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NOTE: All capitalized terms not defined in these Terms and Conditions shall have the meanings assigned to them in the Purchase Order.

1.0 DEFINITIONS

Purchaser

Monolith Nebraska LLC, a Delaware limited liability company, who procures the Goods from the Seller

Goods

All material, equipment, supplies and other items to be furnished by Seller under the Purchase Order.

Party or Parties

Purchaser and or Seller individually or collectively, as context may dictate.

Purchase Order

The written Purchase Order between Seller and Purchaser, which refers to and incorporates these Terms and Conditions together with any and all written change orders, modifications and supplements including appendices or attachments thereto, for the supply of Goods.

Sub-Seller

Vendor, materialman, consultant, contractor, subcontractor or other person or entity providing Goods or services directly or indirectly to Seller in connection with the Purchase Order.

Facility

The Purchaser's Olive Creek I Plant located in Hallam, NE.

Seller

The firm, company or other corporate entity (including its successors and/or permitted assigns) designated in the Purchase Order to supply Goods to the Purchaser.

Services

Any services specified in the Purchase Order to be provided along with the Goods.

2.0 DOCUMENTATION AND RIGHT OF AUDIT

Seller agrees that Purchaser will have the right to audit, copy and inspect, or cause to have audited, copied and inspected, Seller's records and accounts pertaining to performance under the Purchase Order at all reasonable times during the course of performance hereunder and for a minimum period of five (5) years after final payment has been made to Seller; however, Purchaser's rights will not extend to

any components of any lump sum amounts or unit rates.

Where Seller's invoice includes compensation for work performed at a lump sum, unit rate or for changes in the work, Seller will submit Seller's determination of units of work performed, substantiated by documents satisfactory in form and content to Purchaser. Upon verification by Purchaser of such documents, Purchaser will advise Seller in writing of either Purchaser's acceptance of Seller's determination, or of Purchaser's alternative determination of such units. Where Seller's invoices include compensation for work performed for a reimbursable price, all costs, expenses and other amounts so invoiced will be substantiated and supported by documents satisfactory to and verified by Purchaser. Seller will maintain such documentation for a minimum period of five (5) years after final payment has been made to Seller under the Purchase Order, including all records and accounts pertaining to work performed hereunder.

3.0 EXPEDITING

Seller agrees:

- to expedite delivery of the Goods in the Purchase Order and any suborders to the extent necessary and in sufficient time to safeguard the Schedule;
- that all Goods and Services furnished hereunder by Seller or its Sub-Sellers shall be subject to expediting by the Purchaser at all reasonable times and places, before, during and after manufacture;
- that such expediting or failure to expedite by the Purchaser shall not relieve Seller of any of its responsibilities under the Purchase Order; and
- that all orders with Sub-Sellers shall include a statement providing for the expediting rights of the Purchaser.

All costs and expenses of the Seller, its Sub-Seller and/or its subcontractor, and Purchaser which are a result of expediting by the Purchaser, shall be borne by the Seller.

4.0 INSPECTION / TESTING / ACCEPTANCE

All Goods shall be subject to inspection and witness testing by the Purchaser on Seller's or its Sub-Seller's premises before, during, and after manufacture, at reasonable times. Notwithstanding any inspection at Seller's or its

Sub-Seller's premises, acceptance of the Goods shall be at the Facility unless expressly indicated otherwise in the Purchase Order.

If any inspection or test, whether preliminary or final, is to be made on Seller's or its Sub-Seller's premises, Seller shall ensure that the Purchaser is furnished, without additional charge, all reasonable facilities and assistance required for such inspection or test to be conducted safely and conveniently.

Any inspection or test by the Purchaser or failure to inspect or test by the Purchaser shall not relieve Seller of any responsibility or liability with respect to the Goods, nor shall any such inspection or test or failure to inspect or test be interpreted as or in any way imply acceptance of the Goods.

If the results of the tests conducted indicate that any Goods or Services do not comply with the requirements set forth in the Purchase Order, the Seller shall, at Seller's expense, make all necessary adjustments, repairs, replacements or changes to attain compliance with the Purchase Order. Until the required compliance is achieved, all subsequent tests by Purchaser shall be made at Seller's expense.

5.0 SHIPMENT OF GOODS

Seller shall deliver the Goods in good condition, properly packed for shipment and otherwise in strict compliance with the Incoterm requirements of the Purchase Order.

All charges for packing, boxing, crating, trucking or special services of any kind are included in the Purchase Order price unless otherwise specifically stated and authorized in the Purchase Order.

