

TEAM INDUSTRIES, INC. and Subsidiaries - Purchase Order Terms/Conditions

These purchase order terms and conditions (the "Terms") govern the sale and purchase of any products in all instances that: (1) TEAM Industries, Inc., or any division, subsidiary, operation or plant of TEAM Industries, Inc. (collectively, "Buyer"), issues a purchase order (each, a "Purchase Order") to a supplier within the U.S. and Canada; OR (2) Buyer issues a Purchase Order to a supplier that is located anywhere outside of the U.S. or Canada (in either case, any supplier is referred to hereinafter as "Seller").

1. Acceptance of Order: Buyer shall not be bound by any Purchase Order until Seller executes and returns to Buyer the acknowledgment copy of the Purchase Order. For purposes of clarity, Seller may not bind Buyer by indicating acceptance of any Purchase Order by any means other than executing and returning the acknowledgment copy of the Purchase Order to Buyer, including, but not limited to, delivering to Buyer any of the items or rendering to Buyer any of the services as set forth in a Purchase Order.

2. Entire Agreement; Amendments: The parties agree that each Purchase Order and these Terms, together with any documents attached to any Purchase Order or incorporated therein by reference, contain the complete and final contract between Buyer and Seller with respect to each Purchase Order. No changes or modifications to these Terms, any Purchase Order, or any documents attached to any Purchase Order or incorporated therein by reference, shall be made except with Buyer's prior written consent.

3. Changes: Notwithstanding anything in these Terms or any Purchase Order to the contrary, Buyer reserves the right at any time to make written changes in any one or more of the following: (a) Specifications, drawings and data incorporated in any Purchase

Order; (b) methods of shipment or packing; (c) place of delivery; (d) time of delivery; (e) manner of delivery; and (f) quantities.

If any such change causes an increase or decrease in the cost of, or the time required for, performance of the applicable Purchase Order, Seller shall be entitled to claim an equitable adjustment in the price or delivery schedule, or both; provided, however, that Seller waives any such claim unless asserted within twenty (20) days from the date of receipt by Seller of the change order. Notwithstanding the foregoing, all such claims by Seller must be approved by Buyer in writing before Seller proceeds with such change. In no case will Buyer be bound to any price increases unless evidenced by a Purchase Order change notice or revision issued and signed by Buyer's authorized representative.

4. Delivery & Delays: Time is of the essence in the performance of any Purchase Order. If Seller fails in any respect to deliver any items in the quantities and at the times specified or rendering any services according to the specifications or by the times specified, Buyer, in addition to any other rights and remedies available under law or equity, may, in its sole discretion and without liability to Seller or any other party, take either or both of the following actions: (a) direct expedited routings of items (the difference in cost between the expedited routing and the order routing costs to be paid by Seller); or (b) terminate the applicable Purchase Order by notice effective immediately upon receipt by Seller as to stated items not yet shipped or services not yet rendered and to purchase substitute items or services elsewhere (the difference in cost of procuring such substitute items or services to be paid by Seller).

Seller shall be liable for excess transportation charges, delays or claims resulting from any deviation by Seller from Buyer's routing instructions. Neither party shall be liable for excess costs of deliveries or defaults due to causes beyond its control and solely without its fault or negligence, whether in whole or in part; provided, however, that when Seller has reason to believe that deliveries will not be made as scheduled, Seller must provide written notice immediately to Buyer setting forth the cause of the anticipated delay. If Seller's delay or default is caused by the delay or default of any of Seller's permitted

subcontractors, such delay or default shall be excusable only if the items to be furnished or services to be rendered were not obtainable from other sources in sufficient time to permit Seller to meet the required delivery or performance schedule, and the delay arose solely out of causes beyond the control of both Seller and such subcontractor and solely without the fault or negligence of either of them, whether in whole or in part.

5. Excess Goods: Buyer will not be obligated to accept goods in excess of those specified in the applicable Purchase Order, and such goods will be held at Seller's risk. Buyer may return such goods at Seller's risk, and all transportation charges, both to and from the original destination, shall be paid by Seller.

6. Inspection and Acceptance: Inspection and test of the goods by Buyer may be made at Buyer's option at Seller's plant and/or the point of destination. Acceptance of the goods by Buyer shall not relieve Seller from any of its obligations and warranties under these Terms or the applicable Purchase Order. In no event shall payment be deemed to constitute acceptance.

