



GENERAL TERMS AND CONDITIONS FOR ENGINEERED EQUIPMENT

THIS PURCHASE ORDER IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS

This Purchase Order constitutes an offer to purchase, and not an acceptance of any offer to sell, the goods and any services described herein, which may be accepted only in accordance with its terms and without modification, addition, deletion or alteration. In the event Supplier's quotation, sales proposal, sales order, acknowledgment, confirmation, invoice or other forms state terms additional to or different from those set forth herein, this Purchase Order shall be deemed a notification of objection to such additional and/or different terms and a rejection thereof.

1. DEFINITIONS AND INTERPRETATION:

A. As used herein, the term "Purchaser" means the party designated as such on the face of this Purchase Order (or as "Owner") and includes its successors, assigns and legal representatives, and the term "Supplier" means the party designated as such on the face of this Purchase Order (or as "Supplier" or "Bidder") and includes its successors, permitted assigns and legal representatives.

B. Unless the context otherwise requires, (a) words in the singular include the plural and vice versa, (b) words of any gender (masculine, feminine or neuter) include each other gender, and (c) a reference to any article, paragraph or clause is a reference to such article, paragraph or clause in these Terms and Conditions.

C. Headings are included for purposes of easy reference and shall not affect the meaning or interpretation of this Purchase Order.

D. The Purchase order drawings and specifications are complementary, and what is required by either one shall be as binding as if required by both, unless specifically stated otherwise. In the event of a conflict between the drawings and specifications involving quality or quantities, the highest quality and the greatest quantity shall be furnished; otherwise, in resolving such conflicts, the documents incorporated into this Purchase Order shall be given precedence in the following order: the first section of this Purchase Order, the "Memorandum of Understanding," these Terms and Conditions, any Exhibits incorporated by reference in this Purchase Order in the sequence incorporated herein, the specifications, then the drawings. Within the drawings, dimensions on drawings shall govern over general drawings. Any work that may be reasonably inferred from drawings

or specifications as being required to produce the intended result shall be supplied whether or not it is specifically called for.

2. **PURCHASE ORDER:** This Purchase Order, when properly signed by Purchaser and bearing an order number, is the only authorization which will be recognized by Purchaser for charges to its account.

3. **CONFORMING GOODS:** Neither the quantity nor the quality of the goods delivered by Supplier to Purchaser shall differ from those specified on the face of this Purchase Order or the documents incorporated herein by reference, nor shall any other modifications of this Purchase Order be effective unless such changed quantity or other modification is first ordered by Purchaser by written change order. Supplier shall make no shipment of nonconforming goods, whether as an accommodation or otherwise, unless first authorized in writing by Purchaser.

4. PERFORMANCE BY SUPPLIER:

A. Where the work covered by this Purchase Order is one part of a project being undertaken by Purchaser, the failure of Supplier to perform the work within the time limits specified herein may delay other work or seriously affect other commitments and programs of Purchaser. Continuity of design and construction for foundations, structural, mechanical, electrical, instrumentation and other related work is dependent upon Purchaser's receipt of drawings and data from Supplier. Time is of the essence of this Purchase Order and Supplier shall take adequate measures to accomplish all elements of the work required in connection with this Purchase Order within the time limits specified herein or, if no schedule is specified herein, within such time limits as are compatible with the shipping date specified herein. Such measures shall include, without limitation, expediting its subcontractors for engineering and fabrication and expediting its suppliers for materials and parts. Failure of Supplier to take such adequate measures so as to maintain scheduled completion of the work shall be considered a material breach by Supplier of its obligations under this Purchase Order.

B. Prior to the commencement of any work under this Purchase Order, Supplier shall furnish to Purchaser a comprehensive "Production Control Schedule" clearly demonstrating how Supplier proposes to comply with its committed delivery date(s). As a minimum, the Production Control Schedule shall define and list the basic activities involved and shall show the scheduled commencement and completion dates and the scheduled percentage of

completion for each of the following: (a) engineering drawings and technical data required for approval, (b) materials and parts required for manufacture, (c) shop manufacture, (d) shop assembly, (e) testing, (f) shipment, and (g) delivery.