No delivery of any Goods shall be considered until such Goods are finally delivered in their entirety to Purchaser's named location, including but not limited to repair or replacement of any defective or missing parts. No shipment is deemed completed until Seller delivers an itemized packing list and bill of lading accepted by Purchaser.

Note: The Seller shall not ship the Goods on the Purchase Order without either an Inspection Release or Written Waiver of Inspection and a release for shipment from Purchaser. Violation of this Requirement shall constitute a rejection of the Goods, with subsequent cost for return or other action as warranted against the account of the Seller.

6.0 INSPECTION AT OFF-LOADING

If any shortage, loss or damage caused by the Seller is found at the time of the unpacking

inspection, the Seller shall at its own expense (including export packing and transportation costs to the Facility and import customs duties) and as promptly as possible make all repairs, replacements or supplements of the Goods as are necessitated by such shortage, loss or damage irrespective of whether the Seller's personnel and/or agent witness the unpacking inspection.

Any excess Goods found at the time of unpacking inspection shall not be considered as the substitute for the shortage and loss and shall not be returned to the Seller. All costs and expenses incurred in connection with the dispatch of the Seller's personnel and/or agent and the witness of said inspection shall be borne by the Seller.

7.0 SITE SUPPORT

If Seller performs any work or services on site related to the Purchase Order or the Goods provided thereunder, Purchaser's On-Site Services Terms and Conditions will apply, in addition to the provisions of the Purchase Order. Seller may request a copy of the On-Site Services Terms and Conditions at any time prior to commencing any work or services on site. Unless Seller objects in writing to the On-Site Services Terms and Conditions prior to Seller commencing any work or services on site, the On-Site Services Terms and Conditions shall be deemed fully incorporated herein.

8.0 CHANGES IN THE GOODS

Seller will make no modification, change, substitution, or revision without Purchaser's prior written consent.

Purchaser may propose changes in the character or quantity of the Goods, in the manner or time of performance of the Purchase Order, or otherwise, by written notice to Seller. Such changes will be in writing and signed by a duly authorized representative of Purchaser. Seller will respond to Purchaser in writing within five (5) business days of receipt either accepting the proposed changes, with any proposed adjustment in price or schedule, or rejecting the changes if Seller is unable to comply. If Seller fails to respond within such period, such changes will be deemed accepted and an equitable adjustment in the price and time of performance will be made by Purchaser if any change results in a reasonably documented decrease or increase in Seller's cost or time of performance. If Seller rejects the proposed changes, Purchaser may cancel the

Purchase Order according to Article 36.

Should Seller request any change from Purchaser, Seller shall make such request in writing, with all reasonable supporting documentation, and submit to Purchaser. If Seller's request is complete, Purchaser will respond in writing as soon as possible concerning acceptance or rejection of such change. Seller will not discontinue performance pending Purchaser's decision without the prior written consent of Purchaser. No claim by Seller for any change will be considered unless submitted to Purchaser in writing within ten (10) days after the occurrence of the event upon which such request for change is based.

Purchaser and Seller shall use reasonable efforts to agree in writing, as soon as practicable, to any adjustment under to this Article to reflect the extent, if any, to which such change has resulted in an increase or decrease in the Purchase Order price and/or a delay or acceleration of the delivery date. Seller shall not suspend performance of the unaffected portion of the delivery of the Goods under the Purchase Order while Purchaser and Seller are in the process of making any such change. If approved in writing by Purchaser, Seller shall comply with and perform such change in accordance with the terms of the Purchase Order during the time Seller and Purchaser are working to mutually agree upon an equitable adjustment in the Purchase Order price or delivery or both.

No substitutions shall be made to the Purchase Order without prior written authorization of Purchaser. No agreement or understanding modifying the conditions or terms of the Purchase Order shall be binding upon Purchaser, nor will Purchaser pay compensation, unless such agreement or understanding is made in writing. Such written agreement will be via a change order or order supplement that will document the agreement made between Purchaser and Seller. The change order or supplement shall be deemed to be incorporated into the Purchase Order complete and final and include the cumulative effect of any previously agreed-to change orders or supplements with respect to cost and time of delivery or performance.

9.0 SELLER'S DRAWINGS, SPECIFICATIONS AND CALCULATIONS

Drawings, specifications, and calculations submitted by Seller to the Purchaser as stipulated in the Purchase Order are subject to review, comment and approval by Purchaser. Such review, comment or approval shall relate only to general conformance with the specifications and for confirmation of the physical interface of items shown with related systems. In no event will such review, comment

and/or approval relieve Seller of the responsibility to comply with all requirements of the Purchase Order.

