** Supplier is deemed to have accepted the Purchase Order upon (a) Supplier's signing and returning to Buyer the New Supplier Packet and these Standard Terms or (b) Supplier's shipment of any of the Goods subject to any purchase order, whichever occurs first. Acceptance of any Purchase Order is limited to acceptance of the express terms of the offer contained in Purchase Order as previously defined. Any terms and conditions proposed in Supplier's offer, acceptance or in any acknowledgment, invoice, or other form of Supplier that add to, vary from, or conflict with the terms herein are hereby rejected, but such proposals shall not operate as a rejection of the Purchase Order unless such variances are in the terms of the description, quantity, price or delivery schedule of the Goods, but shall be deemed a material alteration thereof, and the Purchase Order shall be deemed accepted by Supplier without said additional or different terms.

3. **Pricing:** The price or prices for the Goods set forth on the Purchase Order are firm, and unless otherwise provided on the Purchase Order.
 - a. Supplier shall be responsible for the prompt payment of all charges imposed or payable on any of the Goods, including, without limitation, state and local taxes, customs duties and tariffs, freight and insurance.
 - b. Supplier represents that the prices for the Goods sold to Buyer under any Purchase Order are no less favorable than those currently extended to any other customer for the same or like goods in equal or less quantities. In the event Supplier reduces its price for such Goods during the term of any Purchase Order, Supplier agrees to reduce the prices hereof correspondingly.
4. **Payment:** Payment terms will be set forth on the Purchase Order. If the terms are not set forth on the Purchase Order, the payment terms are Net 60 days from receipt of invoice. If a payment date falls on a non-business day, payment will occur on the following business day. Invoices must contain the following information: Purchase Order number, item number, description of items, quantities, unit prices, extended totals, and any other information required by these terms.
5. **Quality, Inspection and Rejection:**
 - a. Supplier shall comply with all instructions and specifications, including quality testing requirements (collectively the "Requirements") provided by Buyer in the Purchase Order or other documentation. Supplier shall immediately notify Buyer, in writing, of any failure of the Supplier or the Goods to comply with the Requirements. Supplier agrees to provide and maintain inspection and quality control systems covering the Goods that are acceptable to Buyer. Buyer and Supplier agree to maintain records of all inspection work and make them available to the other party upon request.
 - b. Payment for Goods delivered pursuant to any Purchase Order will not constitute acceptance of the Goods nor will tender of payment be a condition to Supplier's duty to tender and complete any delivery required hereunder. Buyer shall have the right to inspect the Goods before or after payment (without regard to the manner of shipment or any shipping or price terms contained herein) and to reject any or all Goods which are in Buyer's judgment defective or nonconforming. Goods rejected and Goods supplied in excess of quantities called for herein may be returned to Supplier at Supplier's expense. In addition to Buyer's other rights, Buyer may charge Supplier all expenses of unpacking, examining, repacking and reshipping such goods. Buyer reserves the right to revoke any acceptance of nonconforming goods.
6. **Warranty:**
 - a. Supplier expressly warrants that all Goods purchased and delivered hereunder shall be (i) new; (ii) free from defects in workmanship, materials, and design; (iii) merchantable in the trade as goods strictly of the kind and quality described on the face of the Purchase Order; (iv) safe for their intended use; and (v) conform to the specifications established on the Purchase Order. If Supplier has reason to know the particular purpose for which Buyer intends to use the Goods, Supplier warrants that such Goods will be fit for such particular purpose.
 - b. Supplier warrants that the goods furnished hereunder will conform in all respects to samples provided to Buyer by Supplier, but any such samples shall not be deemed to diminish any other warranty of Supplier hereunder. Inspection, acceptance or use of the goods furnished hereunder shall not affect Supplier's

obligations under any warranty hereunder, and all express or implied warranties of Supplier, shall survive any such inspection, acceptance and use. All of Supplier's warranties shall run to Buyer, its successors, affiliates, transferees, assigns and customers, and Supplier expressly permits Buyer's assignment of its warranties to such persons. Notwithstanding any language in Supplier's forms or documentation, these warranties shall control insofar as the same may conflict with any warranty or limitation on warranty set forth in Supplier's forms. All express warranties contained herein are in addition to, and not in limitation of, any other express or implied warranties made or deemed made by Supplier.

