

# Standard Commercial Purchase Order Terms and Conditions

**Trico Products Corporation, and those affiliates and subsidiaries it designates (herein after collectively “Buyer”) and the person or entity to whom this purchase order is directed (herein after “Seller”) agree to the following Terms and Conditions.**

## **1. Acceptance**

Acceptance of the offer represented by a Purchase Order or other agreement is expressly limited to the terms of such Purchase Order or other agreement. Signing and returning the acknowledgment copy of a Purchase Order or other agreement (if included herewith) or, in any event, commencement of performance hereunder or thereunder shall constitute acceptance of such Purchase Order or other agreement. The terms and conditions set forth herein, to the extent that there is any conflict with any applicable Trico master purchase order and/or supply agreement, shall be superseded by those terms set forth in such master purchase order and/or supply agreement (as applicable). Whether this Purchase Order is construed as an offer, acceptance, or confirmation of an existing contract, Buyer’s assent is expressly conditioned upon the full and complete protection afforded by the uniform commercial code in relation to warranties, remedies, and all other rights of Buyer under the code without limitation. Buyer hereby objects to and rejects any attempted limitation on such code protection in any oral, written, or printed statement from the vendor, regardless of the character or such statement.

## **2. Price**

Purchase prices shall be as stated on the face of the Purchase Order, and shall not be subject to escalation without Buyer’s prior consent. Notwithstanding the foregoing, Seller agrees that purchase prices charged shall not be less favorable than those extended to any other customer for the same or like articles in equal or lesser quantities, and that if prices for such articles are reduced prior to delivery, prices hereunder shall be reduced correspondingly. Purchase prices are inclusive of all extra charges, including charges for packing, containers, insurance, and transportation, except as otherwise specifically provided on the face of the Purchase Order. All taxes based upon and measured by sale, use or manufacture shall be shown separately on Seller’s invoice. Delays in receiving Seller’s statement or invoice, and also errors and omissions on statements, shall be grounds for withholding settlement without losing any discount privileges. Seller may not refuse to ship Products to Buyer in order to force modifications to pricing. Seller’s prices shall include and Seller shall disclose upon request by Buyer, in reasonable detail, a breakdown of all costs and fees, including disclosures of all material, labor, handling, shipping, and storage fees, all taxes, fees, duties, and other expenses incorporated into Seller’s prices.

## **3. Service Parts and Product Support.**

(a) Seller shall continue to provide products, including any components of products, as required by Buyer for a period of fifteen (15) years after the date of final shipment under the Purchase Order or for such other period as Buyer is required to provide to its customer service or replacement parts incorporating the products, whichever is longer. During the first five (5) years after the date of final shipment, the prices for the products shall be the prices specified in the Purchase Order. Thereafter, the prices for the products shall be the prices specified in the Purchase Order, plus any actual cost increase for packaging and manufacturing, as determined by Buyer. If the products are systems, Seller shall sell the components, parts or sub-assemblies that comprise the system at prices that shall not, in the aggregate, exceed the price of the system, less assembly costs. Further, during said period, Seller shall continue to provide technical support and service at the same level as currently required under the Purchase Order.

(b) If Seller discontinues manufacture of the products, or the components, parts or sub-assemblies or does not provide any of them in a timely manner for Buyer’s requirements, Seller shall make available to Buyer all software, drawings, specifications, data, documentation and know-how which shall enable and facilitate Buyer, its suppliers and its customers to purchase, manufacture, incorporate into Buyer’s products, use, market, sell, modify, repair and/or reconstruct such products, components, parts and sub-assemblies.

## **4. Changes**

Buyer may at any time by a written order, and without notice to sureties, make changes within the general scope of any Purchase Order as follows: (i) drawings, designs or specifications, where the products to be furnished are to be specially manufactured for Buyer in accordance therewith; (ii) method of shipment or packing; (iii) time and/or place of delivery and amount; and/or (iv) the period of performance of work; and Seller shall comply therewith. If any such change causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under the Purchase Order, whether changed or not changed by any such order, an equitable adjustment, as determined by Buyer, shall be made in the Purchase Order, price or delivery schedule, or both, and the Purchase Order shall be modified in writing accordingly. Any claim by Seller for adjustment under this clause must be asserted within 30 days from the date of receipt by Seller of the notification of change; provided, however, that Buyer, if it decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under the Purchase Order and where the cost of property made obsolete or excess as result of a change is included in Seller’s claim for adjustment, Buyer shall have the right to prescribe the manner of disposition of such property. Failure to agree on any claim for equitable adjustment under this clause shall be a dispute and Seller may thereupon pursue any remedy which it may have in any court of competent jurisdiction. Pending the resolution of any such dispute Seller shall diligently pursue the performance of the Purchase Order as changed. Except as expressly provided for elsewhere in the Purchase Order as the parties agree that there shall be no adjustment in the price or time for performance hereunder unless an authorized representative of Buyer’s Purchasing Department shall have directed a change hereto by the issuance of a written change order to the Purchase Order.