Seller shall furnish all submittals and other required documentation when and as required by the Purchase Order. All materials specifically prepared or developed by Seller or any of its Sub-Sellers to perform Seller's obligations under the Purchase Order shall become the property of Purchaser upon payment for, or termination of, Seller's Goods, whether delivered to Purchaser or not, and shall be delivered to Purchaser upon Purchaser's written request.

10.0 INCONSISTENCIES OR CONTRADICTIONS IN TECHNICAL DOCUMENTS

In the event of any conflict, ambiguity or inconsistency between the Purchase Order, technical documents, specifications, drawings, data sheets or these terms and conditions, the more stringent requirement shall apply. In the case of an omission or error in one or more of the documents, Seller shall be responsible for immediately contacting Purchaser for clarification.

11.0 ORDER OF PRECEDENCE IN CASE OF CONFLICT

Unless otherwise specified in the Purchase Order, the order of precedence shall be as follows:

- The Purchase Order
- Supplementary terms and conditions (if any)
- These Purchase Order Terms and Conditions
- Documents incorporated into the Purchase Order

Any change order shall have precedence over the document it modifies and, unless stated otherwise, any amended document shall have the precedence order stated in this Article.

12.0 ERRONEOUS OR CONFLICTING REQUIREMENTS

Upon Seller's discovery that any provision of the Purchase Order may contain any error, omission or conflict with any other provision contained therein, Seller shall give Purchaser immediate written notice of such for resolution by Purchaser. If Seller proceeds with performance of the work, after such discovery without notification to and resolution by Purchaser, then Seller assumes the risk of all resulting expenses, costs and consequences incurred.

13.0 GOVERNING LAW AND VENUE

The Purchase Order, unless it expressly provides to the contrary in the "Purchase Order Form", shall be governed by and construed in accordance with the laws of the State of Nebraska, USA, excluding any provisions or principals thereof that would require the application of the laws of a different jurisdiction. Any litigation initiated by the Parties arising out of or relating to the Purchase Order shall be conducted in the federal or state courts of Nebraska, and Purchaser and Seller consent to the jurisdiction of such courts.

14.0 CLAIMS AND DISPUTE RESOLUTION

Seller will submit any claims or disputes arising under the Purchase Order to Purchaser in writing before Purchaser makes final payment. Purchaser's obligation to make final payment is conditioned upon Seller's settlement and release of all claims or disputes. Seller agrees that its failure to submit any claims or disputes in writing by such time will constitute an express waiver by Seller of any legal rights with respect to the subject matter of the claim or dispute.

For any claims or disputes arising under the Purchase Order, the Parties agree to exert reasonable efforts to try to resolve such issues through direct negotiation between management. Any such issues that cannot be resolved through direct negotiation within a reasonable time will be submitted to state and federal courts located in Lincoln, Nebraska. Each Party will bear its own expenses in any dispute resolution process or proceeding. Notwithstanding the existence, filing, or pendency of any claim or dispute under the Purchase Order or with Purchaser, Seller will continue to fully perform its obligations hereunder and will not cease or delay performance or fabrication or fail to make any shipment pending resolution of any claim or dispute.

15.0 COMPLIANCE WITH LAWS

Seller shall observe and comply with all applicable federal, state and local laws, codes and regulations in the course of performance hereunder. Seller warrants that all Goods furnished by Seller in performance under the Purchase Order will fully comply with the Occupational Safety and Health Act as amended to the extent applicable, and Seller shall indemnify Purchaser from and against any and all claims, loss or other costs, penalties or liability arising from failure of such equipment to comply therewith. Seller shall immediately contact Purchaser for

instructions if Seller believes any part of Seller's performance under the Purchase Order does not comply or may not comply with an applicable law, code or regulation.

16.0 CONFIDENTIALITY

All data, designs, documents, drawings, specifications, communications and other information, revealed or disclosed in any form or manner to Seller by Purchaser (whether written, oral, electronic, visual, graphic, photographic, observational, or otherwise), including any documents or other tangible items supplied, produced or created by Seller for Purchaser hereunder, or any information or item provided by Purchaser (collectively defined as "Purchaser Information") will be considered as proprietary and confidential to Purchaser and will be used by Seller solely for purposes of performing the Purchase Order. All Purchaser Information will be treated and protected by Seller as confidential, and Seller will not disclose same to any third party without the prior written consent of Purchaser. Seller may disclose Purchaser Information within Seller's organization only on a need-to-know basis.