- c. Supplier shall at Supplier's expense repair or replace the goods or refund the full purchase price for any goods for which a breach of warranty exists as directed by Buyer in Buyer's sole discretion. Supplier shall also be liable for all expenses and damages, including, but not limited to, shipping, receiving and storage costs of Buyer and all other incidental and consequential damages of Buyer for any breach of warranty.
 - d. Supplier warrants that it has good and marketable title to all goods provided under any Purchase Order and that such goods are free of any security interests, liens and other encumbrances.
7. **Indemnification:** Supplier agrees to protect, defend, hold harmless and indemnify Buyer, its agents, servants, employees, officers, directors, affiliates, transferees, customers, successors, assigns and customers ("Buyer's Indemnities") from and against any and all claims, actions, liabilities, losses, costs and expenses including attorneys fees arising out of any actual or alleged infringements of any patent, trademark or copyright by any Goods sold to Buyer and/or Buyer's Indemnities hereunder or arising out of any death or any actual or alleged injury to any person, damage to any property, or any other damage or loss by whomsoever suffered, resulting or claimed to result in whole or in part from any actual or alleged defects in such Goods, whether latent or patent, including actual or alleged improper construction or design of said Goods or the failure of said Goods to comply with specifications or with any express or implied warranties of Supplier, or arising out of any actual or alleged violation by such Goods, or its manufacture, possession, use or sale, of any law, statute or ordinance or any governmental or administrative order, rule or regulation.

These agreements and obligations of the Supplier shall not be affected or limited in any way by Buyer's extension of express or implied warranties to its customers. The foregoing agreement to indemnify and defend, and hold Buyer and Buyer's Indemnities harmless, shall include indemnification for all fines, costs, and expenses, including reasonable attorney's fees, incurred by Buyer and/or Buyer's Indemnities in connection with or as a result of any such demand, action, suit, claim, or proceeding, whether meritorious or not. Buyer reserves the right to participate fully in any defense at its own expense with counsel of its own choosing. However, if Buyer furnishes specifications to Supplier regarding the Goods, Buyer shall not be required to hold Supplier harmless against any claim of any third person by way of actual infringement of a valid US patent to the extent which arises out of compliance with such specifications.

8. **Insurance:** Supplier agrees to and shall maintain the following insurance coverage, commencing on the date of these Standard Terms and at all times thereafter until the fifth (5th) annual anniversary of the date of Buyer's last receipt of Supplier's goods: (i) Commercial General Liability including contractual liability and products liability and completed operations liability with Buyer and its affiliates INCLUDED AS ADDITIONAL INSURED, and coverage limits not less than \$2,000,000 per occurrence per year with a minimum aggregate amount per year of \$5,000,000 unless Buyer's Risk Manager requires higher; (ii) Workers' Compensation as statutorily required and Employers' Liability with a minimum coverage of \$1,000,000, with Waiver of Subrogation where permitted by law.

Supplier shall provide Buyer with a minimum of 30 days prior notice of cancellation of coverage. Furthermore, Supplier agrees to and shall provide annually Buyer a copy of Supplier's current Certificate of Insurance with Certificate Holder shown as:

Orscheln Products L.L.C. and its affiliates
PO BOX 220 Moberly, MO 65270 FAX (660) 269-4530
Attn: Risk Management

with a copy of the certificate forwarded to:
Orscheln Products L.L.C.
Attention: Your Orscheln Buyer 1177 N. Morley Moberly MO 65270

Supplier shall submit renewals of certificates of insurance to Buyer prior to expiration of insurance and Supplier agrees to notify Buyer immediately if any insurance coverage is cancelled or materially changed.