## **5. Payment and Discounts**

Payment for goods and/or services covered by this order will be made in U.S. dollars unless otherwise stated on the Purchase Order. All payment periods and cash discount periods will be computed from the later of the date of delivery of the goods ordered, or date of receipt of correct and proper invoices prepared in accordance with the terms of the Purchase Order. For purposes of determining whether payment has been made on time or whether the discount has been earned, payment is deemed to be made on the date of postmark of Buyer’s check or initiation of wire. Upon reasonable notification to Seller, Buyer may withhold and deduct from any part of the price due under this order all or any part of the damages, including consequential damages, resulting from any breach of terms and conditions contained herein, or any other amount which Seller owes Buyer, arising out of or related to the transaction which is subject of the Purchase Order or which is otherwise due from Seller or Buyer.

## **6. Invoicing**

One (1) invoice shall be mailed immediately after each shipment to:

Trico Products Corporation  
Accounts Payable  
1995 Billy Mitchell Blvd.  
Brownsville, TX 78521

In the case of (a) any delays in receiving invoice; (b) errors or omissions in invoice; or (c) lack of supporting documentation required by the terms of the Purchase Order, Buyer will have cause to withhold settlement and shall not lose any discount privilege that applied to the products affected by such action or inaction. All payments will be issued to Seller at the location specified in Seller’s block on the Purchase Order, unless proper authority for deviation is supplied to Buyer’s Accounts Payable Department.

## 7. Delivery

Time of delivery, as provided, is of the essence. Seller must notify Buyer as soon as possible but no later than 10 business days in advance of delivery schedule that will not be met or if material is on back order. If Seller for any reason (including but not limited to labor disputes, force majeure, work stoppings, acts of God or civil unrest) does not meet the time of delivery as to all goods ordered, Buyer may at its option either approve the revised delivery schedule, reduce the total quantity covered by the Purchase Order by the amount of omitted shipments reducing the price *pro rata*, or terminate the Purchase Order, without liability for any such revision, reduction or termination. Deliveries made more than 5 days in advance of the designated schedule are prohibited without Buyer's prior written consent. **Date stated on P.O. is on dock at Trico, not ship date.**

## 8. Labor Disputes

Whenever an actual or potential labor dispute is delaying or threatens to delay the performance of the work, Seller shall immediately notify Buyer in writing. Such notice shall include all relevant information concerning the dispute, its background and any anticipated resolution, but shall not alter or limit Seller's obligation under any Purchase Order.

## 9. Late Shipments

If Seller is not able to meet a delivery date, Seller shall either ship the products on an expedited basis or offer and deliver a substitute product which is acceptable to Buyer as determined in Buyer's sole and absolute discretion. Seller will pay all costs in excess of those that would have been incurred by Buyer had Seller performed according to Buyer's instructions resulting from Seller's expedited shipments or substitute products. If Buyer must use alternate sources or methods to satisfy its supply requirements because of Seller's failure to perform in accordance with the Purchase Order or other agreement, then Seller shall be responsible for all costs in excess of those that Buyer would have otherwise incurred had Seller fully performed its obligations.

## 10. Shipping and Title

Except as otherwise expressly provided herein, title to all items shipped by Seller to Buyer shall pass to Buyer upon Buyer's inspection and acceptance of such items at Buyer's dock. An itemized packing slip **referencing Buyer's purchase order numbers, part number**, and any special instructions must be plainly marked on all invoices, packages, bill of lading, and shipping orders. **Shipping memos or packing lists must accompany all material.** Bill of lading or shipping receipts shall accompany each invoice. Buyer's count or weight shall be final and conclusive on shipments not accompanied by shipping memos or packing lists. Failure to provide packing slips with proper numbers may result in excusable delay in processing Seller's invoices. All shipments to be made per Buyer's vendor routing instructions. If documentation is missing or incorrect, an administrative charge of \$100 may be assessed.

