



## **CURTIS-MARUYASU AMERICA, INC.**

665 Metts Drive, Lebanon, Kentucky 40033-1909 270/692-2109  
15805 North 475 East, Santa Claus, Indiana 47579 812/544-2021

### **PURCHASE ORDER TERMS AND CONDITIONS**

- 1. ACCEPTANCE:** The manufacture, sale, shipment and delivery of goods will be subject only to and governed exclusively by the terms and conditions set forth herein. **THE ACCEPTANCE OF ANY OFFER MADE BY BUYER IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS CONTAINED HEREIN.** Seller has read and understands these terms and conditions which are expressly incorporated into Buyer's order. Seller's written acknowledgment of this order, commencement of any work or service, or delivery of any goods shall constitute Seller's unconditional acceptance of these terms and conditions only. **ANY ACCEPTANCE BY BUYER OF AN OFFER MADE BY SELLER IS MADE EXPRESSLY CONDITIONAL UPON THE SELLER'S ASSET TO THESE TERMS AND CONDITIONS.** Any additional or differing terms and conditions contained on any documents prepared or submitted by seller, including but not limited to any quote, acknowledgment, receipt or other document are unacceptable to Buyer, are expressly rejected by Buyer, and shall not become a part of this order. Any modifications to this order shall be made only in accordance with Section 40.
- 2. SHIPPING, BILLING AND FLSA CERTIFICATION:** Seller agrees: (a) to properly pack mark and ship goods in accordance with the requirements of Buyer and involved carriers in a manner to secure lowest transportation cost, (b) to route shipments in accordance with instructions from Buyer's Traffic Department; (c) to make up no charge for handling, packaging, storage, transportation or drayage of goods unless otherwise stated in this order; (d) to provide with each shipment packing slips with Buyer's order number marked thereon; (e) to properly mark each package with this order number, the factory, plant and dock number, and where multiple packages comprise a single shipment, to consecutively number each package,; and (f) to promptly forward the original bill of lading or other shipping receipt for each shipment in accordance with Buyer's instructions. Seller will include on bills of lading or other shipping receipts correct classification identification of the goods shipped in accordance with Buyer's instructions and carrier's requirements. The marks on each package and identification of the goods on packing slips, bills of lading and invoices shall be sufficient to enable Buyer to easily identify the goods purchased. Seller further agrees; (a) to promptly render, after delivery of goods or performances of services, correct and complete invoices to Buyer, and (b) to accept payment by check or at Buyer's discretion, other cash equivalent (including electronic transfer of funds). Seller's invoice must include a certification that all goods were produced in compliance with the applicable requirements of sections 6, 7, and 12 of the Fair Labor Standards Act, as amended and of regulations and orders of the United States Department of Labor issued in connection therewith. The payment date is set forth on the face side of this order, or if not stated, shall be on the 25<sup>th</sup> day of the month following Buyer's receipt of a proper invoice (except as may otherwise be agreed upon by Buyer and Seller in connection with a program providing for electronic funds transfer). Time for payment shall not begin until correct and complete invoices are received, and Seller's cash discount privileges to Buyer shall be extended until such time as payment is due. Buyer may withhold payment pending receipt of evidence, in such form and detail as Buyer may direct, of the absence of any liens, encumbrances and claims on the goods or services under this order.
- 3. COUNTRY OF ORIGIN INFORMATION:** Upon request, Seller agrees to provide Buyer with documentation which establishes the country of origin of the goods, including where applicable, affidavits of manufacture, NAFTA certificates of origin or other documentation that Buyer may reasonably require.
- 4. DELIVERY SCHEDULES:** Unless otherwise stated on the face of the order, goods are sold "Delivered Duty Paid" (as defined in Incoterms 2000) to Buyers designated facility, and Seller will bear all risk and costs of delivering the goods, including shipping and insurance charges, duties, taxes and other charges. Title to and risk of loss for the goods will pass to Buyer upon delivery. Deliveries shall be made both in quantities and at times specified in Buyer's schedules. Buyer shall not be required to make payments for