Purchaser may require Seller's employees, contractors, Sub-Sellers and other personnel involved in the performance of the Purchase Order to execute an individual confidentiality agreement prior to any disclosure. The provisions protecting Purchaser Information in any separate confidentiality, secrecy, or nondisclosure agreement heretofore executed by Seller in connection with Purchaser's business, the Purchase Order, or any other contract pertaining to the Goods are hereby expressly incorporated into the Purchase Order, and these terms and conditions are in addition to such agreement. Upon request of Purchaser, Seller will immediately destroy or return to Purchaser any Purchaser Information provided to Seller, including all copies made by Seller.

The provisions protecting Purchaser Information in any separate confidentiality, secrecy, or nondisclosure agreement heretofore executed by Seller in connection with Purchaser's business, the Purchase Order, or any other contract pertaining to the Goods are hereby expressly incorporated by reference into the Purchase Order, and these terms and conditions are in addition to such agreement.

17.0 INDEPENDENT CONTRACTOR

Seller is an independent contractor, and neither an employee, agent, nor representative of the Purchaser, shall maintain complete control of,

and responsibility for, its Sub-Sellers, employees, agents, means, methods, and operations.

18.0 TIME OF PERFORMANCE/LIQUIDATED DAMAGES

SELLER ACKNOWLEDGES THAT THE TIME REQUIRED FOR PERFORMANCE AND THE DELIVERY SCHEDULE SPECIFIED HEREIN IS CRITICAL, MATERIAL AND OF THE ESSENCE TO PERFORMANCE OF THE PURCHASE ORDER FOR THE AVOIDANCE OF SUBSTANTIAL LOSS TO PURCHASER AND/OR VARIOUS CONTRACTORS. SELLER'S FAILURE TO MEET THE DELIVERY SCHEDULE WITHOUT PURCHASER'S WRITTEN APPROVAL OF A NEW SCHEDULE WILL CONSTITUTE A BREACH OF CONTRACT OR DEFAULT HEREUNDER.

Seller will pay to Purchaser liquidated damages per the schedule set out in the Purchase Order for Seller's failure to meet the required delivery schedule as agreed in the Purchase Order. Such payment of liquidated damages shall not be deemed a penalty.

19.0 HAZARDOUS MATERIAL

In the performance of the Purchase Order, Seller shall comply with all applicable laws, regulations, rules, requirements, and ordinances including, but not limited to, those relating to environmental law, toxic or hazardous materials and occupational health and safety.

If the Purchase Order calls for the transfer by Seller to Purchaser of any chemical substance or mixture, or any material that may generate or release a chemical substance or any hazardous agent, Seller shall provide Purchaser before said transfer a Material Safety Data Sheet (MSDS) and any associated labels that are current, accurate and complete, and that include but are not limited to a statement of Goods hazards and precautions for safe handling and use. Copies of the SDS shall include the Purchase Order number, and shipping location, and shall be sent with the shipment of the Goods to the shipping location identified in the Purchase Order.

20.0 PUBLICITY

Seller will not publicize, disclose, or discuss the existence, content, or scope (whether generalities or details) of the Purchase Order, make any reference to Purchaser, the business of either, or the project for which the Purchase Order is intended, to any third party by any means, or through any medium (including but not limited to marketing materials, advertising, Internet or Web site references, photographs, articles, press releases or

interviews, speeches or programs) without obtaining the prior written consent of Purchaser. Seller shall not use Purchaser's, or the project name as a reference in any manner without Purchaser's prior written consent.

21.0 WARRANTY

Seller warrants that the Goods furnished under the Purchase Order, whether manufactured, fabricated, or otherwise produced or provided by Seller or others, will

- be new;
- be of the latest design or model conforming to Purchaser requirements;
- conform to the descriptions, data, drawings, plans, specifications, any performance criteria provided by Purchaser to Seller;
- be of merchantable quality;
- be fit for the purpose(s) intended;
- conform with all applicable laws, ordinances, codes and regulations;
- be of the highest quality;
- be free from defects in materials, performance, operation, and workmanship

Unless specified in the Purchase Order, the Goods will be warranted thereunder, as may be applicable, for a period of twelve (12) months after the date of substantial completion, or twenty-four (24) months from date of delivery, whichever period expires later.

22.0 WARRANTY REMEDIES

Upon receipt of written notice from Purchaser that the Goods do not conform with the requirements of the Purchase Order, Seller shall at no cost to Purchaser promptly repair or replace such Goods so that they conform with the requirements of the Purchase Order. If the Goods cannot be repaired or replaced so as to conform with the requirements of the Purchase Order, the nonconforming Goods shall be removed by Seller at no cost to the Purchaser and Seller shall promptly refund all of that portion of the Purchase Order price that has been paid by Purchaser, along with any carriage, insurance, freight and related costs incurred by Purchaser in connection with the transportation, handling, delivery, removal, and replacement of the Goods and in connection with any damages or other expenses incurred in removing and/or replacing such Goods. Seller will also compensate Purchaser for any damages to Purchaser's property other than the Goods

caused by any defect in or malfunction of the Goods.