## 11. Trico's Property

All tooling, dies, parts, schedules and specifications, and all reproductions thereof, and any other property furnished to Seller by Buyer, or paid for (in whole or in part) by Buyer shall be the exclusive property of Buyer, clearly so identified, and subject to removal at any time upon Buyer's demand, and shall be used solely in filling orders from Buyer or its nominee. Seller assumes all liability for loss of, and damage to, such property and Seller shall, unless otherwise directed in writing by Buyer, insure at Seller's expense such property in amount equal to the replacement cost thereof with losses payable to Buyer.

## 12. Indemnification

Seller shall indemnify, defend and hold Buyer harmless from and against any claim, loss, damage, expense or liability (including reasonable attorney's fees and costs) (collectively, "Losses") that may result, in whole or in part, from (i) any warranty or product liability claim by a third party with respect to products supplied to Buyer by Seller, (ii) Seller's failure to comply with the representations, warranties and covenants of any agreement or the requirements of any applicable law, rule or regulation or Purchase Order, (iii) any recall or mandatory repair or replacement program including products supplied to Buyer by Seller; or (iv) any non-conformance with specifications or deficiencies in products supplied to Buyer by Seller or its designee. Seller also shall indemnify Trico against any loss, damage or liability, including costs and expenses, including reasonable attorneys' fees, which may be incurred on account of any suit, claim, judgment or demand involving infringement or alleged infringement of any patent, copyright, industrial design, right or other intellectual property rights in the manufacture, use or disposition of Supplier's products.

## 13. Disputes

Any dispute arising hereunder which is not disposed of by agreement shall be decided by Buyer who shall set forth its decision in writing and mail or otherwise furnish a copy thereof to Seller. **Buyer's decision shall be final and conclusive, unless within 30 days from the date of receipt of the decision by Seller, Seller submits the controversy or claim to arbitration in Oakland County, Michigan, or such other location to be designated by Buyer,** in accordance with the rules of the American Arbitration Association. A copy of such submission shall be simultaneously furnished to Buyer. Any judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Notwithstanding anything to the contrary herein, Buyer shall have at all times the right but not the obligation to commence litigation at any time with respect to any dispute arising hereunder in any court of competent jurisdiction or to commence arbitration of any dispute pursuant to the rules of the American Arbitration Association. Pending final decisions or arbitration of any dispute, Seller shall proceed diligently with performance of the Purchase Order and in accordance with Buyer's direction and shall comply fully with its obligations thereunder. Seller's failure to continue performance during the pendency of any litigation or arbitration shall entitle Buyer to enhanced damages and attorney fees.

## 14. Warranties and Reworks

In addition to warranty claims arising out of the non-conformance of Supplier's products with specifications, all warranties are intended to provide Buyer with protection from any and all warranty claims brought against Buyer by its customer and others. This includes, without limitation, meeting any customer-required warranties relating to goods into which the products are incorporated. All such customer-required warranties are incorporated herein by reference. Seller represents and warrants that its products are merchantable, free from any defects in material or workmanship and shall perform in accordance with any manufacturer's warranties. If any product fails to satisfy the warranty during any applicable warranty period, whether or not resold and shipped by Buyer, Buyer shall give written notice of such defective product(s) to Seller within 120 days of the date that Buyer becomes aware of such failure and shall deliver the defective product(s) to Seller within 120 days of the date when Buyer receives possession of such defective product(s). At Buyer's election, (i) Buyer may require that Seller promptly deliver to Buyer replacement products, (ii) Buyer may set-off that portion of the price attributable to the defective products against current or future amounts owing to Seller, or (iii) Seller shall credit any amounts owing from Buyer for that portion of the price attributable to defective products. Buyer shall ship any defective or non-conforming products to Seller on a freight prepaid basis and, at Buyer's election, deduct the amount of such prepaid freight from amounts owed to Seller or receive prompt reimbursement from Seller. If Buyer elects to receive replacement products, Seller shall deliver such replacement products to Buyer FOB Delivery Point on an expedited basis. All costs associated with the return of products to Seller and the redelivery of conforming products to Buyer for failure to satisfy the acceptance testing or warranty shall be at Seller's sole cost and expense.