7. Defective Goods: If any of the goods fail to meet the warranties contained in these Terms or the applicable Purchase Order, Seller shall promptly correct or replace those goods at Seller's expense upon notice from Buyer. If Seller fails to do so, Buyer may cancel the applicable Purchase Order as to all such goods, and in addition, may cancel the then-remaining balance of such Purchase Order. After notice to Seller, Buyer may return all such goods to Seller at Seller's risk, and all transportations charges, both to and from the original destination, shall be paid by Seller. Any payment for such goods shall be refunded by Seller. In no instance will Buyer be obligated to make payment for rejected or non-conforming goods.

With respect to Buyer's payment for any goods not rejected by Buyer or conforming replacement goods provided by Seller, the date payment is due shall be computed from the later of the date when Buyer receives a correct invoice to account for rejected goods or the date Buyer receives conforming items.

Buyer shall not be liable for failure to accept any of the items, if such failure arises, in whole or in part, from any cause beyond the control of Buyer, including, but not limited to, fires, floods, Acts of God, strikes, acts of terrorism, differences with employees, casualties, delays in transportation, shortages of cars, inability to obtain necessary materials or machinery, or total or partial shutdown of Buyer's plant for any reason. Acceptance of any of the items shall not bind Buyer to accept future shipments, nor deprive it of the right to return items already accepted.

Acceptance of all or any part of the items shall not be deemed to be a waiver of Buyer's right either to cancel or to return at Seller's risk and expense all or any portion of the items because of failure to conform to the applicable Purchase Order, or by reason of defects, latent or patent, or other breach of warranty, or to make any claim for damages, including manufacturing costs, damage to materials, or articles caused by improper boxing, crating or packing, and loss of profits or other special damages incurred by Buyer. Such rights shall be in addition to any other remedies available under law or equity.

8. Packing, Drayage and Containers: No charges for packing, drayage or containers will be allowed unless specified on the face of the applicable Purchase Order. Seller shall prepare, at its expense, labels for the boxes and shipping containers containing such information, if any, as Buyer may specify. Seller shall be liable for damage to materials or articles arising from improper boxing, crating or packing.

9. Seller's Warranties: Seller hereby warrants that all items furnished to Buyer by Seller: (a) shall conform in all respects to all specifications set forth in these Terms, the applicable Purchase Order, and any documents attached to any Purchase Order or incorporated therein by reference; (b) shall be free from defects; and (c) shall be of merchantable quality that is fit for Buyer's purposes. Seller hereby further warrants that all items furnished shall conform to all representations, affirmations, promises, descriptions, samples or models forming the basis of the applicable Purchase Order. Seller agrees that these warranties shall survive acceptance of the items. Seller further warrants that all services performed for or on behalf of

Buyer shall: (a) conform in all respects to all specifications set forth in these Terms, the applicable Purchase Order, and any documents attached to any Purchase Order or incorporated therein by reference; (b) will be performed in a competent, workmanlike manner; and (c) shall be free from faults and defects. If any items furnished or services provided are not ordered to Buyer's specifications, Seller further warrants that they will be merchantable and fit and sufficient for the purpose intended. *All of the foregoing warranties shall be in addition to any warranties of additional scope given by Seller to Buyer.* None of the foregoing express warranties nor any other implied or express warranties shall be deemed disclaimed or excluded unless evidenced by a Purchase Order change notice or revision issued and signed by Buyer's authorized representative.

10. Interchangeability: All items purchased hereunder (or parts thereof) are to be completely interchangeable with like items (or parts thereof) purchased from Seller previously by Buyer or Buyer's customer. To this end, all designs, processes or procedures used by Seller in supplying like items (or parts thereof) previously are to be used by Seller in supplying all purchased items (or parts thereof). Any deviation to any of Seller's design, processes or procedures requires Buyer's prior written approval. Seller shall be liable for all of Buyer's costs associated with the discovery and retrofit of non-interchangeable items or parts thereof resulting from Seller's failure to comply with the requirements of this Article.

11. Design Ownership: Unless otherwise provided in the applicable Purchase Order or agreed to in a writing signed by both parties, each party remains the respective owner of its developments, inventions, conceptions, creations, works of authorship, improvements, and the like made, conceived, or created related to the items that are the subject of the applicable Purchase Order, as well as patents thereon whether applied for or granted ("Intellectual Property"). Buyer and Seller will jointly own any Intellectual Property developed as a result of any Purchase Order. Without the express written consent of Buyer, Seller will not sell or otherwise transfer items subject to any Purchase Order unless Seller is the sole owner of the Intellectual Property related to said items.

