

**Etratech Inc.****Purchase Order Terms and Conditions****1) AGREEMENT**

This Purchase Order ("Order") confirms the agreement (contract) between the Purchaser and the Person to whom this Purchase Order is addressed (the "Seller") to purchase the products and/or services listed on the face of this Order (the "Goods and/or Services") on the following terms and conditions. This Order shall constitute the complete agreement between the Purchaser and the Seller. The Purchaser shall not be bound by any alterations, changes, variations or addition to the terms and conditions of this Order unless expressly agreed to in writing by the Purchaser. The Order shall include terms and conditions on the face of this Order. If the following terms and conditions conflict with the terms set forth on the face of this Order, the terms on the face shall prevail. For greater certainty, it is agreed that the terms and conditions of this Order shall supersede any terms and conditions appearing on the Seller's waybill, acknowledgement of receipt of this Order or other forms or documentation.

**2) ACKNOWLEDGEMENT AND ACCEPTANCE**

Acknowledgements must be electronically received within five (5) days after receipt of the Scheduled Order and within two (2) days after receipt of the MRP Report for a Blanket Purchase Order. In the event where a supplier fails to submit the acknowledgement then the Seller's commencement of (i) work on the goods subject to this Order ("Goods") or shipment of the Goods, whichever occurs first, or (ii) performance of all or any portion of the services subject to this Order ("Services"), shall constitute acceptance of Buyer's offer to purchase contained in this Order

**3) CHANGE NOTICES**

At any time Purchaser may request changes in the description, drawings, specifications, service requirements, quantities, delivery schedules or shipping and packing instructions relating to the Goods and/or Services by sending to the Seller an Order revision. Seller shall have five (5) days from the date of receipt of such Order revision to notify the Purchaser if it does not accept such changes. If the Purchaser does not receive the notification within such five (5) days period, Seller shall be deemed to have accepted the Order revision. If the Seller advises the Purchaser that it does not accept any or all of the changes requested by the Purchaser within such five (5) day period, the Purchaser may terminate the Order in accordance with Article 20, 21 and 22 of this Order. If the Purchaser does not terminate this Order pursuant to this Article 20, 21 and 22, the Order shall remain in full force and effect, unamended.

**4) SHIPPING AND STORAGE INSTRUCTIONS**

- a) The Seller shall package and protect all Goods against damage and climatic conditions. Goods requiring special precautions during shipping and storage shall be clearly marked as requiring special precautions on the outside of the shipping containers. No additional charges will be paid by Purchaser for boxing, crating or any other packaging unless it is so indicated by the Purchaser on the face of this Order.
- b) All Goods are to be suitably prepared for shipment and must be labelled, packed and shipped in accordance with Etratech's specifications, (including the marking of all cases, packages, boxes or other containers with the Number of this Order, and enclosing therewith or attaching thereto a shipping notice showing the contents thereof, together with the name of Seller and, if different, the name of the shipper).
- c) Packing slips listing the Goods in the package shall accompany each shipment showing the quantity and description of the Goods, the Order number, the item number, the Etratech part number, barcode, manufacturer part number, where applicable, and the full address of the consignee as shown on the Order. Such packing slip must be separate from the Canada Customs Invoices described in d) of this section. Bills of lading shall clearly identify the Order number, the item number, the Etratech part number, and manufacturer part number. All shipments shipped in one day from and to a single location must be consolidated on one Bill of Lading unless otherwise directed. Packing slips must identify those items previously shipped and those items on back order.
- d) If the Seller is of U.S. or international origin, then the Seller shall ensure each shipment is complete with all required customs documentation. This shall include, without limitation, the following: Canada Customs invoice and/or Commercial Invoice, Certificate of Origin, Free Trade Certificate (NAFTA), if applicable, and Bill of Lading. All documentation must reference this Order number and the Purchaser's customs broker identified on the face of this Order. Three copies of the Customs documentation must be attached to the shipment in a separate envelope clearly marked "Canada Customs Invoices".
- e) Except with the prior written consent of the Purchaser, all goods are to be shipped in the manner specified on the face of this Order (or, if no method is specified, by the cheapest method of shipment).
- f) When rates are based on released, declared or agreed valuation, the Bill of Lading must be annotated to show that the shipment is released at the specific maximum value which applies to the lowest rate or rating provided in applicable carrier's tariffs. When applicable tariff require the actual value of the shipment must be declared on the

Bill of Lading, the actual value of the shipment must be known. All other shipments: Do not insure and do not declare any value.