## 15. Intellectual Property Rights

(a) Seller warrants that the products and the purchase, manufacture, incorporation into Buyer's products, use, marketing, sale, modification, repair and/or reconstruction thereof (before and after incorporation into Buyer's products during manufacture) do not and will not infringe any patent, trademark, copyright, trade secret, industrial design right or other intellectual property right of any third party in any jurisdiction throughout the world.

(b) Seller hereby grants to Buyer, each party or entity to which the products are provided, and each of their affiliates, agents, suppliers and contractors, a fully paid, unrestricted, worldwide, irrevocable and perpetual license to all intellectual property rights, including without limitation all software, drawings, specifications, data, documentation and know-how so as to enable the purchase, manufacture, incorporation into Buyer's products, use, marketing, sale, modification, repair and/or

reconstruction, and the right to make derivative works of the products or any components, parts or sub-assemblies thereof in any manner. Seller warrants that it is aware of the uses to which the products are to be put, and that Seller has full right to grant said license.

(c) If the purchase, manufacture, incorporation into Buyer's products, use, marketing, sale, modification, repair and/or reconstruction of the products, or any part thereof, is alleged to constitute infringement or is enjoined or, in Buyer's sole judgment, is likely to be enjoined, Seller shall, at its own expense and without limiting its other obligations or the rights of Buyer under the Purchase Order, obtain for Buyer and its customers the right to continue the purchase, manufacture, incorporation into Buyer's products, use, marketing, sale, modification, repair and/or reconstruction of the products. If Seller cannot obtain such rights then Seller shall, at the option of Buyer, either modify the products so they become non-infringing while continuing to conform to all warranties and other requirements of the Purchase Order, or remove the products and refund the purchase price and all transportation, installation and other costs thereof. Seller shall be liable for all direct, incidental, consequential and other damages, losses, costs, charges and expenses incurred by Buyer resulting from any of the foregoing.

(d) If the Purchase Order involves or results in: (i) any invention or any experimental, developmental or research activities, including engineering related thereto, (ii) any reduction to practice or any subject matter, application or discovery which could be patented, copyrighted, or otherwise perfected or protected, or (iii) any improvement in the design of the products or any alternative or improved method of accomplishing the objectives of the Purchase Order (collectively, "Inventions"), such Inventions shall be owned by Buyer and shall be deemed confidential and proprietary property of Buyer. Seller agrees to and does hereby assign to Buyer all right, title and interest in any intellectual property rights in such Inventions, and Seller shall cooperate and cause its employees and contractors to cooperate in executing any documents and taking any other actions necessary or convenient to evidence such assignment or to patent or otherwise perfect or protect such Inventions for the benefit of Buyer.

(e) All works of authorship, including without limitation, technical data related to the products, design documents and drawings, software, computer programs and databases, and all enhancements, modifications and updates thereof and all written work products or materials which are created in the course of performing the Purchase Order are "works made for hire" and the sole property of Buyer. To the extent that such works of authorship do not qualify under applicable law as works made for hire, Seller agrees to and does hereby assign to Buyer all right, title and interest in any intellectual property rights in such works of authorship, and Seller shall cooperate and cause its employees and contractors to cooperate in executing any documents and taking any other actions necessary and/or convenient to evidence such assignment.

#### **16. Proprietary Information**

(a) Any information or knowledge which Buyer may have disclosed or may hereafter disclose to Seller in connection with the products or the Purchase Order shall be deemed confidential and proprietary information of Buyer and shall not be disclosed by Seller to any third party without the prior written consent of an officer of Buyer. Buyer retains ownership of all proprietary rights in any information disclosed to Seller in connection with the products or the Purchase Order.

(b) Any knowledge or information which Seller shall have disclosed or may hereafter disclose to Buyer in connection with the products or the Purchase Order shall not, unless otherwise specifically agreed upon, on a case-by-case basis, in writing by an officer of Buyer, be deemed to be confidential or proprietary information, and accordingly shall be acquired free from any restriction. Notwithstanding anything to the contrary herein contained, no employee of Buyer has authority to make any agreement, express or implied, limiting the use or publication of, or providing for confidential treatment of information of whatever kind, unless such agreement is made in writing and signed by an officer of Buyer.