12. Property of Buyer: Unless otherwise provided in the applicable Purchase Order or agreed to in a writing signed by both parties, property of every description including but not limited to all tooling, tools, equipment and material furnished or made available to Seller, title to which is in Buyer, and any replacement thereof shall be and remain the property of Buyer. Such property other than material shall not be modified without the written consent of Buyer. Such property shall be plainly marked or otherwise adequately identified by Seller as being owned by Buyer and shall be safely stored separately and apart from Seller's property when possible and practical. Buyer's property shall remain on Seller's premises and in Seller's control at all times unless authorized by Buyer in writing. Seller shall keep Buyer's property free from all liens and encumbrances. Seller shall not use such property except for performance of work under a Purchase Order or as authorized in writing by Buyer. Such property while in Seller's possession or control shall be listed in writing and kept in good condition, shall be held at Seller's risk, and shall be kept insured by Seller, at its expense, in an amount equal to the replacement cost with loss payable to Buyer. To the extent such property is not material consumed in the performance of a Purchase Order, it shall be subject to inspection and removal by Buyer and Buyer shall have the right of entry for such purposes without any additional liability whatsoever to Seller. As and when directed by Buyer, Seller shall disclose the location of such property, prepare it for shipment and ship it to Buyer in as good condition as originally received by Seller, reasonable wear and tear excepted.

13. Special Tooling: The term "special tooling" as used in this Article shall be deemed to include all jigs, dies, fixtures, molds, patterns, special cutting tools, special gauges, special test equipment, other special equipment and manufacturing aids, and drawings and any replacements of the foregoing, acquired or manufactured or used in the performance of a Purchase Order, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the production of the items or parts thereof or performance of the services of the type required by the applicable Purchase Order. The term "special tooling" does not include (a) items of tooling or equipment heretofore acquired by Seller, or replacement

thereof, whether or not altered or adopted for use in the performance of a Purchase Order, (b) consumable small tools, (c) general or special machine tools or similar capital items, or (d) tooling, title to which is in Buyer.

Seller agrees that special tooling shall be retained and not used or reworked except for performance of work under a Purchase Order or as authorized in writing by Buyer. While in Seller's possession or control, Seller warrants that it will keep the special tooling in good condition fully covered by insurance, and will replace it when lost, destroyed, or necessary for performance of work under a Purchase Order. Seller shall furnish Buyer a list of the items, parts, or services for the manufacture or performance of which such special tooling is used or designed and a list indicating where each item of the special tooling is located quarterly, and upon cessation or termination of work under the applicable Purchase Order for which special tooling is required. Upon cessation or termination of such work, Seller shall transfer title to and possession of the special tooling to Buyer for an amount equal to the unamortized cost thereof, or dispose thereof as Buyer may direct in writing. In addition, Buyer shall have the right to take possession of, including the right of entry for such purpose, any special tooling, title to which Buyer acquires under these Terms or the applicable Purchase Order, without any additional liability whatsoever to Seller.

14. Confidentiality: All information furnished or made available by Buyer to Seller or to Seller's employees or subcontractors shall be treated as confidential and shall not be disclosed by Seller, its employees and subcontractors to any third party either in whole or in part, without Buyer's prior written consent. Seller shall enter into a confidentiality agreement with all subcontractors and third parties when sharing confidential information and shall provide Buyer with an executed copy of such agreement. Seller agrees not to assert any claim against Buyer with respect to any information which Seller shall have disclosed or may hereafter disclose to Buyer in connection with the items or services covered by any Purchase Order. Seller agrees that all designs, drawings, processes, compositions of material, specifications, software, mask works or other technical information made or furnished by Seller in connection with the items or services covered by any Purchase Order, including

all rights thereto, shall be the sole and exclusive property of Buyer, free from any restriction, and Seller shall protect same against unauthorized disclosure to or use by any third party.

15. Inventions: Seller agrees that, as to all inventions and improvements in such designs, drawings, processes, compositions of material, specifications, software, mask works or other technical information made or furnished by Seller in connection with the items or services covered by any Purchase Order, Seller will promptly identify and disclose such inventions or improvements to Buyer and execute or obtain the execution of any papers as may be necessary to perfect ownership of the inventions or improvements in Buyer or as may be necessary in the obtainment, maintenance, or enforcement by Buyer of any patent, trademark, copyright, trade secret, mask work right or other proprietary right pertaining to the inventions or improvements. All of the foregoing confidentiality provisions and the obligations shall survive termination or completion of the applicable Purchase Order.