C. Supplier shall furnish to Purchaser by the tenth (10th) day of each month during the term hereof current "Monthly Progress Reports," which shall be updated editions of the Production Control Schedule and shall clearly portray the progress during the prior month and the general status of the work as of the reporting date. Supplier shall report the reason for any item behind schedule or otherwise delayed and the specific action being taken to overcome the delay and to regain the progress required by this Purchaser Order. Submittal of Monthly Progress Reports shall be a condition precedent to any payment otherwise due and payable hereunder.

D. Supplier shall promptly provide Purchaser's expediting representatives with such information as they may request from time to time concerning Supplier's program and schedule for the work and shall accord Purchaser's expediting representatives full cooperation in their review and observation of Supplier's engineering, materials acquisition, manufacture, assembly and testing activities at Supplier's facilities, as well as at the facilities of Supplier's suppliers and subcontractors. If Purchaser determines that Supplier is not meeting the requirements of the schedule, Supplier shall take such action as may be required by Purchaser to enable Supplier to comply with the requirements of the schedule.

E. All special tools required for erection and servicing shall be furnished as part of the materials, together with drawings thereof, if available. "Special tools," as used in this context, means those custom tools and instruments necessary for assembling, adjusting, servicing and maintaining the equipment which are specially designed or manufactured by Supplier or Supplier's suppliers for use on or with the equipment and which are not readily available from other convenient sources.

F.

(a) Supplier shall cap or plug all intakes, outlets and openings to prevent entry of foreign materials or damage and shall coat all nozzles, machined surfaces, and other finished parts with a hard, solvent-removable coating to protect against and prevent corrosion.

(b) All items shall be properly tagged with the item number or piece number and Purchase Order number indicated on the Purchase Order. The tag shall be made of metal or of equal substantial material, weather and corrosion resistant, and securely fastened to the item or piece of equipment, not to the case or crate.

(c) Supplier shall properly crate or pack and handle all goods for safe shipment so as to preclude damage or distortion during shipment and unloading.

(d) Shipping cases, crates or skids must be plainly marked with Purchaser's Purchase Order number, equipment item number, Purchaser's name and location of the jobsite.

(e) Supplier shall send to Purchaser by facsimile or overnight express a comprehensive Bill of Lading at the time of shipment. The Bill of Lading shall be coded by item with sufficient description for identification. This document will be used by Purchaser as the master control document for receiving. The following packing list requirements shall apply:

(i) Packing lists shall be prepared indicating the name of Supplier and Purchaser's Purchase Order number.

(ii) Separate packing lists shall be prepared for each shipment made and shall not be combined with invoices.

(iii) Packing lists shall provide a general description corresponding to the Bill of Lading.

(iv) Packing lists shall be detailed showing the following information for EACH shipping package (box, crate, piece, bundle, etc.):

- The precise description of each kind of shipping package, namely, whether the package is a box, crate, keg, drum, piece, bundle, mounted on skid, etc.

- Package number.

- Description of contents.

- Identification of items by Supplier's Bill of Lading number, this Purchase Order number, drawing number and all other identifying data, where applicable.

- Gross, tare and net weight. Identification of each dimension: length, width and height.

(v) Packing lists shall be placed both inside and outside of each shipping package. A copy of the packing list shall be securely fastened to unpackaged pieces or bundles in a waterproof envelope.

5. WARRANTIES: Supplier warrants to Purchaser that the goods and any services covered hereby shall correspond with the description of the same on the face of this Purchase Order or in the documents incorporated herein by reference, shall conform to any applicable specifications or samples, shall be new and of the best quality unless otherwise specified, shall be free from defects in materials and workmanship, and shall be fit for the purpose for which they are furnished where

Purchaser is relying on Supplier's skill and judgment in selecting and providing the proper goods and services for Purchaser's specified use or requirements. Supplier also warrants that said goods are free and clear of all liens and encumbrances whatsoever and that Supplier has good and marketable title to the same. Supplier agrees to defend and hold Purchaser harmless from and against any and all liens, encumbrances or other claims to said goods. The foregoing warranties of Supplier are in addition to any other warranty or service guarantee offered by Supplier or implied or provided by law.