goods delivered to Buyer which are in excess of quantities specified in Buyer's delivery schedules. If any goods are delivered in advance of schedule, Buyer may retain such goods and invoice Seller for any resulting handling and storage costs. Buyer will not process invoices for goods shipped in advance of schedule until the scheduled delivery date. Buyer may change the rate of scheduled shipments or direct temporary suspension of scheduled shipments, neither of which shall entitle Seller to a modification of the price for goods or services covered by this order. For orders of goods where quantities and/or delivery schedules are not specified, Seller shall deliver goods in such quantities and time as Buyer may direct in subsequent releases. TIME IS OF THE ESSENCE IN SELLER'S PERFORMANCE OF THIS ORDER. 100% ON-TIME DELIVERY IS REQUIRED. If Seller fails to deliver any shipment in accordance with the schedule or any release, Buyer may, at its option, cancel the shipment, accept partial or delayed delivery, and /or purchase substitute goods, and Seller will reimburse Buyer for its incremental costs in procuring any substitute goods and for any costs or losses Buyer incurs due to such delivery failure.

5. **PREMIUM SHIPMENTS:** If Seller's acts or omissions result in Seller's failure to meet Buyer's delivery requirements and Buyer requires a more expeditious method of transportation for the goods than the transportation method originally specified by Buyer, Seller shall, at Buyer's option, (i.) promptly reimburse Buyer the difference in cost between the more expeditious method and the original method, (ii) allow Buyer to reduce its payment of Seller's invoice by such difference or (iii) ship the goods as expeditiously as possible at Seller's expense and invoice Buyer for the amount which Buyer would have paid for normal shipment.
6. **CHANGES:** Buyer reserves the right at any time to direct changes, or cause Seller to make changes to drawings and specifications of the goods or to otherwise change the scope of the work covered by this order, including work with respect to such matters as inspection, testing or quality control, and Seller agrees to promptly make such changes; any difference in price or time for performance resulting from such changes shall be equitably adjusted by Buyer and after receipt of documentation in such form and detail as Buyer may direct. Any changes to this order shall be made in accordance with Section 40.
7. **INSPECTION:** Seller agrees that Buyer shall have the right to enter Seller's facility at reasonable time to inspect the facility, goods, materials and any property of Buyer, covered by this order. Buyer's inspection of the goods whether during manufacture, prior to delivery or within a reasonable time after delivery, shall not constitute acceptance of any work-in-process or finished goods.
8. **NONCONFORMING GOODS:** To the extent Buyer rejects goods as nonconforming, the quantities under this order will automatically be reduced unless Buyer otherwise notifies Seller. Seller will not replace quantities so reduced without a new order or schedule from Buyer. Nonconforming goods will be held by Buyer for disposition in accordance with Seller's instructions at Seller's risk. Seller's failure to provide written instructions within ten (10) days, or such shorter period as may be commercially reasonable under the circumstances, after notice of nonconformity shall entitle Buyer, at Buyer's option, to charge Seller for storage and handling, or to dispose of the goods, without liability to Seller. Payment for nonconforming goods shall not constitute an acceptance thereof, limit or impair Buyer's right to assert any legal or equitable remedy or relieve Seller's responsibility for latent defects. Buyer's count or weight will be final and conclusive for all shipments.
9. **FORCE MAJEURE:** Any delay or failure of either party to perform its obligations hereunder shall be excused if, and to the extent that it is caused by an event or occurrence beyond the reasonable control of the party and without its fault or negligence, such as, by way of example and not by way of limitation, acts of God, actions by any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, labor problems (including lockouts, strikes and slowdowns), inability to obtain power, material, labor, equipment or transportation, or court injunction or order; provided that a written notice of such delay (including the anticipated duration of the delay) shall be given by the affected party to the other party within ten (10) days. During the period of such delay or failure to perform by Seller, Buyer, at its option, may purchase from other sources and reduce its schedules to Seller by such quantities, without liability to Seller, or have Seller provide the goods from other sources in quantities and at times requested by Buyer and at the price set forth in this order. If requested by the Buyer, Seller shall, within ten (10) days of such request, provide adequate assurances that the delay shall not exceed thirty (30) days. If the delay lasts more than thirty (30) days or Seller does

not provide adequate assurance that the delay will cease within (30) days, Buyer may immediately cancel the order without liability.