- g) Goods shipped in advance of releases or the shipping dates specified in this Order, or in excess of the quantity ordered, shall be at Seller's risk, and may be returned to Seller, with all transportation charges both to and from the original destination payable by Seller.

If the Goods are not shipped in accordance with Buyer's directions and/or the instructions set out in this Order, if any, then Seller shall pay or reimburse Buyer, as the case may be, for any excess cost occasioned thereby.

## 5) DELIVERY

Time is of the essence with respect to this Order. If the Seller fails to deliver the Goods and/or Services by the delivery date (Date Required) (as set forth on the face of this Order) in the quantities and of the nature specified on the face of this Order, the Purchaser has the right to immediately terminate this Order, either in whole or in part, to refuse, to accept delivery of any Goods and/or Services delivered and to return, at the Seller's expense, all shipped Goods to the Seller. The Seller shall indemnify the Purchaser against any loss resulting from such default or delay unless such default or delay arises solely from causes beyond the Seller's reasonable control without its negligence, and provided that notice of such unavoidable delay is promptly given to the Purchaser in writing.

- a) Scheduled Purchase Orders: Quantities shipped in excess of the quantity on the face of this Order may be returned at the Seller's expense. The Supplier must not ship more than five (5) days earlier than the date on the Order.
- b) Shipment quantities may be rounded up to a lot sizes agreed to by the Purchaser and the Seller.
- c) Blanket Purchase Orders: Etratech may elect to send Blanket Orders to the Supplier. To release against such Blanket Orders, weekly MRP Reports will be electronically sent to the Supplier. The MRP Report typically will provide a ten to twelve week rolling forecast, as provided by Etratech's customers, for planning purposes only. Etratech is not bound to take shipments not stated as Firm on the MRP Report. All other quantities on the MRP Report are for planning purposes only. The Supplier will send an Advance Shipping Notice in response to the MRP Report within three (3) days. The Firmed shipment dates and quantities must match those specified in the MRP Report. Quantities shipped in excess of the Firmed quantities may be returned at the Seller's Expense. The Supplier must not ship more than five (5) days earlier than the date on the MRP Report.
- d) There must be a warehouse in Canada or in the United States at location that is acceptable to the Purchaser and the Seller.
- e) A minimum of weeks must be held in Bond Reserve (Safety Stock) at all times. The Seller must electronically send weekly Bond Reserve reports to the Purchaser.
- f) If the MRP Report ship quantities exceed the Order quantity, the Seller must notify the Purchaser prior to incurring costs to support the MRP Report quantities in excess of the quantities on the face of this Order. If the Purchaser wishes to purchase the amount greater than the quantity on the face of the Order the Purchaser must send a Change Notice to the Seller. Authorization to fabricate Goods in excess of the quantity on the face of this order must not exceed twelve (12) weeks or the Sellers longest lead-time, whichever is the least number of weeks.
- g) Shipment quantities may be rounded up to a lot sizes agreed to by the Purchaser and the Seller.
- h) In the event of a partial failure of the Seller's sources of supply Goods and/or Services purchased on the face of this Order, the Seller shall first meet all the Purchaser's requirements as shown on the face of this Order prior to any allocation among the Seller's other customers.
- i) In the event of a failure of the Seller's sources to complete all documentation to the satisfaction of any and all customs or government entity in any country, Etratech will reserve the right to debit the associated costs from the suppliers Invoice. This includes AMPS penalties.

## 6) DOCUMENTATION

- a) The Order number, the item number, the Etratech part number, manufacturer part number, shall be clearly shown on all invoices. Invoices shall be submitted in a form which corresponds to the item listed on the face of the Order. Applicable Federal and Provincial sales and goods and services taxes (even if included in the price) shall be separately identified on each invoice. Invoices shall be forwarded in duplicate to Accounting Department of the address shown on the face of this Order. If costs for any transportation, freight or insurance charges are prepaid on the Purchaser's behalf, these costs shall be shown separately on the invoices. Copies of the invoices for such costs must accompany the Seller's invoices.
- b) No later than one day after the shipment date, the invoice together with properly signed by the carrier Bills of Lading or other transportation receipts must be sent to Etratech.
- c) If the goods are delivered or the service performed, the Goods and/or Services will not be deemed to be delivered until the scheduled date for purposes of determining when payment is due. The time for making payments shall be calculated from the date the invoice is received by the Accounting Department or by the date that satisfactory

Goods and/or Services and any required documents are delivered to the destination point, whichever is later unless alternate terms are stated on the face of this Order. No interest will be paid on bills overdue.