If Seller does not commence action to correct any nonconformity in the Goods within the warranty period in a reasonable time (in no event later than two (2) working days) following receipt of written notice of the nonconformity, Purchaser may effect repairs, and Seller shall reimburse Purchaser for all expenses incurred. Such actions on the part of Purchaser shall not relieve Seller of any responsibility or liability hereunder with respect to such Goods. Seller warrants any Goods repaired or replaced hereunder for a period of twelve (12) months from the date of acceptance by Purchaser of such repaired or replaced Goods.

Seller warrants that it has the ability to deliver clear title to all Goods, that it has the right to sell the Goods, and that the Goods are free from any interest, lien, restriction or other encumbrance.

23.0 FORCE MAJEURE

An event of "Force Majeure" hereunder shall be an excused delay, provided Seller has provided timely written notice of the occurrence of such event to Purchaser.

Seller agrees to take all reasonable commercial efforts to reduce or mitigate the effects of such delay. "Force Majeure" is defined as any act of God, flooding, fire, devastating storm, lightning, act of war, act of terrorism, or unforeseeable government action beyond the reasonable control of and not caused in any way by any fault of Seller, but shall not include any power supply, transportation or labor problems.

In the event of a Force Majeure occurrence, Purchaser, at its sole option, may require or approve in writing a change in the delivery schedule or progress requirements as established in the Purchase Order in response to Seller's notice. If Seller fails to obtain the approval of Purchaser for any such change, and Seller fails for any reason to meet the delivery schedule or progress requirements, or it becomes apparent that Seller will for any reason not meet the schedule or progress milestones, Purchaser may, in such case, without penalty, cancellation fee, restocking, or other fee or charges, and without prejudice to any other rights which it may have, cancel all or part of the Purchase Order and take any other action as Purchaser may consider necessary under the circumstances to avoid or minimize losses.

24.0 LIMITATION OF LIABILITY

Notwithstanding anything to the contrary, the total aggregate liability of Seller to Purchaser

arising out of or in connection with the performance of Seller's obligations under the Purchase Order shall not exceed three times the Purchase Order Value.

However, in no event shall the foregoing limitation of liability apply to the obligations assumed by Seller under Article 26 (PATENT INDEMNIFICATION AND OTHER RIGHTS).

25.0 GENERAL INDEMNITY AND CONSEQUENTIAL DAMAGES

Seller shall indemnify, defend and hold harmless the Indemnified Parties against and from any and all Damages, including without limitation any damage to or destruction of property of, or death of or bodily injury to, persons (regardless of whether they are employees of an Indemnified Party, Seller or any Sub-Seller, or unaffiliated with the Project, or otherwise), arising from (i) any act or omission of Seller or any of its Sub-Sellers, or of any of their respective employees, agents, or representatives, in connection with the Purchase Order or the Project or (ii) any failure of Seller to comply with the terms of the Purchase Order.

In any claim against one or more of the Indemnified Parties by any employee of Seller or by any employee of any of its Sub-Sellers, the indemnification, defense and hold harmless obligation under this article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Seller or any of its Sub-Sellers under workers' compensation acts, disability benefit acts or other employee benefit acts.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES OF ANY KIND ARISING FROM ANY CAUSE WHATSOEVER, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, EXCEPT TO THE EXTENT PURCHASER IS OBLIGATED TO PAY ANY SUCH DAMAGES TO A THIRD PARTY.

26.0 PATENT INDEMNIFICATION AND OTHER RIGHTS

Seller warrants that Purchaser's use or sale of the Goods will not infringe any valid patents, copyrights, trademarks or trade secrets. Both during the duration of the Purchase Order and after its expiry or termination, Seller shall defend, hold harmless and indemnify Purchaser against any claim, suit, action or proceeding against Purchaser for actual or alleged infringement of patents, copyrights, trademarks or trade secrets

based on Purchaser's use or sale of the Goods, provided that Seller is promptly notified in writing of said claim, suit, action or proceeding. Seller shall pay any amount negotiated by Seller for the settlement of said claim and all damages and costs awarded against Purchaser in such suit, action or proceeding.

If Purchaser's use or sale of the Goods is enjoined, Seller shall, at its expense, either obtain for Purchaser the right to continue using the Goods, modify the Goods so that they are non-infringing, or replace the Goods with non-infringing Goods; provided, however that no such replacement or modification shall in any way diminish the rated capacity or performance of the Goods. Purchaser shall be entitled to participate in the defense of any such claim, suit, action or proceeding by counsel of its choice at its own expense.