10. **WARRANTY:** Seller expressly warrants to Buyer and Buyer's customers and end users that all goods and services covered by this order will be new, and that Seller will have good title to them and will deliver them to Buyer free and clear of all liens, restrictions, and encumbrances. Seller further warrants that all goods or services covered by this order will (i.) conform to the specifications, drawings, samples, or descriptions furnished by Buyer, (ii.) be free from defects in design, material and workmanship, (iii.) be merchantable, (iv.) be free from any actual or claimed patent, copyright, or trademark infringement, and (v.) if applicable, be in conformity with the Federal Motor Vehicle Safety Standards issued pursuant to the National Traffic and Motor Vehicle Safety Act of 1966 as amended. In addition, Seller acknowledges that Seller knows of Buyer's intended use and expressly warrants that all goods covered by this order will be fit and sufficient for the particular purposes intended by Buyer. The warranty term will be coterminous with the warranty extended to Buyer's customers by Buyer. These warranties are in addition to any warranties implied by law or otherwise made by Seller and will survive acceptance and payment by Buyer.
11. **INGREDIENTS, DISCLOSURE AND SPECIAL WARNINGS AND INSTRUCTIONS:** If requested by Buyer, Seller shall promptly furnish to Buyer in such form and detail as Buyer may direct; (a) a list of ingredients in the goods purchased hereunder; (b) the amount of one or more ingredients; and (c) information concerning any changes in or additions to such ingredients. Prior to and with the shipment of the goods purchased hereunder, Seller agrees to furnish to Buyer sufficient warning and notice in writing (including appropriate labels on goods, containers and packing) of any hazardous material which is an ingredient or a part of any of the goods, together with such special handling instructions as may be necessary to advise carriers, Buyer, and their respective employees' of how to exercise that measure of care and precaution which will best prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of goods, containers and packing shipped to Buyer. Seller warrants that it will properly classify, describe, package, mark, label and provide any necessary Material Safety Data Sheets for the goods and will pack and ship them in compliance with all applicable hazardous materials laws, regulations, ordinances and orders.
12. **INSOLVENCY:** Buyer may immediately cancel this order without liability to Seller in the event of the happening of any of the following or any other comparable event; (a) insolvency of the Seller; (b) filing of a voluntary petition in bankruptcy by Seller; (c) filing of any involuntary petition in bankruptcy against Seller; (d) appointment of a receiver or trustee for Seller; (e) execution of an assignment for the benefit of creditors by Seller, provided that such petition appointment, or assignment is not vacated or nullified within fifteen (15) days of such event or (f) Seller fails or refuses to furnish buyer promptly with such information and assurances as Buyer may request from time to time about Seller's financial and operating conditions and ability to supply goods and services under this order.
13. **ALLOCATION:** If Seller is unable, at any time, to supply the entire quantity of goods ordered by Buyer, Seller will meet all of Buyer's requirements before making any allocation among its other customers under Section 2-615 of the Uniform Commercial Code or the equivalent.
14. **PRICE WARRANTY:** Seller warrants that the prices for the goods sold to Buyer hereunder are no less favorable than Seller currently extends to any other customer for the same or similar goods or services in similar quantities. Seller warrants that prices shown on this order are complete, and that no additional charges of any type will be added without Buyer's express written consent.
15. **CANCELLATION FOR BREACH:** Buyer reserves the right to cancel all or any part of this order, without liability to Seller, if Seller; (a) repudiates or breaches any of the terms of this order, including Seller's warranties; (b) fails to perform services or deliver the goods as specified by Buyer, or (c) fails to make progress so as to endanger timely and proper completion of services or delivery of goods; and does not correct such failure or breach within ten (10) days (or such shorter period of time, if commercially reasonable under the circumstances) after receipt of written notice from Buyer specifying such failure or breach.