- d) At its sole discretion, Etratech may receive a shipment that was not invoiced in accordance with the instructions on the face of this Order. This will not bind Etratech to terms of payment that are in conflict with the terms of payment on the face of this Order. If the failure to adhere the terms of payment on the Order delay payment Etratech will not be responsible for such delays and will take discounts stated on the invoice.
- e) At its sole discretion, Etratech may receive a shipment that was not shipped in accordance with the instructions on the face of this Order. This will not bind Etratech to transportation charges that are greater than transportation charges specified on the face of this Order.
- f) A properly completed exporter's certificate of origin is required for Goods which qualify for exemption from duties. If the Seller uses the blanket certificate format, a renewal must be sent to the Materials Manager, thirty (30) days prior to the expiry of the said blanket certificate.

## 7) WARRANTY, INSPECTION AND ACCEPTANCE

Without limiting any warranties that may otherwise be associated with the Goods and/or Services, including, without limitation, implied warranties and warranties stated in any of the Seller's documentation in favour of Purchaser, the Seller expressly warrants that:

- (i) each item to be supplied pursuant to this Order will conform to all pertinent drawings, operational, functional, technical and other representations respecting functionality for the Goods and with any samples made available to the Purchaser by the Seller, if any, and will be free from defects in design, material and workmanship under conditions of normal use and service for a period equal to the greater of the manufacturer's stated warranty or two (2) years from the later of the date of acceptance of the Goods by the Purchaser and first use of the Goods by the Purchaser.
- (ii) all Services shall be provided in a good and workmanlike manner in accordance with the highest industry standards and shall be warranted for a period equal to two (2) years from the date of acceptance of the Services by the Purchaser.
- (iii) all Goods and/or Services being purchased by the Purchaser under this Order shall not contain of any routines or devices that are constructed with the intent to adversely interfere with its use or interfere with, corrupt or destroy data including, without limitation, any time locks, keys, bombs, Trojan horses, viruses or other harmful or debilitating features.
- (iv) all Goods and/or Services being purchased by the Purchaser under this Order shall be free and clear of any and all encumbrances of whatsoever kind and nature;
- (v) none of the Goods and/or Services covered by this Order will infringe any Canadian or foreign patents, trademarks, industrial design, copyright, trade secrets or similar rights;
- (vi) none of the Goods and/or Services nor any component part thereof is subject to any import quota, restriction, rule or regulation preventing or forbidding the importation or sale of same or any component part thereof
- (vii) all representations and warranties are transferable to the ultimate consumer and that all warranties are and will be completely effective and enforceable by Purchaser and/or the ultimate consumer.

If any of the Goods or Services fail to meet the warranties listed above the Seller shall, upon notice thereof from Buyer at any time, promptly correct, repair, replace or otherwise satisfactorily deal with the defective or non-conforming Goods or Services (including, to the extent applicable, participation in "recall", claims adjustment and other similar programs) in a manner acceptable to Buyer, all at Seller's expense. Should Seller fail or otherwise be unable to do so within the time-frame or other parameters required by Buyer (and whether or not such time-frame or other parameters are communicated in advance to Seller) (i) Buyer may cancel this Order as to the particular defective or non-conforming Goods or Services and/or cancel the then remaining balance of this Order, and/or (ii) Buyer may, in Buyer's own discretion (and without any obligation to do so), assume control over the correction, repair, replacement or other rectification efforts, processes and programs, in which case Seller shall pay or reimburse Buyer for all associated costs and expenses (including Buyer's internal handling, reworking and administrative time, labour and materials). After notice to Seller, all defective or non-conforming Goods shall be held at Seller's risk. Buyer may, and at Seller's direction, shall, return such Goods to Seller at Seller's risk, and all sorting and handling charges, as well as all transportation, freight and delivery charges (both to and from the original destination), shall be paid by Seller. Any payment made by Buyer to Seller for such defective or non-conforming Goods or Services shall be immediately refunded by Seller, unless and to the extent that Seller promptly corrects, repairs, replaces or otherwise satisfactorily deals with the same as stated in this Article 7. Seller's warranties shall also apply to such corrected, repaired, replaced or otherwise satisfactorily dealt with Goods or Services.

