



STANDARD PURCHASE ORDER TERMS AND CONDITIONS

The goods (including any parts, components and accessories) and services specified on the Purchase Order (collectively, the "goods") are being purchased subject to the terms and conditions set forth herein. No terms or conditions proposed by seller in its invoice or otherwise other than those that are identical to those contained herein shall be binding on Masterack unless expressly accepted by Masterack in writing.

- 1. Acceptance** The Purchase Order shall become a binding contract, and the terms and conditions hereof shall be deemed accepted by Seller, upon receipt by Masterack of either a signed copy of the Purchase Order or receipt of the goods by Masterack. Acceptance of this Purchase Order is expressly limited to the Terms and Conditions, and any terms and conditions proposed by Seller in Seller's quotation, invitation, acceptance, acknowledgment, invoice, transmittal or any other document which are different from, conflict with or add to the Terms and Conditions shall be deemed to materially alter the Terms and Conditions and are hereby objected to and rejected by Masterack.
- 2. Prices.** Prices stated hereon shall remain firm until the Purchase Order has been filled. Seller agrees that the prices charged on the Purchase Order are not in excess of the maximum prices established under all applicable laws and regulations. The prices set forth in the Purchase Order include all applicable federal, state and local taxes for which Masterack agrees to accept liability. Seller agrees to reimburse Masterack for any tax or contributions, which Masterack by law may be required to pay on behalf of Seller. Masterack shall pay for goods pursuant to the Purchase Order in U.S. dollars (less applicable discounts and allowances, if any).
- 3. Delivery.** All goods ordered hereunder are to be shipped F.O.B. the place of destination, unless otherwise provided by Masterack on the Purchase Order. No charge shall be included in the prices of the goods for packing, crating, or freight unless otherwise agreed to and specified on the Purchase Order.
- 4. New Product Introduction / First Article Inspection.** Supplier shall comply, as applicable, with Masterack's New Product Introduction and First Article Inspection procedures, attached hereto as Exhibit "C" or forwarded under separate cover.
- 5. Risk of Loss.** Notwithstanding anything herein contained to the contrary, Seller shall bear the risk of loss for the goods subject to the Purchase Order and title shall remain with Seller until delivery thereof to Masterack or its duly authorized representative pursuant to Paragraph 3 above.
- 6. Time of Performance.** Time is of the essence of this agreement. Seller shall perform all of its obligations for delivery of the goods on or before the date designated herein or approved in writing by Masterack. Upon Seller's failure to make timely delivery of the goods, Masterack shall have all of the rights of a buyer described in Uniform Commercial Code, Article 2 in effect in the State [as defined herein], including, without limitation, the right to cancel the Purchase Order and the right to obtain cover.
- 7. Payment.** Payment by Masterack for goods ordered hereunder shall be made according to the terms set forth on the Purchase Order. Masterack shall not be liable for any interest, service or late charge in connection with the goods ordered hereunder. Discounts will be calculated from the date that an acceptable invoice or acceptable goods are received by Masterack, whichever is later. Seller agrees that payment shall not be due until final acceptance following physical delivery and final inspection.
- 8. Inspection.** Masterack or its duly authorized representative shall have the right within a reasonable time after delivery thereof for Masterack to inspect all goods subject to the Purchase Order prior to its obligation to make payment therefor. The inspection by Masterack shall not relieve Seller of any responsibility for latent defects or from warranties set forth in the Purchase Order or in any other document containing warranties in favor of Masterack. It is understood that this Paragraph 8 is not intended to relieve Seller of any liability it would otherwise lawfully bear

after Masterack's final inspection and acceptance. Seller shall be responsible for asserting claims for losses or damages in transit against the carrier or carriers. The expenses of the inspection shall be borne by Masterack except that such expenses shall be reimbursed by Seller if the goods do not conform and are rejected.

9. Rights of Masterack with Respect to Nonconforming Goods. Notwithstanding any other provision hereof or of any applicable law, acceptance of all or any portion of the goods by Masterack or its fully authorized representative shall not be deemed a waiver of any of Masterack's rights as a buyer, without limitation (a) the right to cancel, reject or return all or any portion of the goods because of (1) failure to conform to purchase order specifications, (2) latent or patent defects, (3) other breach of warranty within a reasonable time after discovery thereof or (b) the right to make a claim for damages, including manufacturing costs, loss of profits or other special or consequential damages incurred by Masterack.

