



WILLIAMS-BAYER INDUSTRIES INC.

MMBDC Certified
TS-16949 Certified

TERMS AND CONDITIONS OF PURCHASE

- 1. OFFER; ACCEPTANCE; EXCLUSIVE TERMS; IDENTITY OF BUYER; COUNTRY SUPPLEMENT:** Each purchase order ("Purchase Order") issued by Buyer (a/k/a "WBI") is an offer to Seller for the purchase of goods and/or services ("Supplies") and includes and is governed by WBI Terms and Conditions of Purchase, together with any applicable Country Supplement (collectively, "Terms"). The Purchase Order supersedes all prior agreements, orders, quotations, proposals and other communications regarding the goods and/or services covered by the Purchase order, except that a signed prior agreement (such as an award letter, Statement of Work, or Non-Disclosure Agreement) will continue to apply to the extent not directly in conflict with the Purchase Order. The Purchase Order does not constitute an acceptance of any offer or proposal made by Seller. Any reference in the Purchase Order to any offer or proposal made by Seller is solely to incorporate the description or specifications of Supplies in the prior proposal, but only to the extent that the description or specifications do not conflict with the description and specifications in the Order. Seller accepts these Terms and forms a contract by doing any of the following: (a) commencing any work under the Purchase Order; (b) accepting the Purchase Order in writing; or (c) any other conduct that recognizes the existence of a contract with respect to the subject matter of the Purchase Order. The Purchase Order is limited to and conditional upon Seller's acceptance of these Terms exclusively. Any additional or different terms proposed by Seller, whether in Seller's quotation, acknowledgement, invoice or otherwise, are unacceptable to WBI, are expressly rejected by WBI and will not become part of the Purchase Order.
- 2. TIME PERIOD OF PURCHASE ORDER:** Subject to WBI's termination rights, the agreement formed by the Purchase Order is binding on the parties for one year from the date the Purchase Order is transmitted to Seller or, if an expiration date is stated in the Purchase Order, until that date. Subject to WBI's termination rights, the Purchase Order will automatically renew for successive one-year periods after the initial term unless Seller provides written notice at least 180 days prior to the end of the current term of its desire that the Purchase Order not be renewed or unless the Purchase Order otherwise stated.
- 3. PRICE:** The price shall not be higher than that appearing on the face of this order or, if no price appears thereon, then no higher than currently quoted or published by Seller, whichever is lower Seller covenants that if it should at any time prior to the delivery of the products, goods or services covered hereby sell like products, goods or services in similar quantities to any third party at lower prices, it will notify WBI in writing of such lower prices and WBI will receive the full benefit of such lower prices from the date of such sale to any such third party.
- 4. EXTRA CHARGES:** No extra charges of any kind including, but not limited to, escalation, charges for engineering, design, tooling, dies, jigs, fixtures, gauges or equipment, transportation, fuel surcharges, installation of equipment at WBI's plant, insurance and additional costs caused by overtime work will be allowed unless specifically agreed to by WBI in writing.
- 5. TRANSPORTATION:** Unless otherwise specified or agreed by WBI, any transportation charges assessed against WBI shall not exceed the lowest common carrier rate available for the quantity ordered, and invoice charges must be supported by a paid freight bill or equivalent.
- 6. DELIVERY SCHEDULE:** Time is of the essence and delivery must be made within the time and at the quantity specified by WBI. Seller hereby warrants on-time delivery of 100% of the products or services ordered hereunder. If Seller fails to deliver on time, WBI may, at its sole option, require Seller to pay such additional procurement and delivery charges as may be necessary to effect compliance with the on-time delivery requirements. Unless otherwise agreed in writing, Seller shall not make material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet WBI's delivery schedule. Products or goods shipped to WBI in advance of schedule may be returned to Seller at Seller's expense. If Seller for any reason does not comply with WBI's delivery schedule, WBI at its option may either approve a revised schedule or may terminate the order without liability to Seller on account thereof and without prejudice to any other rights that WBI may have on account of Seller's default.
- 7. WARRANTIES:** Seller expressly warrants that all products, goods or services furnished hereunder will conform to the specifications, and/or drawings furnished or approved by WBI and will be fit and sufficient for the purpose intended, merchantable, and will be of good quality and workmanship and free from defects. The foregoing warranty shall survive any acceptance of the goods or materials and shall be in addition to any warranty expressly furnished to WBI by Seller.
- 8. INSPECTION:** All products, goods or services shall be received subject to WBI's inspection and acceptance. Any products, goods or services which are defective, do not comply with these terms and conditions or are not in accordance with WBI's specifications will be held for Seller's instructions and at Seller's risk, and if Seller so directs will be returned at Seller's expense. Products, goods or services returned as defective will be replaced only upon issuance of a new purchase order. Payment by WBI on an order prior to inspection shall not constitute an acceptance by WBI thereof.
- 9. WBI'S PROPERTY:** Unless otherwise agreed in writing, all tools, equipment or material of every description furnished to Seller by WBI or specifically paid for by WBI and any replacement thereof, or any material affixed or attached thereto,