9. **Tooling:** All tooling, patterns, drawings, specifications, molds or similar items prepared by Supplier in connection with any Purchase Order which are funded in whole or in part by Buyer, or incorporate Buyer intellectual property provided to Supplier for its use in fulfillment of the Purchase Order (hereinafter called "Tooling/Molds") shall be the property of Buyer and will be used exclusively for meeting Buyer's requirements. Under no circumstances may the Tooling/Molds, drawings specifications or similar items be used for any other purpose without written authorization from Buyer. Supplier shall, at its sole expense, maintain all Tooling/Molds in good condition and repair at all times. Consistent with the foregoing, Supplier hereby assigns and agrees to assign its interest in such items to Buyer. Upon demand by Buyer, and without regard to whether such demand constitutes a breach of contract, Supplier agrees to turn over any or all Tooling/Molds at once and without any charge whatsoever.
10. **Security Interest:** Supplier hereby grants to Buyer a security interest in the goods the subject of this Purchase Order as security for the performance of Supplier's obligations owing or to be performed hereunder or otherwise in connection with the transactions contemplated hereby. Further, if Buyer shall pay for the goods prior to their shipment by Supplier, Supplier shall hold the goods in trust for the benefit of the Buyer. Supplier hereby appoints Buyer as its attorney in fact to execute and file any Uniform Commercial Code financing statements and/or such other documents as may be required as evidence of and to perfect the security interest granted hereunder.
11. **Shipments and Delivery:**
 - a. Delivery terms are as stated on the Purchase Order. Delivery terms are governed by Incoterms 2010.
 - b. Shipments must equal amounts ordered unless otherwise agreed in writing by Buyer. Partial shipments against any Purchase Order are not authorized except as may be specifically stated or indicated under the delivery date(s) specified on the face thereof, or unless authorization is obtained from Buyer in writing.
 - c. Buyer shall have the right at any time prior to shipment to make changes in specifications, materials, packaging, time and place of delivery and method of transportation. If any such changes cause an increase or decrease in the cost, the Parties shall negotiate an equitable adjustment and the Purchase Order shall be modified in writing accordingly. Supplier agrees to accept any such changes subject to this paragraph.
 - d. Goods delivered by Supplier shall be properly packaged and labeled. Supplier will be charged a repacking fee of Fifty Dollars (\$50.00) per hour for Goods which are not properly packaged and arrive in damaged containers.

- e. Supplier shall furnish, in a timely manner, all relevant documents required to declare and clear the Goods through Customs including, but not limited to, Bill of Lading, Packing List, Manifests, Invoices, Certificates of Origin, etc
- f. Supplier acknowledges that the Goods purchased hereunder and through the issuance of a Purchase Order are purchased for specific purposes and that Buyer has promised certain deliveries and/or completion dates to its customers based on the delivery date(s) specified. Time is therefore of the essence for any Purchase Order. If deliveries are not made by the date(s) specified on the Purchase Order, or if such timely delivery appears reasonably uncertain, Buyer reserves the right without liability and in addition to its other rights and remedies hereunder to terminate the Purchase Order by notice as to Goods not yet received and to purchase substitute items elsewhere and charge Supplier with any loss incurred. If in order to comply with Buyer's required delivery date(s) it becomes necessary for Supplier to ship by a more expensive way than specified in this Purchase Order, any increased transportation costs resulting there from shall be paid for by Supplier unless and to the extent the necessity for such rerouting or expedited handling has been caused by Buyer. Supplier shall not ship any of the goods that are the subject of any Purchase Order under reservation.

12. Termination:

- a. Buyer reserves the right to terminate any Purchase Order in whole or in part by giving Supplier notice in writing at any time prior to Supplier's shipment of the Goods.
- b. Upon of such notice, Supplier agrees to (i) immediately stop all work hereunder except as Buyer may otherwise direct in writing, and place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete the continued portion of the Order; (ii) prepare and submit to Buyer an itemization of all completed and partially completed Goods and/or Services; (iii) if requested by Buyer, deliver to Buyer any and all Goods and/or Services completed up to the date of termination at the pre-termination Order price; and (iv) if requested by Buyer, deliver any work-in-process.
- c. In the event Buyer terminates for its convenience after performance has commenced, Buyer will pay Supplier for (i) unpaid Goods previously delivered and accepted that fully conform to the requirements of the Purchase Order; (ii) Unpaid Goods which fully conform to the requirements of the Purchase Order and are ready for shipment; (iii) Raw Materials which cannot be used for other projects; and (iv) Work in progress which will fully conform to the requirements of the Purchase Order when completed. If the Order does not specify lead time, lead time shall be the reasonable average lead time for the Goods in accordance with Buyer data.
- d. In the event Buyer terminates for cause related to quality and/or delivery issues, or some other mutually agreed upon reason, Supplier shall have thirty (30) days to correct the problem (or less if commercially reasonable under the circumstances). In the event of termination prior to expiration of a Purchaser Order, Buyer will pay Supplier only for the actual and reasonable work-in-process costs incurred by Supplier on Goods required to be delivered within the lead time period, calculated from Buyer's issuance of the notice of termination as well as the cost of unique materials purchased solely for use in the Goods.
- e. Supplier agrees to use its best efforts to mitigate its own and Buyer's damages. In furtherance and not in limitation of the foregoing, Supplier agrees to make reasonable efforts to sell such Goods for Buyer's account and pending such sale, to take any and all other such actions as may be reasonably necessary to maintain the in a good and saleable condition for Goods of such type.