10. Warranty. Seller hereby warrants that all goods sold hereunder shall be (a) **MERCHANTABLE (AS DEFINED IN UNIFORM COMMERCIAL CODE IN THE STATE), FREE FROM DEFECTS IN MATERIAL OR WORKMANSHIP AND IN ACCORDANCE WITH MASTERACK'S PLANS, SPECIFICATIONS, MODELS OR SAMPLES REMITTED TO SELLER, IF ANY, and (b) FIT FOR THE PARTICULAR PURPOSE PREVIOUSLY DISCLOSED BY MASTERACK TO SELLER (INCLUDING COMPLIANCE WITH ALL APPLICABLE LAWS GOVERNING THE MANUFACTURING AS A COMPONENT OF OTHER PRODUCTS, DISTRIBUTING, OR OTHER SELLING OF THE GOODS).** Seller acknowledges that it has reason to know that Masterack requires the ordered goods for a particular purpose and that Masterack is relying on Seller's skill and judgment in selecting and furnishing suitable goods. All warranties shall survive delivery, acceptance and payment. Without limiting the foregoing, Seller further represents, warrants and covenants that the goods sold hereunder comply with applicable regulations of the National Highway Traffic Safety Administration and Federal Motor Vehicle Safety Standards. At the request of Masterack, Seller shall provide Masterack with documentation citing the applicable laws and regulations and the test results demonstrating that the goods are in compliance.

11. Specifications and Tolerances. Seller agrees that all goods sold hereunder shall comply with all specifications set forth on the Purchase Order, and if not specified on Purchase Order, then all goods sold hereunder shall be subject to Seller's standard manufacturing variations, tolerances and classifications.

12. Trademark, Patent or Copyright Infringement. Seller warrants that no goods to be furnished under the Purchase Order will infringe, in their manufacture, use or sale, whether separately, together or in combination with other materials, articles or merchandise or in any process or any or all of them, any United States or foreign patent, trademark, trade name or copyright.

13. Equipment. All tooling, material, equipment and other like items furnished to Seller in connection with the Purchase Order ("Equipment") shall be used exclusively by Seller to manufacture the goods subject to this or any subsequent Purchase Order from Masterack covering like goods. Any other use of the Equipment is unauthorized, unless otherwise expressly stated in the Purchase Order or in a separate written agreement between Seller and Masterack. In addition, Seller shall be responsible for maintenance and protection of the Equipment at all times that it is in Seller's possession. Seller shall maintain a record of all such Equipment, and shall permit Masterack to inspect such Equipment and records at any time during normal business hours.

14. Disclosure of Information. Seller acknowledges that any information disclosed to it by Masterack or which is otherwise obtained in the performance of its obligations hereunder is confidential in nature; and Seller hereby agrees not to disclose any such information so disclosed or obtained or learned in the performance of its obligations hereunder without first securing the written consent of Masterack. All designs, specifications, patterns and blueprints paid for by or charged to Masterack shall become the property of Masterack immediately upon receipt thereof by Seller, shall so be marked and identified and shall be delivered to Masterack upon demand; and Seller agrees to maintain the same in first-class order in Seller's possession and use. Any designs, specifications, patterns, blueprints or other property furnished to Seller by Masterack shall be returned to Masterack upon demand in the same manner as received by Seller, ordinary wear and tear excepted. Seller shall use the same degree of care (but no less than reasonable care) as it uses with respect to its own confidential information and not publish, disseminate or disclose to any third party (except for bona fide subcontractors, provided they respect all obligations

herein defined) any information which is provided to it and which is marked or otherwise identified in writing as being confidential information. However, Seller shall not have any such obligation with respect to confidential information which is:

- (i) specifically authorized for release by Masterack in writing from time to time;
- (ii) made public by Masterack;
- (iii) established to be in the public domain otherwise than as a consequence of a breach of the obligations not to publish, disseminate or disclose the information as set forth herein;
- (iv) proved to have been in the possession of Seller prior to its receipt under this Agreement; or
- (v) proved to have been rightfully received from third parties who are not under an obligation of confidentiality to Masterack with respect to the information.