WILLIAMS-BAYER INDUSTRIES INC.

shall be and remains the personal property of WBI. Such property and whenever practical each individual item thereof, shall be plainly marked or otherwise adequately identified by Seller as "Property of WBI" and shall be safely stored separate and apart from Seller's property. Seller shall not substitute any property for WBI's property and shall not use such property except in filling WBI's orders. Such property, while in Seller's custody or control, shall be held at Seller's risk, shall be kept insured by Seller at Seller's expense in an amount equal to the replacement cost with loss payable to WBI and shall be subject to removal at WBI's written request in which event Seller shall prepare such property for shipment and shall redeliver to WBI in the same condition as originally received by Seller, reasonable wear and tear excepted.

10. **CHANGES:** WBI shall have the right to make changes in the order which shall be done by issuance of an updated written Purchase Order, but no additional charge will be allowed unless authorized in writing by WBI. If such changes affect delivery or the amount to be paid by WBI, Seller shall notify WBI promptly and negotiate an adjustment in writing.
11. **PATENT AND OWNERSHIP PROTECTION:** Seller warrants that all products, goods and services sold or delivered to WBI shall not infringe any third party copyright, patent, trade secret, trade name, trademark, service mark or otherwise infringe any third party intellectual property right. To the extent the subject products, goods or services are not manufactured or rendered pursuant to a design originated by WBI, Seller agrees it will save WBI and/or its agents or customers harmless from any loss, damage or liability which may be incurred on account of infringement of United States Patent rights or any other ownership rights asserted under any statute or common law with respect to such products, goods or services and that it will at its own expense defend any action, suit or claim in which such infringement or rights are alleged with respect to the sale or use of the products, goods or services delivered hereunder, provided Seller is duly notified as to suits against WBI.
12. **COMPLIANCE WITH LAW:** Seller shall comply and hereby warrants its compliance with all state, federal and local laws and regulations applicable to this order and the products or services covered hereby, including, but not limited to, Executive Order 11246, environmental laws, employment laws and the Occupational Safety and Health Act.
13. **TAXES:** Seller agrees that, unless otherwise indicated in this order, (a) the prices herein do not include any federal, state or local sales, use or other tax from which an exemption is available for purposes of this order, and (b) the prices herein include all other applicable federal, state and local taxes in effect at the date of this order. Seller agrees to accept and use tax exemption certificates when supplied by WBI in form ordinarily acceptable to the respective taxing authorities. In case it shall ever be determined that any tax included in the price was not required to be paid by Seller, Seller agrees to notify WBI and to make prompt application for the refund thereof and to take all proper steps to procure the same and when received to pay the same to WBI.
14. **TERMINATION:** WBI may terminate for any of the following reasons: (a) Seller ceases to conduct its operations in the normal course of business including inability to meet its obligations as they mature or if any proceeding under bankruptcy or insolvency laws is brought by or against Seller, or a receiver for Seller is appointed or applied for, or an assignment for the benefit of creditors is made by Seller; or (b) Seller does not manufacture products or goods or render services covered herein in accordance with WBI's specifications or delivery schedule; or (c) Seller breaches any of the provisions of these terms and conditions of this order or any agreement arising from this order with WBI, without prejudice to any other rights and remedies which may be available to it under applicable law; or (d) WBI may terminate this order upon delivery of written notice to Seller. If termination occurs for any of the above mentioned reasons, WBI shall only be responsible to pay for products, goods or services covered by the order then completed and subsequently delivered in accordance with the terms of the order. In no event shall WBI be liable for any incidental or consequential damages, including without limitation, loss of profits or business, or damages arising out of WBI's cancellation of an order or the termination of business relations with WBI, even if WBI has been advised by Seller of the possibility of such damages.
15. **NON-ASSIGNMENT:** Assignment by Seller of this order or any interest therein or any payment due or to become due there under, without the written consent of WBI, shall be void.
16. **INDEMNIFICATION:** To the fullest extent permitted by law, Seller agrees to indemnify and hold WBI harmless from and against any and all liabilities, losses, damages, judgments, awards, costs, fees, and expenses, including all incidental and consequential damages (including, but not limited to, attorneys' fees and costs of investigation) incurred by WBI resulting from or relating to any claim, notice, allegation, complaint, demand, action, lawsuit, investigation, proceeding, or other process or procedure of any kind (including, but not limited to, those based in whole or part on negligence, product liability, willful misconduct, breach of express or implied warranties, strict liability, deceptive or unfair trade practices, advertising liability, governmental statute or regulation, and the like) between WBI and any third party, parties or any other entity and caused by, arising out of or in any way resulting from the products or goods, provided, shipped, furnished or delivered or services performed by Seller to, for, or on behalf of WBI. The obligations of Seller under this Section 16 shall survive cancellation or termination of each purchase order agreement. The obligations of Seller under this Section 16 are independent and do not in any way limit or satisfy the obligations of Seller to WBI under any other provision of this agreement.