- f. In order to receive compensation, Supplier's termination claim for payment must be submitted within 90 days from the effective date of the termination.

13. Force Majeure:

- a. Supplier shall be liable for any failure or delay in performance in connection with the Order, except where such failure or delay results from causes that are, at one and the same time, unforeseeable, unavoidable, outside of its control and without its fault or negligence (an "Excusable Delay"), provided Supplier gives Buyer written notice to the effect that a failure or delay by Supplier will occur or has occurred within 3 days of Supplier's learning of such cause. If a failure or delay in performance is caused by an event affecting any of Supplier's suppliers, such failure or delay shall not be excusable unless such event is an Excusable Delay as defined above and the good or service to be provided by such supplier cannot be obtained by Supplier from other sources in time for timely delivery of the Goods to Buyer. Buyer may cancel without liability to Supplier its purchase of any Goods affected by Supplier's failure or delay in performance and, if the delay is expected to last for a period that could impact deliveries to Buyer's Customers, Buyer may cancel, without liability, any portion of or the entire Order.
- b. Buyer shall not be liable for delaying delivery and/or acceptance of the goods, for its failure to accept any goods or for its failure to perform hereunder or breach hereof due to an Excusable Delay which renders Buyer's performance impossible or impracticable or causes Buyer's breach hereof, including any cause attributable to Buyer's customers.

14. **Insolvency:** If Supplier (a) becomes insolvent, or institutes or has instituted against it insolvency proceedings, or admits in writing its inability to pay its debts generally, or any proceeding is instituted by or against Supplier seeking adjustment, protection or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, or other similar official for it or for any substantial part of its property or (b) fails to comply with any of the terms and conditions hereof of any other contract with Buyer, then, the same shall amount to a breach hereof and a default hereunder. In the event of such breach or default, Buyer shall be entitled to cancel any unfilled part of a Purchase Order without any liability whatsoever and shall have such other rights and remedies afforded to Buyer for breach of contract under the Uniform Commercial Code as enacted in the State of Missouri or under any applicable law, including, but not limited to, the remedies of incidental and consequential damages.

15. **Setoff:** Any claims for money due or to become due from Buyer shall be subject to deduction or setoff by Buyer by reason of any counterclaim arising out of this or any other transaction with Supplier. Not in limitation of the foregoing, Buyer may deduct all or any part of the damages resulting from any breach by Supplier from any part of the price still due under the contract.

16. The rights and remedies provided to Buyer herein shall be cumulative and in addition to any other rights and remedies provided at law or in equity.

17. IN NO EVENT SHALL BUYER BE LIABLE FOR ANTICIPATED PROFITS OR FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF THE SUPPLIER, INCLUDING WITHOUT LIMITATION, ANY CHARGES, EXPENSES OR COMMISSIONS INCURRED IN STOPPING DELIVERY, IN THE TRANSPORTATION, CARE OR CUSTODY OF THE SUBJECT GOODS AFTER BUYER'S BREACH, IN CONNECTION WITH RETURN OR RESALE OF THE GOODS OR OTHERWISE RESULTING FROM SUCH BREACH. BUYER'S LIABILITY ON ANY CLAIM OF ANY KIND FOR ANY LOSS OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH OR RESULTING FROM THESE STANDARD TERMS AND ANY PURCHASE ORDER OR FROM THE PERFORMANCE OR BREACH THEREOF SHALL IN NO CASE EXCEED THE PRICE ALLOCABLE TO THE GOODS OR UNIT THEREOF WHICH GIVES RISE TO THE CLAIM. CONSISTENT WITH THE FOREGOING, SUPPLIER HEREBY WAIVES AND AGREES TO WAIVE ANY CLAIM, LOSS OR DAMAGE IN EXCESS OF THE PRICE ALLOCABLE TO THE GOODS. ANY ACTION RESULTING FROM ANY BREACH ON THE