All information covered by this Section 14 shall remain the exclusive property of Masterack. Except as provided in this Purchase Order, no license whatsoever is implied from Masterack to Seller. Technical documents delivered to Seller hereunder shall be reproducible for the Seller only unless otherwise agreed upon in writing. Technical documents so delivered and in the Seller's possession shall be strictly stored in confidence by the Seller. Upon termination of this Purchase Order for any reason, or upon expiration of this Purchase Order, or upon written request of Masterack, the Seller agrees, at Masterack's option promptly either to return to Masterack, or to destroy, the information and any copies thereof which are in the Seller's possession or under its control. Notwithstanding other provisions this Purchase Order, the provisions of this Section 14 shall remain effective for a period of five years after the termination of this Purchase Order. Due to the nature of the confidential information, Masterack shall be entitled to an injunction restraining such breach or threatened breach without having to prove actual damages or threatened irreparable harm. Such injunctive relief as Masterack may obtain shall be in addition to all of the rights and remedies available at law and in equity. Such equitable relief may include, but is not limited to, the seeking of a temporary or permanent injunction, restraining order or order for specific performance, and may be sought with or without prior notice, depending on the circumstances.

15. Research and Development. Seller and Masterack agree that the goods sold hereunder are unique and require specific molds, dies, etc., in particular instances. Seller agrees to fully and promptly disclose in writing to Masterack all Intellectual Property, work, ideas, inventions, discoveries, processes and improvements, source code, object code, computer programs, specifications, operating instructions, notes, and all other documentation (whether or not patentable) created, conceived or first reduced to practice by Seller, alone or with others, in connection with the Goods or services provided to Masterack hereunder or which derive from information or materials Seller has received from Masterack (the "Work Product"). Except for Seller Property (as defined herein), Seller also agrees that the Work Product is the exclusive property of Masterack and that Seller will, during the term of this Purchase Order and thereafter, execute all papers and do all things deemed reasonably necessary by Masterack to insure that Masterack obtains full title to such Work Product, including all Intellectual Property embodied therein. As used herein, "Seller Property" means any work, ideas, inventions, discoveries, processes and improvements, computer processes, specifications, operating instructions, notes, and any other documentation (whether or not patentable) created by Seller prior to its engagement with Masterack under this Purchase Order, which Seller uses to satisfy its obligations under this Agreement, and which Seller has clearly identified in writing to Masterack prior to its use to be "Seller Property". All written, graphic, or recorded material generated for Masterack in the past or in connection with this Purchase Order are owned by Masterack and shall be subject to inspection by Masterack and shall be delivered to Masterack or otherwise disposed of by Seller only as directed by Masterack. Upon termination of this Purchase Order, Seller will provide to Masterack all copies of such material and Masterack will have the exclusive right to copyright or patent such Work Product, excluding Seller Property. Seller agrees that if any Work Product or any portion thereof created under this Purchase Order, including any Work Product related to the business of the products or services of Masterack, whether or not such work was created at the direction of Masterack, is copyrightable, it shall be deemed to be a "work made for hire," as such term is defined in the copyright laws of the United States of America. If, for any reason, any such copyrightable work created by Seller is excluded from the definition of a "work made for hire," Seller hereby assigns and conveys to Masterack the entire right, title, and interest in and to such work including work created prior to the date of execution of this Agreement, including the copyright therein and any copyright renewal thereof. Seller shall cooperate with Masterack or its designees and execute documents of assignment, declarations, and other documents which may be prepared by Masterack, and

take other necessary actions as reasonably directed by Masterack, to effect the foregoing or to perfect or enforce any proprietary rights resulting from or related to this Purchase Order. Such cooperation and execution shall be performed without additional compensation to Seller; provided, however, Masterack shall reimburse Seller for reasonable out-of-pocket expenses incurred at the specific request of Masterack. Seller shall cause each of Seller's employees or its subcontractor's employees charged with performance under this Purchase Order or granted access to confidential information to execute a confidential information and invention disclosure agreement recognizing Masterack's ownership rights and concurring with the obligations of Seller as set forth herein. Seller hereby grants Masterack a non-exclusive, worldwide, royalty-free, fully paid up, perpetual license to use, copy, modify, and distribute (excluding resale) all Seller Property provided to Masterack hereunder.

16. Assignment. Seller shall neither assign its rights nor delegate its duties or any portion thereof without the prior written consent of Masterack. In addition, Seller shall not subcontract any portion of the work without the prior written consent of Masterack. Masterack may assign this Purchase Order to an affiliate or successor, or to the acquirer of substantially all of Masterack's business, whether by sale of assets, merger or otherwise.