Any receiver's or other Etratech personnel's receipt for any Goods and/or Services shall not constitute acceptance of such Goods and/or Services by the Purchaser. The Seller shall pay incoming and outgoing transportation charges in respect of any defective or otherwise unacceptable Goods returned by the Purchaser. Acceptance of any Goods

and/or Services by the Purchaser, its agents or employees, or failure by the Purchaser, its agents or employees to inspect any Goods and/or Services will not limit the Seller's warranties or conditions or constitute a waiver of any rights of the Purchaser under this Order. No review or approval of the Seller's data, inspection, acceptance of, or payment by the Purchaser for any Goods and/or Services described herein shall relieve or release the Seller from any obligations or liabilities.

#### **8) QUALITY CONTROL AND INSPECTION:**

- a) All materials and workmanship utilized in the performance of this Order shall be subject to inspection and testing by Buyer (and Buyer's customers) to the extent practicable at all times and places, including the period and place of manufacture. If any such inspection or testing is made on Seller's premises or on the premises of any authorized sub-contractor or agent of Seller, Seller or such authorized sub-contractor or agent, as the case may be, shall provide, without additional charge, all reasonable facilities and assistance. Unless specifically granted by Buyer's authorized representatives in writing, no inspection shall be deemed to be an approval or admission by Buyer that the inspected Goods or Services (or any related work-in-process or other physical inventory) fulfil the terms of this Order. Inspection and approval by Buyer or Buyer's authorized representatives does not preclude rejection or other relief for any existing defects (whether latent or manifest) subsequently discovered. Seller shall provide and maintain, without additional charge, a testing and inspection system (which shall include quality control and reliability procedures) acceptable to Buyer covering the materials and workmanship utilized in the performance of this Order.
- b) At Buyer's option, Buyer may, from time to time, review and inspect Seller's testing, inspection, quality control and reliability procedures, as well as the data supporting the same. To the extent applicable and if and as furnished, from time to time, by Buyer, Seller agrees to comply with Buyer's most recently adopted quality control/assurance specifications and manuals and inspection standards and procedures. Seller shall, whenever requested by Buyer, furnish certificates indicating such compliance.
- c) In no case whatsoever shall (i) any inspection or testing by Buyer (or Buyer's customers) of the materials and workmanship utilized in the performance of this Order, (ii) any review or inspection by Buyer of Seller's testing, inspection, quality control or reliability procedures (or related data), or (iii) any acceptance by the Buyer of the Goods or Services, relieve Seller from the strict and complete performance of all of Seller's obligations and warranties under this Order. In no event shall payment be deemed to constitute acceptance by or on behalf of Buyer.

#### **9) TITLE AND RISK OF LOSS**

Title to and risk of loss or damage of the Goods shall pass to the Purchaser upon acceptance in accordance with Article 7 in this Order. Until such time that the Goods are accepted by the Purchaser and after such time that the Goods are rejected, if any, the Goods shall be held by Purchaser at the Seller's sole risk and expense, in all circumstances, any loss or damage to the Goods which results from Seller's improper packaging or crating shall be the responsibility of the Seller. Upon acceptance by Purchaser, all rights, title and interest in and to all Goods and/or Services, including all material and component parts thereof, provided by Seller as part of the Goods and/or Services or related, either directly or indirectly, to the Goods and/or Services shall pass to the Purchaser. The Seller further agrees to co-operate fully at all times with respect to signing further documents and doing such acts and other things reasonable required by the Purchaser to confirm such transfer or ownership of rights, including intellectual property rights. The Seller waives, on behalf of itself and its employees, all moral rights which the Seller may have in the Goods and/or Services.

Upon any payment being made to the Seller for or on account of materials, parts, work-in-process and finished work either by way of process payments or accountable advances or otherwise, title in and to all materials, parts, work-in-process and finished work paid for by such payments or accountable advances or otherwise, title in and to all materials, parts, work-in-process and finished work paid for by such payments or accountable advances or otherwise shall vest and remain in the Purchaser (but at the Seller's risk) providing such vesting of title shall constitute acceptance by the Purchaser of such materials, parts, work-in-process and finished work and shall not relieve the Seller of his obligation to perform the work or deliver the Goods in conformity with requirements of the Order or any Change Notices following thereupon. Any such progress payments or accountable advances shall be deemed trust funds in the hand of the Seller pending delivery.