PART OF BUYER ARISING OUT OF A PURCHASE ORDER MUST BE COMMENCED BY THE SUPPLIER WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.

18. **Compliance with Laws:** By accepting any Purchase Order, Supplier affirms that it is in compliance, and shall ensure that Supplier's subcontractors, vendors and suppliers are in compliance, with all applicable laws, rules, regulations, orders, conventions, or standards that regulate the sale, manufacture, labeling, transportation, licensing, approval or certification of the Goods, including but not limited to, those relating to data security, environmental matters, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety and motor vehicle safety, and each Purchase Order shall be deemed to incorporate by reference all the clauses required by the provisions of said laws, orders, rules, regulations and ordinances. At Buyer's request, Supplier shall certify in writing its compliance with the foregoing, including compliance of Supplier's subcontractors, vendors and suppliers.

Supplier shall indemnify and hold Buyer harmless from and against any liability claims, demands or expenses (including, without limitation, attorneys' or other professional fees) arising out of or in connection with Seller's non-compliance with the provisions of this paragraph.

19. **Conflict Minerals:** Supplier recognizes, consistent with the public policy underlying enactment of the Conflict Minerals provision (Section 1502) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"), the significant legal and non-legal risks associated with sourcing tin, tantalum, tungsten and gold (the "Conflict Minerals") from the Democratic Republic of the Congo and adjoining countries ("DRC countries"). Supplier will have a policy and exercise due diligence to reasonably assure that the tantalum, tin, tungsten, gold and other minerals identified as Conflict Minerals used in the Goods they manufacture or supply do not directly or indirectly finance or benefit armed groups that are perpetrators of serious human rights abuses in the DRC countries.
20. **Export Control:** Supplier shall control the disclosure of and access to technical data, information and other items received under this Purchase Order in accordance with U.S. export control laws and regulations, including but not limited to the ITAR. Supplier agrees that no technical data, information or other items provided by Buyer in connection with this Purchase Order shall be provided to any foreign persons or to a foreign entity, including without limitation, a foreign subsidiary of Seller, without the express written authorization of Buyer and Supplier's obtaining of the appropriate export license, technical assistance agreement or other requisite documentation for ITAR-controlled technical data or items. Supplier shall indemnify and hold Buyer harmless from and against any liability claims, demands or expenses (including, without limitation, attorneys' or other professional fees) arising out of or in connection with Seller's non-compliance with the provisions of this paragraph.
21. **Data Privacy:** Supplier shall comply with all applicable data privacy laws and shall be responsible for providing any notice required by law to the data subjects whose personal data it provides to Buyer. Supplier shall protect business contact personal data received from Buyer in association with the Purchase Order, secure any such personal data to prevent loss or theft and shall not use the data for any other purpose except what is necessary in association with the Purchase Order. In the event that the Supplier learns that personal data in its custody is misappropriated or accessed by unauthorized persons, the Supplier shall immediately take remediation actions and notify the Buyer that the data was compromised.
22. **Data Security:** Supplier will use all reasonable practices and security procedures necessary to protect all electronic data that is transmitted under the Purchase Order by (but not limited to) electronic transmission or the physical delivery of electronically recorded data. Such protective measures shall include, but not be limited to, use of up-to-date anti-virus software to guard against viruses, worms, Trojans or other malware

that may permit unauthorized access to data or may compromise the confidentiality, integrity or authorized accessibility of data or associated information systems of the other party. Neither Buyer nor Supplier shall introduce into electronic data transmitted between them under a Purchase Order any virus, worm, Trojan or other malware that may permit unauthorized access to data or may compromise the confidentiality, integrity or authorized accessibility of data or associated information systems of the other party. Provided, however, in no event shall Buyer be responsible for any damages or loss caused by electronic data transmitted to Supplier. In the event of a breach of Supplier's data or associated information systems and Buyer data or information in its custody is misappropriated or accessed by unauthorized persons, the Supplier shall immediately take remediation actions and notify the Buyer that the data was compromised.