6. INSURANCE:

A. Supplier shall, at its expense, procure and maintain the following insurance:

(a) WORKERS' COMPENSATION INSURANCE in the amount required by all applicable laws, including, without limitation, the Longshore and Harbor Workers' Compensation Act and any other federal compensation act or maritime act, and EMPLOYER'S LIABILITY INSURANCE to a limit of not less than \$1,000,000. Supplier before commencing any work under this Purchase Order shall be qualified under the workers' compensation laws of the state or states in which the work or any portion of the work is to be performed and shall at all times comply with the provisions of said laws. All subcontractors of Supplier shall be required by Supplier to maintain the above described insurance coverages and to comply with qualification requirements of all applicable workers' compensation laws; Supplier shall do so on behalf of its subcontractors if its subcontractors fail to maintain said insurance or to comply with said qualification requirements.

(b) COMPREHENSIVE GENERAL LIABILITY INSURANCE, including, without limitation, automobile liability covering Supplier and its employees for all of Supplier's operations hereunder, including, without limitation, the operations of all subcontractors, the operation of vehicles and equipment by Supplier or any and all subcontractors and liability assumed under the "Indemnity" provision of this Contract, with limits of not less than \$5,000,000 as a combined single limit for injury to, or death of, any person or persons and for property damage, including consequential loss, arising out of any single occurrence.

B. Prior to commencement of the work, Supplier shall provide Purchaser with certificates of insurance which demonstrate compliance with the terms of this Article 6. The Comprehensive General Liability Policy (a) shall name Kaiser Aluminum Fabricated Products LLC as an additional insured, (b) shall provide that other insurance which Purchaser may have to insure

loss shall be in excess of and not contribute to a loss to which the insurance provided herein by Supplier is applicable, and (c) shall provide that the insurer waives any right to subrogation which might arise by reason of any payment under the policies against Kaiser Aluminum Fabricated Products, LLC, its subsidiaries, its affiliated companies and the agents and employees of any of the foregoing.

C. Insurance deductibles, if any, shall not exceed \$10,000 per occurrence and shall be absorbed entirely by Supplier with no contribution by Purchaser. In the event of a reduction or exhaustion of any aggregate limit, Supplier shall secure additional insurance or shall have excess insurance available so as to comply at all times with the above requirements as to limits.

7. PARTS, ORIGINAL SOURCE AND SUPPLY: Supplier shall not remove, deface or in any manner render illegible the original manufacturer's name, identity, part number or any other data from any parts, components, pieces or systems. Maintenance manuals, operating manuals and parts lists shall identify parts, components, pieces and systems by original manufacturer's name and part number.

8. TRANSPORTATION COSTS: Supplier warrants that any transportation costs included in the price will not exceed actual transportation costs paid by Supplier. If this Purchase Order calls for payment of any transportation costs by Purchaser, Purchaser shall in no event be liable or accountable for any amount in excess of the actual costs of transportation. Supplier shall be accountable for and pay any excess transportation costs arising from Supplier's failure to make delivery to the agreed point of delivery or to follow shipping instructions furnished by Purchaser.

9. CHANGES:

A. Purchaser may at any time or from time to time issue written instructions requiring changes, additions, deletions or alterations in or to the goods to be supplied or the services to be performed under this Purchase Order. Supplier shall proceed promptly with any such changes, additions, deletions or alterations as instructed if requested to do so by Purchaser in writing.