The Seller shall, without limiting his obligations or liabilities under the terms and conditions of this Order provide, obtain, maintain and pay for during the continuance of the Order Comprehensive General Liability Insurance in the names of Purchaser, the Seller and its Subcontractors, for an inclusive limit of no less than (\$1,000,000 CDN) each occurrence, for damage which the insured will become legally obliged to pay because bodily injury to persons including death, or damage to or destruction of property caused by an accident or occurrence arising out of or related to the performance of the service.

#### **10) SAFETY AND ENVIRONMENTAL**

Seller shall comply, and shall cause all of its employees and agent working the Purchaser's premises to comply with all laws and regulations relating to the environment (including the protection, preservation and remediation thereof) and to health and safety matters including, without limitation, those relating to workplace health and safety, the Workplace Hazardous Materials Information System and to the transportation, storage, handling and disposal of dangerous or hazardous goods. All hazardous products must be shipped with the supplier's current Material Safety Data Sheet. In addition, Controlled Products must have a WHMIS supplier label on the container.

Worker's Compensation Insurance covering all employees of the Seller and / or Subcontractors in accordance with the statutory requirements of the province or territory having jurisdiction over such employees.

#### **11) RIGHTS IN DATA**

The Seller hereby grants the Purchaser the perpetual right to use, publish, translate, reproduce or dispose of, free of the payment of any royalty or fee, all reports, drawings, blueprints computer software, data and other technical information specified to be delivered on the face of this Order.

#### **12) PROPRIETARY RIGHTS**

The Seller understands and agrees that the benefits of the Purchaser's designs and manufacturing information shall not exceed beyond the scope and subject of the Order.

#### **13) PROPERTY FURNISHED BY THE PURCHASER**

- a) Unless otherwise agreed in a Change Notice, all tools, equipment or material of every description furnished to the Seller by the Purchaser, or specifically paid for by the Purchaser; and any replacement thereof, or any materials affixed or attached thereto, shall be and remains the personal property of the Purchaser. Such property and whenever practical each individual item thereof, shall be plainly marked and otherwise adequately identified by the Seller as "Property of Etratech Inc." and shall be safely stored separate and apart from the Seller's property and shall remain free of liens and encumbrances. The Seller shall not substitute any property for the Purchaser's property and shall not use such property excepting filling the Purchaser's orders. Such property while in the Seller's custody or control shall be held at the Seller's risk, shall be kept insured by the Seller at the Seller's expense in an amount equal to the replacement cost with the loss payable to the Purchaser in the same condition, as originally received by the Seller, reasonable wear and tear excepted. The Purchaser shall have the right at all reasonable times upon prior request to enter the Seller's premises to inspect any all such property.
- b) Neither the Seller nor the Purchaser shall be liable to the other for loss damage, delay in the work, or non-performance of any contractual obligation caused by war, riot, the act or order of any competent civil or military authority, fire, flood, strike, labour disruption or by any other cause which is unavoidable and beyond the party's reasonable control. The affected party shall notify the other, in writing, within five (5) days after the beginning of the occurrence and immediately at the termination of the occurrence. Both parties shall be prompt in restoring normal conditions, re-establishing schedules and resuming operations as soon as the interruptions have ceased. The Purchaser shall have the right to terminate this Order without any further liability if an event of force majeure affecting the Seller continues for longer than sixty (60) days and to contract with another supplier for that portion of the work that has not been supplied or performed.