16. Intellectual Property Indemnification. Seller agrees: (a) to defend, indemnify and hold harmless Buyer, its successors and customers against all claims, demands, losses, suits, damages, liability and expenses (including reasonable attorneys' fees) arising out of any suit, claim or action for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, copyright, mask work or other proprietary right by reason of the manufacture, use or sale of the items or services covered by any Purchase Order, 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 as adopted by the State of Minnesota, 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) that Buyer shall have a worldwide, exclusive, royalty free, irrevocable license to use, sell and have sold, repair and have repaired, and reconstruct and have reconstructed the items covered by any Purchase Order. Seller

assigns to Buyer all right, title and interest in and to all trademarks, copyrights, and mask work rights in any material created for Buyer in connection with any Purchase Order. The obligations of this paragraph shall survive termination or completion of any Purchase Order. Seller shall notify Buyer in writing of any lawsuit or other claim against it or its affiliated corporations, on account of any intellectual property infringement.

17. Indemnification: To the fullest extent permitted by law, Seller shall indemnify and save the Buyer harmless from any and all claims against the Buyer as a result of injury or damage to an ultimate user or other person arising out of or in any way related to any product or service sold by the Seller to the Buyer, whether the injury or damage is a result of negligent manufacturer or otherwise. Seller further agrees to indemnify and save Buyer harmless from any and all losses, liabilities, damages, claims, demands, suits, actions, proceedings, subrogation's and expenses, including court costs and reasonable attorneys' fees, arising out of or in any way related in any way to any Purchase Order, or the services performed or items delivered under any Purchase Order, except for items manufactured entirely to Buyer's specifications, which are claimed or made by any person, firm, association or corporation, including employees, workers, servants, subcontractors or agents of Seller arising from any cause or for any reason whatsoever. Seller further agrees, upon receipt of notification, to promptly assume full responsibility for the defense of any and all such suits, actions, or proceedings which may be brought against Seller or against Buyer. In the event Buyer's machinery or equipment is used by Seller in the performance of any work that might be required under any Purchase Order, such machinery or equipment shall be considered as being under the sole custody and control of Seller during the period of such use by Seller.

18. Insurance: Seller shall secure, maintain, and furnish evidence of insurance showing that Seller has and will maintain adequate insurance coverage during the life of any Purchase Order and for a reasonable period thereafter at Buyer's option, including but not limited to comprehensive general liability insurance and products liability insurance. Such evidence of insurance must be updated as required to maintain coverage and set forth the name of the insurer, policy number, expiration date, and limits of liability, and shall name Buyer as an additional insured. Compliance by Seller with insurance requirements does not in any way affect or limit Seller's obligation to indemnify Buyer as set forth in these Terms or the applicable Purchase Order.

19. Cancellation: Buyer shall have the right to cancel for default all or any part of the undelivered portion of any Purchase Order if Seller: (a) fails to make reasonable progress towards completion of the Purchase Order at the times specified; (b) does not make deliveries as specified in the delivery schedule; (c) breaches any of the terms set forth in the Purchase Order or these Terms, including any express or implied warranties of Seller; (d) makes an arrangement, extension or assignment for the benefit of creditors; (e) dissolves or otherwise ceases to exist or liquidates all or substantially all of its assets; or (f) becomes insolvent or generally does not pay its debts as they become due. If this order is cancelled for default, Buyer may require Seller to transfer title and deliver to Buyer any (1) completed items, and (2) partially completed items and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights that Seller has specifically produced or acquired for the terminated portion of the applicable Purchase Order. Upon direction of Buyer, Seller shall also protect and preserve property in its possession in which Buyer has an interest. The rights and remedies of Buyer set forth in this Article are in addition to, and not in lieu of, any other remedies which Buyer may

have in law or equity or pursuant to any terms set forth in these Terms or the applicable Purchase Order. If, after cancellation pursuant to this Article, it is determined by a court of competent jurisdiction, or otherwise, that the Seller was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued pursuant to Article 20 hereof.

20. Termination: Buyer may terminate performance under any Purchase Order in whole or from time to time in part by written notice of termination, whereupon Seller will cease to perform on the date and to the extent specified in the notice and terminate all orders and subcontracts to the extent they relate to the terminated work. Seller will promptly advise Buyer of the quantities of applicable work and material on hand or purchased prior to termination and the most favorable disposition that Seller can make thereof. Seller will comply with Buyer's instructions regarding transfer and disposition of title to the possession of such work and material. Within 60 days after receipt of such notice of termination, Seller will submit all its claims resulting from such termination. Buyer will have the right to check such claims at any reasonable time or times by inspecting and auditing the records, facilities, work or materials of Seller relating to the applicable Purchase Order. Buyer will pay Seller without duplication, the order price for finished work accepted by Buyer and the cost to Seller of work in process and raw material allocable to the terminated work, based on any audit Buyer may conduct and United States generally accepted accounting principles; less, however, (a) the reasonable value or cost (whichever is higher) of any items used or sold by Seller without Buyer's consent; (b) the agreed value of any items used or sold

