



TERMS AND CONDITIONS OF PURCHASE—INCLUDING ENGINEERING SERVICES

1. **PARTIES.** Dayton Superior Corporation, a Delaware corporation, is referred to as “Buyer,” and the person or company to whom Buyer issues a purchase order is referred to as “Seller.” Buyer’s purchase orders may be used to purchase supplies, machinery, equipment, and other goods, and also may be used to contract for the performance of services, including engineering and maintenance services, and construction work on premises specified by Buyer. Buyer’s purchase orders are referred to herein as “order” or “orders.” All engineering services, design services, detail drawing services, consulting, training, inspection and analysis services, or any work related thereto, are referred to herein as “Engineering Services.” Engineering Services are expressly included in any reference to service or services herein.
2. **TERMS AND CONDITIONS.** Buyer’s order includes, is subject to and is expressly conditioned on these Terms and Conditions (“Terms”). By performing or acknowledging Buyer’s order in whole or in part, shipping any goods, providing any services, accepting any payment, or otherwise acting upon Buyer’s order, Seller acknowledges its receipt of and its unconditional acceptance of the Terms. Buyer hereby objects to and will not accept any additional or contradictory terms or conditions. Reference to, or receipt or acknowledgement of, any document or communication of Seller, or payment by Buyer shall not be deemed to be an acceptance of any additional or contradictory terms or conditions therein. These Terms supersede all other terms and conditions in regard to the subject matter hereof. The sole exception shall be if, and to the extent that, additional or contradictory terms or conditions are agreed to in writing and signed by the Director of Procurement of Buyer. Seller shall supply only those services and goods specified in this order and may supply alternative services and goods only with the prior written approval of Buyer.
3. **NON-CONFORMING GOODS OR SERVICES.** If Buyer notifies Seller that any services or goods have been found by Buyer to be non-conforming, Seller shall at its own expense promptly correct such non-conformity. Buyer reserves the right to take any corrective action at Seller’s expense if, upon notification, Seller does not correct such non-conformity within a reasonable time. Replacement parts shall be delivered F.O.B. the location designated by Buyer. Non-conforming goods shall be returned freight collect or held pending Seller’s instructions, at Seller’s risk and expense.
4. **DELIVERY.** Seller shall comply with Buyer’s shipping instructions. Seller shall suitably wrap, box, crate and/or otherwise pack as appropriate all products to protect against hazards of shipment, storage, exposure, damage and injury. Seller shall deliver the goods to, or perform the services at, the location(s) designated by Buyer in its order. Unless otherwise provided by Buyer in its order, goods shall be delivered F.O.B. Buyer’s designated location, freight collect, using only freight carriers designated and/or approved by Buyer in advance of shipment. Contact Buyer’s Transportation Department at 937-866-0711 ext. 44446 with any questions. No charges for unauthorized transportation will be permitted. Title to goods and risk of loss shall remain with Seller until delivered to the location designated by Buyer. Seller shall include Buyer’s order number on all invoices, correspondence, shipping tickets, packages, packing lists, and bills of lading. A packing list must accompany each shipment.

Time is of the essence in the performance of Buyer’s order, and Seller shall perform services and deliver goods both in the quantities and at the times specified in Buyer’s order. Seller promptly shall notify Buyer in writing of any actual or potential delays in the delivery of goods or the performance of services beyond the dates specified in Buyer’s order. Buyer may cancel its order without incurring any cancellation charges if the items or services covered by the order are not delivered or performed by Seller within five (5) business days of the delivery or performance schedule specified therein. Buyer reserves the right to refuse deliveries made in advance of the delivery schedule. Deliveries made after the time specified in the order may be returned at Seller’s expense for full credit. Retention of all or any part of such a delivery shall not be considered acceptance of same. Retention of such delivery shall not be deemed a waiver of the Buyer’s right to hold the Seller liable for any loss or damage resulting therefrom, nor shall it act as a modification of Seller’s obligation to make future deliveries timely as specified in the order. Buyer shall be reimbursed for all deliveries returned. Buyer shall have the right, if all or any portion of a delivery is not made timely or is anticipated to not be made timely, to purchase similar product in the open market in such quantities as necessary and hold Seller responsible for the difference, if any in price between the price paid and the order price, including any expedited shipping costs regardless of whether Buyer terminates the order.