WILLIAMS-BAYER INDUSTRIES INC.

- 17. WORK ON WBI'S PREMISES:** *If an order involves work by Seller, its employees or agents on the premises of WBI, Seller shall indemnify WBI against and provide workers compensation and comprehensive liability insurance covering such work by its employees and agents. Performance of such work shall be in accordance with all of WBI's plant and safety rules as such exist from time to time (which are hereby incorporated herein by reference) and Seller shall obtain a copy of such rules from WBI's Purchasing Department prior to performance on WBI's premises of any work hereunder.*
- 18. INSURANCE:** *Seller shall procure and maintain comprehensive commercial general liability insurance, including, without limitation, coverage for products liability, advertising liability and contractual liability (i.e., contractual assumption of liability under this agreement) and providing coverage on an occurrence basis, with limits of at least \$3,000,000.00 per occurrence, claims for bodily injury, sickness and disease including death, property damage, and damages relating to loss of use of physical property, arising out of or relating to all goods, materials, products or substances provided, shipped, furnished, or delivered or services performed which are the subject of this agreement. Each policy required by this Section shall name WBI as an additional insured for all such coverages, shall require the insurer to provide notice in writing to WBI at least 30 days prior to any cancellation or non-renewal, and shall provide that such insurance shall be primary insurance without any right of contribution from any other insurance carried or maintained by WBI. Seller shall annually, and more frequently upon request of WBI, furnish to WBI Certificates of Insurance evidencing Seller's compliance with the provisions of this Section 18. The obligations of Seller under this Section 18 are independent and do not in any way limit or satisfy the obligations of Seller to WBI under any other provision of these terms and conditions.*
- 19. ADVERTISING AND ANNOUNCEMENTS:** *Seller shall not advertise or publicly announce the fact that Seller has contracted to supply any machinery, equipment, material or services for WBI without obtaining the prior written permission of WBI.*
- 20. CONFIDENTIAL INFORMATION:** *Seller hereby acknowledges and agrees that to the extent that it receives confidential, proprietary and trade secret information concerning WBI, it shall not disclose such information to anyone or business entity without the express written consent of WBI. Seller also acknowledges and agrees that all confidential, proprietary and trade secret information received from WBI is solely WBI's property and shall be returned immediately upon written request of WBI.*
- 21. EXCUSABLE DELAY:** *Neither WBI nor Seller shall be held responsible for the failure or delay in delivery or acceptance of products or goods sold or services rendered hereunder where such failure or delay is due to any Act of God, or the public enemy, war, compliance with law, governmental act or regulation, fire, flood, quarantine, embargo, epidemic, unusually severe weather, strike, work stoppage, acts or omissions of carriers or other cause beyond the control or the party, but the party seeking to justify failure or delay shall promptly notify the other party of the reasons for any failure or delay in the delivery or acceptance and shall use good faith and diligent efforts to perform its obligations despite the occurrence of such event.*
- 22. CHOICE OF LAW:** *This order and any contract resulting from this order shall be governed by the laws of the state of Michigan without regard to its conflicts of law principles. The parties agree and consent to the exclusive jurisdiction of the Wayne County Circuit Court for Wayne County Michigan or the U.S. District Court for the Eastern District of Michigan, as applicable, provided, however, that WBI may elect to bring an action against Seller in any court having jurisdiction over seller.*
- 23. PAYMENT TERMS:** *Payment shall be made within net forty-five (45) days by WBI upon receipt and acceptance of appropriate invoices (except as by written agreement executed by both parties).*