16. **TERMINATION:** In addition to any other rights of Buyer to cancel or terminate this order, Buyer may at its option immediately terminate for convenience all or any part of this order, at any time and for any reason, by giving written notice to Seller. Upon such termination, Buyer shall pay to Seller the following amounts without duplication; (a) the order price for all goods or services which have been completed in accordance with this order and not previously paid for; and (b) the actual costs of work-in-progress and raw materials incurred by Seller in furnishing the goods or services under this order to the extent such costs are reasonable in amount and are properly allocable or apportionable under generally accepted accounting principles to the terminated portion of this order, less, however, the reasonable value or cost (whichever is higher) or on goods or materials used or sold by Seller's written consent, and the cost of any damaged or destroyed goods or material. Buyer will make no payments for finished goods, work-in-progress or raw materials fabricated or procured by Seller in amounts in excess of those authorized in delivery releases or for any undelivered goods which are in Seller's standard stock which are readily marketable. Payments made under this Section shall not exceed the aggregate price payable by Buyer for finished goods which would be produced by Seller under delivery or release schedules outstanding at the date of termination. Except as provided in this Section. Buyer shall not be liable for and shall not be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, and general and administrative burden charges from termination of this order. Within (60) days from the effective date of termination, Seller shall submit a comprehensive termination claim to Buyer, with sufficient supporting data to permit Buyer's audit and shall thereafter promptly furnish such supplemental and supporting information as Buyer shall request. Buyer, or its agents, shall have the right to audit or examine all books, records, facilities, work, material, inventories, and other items relating to any termination claim of Seller. Failure to submit such termination claim in accordance with the provisions of Section 16 shall be deemed a waiver by Seller of any payment required hereunder.
17. **INTELLECTUAL PROPERTY:** Seller agrees; (a) to defend, hold harmless and indemnify Buyer, its successors and customers against all claims demands, losses, suits, damages, liability and expenses (including reasonable attorney fees) arising out of any suit, claim of action for actual or alleged direct or contributory infringement of, or inducement to infringe any United States or foreign patent, trademark, copyright or mask work right by reason of the manufacture, use or sale of the goods or services ordered, including infringement arising out of compliance with specifications furnished by Buyer, or for actual or alleged misuse or misappropriation of a trade secret resulting directly or indirectly from Seller's actions; (b) to waive any claim against Buyer under the Uniform Commercial Code or otherwise, including any hold harmless or similar claim, in any way related to a claim asserted against Seller or Buyer for patent, trademark, copyright or mask work right infringement or the like, including claims arising out of compliance with specifications furnished by Buyer; and (c) to grant to Buyer a worldwide, nonexclusive, royalty-free, irrevocable license to repair and have repaired, to reconstruct and have reconstructed the goods ordered hereunder. Seller assigns to Buyer all right, title and interest in and to all trademarks, copyrights, works of authorship (which shall be deemed works-made-for-hire) and mask work rights in any material created for Buyer under this order.
18. **TECHNICAL INFORMATION DISCLOSED TO BUYER:** Seller agrees not to assert any claim with respect to any technical information which Seller shall have disclosed or may hereafter disclose to Buyer in connection with the goods or services covered by this order.
19. **CONFIDENTIAL INFORMATION:** Except as necessary to perform this order, as required by law and with prior written notice to Buyer, or with Buyer's prior written consent, Seller will at all times, keep confidential all information, drawings, specifications, and data of any kind or nature furnished by Buyer (whether in writing, electronically, orally, or visually) or derived or developed by Seller therefrom in the course of performing this order. Seller will not divulge such confidential information, use it for its own benefit or for the benefit of any other party, or copy it or permit copies to be made. These confidentiality obligations will not apply to information lawfully known by Seller at the time of disclosure by Buyer or obtained by Seller from a third party lawfully entitled to disclose it, or to information that is or becomes public knowledge other than through disclosure by Seller. Seller will not publish or advertise the existence of nature of this order without Buyer's prior written consent. These obligations will survive the expiration or cancellation of this order.