B. Within ten (10) days after receipt of said instructions, Supplier shall furnish to Purchaser an estimate of the increase or decrease in cost and time of performance resulting from its compliance with said instructions. The purchase price shall be increased or decreased, as the case may be, on account of each authorized change, addition or deletion by an amount equal to the sum of (a) the lowest reasonable increase or decrease, if any, in the direct cost of performing the work resulting from such change, addition or deletion and (b) the allowances provided for in this Purchase Order, or if no allowances are stated in this Purchase Order, a maximum of fifteen percent (15%) of the direct cost to cover overhead and profit as the combined allowance to Supplier and all subvendors and suppliers for overhead and profit;

provided that if the purchase price provides for unit prices, such unit prices shall be applicable in lieu of the amounts specified in clauses (a) and (b) of this sentence to the extent such change, addition or deletion involves work covered by such unit prices. If any change or accumulation of changes is covered by unit prices or if unit prices are subsequently agreed upon and if quantities originally contemplated are so changed by such written instructions that application of such unit prices to quantities of goods proposed will cause substantial inequity to Purchaser or to Supplier, the applicable unit prices shall be equitably adjusted. Under no circumstances, however, shall Supplier be entitled to any amount for indirect costs, damages or expenses of any nature regardless of the number, nature or timing of changes hereunder, including, without limitation, "impact" costs or labor inefficiency costs. The time for performance shall be increased or decreased, as the case may be, for each authorized change, addition or deletion by the lowest reasonable number of days by which the time required for Supplier's completion of each phase of the work will be increased or decreased, if at all, as a result of such change, addition or deletion.

C. Purchaser may determine the amount of the increase or decrease in the purchase price and time for performance, if any, necessary to reasonably compensate Supplier for such change and shall issue an amendment to this Purchase Order providing for such change in the purchase price and time of performance. Each such determination by Purchaser shall be final and binding upon Purchaser and Supplier; and this Purchase Order shall be modified in accordance therewith unless within thirty (30) days following Supplier's notice or receipt of such determination, Supplier protests such determination by written notice to Purchaser. Pending final resolution of any dispute arising under this Purchase Order, unless Purchaser and Supplier otherwise agree in writing, Supplier shall proceed diligently with the performance of this Purchase Order and Purchaser shall continue to make payments subject to the terms of Article 12 "Payment."

10. DELAYS: Neither party shall be liable for any delay or failure in the performance of its obligations under this Purchase Order if such performance is delayed or prevented due to a circumstance of Force Majeure. For the purposes of this Purchase Order, the term "Force Majeure" means acts of God; strikes, lockouts or other industrial disturbances; wars, whether declared or undeclared; blockages; insurrections; riots; earthquakes; typhoons; hurricanes; floods; epidemics; fires; explosions; serious breakage or accidents to machinery or equipment; failure of transportation or usual sources of supply; acts or restraints of governmental authority, whether legitimate or not; and, without being limited by the above, any other cause, occurrence or failure which is not within the reasonable control of the party

affected. Upon the occurrence of a circumstance of Force Majeure, the party affected shall immediately notify the other party of the nature, anticipated duration and probable effect thereof in reasonable detail and take every reasonable step to resume its performance with the least possible delay; provided, however, that nothing herein shall be deemed to require either party to settle any strike, lockout or other industrial disturbance on terms which in its opinion are not satisfactory.

11. INSPECTION AND TESTING: Purchaser may inspect the goods at all stages of manufacture. Notwithstanding any prior payment therefor or inspection thereof, all of the goods are subject to inspection and testing by Purchaser after arrival at their ultimate destination; and if the goods are to be incorporated into a plant or other operating facility, Purchaser's inspection and testing of the goods may be made under operating conditions after the goods have been installed. If upon inspection or testing, such goods or any portion thereof are found to be nonconforming, unsatisfactory, defective, of inferior quality or workmanship, or fail to meet any guarantees or operating or other specifications contained herein or any other requirements of this Purchase Order, then without prejudice to any other rights or remedies which Purchaser may have, Purchaser may return the goods or any part thereof to Supplier, and all amounts theretofore paid by Purchaser to Supplier on account of the purchase price of such returned goods, together with any costs incurred by Purchaser in connection with the delivery, removal or return of such goods, shall be paid to Purchaser by Supplier. Neither any inspection nor any failure to make inspection nor any acceptance of the goods shall release Supplier from any of the warranties or other provisions of this Purchase Order nor impair Purchaser's right to reject nonconforming goods. Purchaser reserves the right, even after it has paid for and accepted the goods, to make claim against Supplier on account of any goods which do not prove to be satisfactory or are defective, irrespective of Purchaser's failure to notify Supplier of a rejection of nonconforming goods or revocation of acceptance thereof or to specify with particularity any defect in nonconforming goods after rejection or acceptance thereof. At any reasonable time, the Supplier shall permit Purchaser, their customers and regulatory authorities right of access to all of the Supplier's facilities involved in the order and to applicable records.

