

## ERMCO PURCHASE ORDER TERMS AND CONDITIONS

**1. CONTRACT.** These Purchase Order Terms and Conditions (“Terms and Conditions”) govern orders placed by Buyer for products and/or services (each an “Order”) to be provided by Seller (defined herein to include the Seller’s affiliates, and any of their respective subcontractors, officers, directors, agents, and employees). This Order is accepted and will become a binding and enforceable agreement upon either 1.) Seller beginning performance as set forth in the Order, 2.) the shipment of goods or performance of services pursuant to this Order, or .3) Any other generally recognized forms of acceptance by Seller (such as order acknowledgement), shall be deemed to be an acceptance by Seller of the Terms and Conditions of this Order. Seller’s acceptance of these terms binds Seller to comply with the Order, the Terms and Conditions, including any supplements thereto, and all specifications and other documents Buyer incorporates by express reference in this Order prior to acceptance, which together constitute a binding legal agreement (collectively referred to herein as the “Agreement”). Each Order will constitute a separate Agreement between the parties, and each Order is subject to its own terms and the general Terms and Conditions separately, unless otherwise specified herein. Any additional or different terms or conditions which appear in any communication from Seller, in Seller’s acknowledgement or signed return as part of this Order, are hereby expressly objected to, shall not become part of this Agreement despite Buyer’s acceptance of goods or services and shall not be effective or binding unless specifically recognized, assented to and agreed to in writing by Buyer. Buyer may terminate all or any part of this Agreement for convenience at any time by written notice to Seller without liability - except as allowed under these Terms and Conditions. Upon such termination, Buyer’s liability for any goods or services ordered but not yet delivered prior to termination shall be limited to reasonable termination charges mutually agreed by Seller and Buyer, provided that Seller must specify and document any proposed charges in writing within thirty (30) days of termination or Seller waives the right to request recovery. Reasonable termination charges shall be actual, documentable costs which relate to the particular terminated Order at issue, including direct materials costs (purchased to complete the Order), specially ordered materials, labor competed prior to termination, or other similar costs which cannot be used for other production by Seller. Termination charges shall not apply if all goods or services specifically ordered by Buyer have been accepted or performed prior to receipt of the termination notice by Seller or if such termination notice will take effect subsequent to such acceptance or performance. It shall be the responsibility of the Seller to draft and ensure that any Request for Quotation (RFQ), scope of work, plans, blueprints, or other project related documents be complete and accurately reflect Buyer’s requirements.

**2. DELIVERY; TIME IS OF THE ESSENCE.** Except for the reasonable termination charges allowed herein, if any goods are not delivered or services not performed within the time specified in this Agreement or within a reasonable time if no time is so specified, Buyer may refuse to accept such goods or services and cancel this Agreement and shall be relieved of all liability for any undelivered goods or unperformed services, or Buyer may cause the goods to be shipped or the services to be performed by the most expeditious means in Buyer’s sole discretion. Any additional transportation charges in excess of those which would apply for the usual means of transportation shall be for the account of and responsibility of Seller. Risk of loss or damage in transit, or by deviation in specified route, noncompliance with instructions or improper description of the goods or services, excess transportation charges and insurance costs not specified otherwise will be for the account of and responsibility of Seller. If timely delivery cannot be guaranteed to Buyer’s satisfaction then Buyer shall have the right to contract expedited freight services and Seller shall be responsible for any and all increased costs associated with such expedited services. Buyer reserves the right to set-off any expedited services costs from any other amounts due Seller. All dates defined in these Terms and Conditions are calendar days, unless otherwise specified.