20. **INDEMNIFICATION:** If Seller performs any work on Buyer's premises or utilizes the property of Buyer, whether on or off Buyer's premises, Seller shall indemnify and hold Buyer harmless from and against any liability claims, demands or expenses (including reasonable attorney fees) for damages to the property of or injuries (including death) to Buyer, its employees or any other person arising from or in connection with Seller's performance of work or use of Buyer's property except for such liability, claim, or demand arising out of the sole negligence of Buyer.
21. **INSURANCE:** Seller shall maintain at its own expense, insurance coverage in amounts not less than the following; (a) Worker's Compensation – Statutory Limits for the state or states in which this order is to be performed (or evidence of authority to self-insure); (b) Employer's Liability - \$250,000; (c) Comprehensive General Liability (including Products/Completed Operations and Blanket Contractual Liability) - \$1,000,000 per person, \$1,000,000 per occurrence Personal Injury, and \$1,000,000 per occurrence Property Damage, or \$1,000,000 per occurrence Personal Injury and Property Damage combined single limit; and (d) Automobile Liability (including owned, non-owned and hired vehicles) - \$1,000,000 per person, \$1,000,000 per occurrence Personal Injury, and \$1,000,000 per occurrence Property Damage, or \$1,000,000 per occurrence Personal Injury and Property Damage combined single limit. Such policies shall name Buyer as an additional insured thereunder and shall contain endorsements stating that the policies are primary and not excessively over or contributory with any other valid, applicable, and collectible insurance in force for Buyer. Such policies will further provide that Buyer shall receive thirty (30) days prior written notification from the insurer of any termination or reduction in the amount or scope of coverage. Buyer may require Seller to furnish evidence of the foregoing insurance but failure to comply with these insurance requirements will not relieve Seller of its liability and obligations under this clause. Seller's purchase of appropriate insurance coverage or the furnishing of certificates of insurance shall not release Seller of its obligations or liabilities under this order. In the event of Seller's breach of this provision, Buyer shall have the right to cancel the undelivered portion of any goods or services covered by this order and shall not be required to make further payments except for conforming goods delivered or services rendered prior to cancellation.
22. **TOOLS:** Unless otherwise agreed to by Buyer in writing, Seller at its own expense shall purchase, furnish, keep in good condition, and replace when necessary all tools, jigs, dies, gauges, fixtures, molds and patterns ("Tools") necessary for the production of the goods. Seller shall insure the Tools with full fire and extended coverage insurance for the replacement value thereof. Seller grants Buyer an irrevocable option to take possession of and title to the Tools that are special for the production of goods upon payment to Seller of the book value thereof less any amounts which Buyer has previously paid to Seller for the cost of such Tools provided, however, that this option shall not to apply such Tools that are used to produce goods that are the standard stock of Seller's or if a substantial quantity of like goods are being sold by Seller to others.
23. **BAILED PROPERTY:** All supplies, materials, tools, jigs, dies, gauges, fixtures, molds, patterns, equipment and other items furnished by Buyer, either directly or indirectly, to Seller to perform this order, or for which Seller has been reimbursed by Buyer, shall be and remain the property of Buyer, or Buyer's customer, as the case may be. Seller shall bear the risk of loss of and damage to Buyer's property. Buyer's property shall at all times be properly housed and maintained by Seller, shall not be used by Seller for any purpose other than the performance of this order, shall be deemed to be personal property; shall be conspicuously marked "Property of CMA" by Seller, shall be commingled with the property of Seller or with that of a third person; and shall not be moved from Seller's premises without a Buyer's prior written approval. Upon the request of Buyer, such property shall be immediately released to Buyer or delivered to Buyer by Seller, either (i) F.O.B. transport equipment at Seller's plant, properly packed and marked in accordance with the requirements of the carrier selected by Buyer to transport such property, or (ii) to any location designated by Buyer, in which event Buyer shall pay to Seller the reasonable cost of delivering such property to such location. Buyer shall have the right to enter onto Seller's premises at all reasonable times to inspect such property and Seller's records with respect thereto.
24. **REMEDIES:** The rights and remedies reserved to Buyer in this order shall be cumulative and additional to all other or further remedies provided in law or equity.