17. Cancellation or Termination by Masterack. Masterack may, with or without cause, suspend and/or terminate the Purchase Order (to the extent delivery or performance has not occurred), in whole or in part effective upon Seller's receipt of written notice from Masterack. Masterack, in addition to any rights set forth elsewhere herein, shall have the right to cancel the Purchase Order in whole or in part without prior notice to Seller, effective upon the happening of any of the following events: (a) if Seller shall become insolvent or make a general assignment for the benefit of creditors; (b) if an order for relief under the Bankruptcy Act shall be filed by or on behalf of Seller; (c) if, at any time, Seller shall default in the performance or shall so fail to make progress in the performance hereof as to endanger complete performance; or (d) if Masterack has good reason to believe that Seller will not make timely delivery of goods. Upon such cancellation, Seller shall transfer title and deliver to Masterack all satisfactorily completed work and such additional work in process (at Supplier's cost) as may be directed by Masterack. In no case shall Masterack be responsible for Seller's work in process that exceeds thirty (30) days, and in no case shall Masterack be responsible for Seller's raw material(s). Seller agrees that Masterack shall not, by reason of the termination of this Agreement, be liable to Seller for compensation, reimbursement or damages on account of the loss of prospective profits on anticipated sales or on account of expenditures, investments, leases or commitments of any kind or nature, occurring in connection with, or arising from or in the performance of this Agreement.

18. Cancellation by Seller. Neither the manufacture nor shipment of goods pursuant to the Purchase Order is subject to deferment or cancellation by Seller unless Masterack is indemnified against any and all loss, liability, cost, damage and expense (including reasonable attorneys' fees) resulting therefrom.

19. Liens. Seller warrants and agrees that immediately prior to each sale of goods to Masterack hereunder Seller shall have (and will deliver to Masterack hereunder) good title to the goods, free from any claim, lien or encumbrance. Seller shall promptly pay for all materials, supplies and labor employed by it in manufacturing the goods. Seller shall not subject the goods to any material person's, warehousemen's or mechanics' lien and, if such lien exists, shall cause any such lien to be discharged promptly.

20. Fair Labor Standards Act. Seller represents that the goods to be furnished under the Purchase Order were or will be produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended, and unless otherwise agreed in writing, Seller shall insert a certificate on all invoices submitted in connection with the Purchase Order stating that the goods covered by the invoice were produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended.

21. Equal Employment Opportunity. The Purchase Order is subject to the requirements of Executive Order 11246, "Equal Employment Opportunity" (30 F.R. 12319) effective October 24, 1965, and any amendments thereto (the "Executive Order"), unless it is expressly stated otherwise on the Purchase Order. Part II, Sub-Part B, Section 202, Paragraphs (1) through (7) inclusive, of said Executive Order, and any amendments thereto, are by this reference thereto incorporated in and made a part of the Purchase Order, and the term "contractor" as used in said Executive Order shall be deemed to include the Seller or any subcontractor furnishing the goods covered by the Purchase Order.

22. **OSHA Compliance.** Seller represents that the goods to be supplied hereunder were or shall be produced and supplied in accordance with The Occupational Safety and Health Act of 1970, all rules, standards and regulations promulgated thereunder and any amendments thereto ("OSHA").

23. **Other Laws.** Seller shall comply with all other applicable federal, state and local laws and all rules and regulations of any governmental authority. Any provisions required to be included in the Purchase Order by such law, rule or regulation shall be deemed to be included herein.

24. **Indemnity.** Seller shall defend, indemnify, exonerate and hold Masterack, its officers, directors, employees and agents, subsidiaries, parent companies and affiliates (collectively, the "Indemnified Parties") free and harmless from and against any and all actions, causes of action, suits, costs, liabilities, losses, damages and expenses, including, without limitation, reasonable counsel fees and disbursements (collectively, the "Indemnified Liabilities"), incurred by the indemnified parties or any of them as a result of, arising out of, relating to, or in connection with: (a) the failure of the goods to conform to the warranties set forth in Paragraph 10; (b) the design (to the extent not designed by Masterack), manufacture, transportation, delivery, purchase or use by Masterack of the goods purchased hereunder, or any part, component or accessory thereof; (c) any unauthorized use of the Equipment; (d) any actual or threatened trademark, patent or copyright Infringement, or any litigation based thereon, with respect to any goods sold hereunder; (e) any violation of the requirements of the Fair Labor Standards Act of 1938, as amended; (f) any violation of the requirements of the Executive Order; (g) any violation of the requirements of OSHA; (h) any violation of the requirements of any applicable federal, state or local laws or any rules or regulations of any governmental authority, including, but not limited to, the applicable regulations of the National Highway Traffic Safety Administration and Federal Motor Vehicle Safety Standards; or (i) any suit or claim that may be based on any alleged injury to or the death of any person or damage to property that may occur, or that may be alleged to have occurred in the course of or related to, directly or otherwise, the performance of the Purchase Order by Seller (whether such claim be made by a third person and whether or not it shall be claimed that the alleged injury was caused by a negligent act or omission of Masterack, by a breach of contract by Seller, or under the doctrine of strict liability in tort). If and to the extent that the foregoing undertaking may be unenforceable for any reason, Seller hereby agrees to make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities, which is permissible under applicable law. The obligation of Seller to indemnify Masterack under this Paragraph 24 shall survive delivery, acceptance and payment thereafter, and such indemnity shall be in addition to any other remedies provided by law.