**3. MODIFICATION; WAIVER; ASSIGNMENT.** This Agreement may not be orally modified or terminated. No modification or any claimed waiver of any of the provisions of this Agreement shall be binding unless in writing and signed by the party against whom such modification or waiver is sought to be enforced. Any failure of Buyer to exercise its rights or remedies with respect to any installment or part performance shall not be deemed a waiver of remedies as to subsequent performance or installments. This Agreement may be assigned only by Buyer and any attempted assignment by Seller without the prior written consent of Buyer shall be void or voidable at the election of Buyer. If any term or provision of this Agreement or its application is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the remainder of this Agreement shall not be affected, but such affected term and provision shall be deemed modified to the extent to render such terms or provision enforceable and with the intent to enforce, preserve and harmonize the remaining rights and obligations of the parties to the Agreement. Notwithstanding, Buyer at any time shall have the right to make changes in this Agreement, including without limitation changes to drawings, designs, or specification; quantity, method of shipment or packing; delivery schedule or place of delivery, and work schedule, shifts, starting time and starting date. If any such change causes an increase or decrease in the cost of goods or services, or the time required

for the performance of, any work under this Agreement, Seller shall make a request in writing for an equitable adjustment within ten (10) business days of such change, and Buyer shall either make an equitable adjustment in the contract price or delivery schedule, or both, or shall withdraw such change, and this Agreement shall be modified in writing accordingly. If Seller shall fail to make a request for an equitable adjustment within ten (10) business days of Buyer's change, such right shall be waived by Seller. Nothing in this section, including any disagreement with the Buyer as to any claimed adjustment, shall excuse Seller from proceeding with the Order or Agreement as changed.

**4. FORCE MAJEURE.** Neither party shall be liable to the other for default, failure or delay in providing or accepting goods or services hereunder if such default, failure or delay is caused by extraordinary event or occurrence beyond that party's control such as fire, accident, strike, civil disturbance, war, act of terrorism, act of God, embargo, delay of couriers, delay in transportation, governmental order or regulation, or power, floods, earthquakes, windstorms, explosions, riots, natural disasters, sabotage or any other similar or different contingency beyond the reasonable control of the Buyer or Seller. Written notice of such delay, including the anticipated duration of the delay, must be given by the nonperforming party within ten (10) days of the event. During the period of any delay or failure to perform by Seller, Buyer, at its option, may purchase goods from other sources and reduce its schedules to Seller by such quantities, without liability to Buyer, or cause Seller to provide the goods from other sources in quantities and at times requested by Buyer and at the price set forth in this Agreement without adjustment. If requested by Buyer, Seller shall, within five (5) days of such request, provide adequate written assurances that the delay will not exceed such period of time as Buyer specifically defines or otherwise deems appropriate. If the delay lasts more than the time period specified or agreed to by Buyer, or Seller does not provide adequate written assurances that the delay will cease within such time period, Buyer may, among its other remedies, immediately cancel this Agreement without liability.