(c) Seller shall not use any information provided by Buyer, or developed in connection with the manufacture or development of the products, for any use other than the manufacture of the products or performance of the services for Buyer or its designee.

#### **17. Overshipments**

Subject to inspection and acceptance, Buyer will be liable for payment only for quantities ordered and delivered unless otherwise specified. Overshipments must have prior written approval from Buyer. Overshipments not authorized shall be held at Seller's risk and expense for a reasonable time awaiting shipping instructions. Shipping charges for return shall be at Seller's expense.

#### **18. Release Authorization**

When deliveries are specified to be in accordance with Buyer's written releases, Seller will not fabricate or assemble any goods, nor procure required materials, nor ship any products, except to the extent authorized by such written or electronic releases or provisions of the Purchase Order specifying minimum fabrication or delivery quantities.

#### **19. Inspection**

Buyer may inspect and evaluate all products (including all tooling and material used in their manufacture), and all services at times and places designated by Buyer. Seller will perform its inspections as designated by Buyer and Seller will make inspection systems, procedures and records available to Buyer upon request.

#### **20. Packing, Marking, and Shipment**

Seller will pack and mark products in accordance with Buyer's instructions, secure the lowest transportation rates, meet carrier requirements and assure delivery free of damage and deterioration. Seller is responsible for the products until delivery at the designated FOB point. Prices specified include all charges and expenses for containers, packing and crating, and transportation to the FOB point. All containers, packing and crating material will become the property of Buyer upon delivery. Buyer may specify the carrier and/or method of transportation and Seller will process shipping documents and route shipment of the products in accordance with Buyer's instructions. Unless otherwise specified on the face of a Purchase Order, shipping shall be FOB Delivery Point.

#### **21. Risk of Loss**

Unless a Purchase Order specifically provides otherwise, risk of loss or damage to products covered by a Purchase Order shall remain with Seller until, and shall pass to Buyer, only upon (i) delivery of the Products on board a carrier, if transportation is FOB Origin, or (ii) formal acceptance by Buyer or delivery of possession of the products to Buyer at the destination specified in the Purchase Order, whichever is later, if transportation is FOB Delivery Point, except for products which fail to conform which shall remain with Seller until any nonconformance has been cured.

#### **22. Customs**

Seller to complete all NAFTA certification per NAFTA instructions called out on face of the Purchase Order. Buyer shall have the right to assess Seller any duties or penalties, including legal fees, directly or indirectly arising out of any NAFTA Certificates supplied by Seller.

#### **23. Work On Buyer's Premises**

When work under a Purchase Order is performed on Buyer's premises, Seller agrees to indemnify and protect Buyer against all liability for injury or damages to any person or property arising therefrom. Seller agrees, upon Buyer's request, to furnish a certificate from its insurance carriers showing that it carries workmen's compensation, public liability and property damage insurance coverage acceptable to Buyer and names Buyer as an additional loss payee.

#### **24. Applicable Law**

The laws of the State of Michigan shall be deemed applicable to all aspects of the transaction covering material ordered hereunder. Any action in connection with a Purchase Order or other agreement shall be brought exclusively in the federal or state courts of the State of Michigan, and both parties consent to the jurisdiction thereof.

#### **25. Compliance with Laws**

Seller agrees to comply with, and represents and warrants that it has fully complied with, all applicable laws, statutes, regulations, and ordinances of each country, state, province, county, municipality or other applicable governmental body, authority, and agency in connection with the manufacture, shipping and delivery of products.

## **26. Stop Work Order**

Buyer may at any time, by written order to Seller, require Seller to stop all or any part of the work under a Purchase Order for a period of 90 days, and for any further period agreed to by the parties. Upon receipt of a stop work order, Seller shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of cost allocated to the work covered by the Purchase Order during the period of work stoppage. Within 90 days or any extension thereof after delivery of a stop work order, Buyer shall either (i) cancel the stop work order, (ii) cancel the stop work order and make changes to the Purchase Order as described in the paragraph entitled "Changes" herein, or (iii) terminate the Purchase Order.