23. **Government Sales:** Supplier acknowledges that Buyer's purchase of Goods may relate to a State or U.S Government or other government contract and such contract may be subject to termination under applicable Department of Defense or other agency procurement regulations. Supplier agrees that the Goods furnished hereunder have been and will be produced in full compliance with the terms of any such contract (the applicable terms of shall be conveyed to Supplier by Buyer, including but not limited to flow down clauses, which are incorporated herein) and to comply with all applicable directives, orders, rules and regulations and to furnish all required information, certificates or reports when and as required by law or by any such contract. If Products are for resale to the Federal Government, Supplier grants to the Comptroller General of the United States the right to audit its books. Buyer shall indemnify and hold Supplier harmless from and against any liability claims, demands or expenses (including, without limitation, attorneys' or other professional fees) arising out of or in connection with Buyer's failure to provide Supplier with the applicable government contract provisions as required by this paragraph.
24. **Buyer's Intellectual Property Rights.** The Buyer may have valuable intellectual Property Rights in Tooling, documents, and information provided to the Supplier. Intellectual Property Rights include trademarks, trade dress, patents, copyrights, trade secrets and industrial design rights. The Supplier may use the Intellectual Property Rights of the Buyer only in the production and supply of Goods to the Buyer.
25. **Confidentiality.** Unless the Parties have entered into a separate confidentiality agreement, the following subsections shall apply:
- a. Confidential Information is information that meets the requirements specified below for Supplier Confidential Information or Buyer Confidential Information.
 - b. Confidential Information is any information disclosed by a party and in reference to a Purchase Order that meets all of the following requirements: (i) The information is non-public information that is proprietary to: (A) a party or any of a party's related companies; or (B) any third party to which a party or related company has an obligation of confidentiality relating to the information; and (ii) The information is disclosed to the the other party: (A) in tangible form and identified as confidential in the tangible form; or (B) orally, and is identified as confidential at the time of disclosure, and is described in a written statement (which must also identify it as confidential) within a reasonable time after disclosure.
 - c. **Obligations and Standard of Care:** The Buyer and Supplier will each use Reasonable Care to protect the confidentiality of Confidential Information to the Other Party. Reasonable Care is the standard of care that the party holding the information would use in protecting the confidentiality of its own confidential information. The obligations under this Section 21.d do not apply to any information that: (1) is or becomes publicly available through no breach of any agreement between the Buyer and the Supplier; (2) is approved for release by the disclosing party in a written notice; (3) is lawfully obtained from a third

party without a duty of confidentiality; (4) was already known to the receiving party prior to its disclosure as evidenced by its written records; or (5) is required to be disclosed by a valid court order.

- d. **Sharing with Other Third Parties:** Neither the Buyer nor the Supplier will share any Confidential Information of the Other Party with any third party, including and competitor of the Other Party, without the prior written agreement of the other party, except as may otherwise be permitted under the Purchase Order Documents or other written agreement between the parties.
- e. A receiving party shall limit its use of the other Party's Confidential Information for the purposes contemplated in this Agreement, and will not otherwise use it for its own benefit or the benefit of others

26. **Inspections and Audits:** Buyer may make Inspections, including quality surveys/audits, and testing at any stage of the manufacture of Goods ("Inspection"). Supplier or sub-supplier, without additional charge, shall provide all reasonable facilities and assistance required for safe and convenient Inspection. Buyer shall not unduly delay the work while conducting such Inspection. Buyer shall not be liable for any reduction in value of samples used in connection therewith, nor shall any rejected Goods be delivered to Buyer. Buyer's Inspection, or lack thereof, shall not relieve Supplier of responsibility for Goods not in accordance with the provisions contained herein, imply approval or acceptance by Buyer, or waive Supplier's responsibility for latent defects, fraud, gross mistake or warranty.