12. PAYMENT:

A. Supplier shall receive the purchase price as full and complete payment for the work done and goods purchased hereunder. Subject to all other provisions of this Purchase Order, the purchase price shall be paid as provided in this Article 12.

B. If this Purchase Order provides for progress payments, Supplier shall submit a detailed estimate of the value of the work completed and materials incorporated in the goods being manufactured hereunder during each month within ten (10) days after the end of such month. Within thirty (30) days after submittal of the above

estimate, Purchaser will pay to Supplier, in accordance with Purchaser's usual practice of vouchering accounts and upon submission of proper invoices by Supplier, ninety percent (90%) of the amount determined by Purchaser to be due Supplier for that month. If this Purchase Order provides for payment only upon or after shipment or delivery of the goods purchased hereunder, Purchaser will pay to Supplier, upon submission of a proper invoice by Supplier, ninety percent (90%) of the amount due at the time provided for herein, or if no due date is provided for herein, within thirty (30) days after receipt of Supplier's invoice.

C. As a condition precedent to any payment of retention moneys under this Purchase Order, Supplier may be required to execute a written general release and waiver of all claims against Purchaser, its subsidiaries, affiliated companies and the directors, officers, employees, agents, representatives and property of any of the foregoing arising under or in any way connected with this Purchase Order, and Purchaser may further require Supplier to furnish comparable written general releases and waivers of all claims by any and all subvendors, suppliers or others furnishing labor, materials, services or equipment in connection with Supplier's performance of this Purchase Order except, in each case, for disputed claims, made in good faith, and specifically reserved in any such release and waiver furnished by Supplier or any of its subvendors, suppliers or such others.

D. Without limiting any other rights which Purchaser may have, whether pursuant to this Purchase Order or otherwise, Purchaser may withhold all or any portion of any progress or final payment as and to the extent Purchaser, in good faith, determines such withholding to be necessary in order to protect it from loss because of (a) defects in workmanship or materials, (b) claims, levies, attachments, stop notices or court orders filed, or evidence indicating probable filing of such claims, levies, attachments, notices or orders, including claims covered by insurance until such claims are accepted by Supplier's insurance carrier, (c) claims, whether valid or not, that Supplier has failed to make payments promptly or properly to its subvendors, suppliers or others furnishing labor, materials, services or equipment or for labor (including fringe benefits) or for materials, equipment, transportation, shipping costs, services, taxes, fees or any other obligation in connection with Supplier's performance of this Purchase Order, (d) reasonable indication that the work cannot be completed for the unpaid balance of the purchase price, (e) damage to the goods or any portion thereof (f) reasonable indication that the goods cannot be manufactured and delivered within the time specified in this Purchase Order, (g) failure to furnish sufficient, properly skilled labor or to supply sufficient materials or otherwise to diligently