#### **14) INDEMNITY**

The Purchaser relies upon the skill and judgement of the Seller and the Seller covenants and agrees that, having acquired full knowledge of the use, function, purpose and application of the Goods to be supplied on the face of this Order, shall include in its price for and forthwith advise the Purchaser of any alterations which may be necessary to ensure that the Goods are fit for the said use, function, purpose and application contemplated and the Seller further covenants and agrees to defend, indemnify and save harmless Purchaser, its employees, officers, directors, shareholders and agents from and against any allegations, claims, costs, damages, expenses, suits or proceedings, including legal fees, direct, indirect, third party, special and consequential damages (it being acknowledged by each of the parties that for the purposes of this Article 14 only the Purchaser is contracting as agent on behalf of its directors, officers, employees, contractors agents) arising out of:

- a) any injury to persons (including injuries resulting in death) or loss of or damage to property of others which may be or be alleged to be caused by or suffered as a result of the provision of all or part of the Goods and/or Services pursuant to this Order;
- b) any encumbrances upon or in respect of any materials, part, works-in-process or finished Goods and/or Services furnished to, or in respect of which payment has been made by Purchaser;
- c) any claim that the Goods and/or Services or any part thereof infringes any patent, copyright, trademark, trade secret or other intellectual property right or contractual right or obligation;
- d) any breach by the Seller of any of the terms, conditions, warranties and obligations under the present Order with respect to the Goods and/or Services; and
- e) any product liability claim (whether founded in contract or tort) relating to the Goods and/or Services.

Seller shall notify the Purchaser in writing of any such potential liability and, upon Purchaser's request; the Seller shall have complete authority and receive complete information required for the Seller's defence. The Seller shall notify and co-operate with Purchaser throughout any such proceedings. At Purchaser's request, Purchaser will have complete authority to participate in any such proceedings and the Seller will notify and co-operate with Purchaser throughout such participation by Purchaser. The Seller will pay all damages and costs awarded against Purchaser.

In the event that the use of any part of the Goods and/or Services by Purchaser is threatened by court action or injunction, the Seller will, in addition to its own obligations under this Agreement and at its own expense, either:

- a. obtain for Purchaser the right to continue using the Goods and/or Services as permitted under this Order;
- b. modify the Goods and/or Services to make them non-infringing without materially affecting or altering its functionality; or
- c. if Purchaser consents and if neither of the foregoing alternatives is available, provide notice of termination of all or a part of this Order and refund to Purchaser all amounts paid to the Seller under this Order which are attributable to the part of the Order terminated.

## **15) CONFIDENTIALITY**

The Seller shall hold in trust, keep confidential and not disclose to others or use in any way confidential business, technical, customer or other information that the Seller may acquire concerning the Purchaser, or in connection with the Order and shall return to the Purchaser all documents provided by the Purchaser hereunder upon Purchaser's request or termination of Order.

## **16) DISCLOSURE TO BUYER:**

Unless otherwise specifically agreed to in advance and in writing by Buyer's authorized representatives, no commercial, financial or technical information disclosed in any form or manner or at any time by Seller to Buyer shall be deemed secret or confidential, and Seller shall have no rights or remedies against Buyer with respect thereto.

## **17) PRICES**

The Seller agrees that it has not sold during the period of months prior to the date of the Order and shall not sell Goods and/or Services: (a) in quantities similar to quantities specified on the face of this Order to other customers for pricing terms (including, without limitation, price, prompt payment, discounts and rebates) (the "Pricing Terms") lower than that charged to the Purchaser in response to this Order: or (b) in quantities similar to the total quantities ordered by the Purchaser and its affiliated companies on an annualized commitment base to other customers for Pricing Terms lower than that charged to the Purchaser and its affiliates cumulatively. If Seller sells any Goods and/or Services to such other customers on lower Pricing Terms, the Seller shall credit the Purchaser for the difference representing the overpayment or, if no further Orders are issued by the Purchaser within one month following entitlement to the more favourable terms, the Seller shall immediately thereafter provide the Purchaser with payment by way of a cheque drawn on a bank acceptable to Purchaser representing the overpayment. If Pricing Terms are not stated herein, it is agreed that the Goods and/or Services shall be supplied on the Pricing Terms quoted to or paid by the Purchaser or the prevailing market Pricing Terms, whichever are more favourable to Purchaser.

## **18) INVOICES**

Seller shall send the original invoice(s) (plus two additional copies) and bill(s) of lading to Buyer's address as indicated on the face of this Order. Seller's invoice(s) shall show the Number of this Order and all items invoiced, with quantities, unit prices and taxes (if any) listed separately. The words "final invoice" (or similar terminology) shall appear on Seller's last invoice covering the completion of this Order. If, in accordance with Article 4, Buyer agrees to be responsible for transportation, freight or delivery charges, such charges (if not included as part of the price on the face of this Order) shall be invoiced separately, with receipted copies of freight bills attached. Any cash discount period available to Buyer shall commence on the day of Buyer's receipt of an invoice or final invoice that meets the requirements set forth above, provided that the Goods have been received by Buyer and/or the Services rendered by Seller. Where the Goods or Services are provided from outside of Canada, Seller shall supply, without additional charge, such number of additional certified copies of invoices and customs or other documents as may be requested or specified by Buyer from time to time.