**5. WARRANTIES; REMEDIES; INSPECTION.** With respect to the goods or services purchased under this Agreement and all other goods or services purchased from Seller, Seller expressly warrants for the Warranty Period as follows: (a) the goods shall strictly conform to all specifications, drawings, instructions, advertisements, statements on containers or labels, descriptions and samples; (b) the goods shall be free from latent or apparent defects in workmanship and material and shall be new and of the highest quality; (c) Buyer shall receive title to the goods that is free and clear of any liens, encumbrances, security interests, charges and any actual or claimed patent, copyright or trademark infringement; (d) the goods shall be merchantable, safe and fit for the Buyer's intended purposes, which purposes have been communicated to Seller; (e) the goods shall be adequately contained, packaged, marked and labeled; (f) all services performed by Seller shall be performed in a competent, professional and workmanlike manner and in accordance with industry standards; (g) the goods shall be manufactured and the services performed in compliance with all applicable federal, state, provincial and local laws, regulations or orders, and agency or association standards or other standards applicable to the manufacture, labeling, transporting, licensing, approval or certification. These warranties shall be in addition to all other warranties, express, implied, or statutory. These warranties shall survive inspection, test, delivery, acceptance, use and payment by Buyer and shall inure to the benefit of Buyer, its successors, assigns, customers and the users of Buyer's products. These warranties may not be limited or disclaimed by Seller. If Buyer experiences any defect, failure or non-conformity during the Warranty Period, Buyer shall have the right to take the following actions, at Buyer's option: (1) retain the defective goods or accept the services in whole or in part with an appropriate adjustment in the price for the goods; (2) require Seller to repair or replace the defective goods or reperform the services in whole or in part at Seller's sole expense, including all labor, shipping, transportation and installation costs (3) correct or replace the defective items with similar items and recover the total cost from Seller, including the cost of product recalls and (4) reperform the defective services and recover the total cost from Seller, including the cost of labor and experts used for reperformance. For purposes of this Agreement, "Warranty Period" shall mean the longer of the following time periods: (a) 18 months from the day the services were preformed, (b) 18 months from the day of first use of the goods by Buyer or acceptance by Buyer; or (c) if the goods are incorporated, in whole or in part, into goods sold by Buyer to third parties, 18 months after acceptance by such third parties or the time period of warranty that Buyer gives to such third parties, whichever of the prior events occurs later. Notwithstanding the foregoing, Seller agrees to waive the expiration of the Warranty Period in the event there are failures or defects discovered after the Warranty Period of a significant nature or in a significant portion of the goods or services, or a defect is discovered which, in Buyer's opinion, constitutes a threat of damage to property or to the health and safety of any person. In no event shall Buyer be liable to Seller for special, consequential (including but not limited to anticipated profits, lost profits, lost revenues or loss of any other economic benefit), incidental, or punitive damages even if the Buyer has been advised of the possibility of such damages. Buyer's liability for a claim of any kind or for any loss or damage arising out of or in connection with or resulting from this Agreement, or from any performance or breach, shall in no case exceed the price allocable to the goods or services or unit which directly gives rise to the claim. In addition to any right of set-off provided by law, all amounts due to the Seller shall be considered net of indebtedness of Seller to Buyer and its affiliated or related companies. Buyer shall have

the right to reduce and set-off against amounts payable hereunder any indebtedness or other claim which Buyer, or its affiliated or related companies, may have against Seller, or its affiliated or related companies, under this Agreement or any other agreement between the referenced parties. The rights and remedies of Buyer and the warranties of Seller set forth in this Agreement shall not be exclusive and are in addition to any other rights, remedies and warranties provided by law or under this Agreement; and any attempt by Seller to limit Buyer's warranties, remedies or the amount and types of damages that Buyer may seek shall be null and void. The failure of either party to enforce any rights under this Agreement shall not constitute a waiver of such rights or any other rights under this Agreement. All such goods, services and work are subject to inspection and test by Buyer and its customer at any and all times, including during manufacture, and Buyer shall at all times have the right to witness and audit all tests by Seller involved in performance of this Agreement. Regardless of when payment is made and without prejudice arising from any prior performance, delivery or acceptance under this Agreement, Buyer, in addition to its other rights, reserves the right to reject any part of the goods, services or work which does not conform to this Agreement with an adjustment in purchase price, or to require prompt correction or replacement thereof at Seller's expense, including transportation charges and labor costs for receipt or return of rejected goods or services. Buyer's final acceptance or rejection of the goods or services shall be made as promptly as practical after delivery, except as otherwise provided in this Agreement, but failure to inspect and accept or reject goods or services or failure to detect defects by inspection, shall neither relieve Seller from responsibility for such goods or services as are not in accordance with this Agreement's requirements nor impose liabilities on Buyer for them. Buyer's approval of Seller's design, material, process, drawing, specifications or the like shall not be construed to relieve Seller of the warranties set forth herein, nor shall a waiver by Buyer of any drawing or specification request for one or more articles constitute a waiver of any such requirements for the remaining articles to be delivered hereunder unless so stated by Buyer in writing.