prosecute the work, (h) failure to deliver a Production Control Schedule or Monthly Progress Reports which comply with the provisions of this Purchase Order as to content or time for submission, (i) failure to deliver insurance certificates or other items to be delivered under the provisions of this Purchase Order, (j) failure to adhere to laws, ordinances, regulations or orders of any authority having jurisdiction over the work or the place where the work under this Purchase Order is being performed, (k) failure to discharge or bond a mechanic's or materialman's lien or notice of lien or stop notice filed against the goods or against Purchaser's property in connection with the goods purchased hereunder in a manner satisfactory to Purchaser or (l) any other failure to perform in accordance with the provisions of this Purchase Order. If Purchaser exercises its right to withhold hereunder in good faith, Supplier shall not be entitled to any interest whatsoever on the money so withheld, regardless of the outcome of any subsequent claim resolution. When the cause for any withholding hereunder has been remedied by Supplier to Purchaser's satisfaction, the amount withheld shall be released and paid.

E. Any overpayment by Purchaser to Supplier shall be deemed to be a mistake of fact and promptly repaid to Purchaser on demand.

13. **TERMINATION FOR CONVENIENCE:** In addition to and without prejudice to the right to cancel, Purchaser may terminate this Purchase Order in accordance with the following provisions:

A. If this Purchase Order covers goods manufactured or fabricated to Purchaser's specifications or specifications especially prepared by Supplier for Purchaser, then at any time prior to delivery of all goods covered by this Purchase Order, Purchaser may terminate this Purchase Order in whole or in part by written notice to Supplier, and in such event the following provisions shall apply:

(a) Immediately upon receipt of such notice of termination or upon such other date as may be specified in said notice, Supplier shall stop all work in connection with this Purchase Order except as otherwise directed by Purchaser;

(b) Purchaser shall pay and Supplier shall accept as full compensation Supplier's actual direct out-of-pocket costs to the date work is stopped, including Supplier's reasonable expense in connection with termination of any subcontracts, all as approved by Purchaser, plus an allowance for overhead, general and administrative expenses, including those of all subcontractors, which shall in no event exceed fifteen percent (15%) of direct costs and an allowance for profit not to exceed ten percent (10%) of the foregoing in lieu of profit; provided, further, that in no event shall the total amount to be paid to Supplier upon such termination, including payments previously made, exceed the proportion of the total purchase price specified herein that the work actually

performed (including goods delivered or in transit and services rendered) at the date of termination (less a reasonable allowance to cover the cost of correcting any defective goods delivered or services rendered) bears to the entire work to be performed hereunder;

(c) The goods or uncompleted portion of the goods shall be the property of Purchaser, and Supplier shall safely hold the same for a reasonable time, subject to receipt of Purchaser's written shipping or other disposition instructions.

B. If the goods covered by this Purchase Order are standard stock merchandise, Purchaser may terminate all or any part of the unshipped portion of this Purchase Order at any time by written notice to Supplier, and in such event Purchaser shall have no further obligation for cancellation charges or otherwise hereunder except to make payment, subject to other applicable terms hereof, for the goods actually shipped and in transit prior to such termination and to make payment for any goods as to which this Purchase Order is not terminated which are shipped subsequent to such termination.

14. SUPPLIER'S DEFAULT: Time is of the essence of this Purchase Order. If Supplier shall default in its timely performance hereof or breach any of its obligations hereunder or if Supplier fails to pay any indebtedness when due or if Supplier becomes insolvent or in the event any voluntary or involuntary proceedings are instituted by or against Supplier in bankruptcy or insolvency or in the event a receiver, trustee or assignee for the benefit of creditors of Supplier is appointed, then in any of such events, Purchaser may cancel this Purchase Order in whole or in part by written notice to Supplier; and Purchaser shall have no liability or obligation whatsoever to Supplier by reason of or resulting from such cancellation, but at Purchaser's sole election it may pay Supplier its actual direct costs of performance hereunder to the date of such cancellation, as approved by Purchaser, which costs of performance, including payments previously made, shall not exceed the proportion of the total purchase price specified herein that the work actually performed (including goods delivered or in transit and services rendered) to the date of termination (less a reasonable allowance to cover the cost of correcting any defective goods delivered or services rendered) bears to the entire work to be performed hereunder; in which event, the goods or uncompleted portions of the goods shall be the property of Purchaser, and Supplier shall safely hold the same for a reasonable time, subject to receipt of Purchaser's written shipping instructions or other disposition instructions.