## **27. Administrative Authority**

All matters pertaining to administration of a Purchase Order shall be referred to or coordinated with Buyer's purchasing department. Correspondence should be directed to:

Trico Products Corporation  
Purchasing Dept.  
3255 West Hamlin Rd.  
Rochester Hills, MI 48309  
Fax: +1-248-371-8300

## **28. Delay in Delivery of Data**

Seller agrees that the technical data called for hereunder (including but not limited to MSDS, certifications, handbooks, service manuals, and maintenance information), if any, will be delivered no later than the respective times herein specified. If such data remains undelivered, unless the delay in delivery thereof arises out of a cause beyond the reasonable control and without the fault or negligence of Seller (within the meaning of the clause hereof entitled "Default"), Buyer may withhold payment to Seller for any of the amounts then due, refuse approval of Seller's invoices and refuse to accept further deliveries hereunder from Seller or take any other action authorized by law regulations now or hereafter in effect including termination of a Purchase Order for default, and may take any or all of the foregoing actions separately or in combination.

## **29. Rejections**

Notwithstanding payment or any prior inspection, if any of the products, material or services are found to be defective in material or workmanship, or otherwise not in conformance with the requirements of a Purchase Order, at any time after delivery, then in addition to any other rights or remedies which it may have under warranty or otherwise, Buyer shall have the right to reject and return such to Seller (at Seller's expense and risk of loss) products, material or services to be corrected or replaced promptly with satisfactory products, material or services in accordance with directions accompanying a notice of rejection. Without limiting its remedies, after notice to Seller, Buyer may also either (i) replace or correct any non-conforming products or services and charge Seller the cost of such replacement or correction, or (ii) cancel the Purchase Order, or any part thereof, for default.

## **30. Insurance**

Seller shall maintain, with reputable companies, insurance in amounts sufficient to protect Buyer from any and all supply interruption, public safety and liability, workmen's compensation or other claims during the performance of a Purchase Order. Buyer may demand evidence of adequate insurance and Seller shall provide same on request. Seller shall ensure that Buyer is listed as an additional insured and loss payee on all such policies contemplated above and shall provide Buyer thirty (30) days' written notice prior to any changes to insurance affecting Buyer.

## **31. Advertising**

Seller shall not, without first obtaining the written consent of Buyer, in any manner advertise or publish the fact that Seller has supplied or contracted to supply Buyer any products, materials or services contemplated hereunder or under any Purchase Order.

## **32. Rights and Reservations**

Seller shall at all times keep confidential all designs, processes, drawings, specifications, reports, data, trade secrets and other confidential and proprietary information, and the features of all parts, equipment, tools, gauges, patterns, and other items, furnished or disclosed to Seller by Buyer in connection with products or a Purchase Order, and shall only use such information to fulfill its obligations under a Purchase Order. Upon completion or termination of a Purchase Order, Seller shall promptly return all such information and items to Buyer. Where research, experimental or developmental work will be involved in the performance of a Purchase Order, Seller grants to Buyer an irrevocable non-exclusive royalty-free, worldwide, fully-paid up license to practice or have practiced all resulting inventions or discoveries, whether or not patentable, including but not limited to any act, method, process, machine, manufacture, design or composition of matter, or any new and useful improvement thereof, unless said license is specifically excluded in writing on the face of the applicable Purchase Order.

## **33. Drawings, Designs, and Specifications**

Unless specially excluded on the face of a Purchase Order, Buyer, upon termination of a Purchase Order for any reason, may at its own option, use all drawings, sketches, designs, design data, specifications, know how, process requirements and operating parameters, technical and scientific data, memoranda and proprietary information of every description whatsoever relating to such Purchase Order whether created by Buyer or Seller, without further compensation to Seller. Unless otherwise stated in writing on the face of a Purchase Order, Buyer's use of Seller's above mentioned proprietary information shall be on a non-exclusive basis.

## **34. Buyer's Property.**

34.1 Seller shall not purchase for the account of Buyer or charge to Buyer the costs of any tools, dies, jigs, molds, fixtures, patterns or other materials or equipment (collectively, "Tools") used or useable for producing Products pursuant to the Purchase Order, unless such Tools have been listed on the Purchase Order. Where Tools are included in the Purchase Order, they shall be purchased by Seller as agent for Buyer and Buyer shall pay Seller the lesser of: (a) the amount specified in the Purchase Order for such Tools or (b) Seller's actual, out-of-pocket costs to acquire or fabricate such Tools. Buyer shall have the right to audit Seller's books and records related to such Tools. Seller acknowledges that all Tools so listed on the Purchase Order, all Tools otherwise supplied by Buyer, and all Products returned by Buyer for repair or pending replacement (collectively, "Buyer's Property") are and shall be owned by Buyer and shall be used only for the production of Products for Buyer. Seller shall have only temporary possession of Buyer's Property, and shall deliver all or any part thereof to Buyer immediately upon demand.