25. **Insurance.** —**Seller shall purchase and maintain in force, with financially sound, insurance companies: (a) Commercial general liability insurance and comprehensive automobile liability insurance, each with a minimum liability limit of \$1,000,000 combined single limit per occurrence, covering (1) Seller's properties, (2) goods delivered under the Purchase Order, (3) injury to or death to persons during the performance of the Purchase Order, (4) damage to properties during the performance of the Purchase Order, (5) the Equipment, and (6) contractual liabilities of Seller under the Purchase Order; (b) Workers compensation and employers liability Insurance with a minimum liability limit of \$500,000, or Statutory limits whichever is greater. Each of the insurance policies set forth in clauses (a) and (b) above shall provide that (i) such insurance is primary with respect to any other insurance carried by or available to Masterack; (ii) written notice will be given to Masterack at least thirty (30) days prior to any cancellation thereof, reduction in policy limits, material change therein or lapse without renewal; (iii) insurer will waive any right of subrogation, setoff, counterclaim or other deduction, whether by attachment or otherwise, against Masterack; (iv) the interests of Masterack shall not be invalidated by any act or negligence of Seller or any person having an interest in any of the goods or Equipment; and (v) such policy shall contain a cross-liability clause providing for coverage of Masterack as if separate policies had been issued to Masterack. The insurance policies set forth in clause (a) above shall each name Masterack as an Additional Insured and Loss Payee. Seller shall provide to Masterack, prior to the commencement of any work by Seller, insurance certificates, in form and substance satisfactory to Masterack, of a reputable insurance broker evidencing the existence of all insurance policies set forth in clauses (a) and (b) above. No monies for work performed by Seller shall be owed to Seller unless and until such insurance certificates are properly completed and on file with Masterack; provided, that the commencement of work by Seller or any payment for work by**

Masterack without properly completed insurance certificates shall not constitute a waiver of any rights of Masterack hereunder.

26. **Applicable Law /Dispute Resolution.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania ["State"] without giving effect to the choice of law principles of the Commonwealth. Seller agrees that the courts of the Commonwealth of Pennsylvania, Berks County and the United States District Court for the Eastern District of Pennsylvania shall have jurisdiction to hear and determine any claims or disputes pertaining directly or indirectly to this Purchase Order, any agreement between the parties or otherwise between the parties. Seller expressly submits and consents in advance to such jurisdiction in any action or proceeding in such courts, and agrees that venue will be proper in such courts for all such matters. If any action or proceeding is brought by Masterack against Seller hereunder and Seller is not otherwise subject to service of the process in the Commonwealth of Pennsylvania, Seller agrees to and does hereby irrevocably appoint the Secretary of the Commonwealth as Seller's agent for the acceptance of service of process therein and a copy of such process shall be mailed by Masterack to Seller at Seller's last known address.

27. **Entire Agreement.** The Purchase Order and any Master Purchase Agreement executed by Masterack and Seller, sets forth the entire agreement between the parties, and merges all prior discussions and understandings between them. The Purchase Order is not binding upon Masterack unless signed by its duly authorized representative.

28. **Modifications or Waiver.** Any modification or waiver of any provision contained herein must be in writing and be executed by a duly authorized representative of Masterack. The failure of Masterack to enforce any provision hereunder shall not be construed as a waiver of its right subsequently to enforce such provision. Masterack reserves the right under the Purchase Order to make changes at any time in any of the following: (a) drawings, specifications or instructions relating to the Purchase Order; (b) method of packing or shipment; and (c) place of delivery. Masterack shall give written notice of such changes, and in the event that such changes affect the cost of furnishing the goods ordered, the price of such goods affected shall be equitably adjusted by mutual agreement.