The provisions of this paragraph shall not apply to any portion of the Goods designed or provided by Purchaser.

27.0 WAIVER

Failure or delay on the part of any Party to exercise any right, power or privilege under the Purchase Order, or under any other agreement relating thereto, shall not serve as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other future exercise thereof.

28.0 PAYMENT

Purchaser will pay the price in the currency as set out in the Purchase Order in accordance with the agreed-to payment conditions. The payment shall not be deemed as a release of the Seller from its responsibilities under the Purchase Order.

The terms of payment as shown in the Purchase Order shall take precedence over terms of payment shown on Seller's invoices or elsewhere.

No payment shall constitute a waiver of any claim Purchaser may have against Seller.

The date of receipt by Purchaser of a proper, complete and fully supported invoice from Seller will be the effective date of the invoice. If not otherwise specified in the Purchase Order, Purchaser will pay the uncontested portion of the invoice amount within forty-five (45) days after the effective date of the invoice.

Applicable freight charges and sales and use taxes shall be shown separately on the invoice. Freight charges shall be supported by copies of the paid freight bill and bill of lading.

29.0 RELEASE OF LIENS

Seller, if requested by Purchaser, shall furnish with each invoice a waiver and release in form and substance satisfactory to Purchaser in which Seller waives and releases any and all claims of any nature, including but not limited to mechanic's and other liens or claims or rights of lien or other encumbrances that Seller or its Sub-Sellers have or may have against Purchaser, the Facility and/or project as a result of labor, services, equipment, material, supplies, documentation or other items used or employed by Seller or its Sub-Sellers to the date of the invoice in the performance of the Purchase Order. Seller shall furnish a full waiver and release of lien with the final invoice, and the final invoice will not be paid until such waiver and release of lien is received by Purchaser.

30.0 TAXES

Unless otherwise provided for in the Purchase Order, Seller is responsible for payment of, and the price set forth therein includes, all sales, use, excise, value-added, goods and services, business (franchise or privilege), and other such taxes, any taxes imposed on Seller that are based on revenue, income, net income, net assets, net worth, or capital, any taxes imposed in lieu thereof, and all duties, fees, levies, charges or other assessments of whatever nature imposed by governing authorities or any jurisdiction applicable in connection with performance under the Purchase Order. Seller has sole responsibility and liability for the payment of any and all contributions or taxes for unemployment insurance, social security payments, or other assessments for those persons performing work for Seller hereunder.

If it is ever determined that any tax included in the price paid by Purchaser was not required to be paid, Seller agrees to promptly refund such amount to Purchaser. Seller shall release, defend, indemnify, and hold the Purchaser Indemnitees harmless from and against any fines, penalties, interest, costs (including attorney's fees and court costs), charges, fees, losses, damages or liabilities arising from, alleged to arise from, or in any way associated with Seller's failure to comply with the terms of this article.

31.0 INSURANCE

Seller shall provide insurance covering the full replacement cost of the Goods (including shipping and related costs if included as part of the Purchase Order and regardless of who has title/ownership), which are in Seller's care, custody and control. Any deductibles maintained

under this insurance shall be for the account of the Seller.

In those instances where Purchaser holds title to all or a portion of the Goods before delivery, then Purchaser shall be named in the insurance policy as an additional insured and as a loss payee. In addition, Seller shall waive on behalf of Purchaser all of its rights of recovery and its insurance carrier's right of subrogation.

Seller shall maintain, at Seller's expense, with insurers satisfactory to Purchaser, the following types of insurance with minimum policy limits as specified, which insurance shall be primary over any insurance maintained by Purchaser:

1. Workers Compensation Insurance as required by law one million \$1,000,000 per accident and two million \$2,000,000 in the aggregate, and an umbrella of five million \$5,000,000 in the aggregate.
2. Employer's Liability Insurance with a limit of one million \$1,000,000 per occurrence and two million \$2,000,000 in the aggregate.
3. Comprehensive Automobile Liability Insurance, covering all owned and non-owned and hired vehicles with a limit of one million \$1,000,000 per occurrence and two million \$2,000,000 in the aggregate.

Seller shall provide Purchaser with copies of certificates of insurance evidencing the required coverage before commencing any Work under the Purchase Order. All insurance carried hereunder shall be endorsed to require the insurer to furnish Purchaser with thirty (30) days' written notice before the effective date of any expiration/cancellation or material modification of insurance.