15. CONFIDENTIAL INFORMATION: All information, including plans, drawings, designs, calculations, specifications, reports, data and other information disclosed to Supplier by or on behalf of Purchaser, or

prepared by Supplier in connection with this Purchase Order, shall remain or become, as the case may be, the property of Purchaser and shall be held in confidence by Supplier and shall neither be disclosed nor used by Supplier for any purpose other than the performance of this Purchase Order. All such material shall be delivered to Purchaser by Supplier upon completion of this Purchase Order or upon request, whichever is sooner. These provisions shall be likewise applicable to Supplier, its suppliers, subvendors and the directors, officers, employees or agents of any of them and Supplier shall ensure that each such person having access to such confidential information is made aware of, and shall comply with, the foregoing obligations as to non-disclosure and use.

16. CAMERAS, PHOTOGRAPHS AND OTHER MEDIA: Supplier shall not bring any cameras onto the premises of Purchaser and shall not take, have taken or otherwise obtain photographs, films, videotapes or other media representations of any kind of Purchaser's premises, including, without limitation, photographs, films, videotapes or other media representations of the goods to be supplied under this Purchase Order at various stages of progress or upon completion thereof, or photographs, films, videotapes or other media representations of any plans, drawings, specifications or other subject matter relating to the goods without the prior written consent of Purchaser. In the event that Purchaser does authorize Supplier to take, have taken, or otherwise obtain any such photographs, films, videotapes or other media representations, the receipt and use thereof will be subject to such terms and conditions as Purchaser deems appropriate at the time. The aforesaid restrictions concerning photographs, films, videotapes and other media representations shall also apply in the event any of the goods are to be produced off Purchaser's premises.

17. PATENTS, TRADE SECRETS, COPYRIGHTS AND TRADEMARKS: Supplier shall indemnify, defend and hold Purchaser (including its successors in interest) harmless from and against any action against Purchaser based on a claim that the manufacture, sale, use or resale of any of the goods covered by this Purchase Order constitutes infringement of any U.S. Patent, now or hereafter issued, or violates any other proprietary interest including, without limitation, copyrights, trademarks and trade secrets if Supplier is notified promptly in writing and is given authority and assistance, at Supplier's expense, for the defense of the action. In the event Purchaser is enjoined from the operation, use or resale of any of the goods covered by this Purchase Order, Supplier shall, at its expense, take all reasonable steps to procure for Purchaser the right to operate, use and resell said goods. If Supplier cannot so procure the right within a reasonable time, Supplier shall then promptly, at its expense, (a) modify the goods so as to avoid infringement or violation of any patent or other proprietary interest, (b) replace the goods with goods which do not infringe or violate any patent or other proprietary interest and reimburse Purchaser for any additional transportation, removal and

reinstallation costs incurred by Purchaser, or (c) remove the goods and refund to Purchaser any compensation theretofore paid to Supplier and pay to Purchaser any transportation costs and other expenses that may have been paid or incurred by Purchaser in connection with the goods so removed.

18. INDEMNITY:

A. Supplier shall indemnify, save harmless and defend Purchaser, its subsidiaries, its affiliated companies and the directors, officers, employees, agents and representatives of any of the foregoing from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs and expenses of whatsoever kind or character, including, without limitation, attorneys' fees and expenses, arising out of or by reason of any liability or obligation in any manner caused or occasioned by or claimed to be caused or occasioned by, any act, omission, fault or negligence of Supplier or anyone acting on its behalf, including, without limitation, subcontractors and vendors, their subcontractors and subvendors and the directors, officers, employees, agents and representatives of any of the foregoing, in connection with or incident to this Purchase Order or with respect to the goods furnished or services performed hereunder except where caused by the concurrent negligence of Purchaser, its directors, officers, employees, agents and representatives (other than Supplier or anyone acting on its behalf), in which event Supplier's liability for the payment of damages, costs and expenses hereunder shall be reduced in proportion to the negligence of Purchaser, its directors, officers, employees, agents and representatives (other than Supplier or anyone acting on its behalf) on the basis of comparative negligence or fault.