## **19) PAYMENT:**

Unless otherwise agreed by Buyer in writing or otherwise stated on the face of this Order, net invoices (subject to applicable withholding taxes, if any) shall be paid within the later of (i) 60 days after the end of the month during which the Goods were delivered and/or the Services performed, as the case may be, or (ii) 60 days after the invoice date.

## **20) TERMINATION:**

- a) Buyer may terminate this Order in whole or in part at any time by written notice (including notice by telefax) stating the extent and effective date of such termination. Upon receipt thereof, Seller shall, to the extent directed by Buyer, (i) stop work (and place no further requisitions) under this Order and any other orders related to work terminated by such notice, and (ii) protect all property in Seller's possession or control in which Buyer has or may acquire an interest Seller shall submit to Buyer any claims relating to such termination as soon as possible, but in any event within 30 days (unless Buyer agrees otherwise) from the effective date of such termination. Seller hereby grants Buyer the right to audit and inspect Seller's books, records and all other documents relating to Seller's termination claims.
- b) Unless otherwise authorized in writing by Buyer, Seller shall not make commitments for materials or fabricate in advance of the time necessary to permit shipment(s) on the delivery date(s). Buyer shall in no event be liable or responsible for any such costs or amounts incurred by Seller in breach of this provision.
- c) If the parties cannot agree within a reasonable time upon the amount of fair compensation for termination by Buyer, Buyer shall, in addition to making payment of the contract price for the Goods and Services delivered or performed and accepted by Buyer prior to the effective date of termination, pay to Seller, without duplication, (i) the contract price for Services performed or Goods completed in accordance with the terms of this Order but not previously paid for, and (ii) the actual costs (other than capital costs) incurred by Seller and property allocated or apportioned under recognized commercial accounting practices to the terminated portion of this Order.
- d) Seller may, with Buyer's consent, retain at an agreed price or sell at an approved price any completed Services, Goods, work-in-process or other physical inventory, the cost of which is allocated or apportioned to this Order under item (ii) of Article 20(c), and shall credit or pay the amounts so agreed or received as Buyer directs, with an appropriate adjustment for any deliver cost savings. Seller shall, if directed by Buyer, transfer title to and make delivery of any Goods, work-in-process or other physical inventory not so retained or sold.

## **21) TERMINATION UPON DEFAULT**

Buyer reserves the right to terminate this Order in whole or in part for default occasioned by Seller's failure to perform in accordance with the requirements of this Order. Such termination shall be without liability to Buyer, except for completed Goods delivered or Services performed and accepted by Buyer. Seller shall be liable for damages caused by or resulting from Seller's default.

## **22) TERMINATION UPON INSOLVENCY OR BANKRUPTCY**

Buyer may terminate this Order, without liability, in the event of the insolvency, bankruptcy, reorganization arrangement, receivership or liquidation by or against Seller or if Seller makes an assignment for the benefit of creditors or ceases to carry on business in the ordinary course. In any such case, Seller shall be liable for damages suffered by Buyer. In the event that Buyer does not terminate this Order but continues to require Seller to deliver the Goods or perform the Services. Buyer may make such equitable adjustments in the price or delivery/performance schedule, or both, of this Order, as Buyer deems appropriate to address Seller's change in circumstances, including Seller's ongoing ability to perform its obligations regarding warranty, defective Goods or Services and/or other requirements under this Order.

## **23) LANGUAGES**

Where Seller is located in the Province of Quebec, Buyer and Seller confirm their intention that this Agreement and all related documents be prepared in the English language. Si le vendeur est situé dans la province de Québec, l'acheteur et le vendeur confirment leur intention d'accepter que le contrat et tous les documents qui s'y rapportent soient préparés en anglais.

## **24) ASSIGNMENT AND SUBCONTRACTING**

The Seller shall not assign or subcontract any portion of its obligations pursuant to this Order without the prior written consent of the Purchaser.