27. **Relationship of the Parties:** The Purchase Order does not create an agency, partnership or other relationship other than that of independent contracting parties. Supplier has no authority to bind or commit Buyer.

28. **Arbitration.** ANY CLAIM OR CONTROVERSY WHATSOEVER BETWEEN BUYER AND SUPPLIER OR ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE BREACH THEREOF OR OTHERWISE, SHALL BE SETTLED BY FINAL AND BINDING ARBITRATION BY A SINGLE ARBITRATOR IN RANDOLPH COUNTY, MISSOURI, TO BE CONDUCTED IN THE ENGLISH LANGUAGE IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION, AND JUDGMENT UPON THE AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF AS THE FINAL NON-APPEALABLE JUDGMENT THEREOF. IF ANY INTELLECTUAL PROPERTY CLAIM IS ASSERTED IN THE INITIAL NOTICE OR INITIAL RESPONSE OF ANY PARTY, THE ARBITRATOR SHALL BE A MEMBER IN GOOD STANDING OF THE AMERICAN INTELLECTUAL PROPERTY LAW ASSOCIATION (AIPLA) THE AWARD SHALL BE MADE WITHIN NINETY (90) DAYS OF THE INITIAL NOTICE OF ARBITRATION NOTHING HEREIN SHALL PREVENT EITHER PARTY FROM SEEKING TEMPORARY OR PROVISIONAL JUDICIAL RELIEF PENDING THE FINAL ACTIONS OF THE ARBITRATION AND BUYER HEREBY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO THE EXCLUSIVE JURISDICTION OF THE STATE COURTS IN RANDOLPH COUNTY, MISSOURI, FOR SAID PURPOSE AND HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS AND AGREES THAT ANY SERVICE THEREOF MAY BE MADE BY THE REGISTERED OR CERTIFIED MAIL OF ANY APPLICABLE COUNTRY ADDRESSED TO BUYER AT THE ADDRESS OF BUYER SET FORTH ON THE FACE HEREOF OR ANY OTHER KNOWN LEGAL ADDRESS OF BUYER.

29. **Miscellaneous**

- a. **Notices:** All notices allowed or required under these Standard Terms shall be in writing and shall be deemed sufficient if sent by personal delivery, or by registered or certified mail, postage prepaid, or by first class air mail, postage prepaid (for international mail), or by facsimile, electronic mail, telex or telegraph, to the parties at the addresses given on the face hereof or to such other address as either party may notify. Notice shall be deemed given upon actual receipt.

- b. **Entire Agreement:** This Agreement constitutes the entire agreement between Buyer and Supplier. This Agreement is an integration of and supersedes any and all understandings, representations, proposals or negotiations between the parties, whether oral or written. No oral agreements, representations, course of conduct or dealings between the parties or usage of trade shall be relevant to supplement, explain, contradict or vary in any way, any provision contained herein or any express or implied warranties of Supplier.
 - c. **Waiver:** No waiver of any provision of or default under these Standard Terms shall affect Buyer's rights thereafter to enforce such provision or to exercise any right or remedy in the event of any other default, whether or not similar. No waiver shall in any event be effective unless in writing and signed by Buyer.
 - d. **Amendment:** None of the terms and conditions contained in these Standard Terms may be amended, added to, modified, supplemented, superseded or otherwise altered except by a written instrument signed by Buyer and Supplier.
 - e. **Assignment:** This Agreement and the rights and obligations of Supplier hereunder, including without limitation, the duty of performance, may neither be assigned nor delegated without the prior written consent of Buyer.
 - f. **Severability:** Wherever possible, each provision of these Standard Terms shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of these Standard Terms shall be prohibited by or invalid under applicable law, said provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of these Standard Terms.
 - g. **Counterparts:** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signature pages may be executed via "wet" signature or electronic mark and the executed signature pages may be delivered using pdf or similar file type transmitted via electronic mail, cloud based server, e-signature technology or other similar electronic means.
30. **Governing Law:** This Agreement shall be deemed made and executed in Randolph County, Missouri, and shall be governed by and construed in accordance with the laws of the State of Missouri, without regard to its conflict of laws provisions. The parties disclaim the application of the United Nations Convention on the International Sale of Goods.