25. **TRADE CREDITS, COUNTRY OF ORIGIN:** All trade credits, export credits, customs drawbacks, tax and fee rebates and the like relating to this order will belong to Buyer, including rights developed by substitution and rights which may be acquired from Seller's suppliers which Seller can transfer to Buyer. Seller agrees to inform Buyer of the existence of any such rights and upon request to supply such documents as may be required to obtain such drawback. Seller will cooperate with Buyer in obtaining these benefits and credits. Seller will furnish buyer and its designees with such documentation establishing the country of origin and value of the goods as Buyer may request, including, as applicable, affidavits of manufacture and NAFTA certificates of origin.
26. **SETOFF:** In addition to any right of setoff provided by law, all amounts due Seller shall be considered net of indebtedness of Seller to Buyer and its subsidiaries; and Buyer may deduct any amounts due or to become due from Seller to Buyer and its subsidiaries from any sums due or to become due from Buyer to Seller.
27. **ADVERTISING:** Seller shall not, without first obtaining the written consent of Buyer, in any manner advertise or publish the fact that Seller has contracted to furnish Buyer the goods or services herein ordered, or use any trademarks or trade names of Buyer in Seller's advertising or promotional materials. In the event of Seller's breach of this provision, Buyer shall have the right to cancel the undelivered portion of any goods or services covered by this order and shall not be required to make further payments except for conforming goods delivered or services rendered prior to cancellation.
28. **GOVERNMENT COMPLIANCE, QUALITY:** Seller agrees to comply with all federal state and local laws. Executive Orders, rules, regulations and ordinances which may be applicable to Seller's performance of its obligations under this order. Seller will be certified to ISO-9001 and compliant with TS16949. Quality System Requirements and any other quality standards and procedures furnished by Buyer.
29. **TAXES:** Seller shall be solely responsible for and shall pay, or reimburse Buyer for all taxes, duties, import deposits, assessments, and other governmental charges however designated, which are now or hereafter imposed under or by any governmental authority or agency that are (a.) associated with the performance by Seller of its obligations hereunder, (b.) associated with the payment of any amount by Buyer to Seller pursuant to this Agreement, or (c.) based on the goods, Tools or their storage or use, including but not limited to value added taxes, taxes on business assets, excise taxes and property taxes.
30. **EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION:** This order incorporates by reference; (a) all provisions of 41 C.F.R. 60-14 as amended, pertaining to the equal opportunity clause in government contracts; (b) all provisions of 41 C.F.R. 60-250 as amended, pertaining to affirmative action for disabled veterans of the Vietnam Era; and (c) all provisions of 41 C.F.R. 60-741, as amended, pertaining to affirmative action for handicapped workers. Seller certifies that it is in compliance with all applicable provisions of 41 C.F.R. 60-1, including but not limited to: (a) developing and presently having in full force and effect a written affirmative action compliance program for each of its establishments as required by 41 C.F.R. 60-1.40. as amended; (b) filing EEO-1 Reports as required by C.F.R. 60-1.7, as amended; and (c) neither maintaining segregated facilities nor permitting its employees to perform services at segregated facilities as prohibited by 41 C.F.R. 60-1.8, as amended. Buyer request that Seller adopt and implement a policy to extend employment opportunities to qualified applicants and employees on an equal basis regardless of an individuals age, race, color, sex, religion, or national origin.
31. **NO IMPLIED WAIVER:** The failure of either party at any time to require performance by the other party of any provision of this order shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver of either party of a breach of any provision of this order constitute a waiver of any succeeding breach of the same or any other provision.
32. **GENERAL INDEMNIFICATION:** Seller shall at all times indemnify and hold harmless the Buyer and its shareholders, directors, officers, employees, agents, affiliates, and their personal representatives, heirs, successors, and assigns, and each of them from and against any and all claims, liabilities, losses, demands, penalties, fines, suits, judgments, settlements, damages, costs, and expenses, (including without limitation reasonable attorneys' fees) incurred by Buyer or any such person or entity, arising out of or related to (i.) any act or omission of Seller in connection with the duties hereunder or (ii.) the failure, breach or default by Seller of any of the representations, warranties, covenants, or other agreement of Seller contained in this order (including without limitation, Seller's warranties hereunder), or (iii.) Seller's