34.2 Seller at its own expense shall keep all Buyer's Property maintained in good working order in accordance with the manufacturer's specifications and any replacement parts installed on Buyer's Property or any other modifications or improvements thereto shall become the Property of Buyer. Seller shall maintain records of all maintenance and repairs performed on Buyer's Property.

34.3 Seller shall bear the risk of loss and damage of such Buyer's Property at all times while in Seller's possession and shall keep Buyer's Property insured for its full replacement cost for the benefit of Buyer, shall keep it segregated from all other assets and labeled as being the property of Buyer, shall not move Buyer's Property from Seller's premises without the prior written consent of an officer of Buyer and shall immediately sign and file documents requested by Buyer to evidence its ownership thereof. Seller shall provide Buyer with a certificate of insurance acceptable to Buyer showing the amount of coverage, policy number and date of expiration of the insurance, naming Buyer as loss payee and requiring that Buyer be given thirty (30) days written notice prior to any modification, lapse or cancellation of any policy. If Buyer's Property is lost or damaged while in Seller's possession, Seller shall, at Buyer's option, replace the same at Seller's expense or indemnify Buyer for the costs of such replacement.

34.4 Nothing herein shall be construed as imposing any obligation on Buyer to furnish to Seller any designs, sketches, drawings, blueprints, patterns or any Buyer's Property and Buyer does not guarantee the accuracy of any such property supplied by it.

**35. Seller's Property.** Unless otherwise provided in the Purchase Order, Seller shall, at its expense, furnish, keep in good condition and replace any Tools necessary for the production of the Products. Seller hereby grants to Buyer the option of purchasing any Tools owned by Seller that are specially designed or outfitted for the production of the Products, upon payment to Seller of the net book value of such Tools, less any amounts that Buyer has previously paid to Seller for the cost of such Tools.

**36. Force Majeure**

Buyer may delay delivery or acceptance occasioned by causes beyond its reasonable control. Seller shall hold such goods at its cost and expense and, at the direction of Buyer, shall deliver them when the cause affecting the delay has been removed. Seller shall also be excused if delivery is delayed by the occurrence of unforeseen and unforeseeable events, provided Seller notifies Buyer its best estimate of such events as soon as they occur, and gives Buyer its best estimate of revised delivery dates. If any delay exceeds 30 days from the original delivery date, Buyer may cancel the Purchase Order without any liability. If Seller's production is only partially restricted or delayed, it shall use its best efforts to accommodate the requirements of Buyer, including giving the Purchase Order preference and priority over those of other customers which were placed after the Purchase Order.

**37. Default**

(a) Buyer may, subject to the provisions of paragraph (c) below, by written notice of default to Seller, terminate all or any part of a Purchase Order if (i) Seller fails to make delivery of the products or to perform the services within the time specified herein or any extension thereof; or (ii) Seller fails to perform any of the other provisions of the Purchase Order, breaches any representation, warranty or covenant or so fails to make progress as to endanger performance of the Purchase Order, in accordance with its terms, and fails to cure such failure within a period of 15 days (or such longer period as Buyer may authorize in writing; but only to the extent curable) after receipt of notice from Buyer.

(b) In the event Buyer terminates the Purchase Order in whole or in part as provided in paragraph (a) above, Buyer may procure, upon such terms and in such manner as Buyer may deem appropriate, products or services similar to those so terminated, and Seller shall be liable to Buyer for any excess costs of such similar products or services.

(c) If the Purchase Order is terminated as provided in paragraph (a) above, Buyer, in addition to any other rights or remedies provided in this clause may require Seller to transfer title and deliver to Buyer in the manner and to the extent directed by Buyer, (i) any completed products, and (ii) such partially completed products and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (herein called "manufacturing materials") as Seller has specifically produced or specifically acquired for the performance of such part of the Purchase Order as has been terminated; and Seller shall, upon direction of Buyer, protect and preserve property in possession of Seller in which Buyer has an interest. Payment for completed products delivered to and accepted by Buyer shall be at the Purchase Order price, prorated as applicable if products are partially completed. Payment for manufacturing material delivered to and accepted by Buyer and for protection and preservation of property shall be at Seller's cost or, if items are determined by Buyer to be obsolete, at Seller's net book value.