by Seller with Buyer's consent; and (c) the cost of any defective, damaged or destroyed work or material. Buyer will make no payments for finished work, work in process or raw material fabricated or procured by Seller in excess of any order or release. Notwithstanding the above, payments made under this Article shall not exceed the aggregate price specified in the applicable Purchase Order less payments otherwise made or to be made, and adjustments shall be made reducing the payments thereunder for costs of work in process and raw material to reflect on a pro rata basis any indicated loss on the entire Purchase Order had it been completed. Payment made under this Article constitutes Buyer's only liability in the event this order is terminated hereunder. Except as otherwise provided in this order, the provisions of this Article will not apply to any cancellation by Buyer for default by Seller or for any other cause allowed by law or under this order. Except as otherwise provided in Article 19, the provisions of this Article will not apply to any cancellation by Buyer for default by Seller. In no event shall Seller be entitled to anticipatory profits or to special or consequential damages under this order.

21. Compliance with Applicable Laws: Seller agrees that, in the performance of any Purchase Order, Seller will comply with all applicable laws, statutes, rules, regulations or orders and shall, upon request, furnish Buyer a certificate to such effect in such form as Buyer may from time to time require.

22. Buyer's Global Sourcing Code of Supplier Conduct: Seller hereby agrees to comply in all respects with Buyer's Global Sourcing Code of Supplier Conduct, which is incorporated by reference in these Terms and is available upon request.

23. Waiver: The failure of Buyer to insist, in any one or more instances upon the performance of any of the terms, covenants or conditions of these Terms or any Purchase Order or to exercise any right under these Terms or any Purchase Order, shall not be construed as a waiver or relinquishment of the future performance of any such terms, covenants or conditions or the future exercise of such right, but the obligation of Seller with respect to such future performance shall continue in full force and effect.

24. Assignment: Neither party may assign or transfer any Purchase Order or any interest therein or monies payable thereunder without the written consent of the other party, and any assignment made without such consent shall be null and void, except that Buyer may without the consent of Seller assign any Purchase Order and its interest therein to any affiliated entity, or to any entity succeeding to Buyer's business.

25. Set Off, Ongoing Performance; Severability. Buyer shall have the right to set off against any amounts payable by Buyer to Seller under any Purchase Order or any other agreements between Buyer and Seller any amounts which Seller owes to Buyer under any Purchase Order or otherwise. In the event of any disputes arising under any Purchase Order, Buyer and Seller shall proceed diligently with the performance required thereunder pending resolution of any such dispute. If any portion of these Terms or any Purchase Order is found to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of these Terms or such Purchase Order shall remain valid and enforceable.

26. Governing Law – Domestic Seller: These Terms and all Purchase Orders shall be governed, interpreted and construed by, and in accordance with, the laws of the State of Minnesota, United States of America, without regard to the conflict of laws provisions

thereof, for those parties whose places of business are in the United States.

27. Governing Law – International Seller: Any dispute, controversy or claim arising out of or relating to these Terms or any Purchase Order shall be finally settled by arbitration before and in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce.

The parties shall nominate by agreement, an arbitrator within thirty days from the date of which the claimant's request for arbitration has been communicated to the other party. The arbitrator shall not be the same nationality of any party to the suit. If the parties are unable to agree upon an arbitrator within the period provided for above, the Members of the Court of the International Chamber of Commerce shall, as expeditiously as possible, appoint the arbitrator at the request of either party. Arbitration shall be in the English language, and shall take place in Washington, D.C., United States of America. Arbitration awards shall be in U.S. Dollars.

Any award rendered by the arbitrator shall be final. Judgment upon the award rendered may be entered in any court having jurisdiction, or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be. This Agreement shall be construed and the obligations of the parties shall be determined in accordance with the laws of Minnesota, United States of America, without regard to the conflict of laws provisions thereof, and expressly excluding the United Nations Convention on Contracts for the International Sale of Goods, 1980 as amended.

The parties acknowledge that this order and any award rendered pursuant to it shall be governed by the I.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

28. Prevailing Language: This agreement shall be governed, interpreted and construed in the English language hereof, regardless of any translations that may be made into any other language.

29. Right of Access: Seller hereby grants Buyer, any of Buyer's customers, and any regulatory authority the right to access all applicable areas of Seller's facilities, at any level of the supply chain, that pertain to or are involved in any manner with the goods or services that are the subject of any Purchase Order. Seller expressly acknowledges and agrees that the foregoing right of access is a material inducement for Buyer to purchase goods or services from the Seller and that Buyer would not purchase any such goods or services from Seller if Seller would not grant such right.