negligent or willful acts or omissions in performing this order. The terms of this Section 32 shall survive the expiration or termination of this order.

33. **NON-ASSIGNMENT:** Seller may not assign or delegate its obligations under this order without Buyer's prior written consent.
34. **RELATIONSHIP OF PARTIES:** Seller and Buyer are independent contracting parties and nothing in this order shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.
35. **GOVERNING LAW:** This order is will be interpreted and enforced under the laws of the Commonwealth of Kentucky, US, (including without limitation, the provisions of the Uniform Commercial Code as adopted by Kentucky) without recourse to the conflict of laws provisions thereof, and the parties agree that any action or proceeding arising out of or in connection with this order will be brought exclusively in a state of federal court in the Commonwealth of Kentucky. In no event will the provisions of the U.N. Convention on the International Sale of Goods apply to this order.
36. **SEVERABILITY:** If any terms of this order is invalid or unenforceable under any statute, regulations, ordinances, executive order or other rule of law, such terms 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 order shall remain in full force and effect.
37. **CONSENT TO JURISDICTION:** Each of the parties consents and voluntarily submits to personal jurisdiction in the Commonwealth of Kentucky and in the courts in such state located in Marion County and the United States District Court for the Eastern District of Kentucky in any proceeding arising out of or relating to this order, and agrees that all claims raised in such proceeding may be heard and determined in such court.
38. **FORUM SELECTION:** Any action to endorse any provision of this order shall be instituted exclusively in the United States District Court for the Eastern District of Kentucky or, if such Court does not have jurisdiction to adjudicate such action. In the courts of the Commonwealth of Kentucky located in Marion County. The parties irrevocably and unconditionally waive and shall not plead, to the fullest extent permitted by law, any objection that they may now or hereafter have to the jurisdiction of such courts over the parties, the laying of venue or the convenience of the forum of any action related to this Order that is brought in the United States District Court for the Eastern District of Kentucky or in the Courts of the Commonwealth of Kentucky located in Marion County. The provisions of this Section 38 shall not be applicable to any dispute, controversy or claim by the Buyer against Seller arising out of or related to any dispute, controversy or claim made against Buyer by a third party, including without limitation an end user of the products.
39. **DISPUTE RESOLUTION:** The parties will attempt to resolve any dispute involving the interpretation, performance or non-performance, or enforceability of the order by prompt good faith negotiations and, if such negotiations fail, will consider alternate dispute resolution procedures before resorting to litigation.
40. **ENTIRE AGREEMENT:** This order, together with the attachments, exhibits, or supplements, specifically referenced in this order, constitutes the entire agreement between Seller and Buyer with respect to the matter contained herein and supersedes all prior oral and written representations and agreements. This order may only be modified by a purchase order amendment/alteration issued by Buyer.

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Supplier Acknowledgement  
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