**6. CONFIDENTIALITY; PROPRIETARY INFORMATION; BUYER'S PROPERTY; INVENTIONS.** All equipment and material furnished to Seller by Buyer, and all drawings, blueprints, schematics, jigs, fixtures, printing plates, dyes, tools or patterns, etc. charged by Seller to Buyer shall be the property of Buyer and shall be promptly delivered to Buyer at its request. All plans, drawings, specifications, documents and the subject matter contained therein and all other information given to Seller in connection with performance of this Agreement involve valuable property rights of Buyer and, whether or not marked as such, shall be held confidential by Seller and shall only be used for the benefit of Buyer and only for the purpose of performing Seller's obligations under this Agreement. Seller agrees that it will keep confidential all information used in the business of Buyer to which Seller may become acquainted with, exposed to, or familiar with during the course of this Agreement and that Seller shall keep confidential the terms of this Agreement, including, without limitation, all pricing. If this Agreement involves developmental or research activities, including engineering or design services, all information developed in the course thereof shall be owned by Buyer and be deemed confidential and proprietary property of Buyer whether patented or not and Seller shall cooperate (and cause its employees to cooperate) in executing any documents and taking any other actions necessary or convenient to patent or otherwise perfect or protect for the benefit of Buyer any inventions conceived, developed or reduced to practice in performance of this Agreement. If the Agreement does not involve developmental or research activities, but the goods covered by it are to be produced in accordance with ideas, methods, drawings or specifications furnished by Buyer, Seller hereby grants to Buyer a worldwide, irrevocable, non-exclusive and royalty-free license to make, have made, use, sell, offer to sell or distribute any improvement in the goods which is conceived, developed or reduced to practice by Seller in the production of the goods under this Agreement. For the purposes of this paragraph 6, the confidentiality obligation of Seller shall extend to Seller's officers, directors, agents, servants, employees, contractors, assigns and affiliates and Seller shall cause all such parties to be bound hereby. Seller's confidentiality obligations extend until 5 years after Buyer's final purchase from Seller under any Order subject to these Terms and Conditions (or successor Terms and Conditions), except that Seller's obligations shall survive and continue in effect with respect to any trade secret or other similar sensitive information protected for a longer period of time by applicable law.

**7. PATENTS; TRADEMARKS; COPYRIGHTS.** SELLER SHALL DEFEND, INDEMNIFY AND HOLD BUYER HARMLESS FROM AND AGAINST ALL LOSSES AND EXPENSES (INCLUDING ATTORNEY FEES) AS DEFINED IN PARAGRAPH 9 HEREOF, AND EXPENSES FOR INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENTS, DESIGN, TRADE NAME, TRADEMARKS, TRADE SECRET, COPYRIGHTS, MISAPPROPRIATION OF TRADE SECRETS, OR OTHER INTELLECTUAL PROPERTY RIGHTS OR ENTITLEMENT BY A THIRD PARTY, ARISING OUT OF OR RESULTING FROM THE USE, SALE, OFFER TO SALE OR DISTRIBUTION OF THE GOODS OR ARISING OUT OF OR RESULTING FROM THE SERVICES FURNISHED PURSUANT TO THIS AGREEMENT. BUYER SHALL AT ALL TIMES HAVE THE RIGHT TO DIRECT THE DEFENSE OF, AND TO ACCEPT OR REJECT ANY OFFER TO COMPROMISE OR SETTLE, ANY LAWSUIT, CLAIM, DEMAND, OR LIABILITY ASSERTED AGAINST BUYER.

IF AN INFRINGEMENT CLAIM THREATENS BUYER'S USE OF THE GOODS OR SERVICES, SELLER SHALL, IN THE FOLLOWING ORDER AND AT NO COST TO BUYER: 1.) OBTAIN THE RIGHTS TO CONTINUE USE OF THE GOOD OR SERVICE, 2.) REPAIR OR MODIFY THE GOOD OR SERVICE SO THAT IT'S NON-INFRINGEMENT, OR 3.) PROVIDE A FUNCTIONAL EQUIVALENT REPLACEMENT OF THE GOOD OR SERVICE. IF NONE OF THE ABOVE ARE POSSIBLE, BUYER MAY TERMINATE THE AGREEMENT WITH CAUSE AND BE PROVIDED A FULL REFUND OF THE AFFECTED GOODS AND SERVICES.