32.0 RIGHT TO OFFSET

Purchaser, without waiver or limitation of any rights or remedies, shall be entitled from time to time to deduct from any amounts due or owing by Purchaser to Seller in connection with the Purchase Order any and all amounts owed by Seller to Purchaser.

33.0 ASSIGNMENT AND NOTICE OF SELLER CHANGES

Seller will not sell, assign, or transfer the Purchase Order, or any part thereof, or any performance or money due thereunder, without the prior written consent of Purchaser. If such consent is granted, any such assignment by Seller will not (a) increase Purchaser's obligations, (b) diminish Purchaser's rights, or

(c) relieve Seller of any of its obligations under the Purchase Order. Purchaser reserves the right to assign the Purchase Order, in whole or in part. Seller will give Purchaser prompt written notice of any adverse material change in its financial standing (including any prospective bankruptcy, reorganization, insolvency, liquidation, dissolution or assignment for the benefit of any creditor), ownership or organization or any other operational change that may affect its performance under the Purchase Order, including any change in the manufacture or production of the Goods. In the event of any adverse material change, Purchaser reserves the right to cancel or terminate the Purchase Order without penalty or further obligation other than to pay Seller for any completed and satisfactory performance to the date of such cancellation or termination.

34.0 ACCEPTANCE OF SUBCONTRACTORS AND SUB-SELLERS

Purchaser reserves the right to approve or disapprove any sub-contractors or Sub-Sellers proposed by the Seller to be involved in the Seller's implementation of or performance in accordance with the Purchase Order. Before entering into the Purchase Order, Seller will submit a list of all proposed sub-contractors and Sub-Sellers for review and approval by Purchaser. Seller agrees that Purchaser has the right to contact or visit any of Seller's proposed sub-contractors or Sub-Sellers to confirm delivery commitments or the origin, composition, manufacture, kind, quantity, or quality of any Goods in connection with the Purchase Order. Any approval by Purchaser will not constitute a waiver, at law or in equity, of any term or condition thereunder nor relieve Seller of any of its obligations under the Purchase Order. Seller will ensure that terms and conditions substantially similar to those in the Purchase Order are contained in any contract for any Goods, materials, equipment or services issued to any sub-contractor or Sub-Seller. Upon request, Seller agrees to submit to Purchaser copies of any unpriced contract with any sub-contractor Sub-Seller for any item pertaining to the Purchase Order.

35.0 TERMINATION FOR CONVENIENCE

Purchaser may, at any time, with or without cause, terminate the Purchase Order in whole or in part by written notice to Seller. If Purchaser terminates for convenience, Purchaser will reimburse Seller those costs not in excess of the Purchase Order value that were incurred by Seller before the date of termination. Seller shall submit to Purchaser evidence of such costs, and Purchaser shall have the right to audit and

verify same.

36.0 TERMINATION FOR CAUSE

If Seller shall become insolvent; or if insolvency, receivership or bankruptcy proceedings shall be commenced by or against Seller; or if Seller shall assign or transfer the Purchase Order or any right or interest therein without Purchaser's written consent; or if Seller shall fail to make prompt payment for labor or materials, or persistently disregard laws or ordinances or the lawful requirements of any competent authority or instructions of Purchaser; or if Seller shall fail, neglect, refuse or be unable at any time during the course of the work on the Goods to provide ample material, equipment, services, or labor to perform the work on the Goods at a rate deemed sufficient by Purchaser to give reasonable assurance that Seller will complete the same on the agreed-to schedule; or if Seller shall default in its performance of a material representation, warranty or guarantee or other obligation, duty or provision of the Purchase Order and Seller having been given notice by Purchaser to remedy such default fails to remedy same if such default can be remedied immediately or if immediate correction is not possible Seller fails to commence and continue corrective actions within seven (7) calendar days after receipt of Purchaser's notice; then Purchaser and Seller shall have the following rights, obligations, and duties:

Purchaser, without prejudice to any of its other rights or remedies, may terminate the Purchase Order forthwith by giving written Notice of Termination to Seller.

Seller shall be liable for any excess cost of the work incurred by Purchaser on account of any of the circumstances described above. Purchaser shall be entitled to withhold further payments to Seller until Purchaser confirms that Seller is entitled to further payments. Upon completion of the work by Purchaser or third parties, the total cost of the work shall be determined, and Purchaser and Seller shall agree in writing on the amount, if any, that Seller shall pay Purchaser or Purchaser shall pay Seller, which shall be deemed to complete all payments under the terms of the Purchase Order.