B. Without limiting the foregoing, Supplier shall indemnify, save harmless and defend Purchaser, its subsidiaries, its affiliated companies and the directors, officers, employees, agents and representatives of any of the foregoing from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs and expenses of whatsoever kind or character, including, without limitation, attorneys' fees and expenses, arising out of or by reason of any injuries (including death) or damage to any person or entity employed by or acting on Supplier's behalf in connection with or incident to this Purchase Order or with respect to the goods furnished or services performed hereunder except where caused by the concurrent negligence of Purchaser, its directors, officers, employees, agents and representatives (other than Supplier or anyone acting on its behalf), in which event Supplier's liability for the payment of damages, costs and expenses hereunder shall be reduced in proportion to the negligence of Purchaser, its directors, officers, employees, agents and representatives (other than

Supplier or anyone acting on its behalf) on the basis of comparative negligence or fault.

C. Supplier's obligations under this Article 18 and under Article 15 "Confidential Information" and Article 17 "Patents, Trade Secrets, Copyrights and Trademarks" shall continue without limitation as to time, notwithstanding the extinguishment of other rights and duties under this Purchase Order by completion, Purchase Order termination or cancellation or any other manner.

19. DRAWBACKS: Supplier shall obtain and pay over to Purchaser all drawbacks and substitutions for drawbacks applicable to goods sold for export hereunder which Supplier is entitled to claim under the Tariff Act of 1930 and under applicable regulations, in each case, as in effect on the date of such export.
20. TAXES: Supplier's prices shall be exclusive of any governmental impost or duty and of any federal, state or local sales, use or excise taxes levied upon, or measured by, the sale, sales price, value or use of the goods to be supplied under this Purchase Order. Supplier shall list separately in its pricing quotation(s) and on its invoice(s) any such impost, duty or tax lawfully applicable to any such goods which is payable by Purchaser and with respect to which Purchaser does not furnish Supplier lawful evidence of exemption. Supplier's price shall be deemed to include all other federal, state, local and other governmental taxes, imposts and duties.
21. COMPLIANCE WITH LAW: Supplier shall comply with all applicable federal, state and local laws, ordinances and regulations, whether existing or hereafter enacted, in connection with its performance of this Purchase Order; and Supplier warrants that all goods delivered hereunder will so comply as of the date of delivery, while in the form, state and condition supplied.
22. NOTICES: All notices under this Purchase Order shall be in writing and may be served by either party on the other by hand, facsimile, telex, telegram, cablegram or regular mail addressed to the respective party at the address indicated in this Purchase Order. The address of either party may be changed at any time by written notice of such change to the other party. Any such notice shall be effective upon delivery to the intended recipient or seven (7) days after being laced in the ordinary course of the mail, postage paid and properly addressed, whichever occurs first.
23. ASSIGNMENT AND SUBCONTRACTING: Neither this Purchase Order nor any right, privilege or obligation hereunder shall be assigned or delegated by subcontract or otherwise in whole or in part by Supplier without the prior written consent of Purchaser. Any attempted assignment without such prior written consent shall be void.
24. WAIVER: No waiver of any provision of this Purchase Order shall constitute a waiver of any other provision of this Purchase Order or of the same or any other provision

in any other instance. No waiver shall be effective except in writing signed by the authorized representatives of the parties hereto.

25. ENTIRE CONTRACT: This Purchase Order contains the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all negotiations, proposals, agreements and understandings, whether written or oral, with respect thereto. No amendment, variance or change in the provisions of this Purchase Order shall be effective except in writing signed by the authorized representatives of the parties hereto.

26. APPLICABLE LAW: This Purchase Order shall be governed by and construed in accordance with the laws of the State of California without reference to principles regarding conflicts of laws.