**8. INDEPENDENT CONTRACTORS.** In the event that any goods or services purchased under this Agreement require the services or goods of a contractor engaged by Seller or a supervisor, engineer, employee or other employee or agent connected with Seller, and Seller agrees to furnish the same, either with or without charge, such third party, contractor, supervisor, engineer or other employee or agent performing such services shall not be deemed to be the agent, partner, subcontractor, joint venture, representative or employee of Buyer, and Seller shall take full responsibility for the same.

**9. INDEMNIFICATION. SELLER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS BUYER, ITS OFFICERS, DIRECTORS, AGENTS, SERVANTS, EMPLOYEES, CONTRACTORS, AFFILIATES AND ASSIGNS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, ACTIONS, PENALTIES, FINES, LOSSES, COSTS OR OTHER LIABILITIES (INCLUDING BUT NOT LIMITED TO LOSS OF GOODS, DAMAGES TO PERSON OR PROPERTY, CLAIMS FOR WRONGFUL DEATH, WORKER'S COMPENSATION OR SIMILAR BENEFITS AND ATTORNEYS FEES AND EXPENSES, INCLUDING THOSE INCURRED TO INVESTIGATE AND ENFORCE THIS INDEMNIFICATION) (COLLECTIVELY "LOSSES") ARISING OUT OF OR RESULTING FROM SELLER'S: 1.) ACTS OF WILLFUL MISCONDUCT, 2.) NEGLIGENCE, 3.) BREACH OF WARRANTY OR PERFORMANCE OF THIS AGREEMENT, OR 4.) ANY OTHER ACT OR OMISSION OF SELLER WHICH CAUSE A CLAIM FOR LOSSES, WHETHER OCCURRING ON BUYER'S PREMISES OR ELSEWHERE. HOWEVER, SELLER SHALL HAVE NO OBLIGATION TO BUYER TO THE EXTENT SUCH LOSSES ARE ATTRIBUTABLE TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF BUYER. SELLER'S OBLIGATIONS UNDER THIS PARAGRAPH 9 SHALL EXTEND TO THE ACTS AND OMISSIONS OF ITS EMPLOYEES, CONTRACTORS, SUBCONTRACTORS AND AGENTS. WITH REGARD TO BUYER PURSUING OR ENFORCING ITS INDEMNIFICATION RIGHTS UNDER THIS AGREEMENT, IF BUYER INCURS ANY LOSSES AND/OR EXPENSES (INCLUDING ATTORNEY FEES) IN PURSUING OR ENFORCING IT'S INDEMNIFICATION RIGHTS AND IS FOUND TO BE ENTITLED TO A DEFENSE OR INDEMNIFICATION (WHETHER BY A COURT OF COMPETENT JURISDICTION OR AGREEMENT OF THE PARTIES), BUYER SHALL RECOVER FROM SELLER ANY AND ALL LOSSES AND EXPENSES (INCLUDING ATTORNEY FEES) AS DEFINED IN THIS PARAGRAPH.**

**10. INSURANCE; TAXES; LICENSE.** Anyone performing work or a specific service on Buyer's site must procure and maintain the insurances acceptable to Buyer, with minimum limits as listed below. Prior to any work commencing under this Agreement, Buyer must be provided a Certificate of Insurance proving that all insurance is in force and that Buyer has been named as an additional insured (except for workers' comp) on all policies. The following additional language will be included on the certificates: **"Company, as their interests may appear as Buyer is an additional insured but only with respect to liability arising out of our operations under this Agreement."** Each certificate shall be endorsed to provide that Buyer shall receive ten (10) days advance notice prior to cancellation or any material change.