37.0 SUSPENSION

Purchaser may at any time suspend performance of all or any part of the Purchase Order by giving written notice to Seller. Such suspension may continue for a period of up to sixty (60) calendar days after the effective date of suspension, during which period Purchaser, in writing, may request Seller to resume

performance of the work. If at the end of said sixty (60) day period Purchaser has not required a resumption of the work, that portion of the work that has been suspended shall be deemed terminated as of the effective date of suspension, unless Purchaser and Seller have agreed in writing to a further extension of the suspension period, and as such Purchaser shall compensate Seller in accordance with Article 35 (TERMINATION FOR CONVENIENCE). Except for circumstances beyond the reasonable control of the Purchaser, if the work on the Goods is suspended, delayed or interrupted by Purchaser and if Seller is authorized by Purchaser to resume such work, an adjustment will be made to the Purchase Order capturing schedule and cost impacts, if any.

38.0 TITLE, SHIPMENT, AND RISK OF LOSS

Unless otherwise specified in the Purchase Order, title to the Goods (and in the event that the Goods are made to order, then title to all materials, inventory and work in progress, design data, other documentation, and all contractual rights thereto) will vest in Purchaser immediately upon acceptance of the Goods by Purchaser or payment by Purchaser, whichever occurs first. If Goods are made to order or the Purchase Order otherwise specifies that title will vest in the Goods upon acceptance or payment, Seller will segregate the Goods and clearly label them as property of Purchaser.

In the event of termination of the Purchase Order, Purchaser will have the right to enter Seller's (or Seller's agent's, contractor's or Sub-Seller's) premises during regular business hours and take possession of any Goods, (including any related drawings, records, materials to be incorporated into the Goods), and equipment for which Purchaser has paid Seller, that Purchaser has provided to Seller, or that have been identified in the Purchase Order or created by Seller thereunder, and Purchaser shall pay Seller for any portion of such Goods or equipment for which Purchaser has not previously paid. In such case, Seller warrants title to the Goods free and clear from any and all liens, claims, restrictions, reservations, security interests and encumbrances.

If applicable, Seller will be responsible for properly and carefully preparing, labeling, packing, and shipping the Goods at Seller's expense unless otherwise specified in the Purchase Order, and providing all required shipping documentation. Seller will comply with all laws and regulations applicable to shipment of the Goods in addition to any requirements or instructions of Purchaser as may be specified in the Purchase Order or otherwise in writing.

Irrespective of vesting of title and any other

provision herein to the contrary, Seller will bear risk of loss and damage with respect to, and will insure or self-insure for the benefit of Seller, Purchaser, and any Owner, the Goods in its care, custody and control, including free-issue material supplied to Seller for incorporation into, or work in conjunction with, the Goods in accordance with the provisions of the Purchase Order.

Should any loss or damage occur to the Goods before acceptance by Purchaser, then Purchaser, at its sole option, may cancel the Purchase Order without any cancellation fee, charge, penalty, or liability, and Seller shall refund in full to Purchaser any amounts paid by Purchaser for such Goods. Should any loss or damage occur to any free-issue Goods provided to Seller, in addition to Purchaser's right to cancel the Purchase Order, Seller shall either, at Purchaser's sole option, immediately replace such materials with identical materials to meet its performance obligations hereunder or reimburse Purchaser for the loss or damage, including any additional expenses and costs that may be incurred resulting from such loss or damage.

additional terms or conditions, Seller agrees that a binding contract has been formed solely upon Purchaser's terms and conditions, which contract will not include any of Seller's different and/or additional terms or conditions.

39.0 ENTIRE AGREEMENT

The Purchase Order and its referenced attachments constitute the entire agreement between Purchaser and Seller with respect to the Goods, superseding all quotations, proposals, communications, negotiations and counter proposals. The Purchase Order expressly excludes any quotations or proposal of Seller unless such proposal is specifically referenced and incorporated therein. Any different or additional terms and conditions in Seller's acceptance or during Seller's performance of the Purchase Order, including any terms and conditions contained on any of Seller's quotations, proposals, or forms, are excluded from the Purchase Order and shall be null and void and of no effect on the Parties. Electronic commerce transactions between Purchaser and Seller pertaining to the Purchase Order will be solely governed by these terms and conditions. If the Purchase Order has been issued by Purchaser in response to a proposal or offer by Seller, the Parties agree that Purchaser's counteroffer to Seller will be governed solely by these Terms and Conditions and not by any of Seller's terms or conditions that may be contained in Seller's proposal or offer. If Seller includes or attaches any different and/or additional terms or conditions in Seller's executed acceptance of a Purchase Order issued by Purchaser and proceeds to commence performance or tender all or any part of the Goods without Purchaser's express written acceptance of such different or