(d) If after notice of termination of the Purchase Order, under paragraph (a) above, it is determined for any reason Seller was not in default under the provisions of this clause, or that the fault was excusable under any provision herein, then the rights and obligation of the parties shall be the same as if the notice of termination has been issued pursuant a "Termination for Convenience," as provided below.

(e) The rights and remedies of Buyer provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided at law or in equity.

(f) The failure of Buyer to insist upon strict performance of any of the terms or to exercise any rights herein conferred, shall not be construed as a waiver of Buyer's right to assent or rely on any such terms or rights on any future occasion.

(g) It is understood and agreed that Seller shall reimburse Buyer for all reasonable attorney's fees and costs incurred by Buyer in order to enforce any provision of a Purchase Order, any damages resulting from the breach thereof, or in pursuing any other remedy hereunder at law or in equity.

**38. Termination for Insolvency or Sale of Assets or Change of Control**

Buyer may immediately cancel a Purchase Order, and the duties and obligations thereunder, without any liability to Seller, in the event of any of the following: (i) insolvency of Seller; (ii) filing of a voluntary petition in bankruptcy by Seller; (iii) filing of an involuntary petition in bankruptcy against Seller; (iv) appointment of a receiver or trustee for Seller; (v) execution of an assignment for the benefit of creditors by Seller, provided that such petition, appointment or assignment is not vacated or nullified within 30 days of such event, (vi) Seller sells, or offers to sell, a material portion of its assets, or (vii) Seller sells or exchanges, or offers to sell or exchange, or causes to be sold or exchanged, a sufficient amount of its equity that effects a change of control.

**39. Termination for Cause**

Buyer may terminate a Purchase Order immediately with written notice to Seller, if Seller materially breaches any term or condition of such Purchase Order or a related order and fails to cure such breach within 15 days after notice thereof is given by Buyer (to the extent curable). Furthermore, Buyer may terminate a Purchase Order immediately with respect to a particular product if Seller fails to reasonably meet the performance requirements of Buyer with respect to such product as determined in Buyer's reasonable discretion, including, without limitation, the failure of Seller to remain competitive with respect to cost, quality, price, technology and/or value of the product. Termination for cause shall be upon written notice and shall limit Buyer's liability solely to payment for products delivered and formally accepted prior to termination or services rendered and accepted prior to termination; provided such products or services are in full conformance with the terms and conditions of the Purchase Order and any specifications set forth therein. In no event shall Buyer be liable for payment for any products or services which are the basis for any termination for cause.

**40. Termination Due to Loss of End Use Customer**

Buyer retains the right to terminate a Purchase Order in the event that the end use customer of Buyer shall cancel the program for the products used by such customer and Buyer shall provide notice to Seller of such cancellation promptly after Buyer receives notice from such end use customer. In the event of such termination, Buyer's sole liability shall be the same as if the Purchase Order had been a "Termination for Convenience," as provided below.

**41. Termination for Convenience**

The performance of work under a Purchase Order may be terminated in whole or in part at any time, and from time to time, by Buyer for its convenience and Buyer's liability shall not exceed the actual cost of material or labor directly chargeable to the canceled portion of the Purchase Order. Notwithstanding the foregoing, in no event shall the cost to Buyer exceed the costs actually incurred by Seller, as determined by accepted cost accounting methods, and Buyer shall only have liability for materials acquired in accordance with firm releases and the authorized production of products under any Purchase Order. Additionally, Buyer shall not be liable for products which are in not strictly in conformance with the terms, conditions and specifications relating thereto.

**42. Continuation of Orders and Transition of Products Following Termination**

(a) Upon any termination of a Purchase Order, any orders subject to the terms hereof which are partially or totally unfulfilled on the date of such termination, shall continue to be subject to all of the terms and conditions hereof.

(b) Following termination of a Purchase Order for any reason Seller shall cooperate in the transition of supply to a successor supplier. Seller shall continue production and delivery of products as ordered by Buyer, at the prices and other terms stated in the Purchase Order, without premium or other condition, during the entire period reasonably needed by Buyer to complete the transition to the alternate supplier(s), so that Seller's action or inaction causes no interruption in Buyer's ability to obtain products.