- i. Minimum Comprehensive General Liability Coverage of US \$2,000,000 or equivalent in local currency.
- ii. Minimum Automobile Liability Coverage of US \$2,000,000 or equivalent in local currency.
- iii. Evidence of Worker's Compensation coverage and Employers Liability Insurance including USL&H coverage if working on a facility dock or equivalent in other jurisdictions.
- iv. Evidence of Excess Umbrella Liability coverage, if applicable.

The specific Buyer facility name and address must also appear on the certificate, and insurance agents or brokers should mail the certificate to the proper facility.

**11. COMPLIANCE WITH LAWS AND RULES.** Seller warrants that its performance of this Agreement will comply with all of the requirements of Section 12 hereof and all applicable U.S. or federal, state, provincial and local laws, regulations, by-laws, ordinances, rulings and orders.

**12. SAFETY.** Seller and its subcontractors shall have been pre-qualified and sign and comply to the ERMCO “Contractor Safety, Health and Environmental Agreement”.

**13. APPLICABLE LAW;** This Agreement shall be governed by, and construed in accordance with, the laws of the State where the products or services are delivered and, without regard to the laws regarding conflict of laws. . **THE RIGHTS AND OBLIGATIONS OF THE PARTIES SHALL NOT BE GOVERNED BY THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS AND SELLER AND BUYER HEREBY DISCLAIM THE SAME.**

**14. HAZARDOUS MATERIALS;** Supplier agrees to provide, upon and as requested by Buyer, proof of compliance with any applicable laws governing the use of any hazardous substances, including the following: (a) all reasonably necessary documentation to verify the material composition, on a substance by substance basis, including quantity used of each substance, included in any goods, and/or of any process used to make, assemble, use, maintain or repair any goods; or (b) all reasonably necessary documentation to verify that any goods and/or any process used to make, assemble, use, maintain or repair any goods, do not contain, and the services do not require, the use of, any hazardous substances.

**15. PRICE / PAYMENT TERMS.** Prices for the goods and/or services will be set out in the applicable Order. Price increases or charges not expressly set out in the Order shall not be effective unless agreed to in advance in writing by Buyer. Supplier will issue all invoices on a timely basis. All invoices delivered by Supplier must meet Buyer’s requirements, and at a minimum shall reference the applicable Order. Buyer shall have the right to withhold payment of any invoiced amounts that are disputed in good faith until the parties reach an agreement with respect to such disputed amounts, and such withholding of disputed amounts shall not be deemed a breach of this Agreement by Buyer, nor shall any interest be charged on such amounts by Seller even if allowed under applicable law. Notwithstanding the foregoing, Buyer agrees to pay the balance of the undisputed amounts on any invoice that is the subject of any payment dispute between the parties within the time periods specified herein. Unless expressly stated on the cover of the Order, payment terms shall be net 60 days. All payments are in U.S. Dollars unless otherwise expressly provided herein. Seller shall provide Buyer with lien releases, in a form acceptable to Buyer, from Seller and all its subcontractors before any payments shall be due.

**17. MISCELLANEOUS.** No extra charges of any kind will be allowed unless specifically agreed to in writing by the Buyer. Seller’s Inventory. Buyer has no obligation to place orders with Seller, and any orders placed shall be in its sole discretion and subject to Buyer’s termination and cancellation rights. Nonetheless, the actual quantity of goods or services to be purchased shall be determined by Buyer acting in its sole discretion. Any forecasts supplied by Buyer from time to time are estimates only and Seller is solely responsible for managing Seller’s raw material, work in process and inventory. Severability. If any term of this Agreement is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term shall be deemed reformed or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of this Agreement shall remain in full force and effect. Ambiguity. No ambiguity in any provision contained herein shall be construed against a party by reason of the fact it was drafted by such party or counsel. Seller affirms that it has engaged legal counsel, or had the opportunity to engage legal counsel, prior to accepting the Order, accepting the Terms and Conditions and before entering into this Agreement.