## **25) GOVERNING LAW**

This Order shall be interpreted and enforced in accordance with the local, domestic laws of the Province of Ontario and of Canada, exclusive of the choice of law rules thereof. For greater certainty, the U.N. Convention on Contracts

for the International Sale of Goods shall not apply to this Order. The Seller hereby: (i) waives trial by jury; and (ii) waives any right, claim, or entitlement to any punitive or exemplary damages whatsoever.

## 26) NOTICES

Any notice, waiver or other document or communication required or permitted to be given to any party under this Order shall be validly given only if in writing and if delivered personally (which shall include delivery by courier, by fax, electronic medium or other agent) to that party at the address on the reverse hereof.

## 27) LIMITATIONS OF LIABILITY

Notwithstanding any other provisions of this Order, all liability of the Purchaser in any connection with this Order shall be strictly limited to direct liability in the aggregate amount, for all such occurrences, of the purchase price of the Goods and/or Services on the face of this Order, and the Purchaser shall not be liable for any other direct damages whatsoever, nor shall the Purchaser be liable for any indirect, special, consequential or third party damages, harm or liability whatsoever, including loss of profit, regardless of whether or not such damages, harm or liability arises in contract, tort, equity, or otherwise and regardless of whether or not such damages were foreseeable.

## 28) SURVIVALS

The following provisions of this Order shall survive any termination of this Order for any reason whatsoever: Articles 7, 9,14,15,17,24,26 and this Article 28.

## 29) COMPLIANCE WITH LAWS

The Seller shall comply with all laws relevant to the performance and execution of its obligations under this Order and shall comply with all Federal and Provincial laws relating to the packaging, labelling and transportation of Goods (including, without limitations, hazardous materials).

## 30) WAIVERS

No Waiver by the Purchaser of any provision of this Order shall: (a) be binding unless made in writing by the Purchaser specifically referring to this Order and executed and delivered by the Purchaser; (b) be a waiver of any other provision hereof (whether or not similar); or (c) constitute a continuing waiver unless expressly stated to be so.

## 31) CUMULATIVE REMEDIES

All remedies afforded under this agreement shall be taken and construed as cumulative and as in addition to every other remedy provided foreherin or by law. To be certain, the cumulative remedies are in addition to, and not a limitation of, rights and remedies otherwise imposed or available at law.

## 32) INTERPRETATIONS

The parties acknowledge and agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not be applicable in the interpretation of this Order.

## 33) AUTHORITY

Wherever the word "Purchaser" appears in these terms and conditions with respect to authorization for such items such as confirming the agreement (contract) between the Seller and the Buyer, changes, termination and cancellation, the work is deemed to mean, and only mean the Purchaser's Purchasing Department, Plant Manager or the President. No other person or department of Purchaser is so authorized to act. Claims by the seller for adjustment to price, cost or time of performance will not be allowed unless the said authorization shall have been duly granted in writing prior to the implementation by the Purchaser's Purchasing department, Plant Manager or President.

## 34) COMPLIANCE TO INDUSTRY STANDARD

The supplier must have copy of current revision and adhere to the following standards:

- |                             |  |
|-----------------------------|--|
| • EIA – 481-B               | Tape and reel specification            |
| • IPC/JEDEC – J –STD – 033A | Handling, packing, moisture sensitive  |
| • JESD671-A                 | Failure Analysis and Corrective Action |
| • JESD 625-A                | ESD                                    |
| • IPC/EIA J-STD-002B        | Solder ability tests                   |
| • IPC/EIA J-STD-003A        | PCB                                    |

- IPC/JEDEC J-STD-020C Moisture/reflow sensitivity classification

**35) ENTIRE AGREEMENT**

**THIS ORDER IS THE ENTIRE AGREEMENT BETWEEN THE PARTIES AND SUPERSEDES ALL PRIOR DISCUSSIONS OR NEGOTIATIONS WITH RESPECT TO THE SUBJECT MATTER OF THIS ORDER. IF THE GOODS AND/OR SERVICES DESCRIBED IN THIS ORDER ARE COVERED BY TENDERING DOCUMENTS, TO THE EXTENT THAT THERE IS ANY DISTINCTION BETWEEN THE TENDERING DOCUMENTS AND THIS ORDER, THEN THE TERMS AND CONDITIONS STATED IN THIS ORDER SHALL GOVERN.**