5. **PAYMENT; PRICES.** Unless otherwise specified in Buyer’s order, all payments are due sixty (60) days from the date of receipt of Seller’s invoice. Seller shall send the invoice in duplicate and acknowledgement to the address indicated on the face of Buyer’s order. Seller guarantees its prices up to the time of shipment. If Buyer omits the price in its order, Seller agrees that the price will be the lowest prevailing market price. Buyer’s order shall not be filled at a higher price than last charged or quoted unless Seller notifies Buyer in writing in advance of shipment. The prices charged by Seller shall be equal to or lower than prices charged by Seller to other customers for the same products in similar quantities.
6. **WARRANTIES.** These warranties are in addition to warranties implied by law. Seller warrants that it has clear title to all items furnished and that they are being delivered free and clear of any encumbrances. Seller further warrants that all furnished goods (a) will conform to applicable drawings, specifications, quality requirements and/or other data provided by Buyer, (b) will conform to published specifications of Seller, where Buyer has not furnished specifications different from or more specific than the published specifications, (c) will conform and be equal to any samples provided by Seller, (d) will be new and contain only new components, (e) will be free from defects in material, workmanship and design through the latest to end of 12 months after installation, 18 months after Buyer’s receipt, or 24 months after Seller’s shipment, or for such longer period of time as the item is normally warranted, (f) will be fit and sufficient for the purpose intended by Buyer, where Buyer has communicated such purpose to, or it is otherwise known by, Seller, and (g) that Seller has taken all proper and necessary precautions for the safety and protection of persons and property, and has provided all proper warnings for hazards related to the products and work that cannot be eliminated. Where Seller provides services, Seller warrants that such services shall be performed by experienced, qualified personnel, in a competent and workmanlike manner, in full compliance with all specifications and instructions of Buyer, and with that degree of skill and judgment exercised by recognized professionals performing services of a similar nature and consistent with industry best practices and standards. Seller warrants that all Engineering Services are performed in accordance with generally accepted professional engineering practices using reasonable care and skill consistent with that ordinarily exercised by members of the profession under similar conditions, that Seller has identified and communicated all safety and warnings related to the product of the Engineering Services and that the Engineering Services are warranted for fitness for a particular purpose and merchantability. Seller further

warrants that the use or sale of the supplied goods and/or services by Buyer will not infringe or misappropriate any patent, copyright, trademark, trade secret or other proprietary right of any third party. All warranties shall survive any inspection, delivery, acceptance of and payment for the goods and/or services and shall run to Buyer and any subsequent owners and users. Disclaimers by Seller of express or implied warranties and limitations of liability shall not be effective unless expressly accepted in writing by Buyer. Remedies under these warranties shall include, without limitation, at Buyer's option and at Seller's sole expense, prompt repair, replacement, re-performance, reimbursement of the purchase price and testing to determine the extent of any non-conformance. These warranties shall be in addition to any statutory warranties or warranties implied by law.

7. **INDEMNIFICATION.** Without limitation and independent, but not to the exclusion, of any insurance, Seller agrees to indemnify, defend and hold Buyer, Buyer's affiliates, and each of their officers, directors, agents, employees and customers or subsequent users harmless from and against all demands, claims, actions, causes of action, judgments, costs of settlement, assessments, losses, all forms of damages (including, without limitation, consequential, special, incidental, and lost profits, whether direct or indirect), liabilities, costs and expenses (including reasonable attorneys' fees and expenses of litigation and enforcing and collecting any judgment) arising from any allegation, asserted against, resulting from, imposed upon or incurred by any of the foregoing parties, directly or indirectly, by reason of, or resulting from, in connection with or arising out of: (a) any breach by Seller of its obligations under Buyer's order, including, without exclusion, any breach of these Terms or defect in services, manufacture or design and any breach of any warranty, including warranties specifically related to Engineering Services; (b) any allegation of infringement or violation of any patent, trademark, copyright, trade secret or other intellectual property rights of any other person in connection with any goods or services; (c) any defect in the goods or services provided by Seller; (d) any injury or death to persons or damage to property in connection with or arising out of the goods or services provided by Seller or the performance of Seller's obligations under Buyer's order; and (e) any actions or omissions of Seller or its employees, subcontractors, suppliers, agents or other representatives, including, without limitation, any negligence by Seller or its employees, subcontractors, suppliers or other agents or representatives. Buyer shall have the right, at Seller's expense, to control the defense and settlement of any third party action as to which Seller is obligated to defend Buyer pursuant to this provision if Seller fails to defend Buyer in a competent and timely manner. Buyer at all times shall have the right to be represented by and actively participate through its own counsel in any suit, proceeding or claim for which Seller is obligated to indemnify Buyer. These indemnification obligations shall be in addition to the warranties set forth in Paragraph 6.
8. **QUALITY CONTROL.** (a) If requested by Buyer, Seller shall provide original material certifications with each shipment of goods.

(b) If requested by Buyer, Seller shall comply with Buyer's approved supplier qualification program, as amended from time to time by Buyer, prior to producing or shipping any goods or providing any services.

(c) Buyer shall have the right to request and inspect representative samples of finished goods prior to each shipment of goods by Seller.

(d) Seller shall maintain internal quality control documentation with respect to the ordered goods which shall constitute verifiable evidence of quality inspections of the production of the ordered goods and analyses of the results of such inspections. If and as requested by Buyer, Seller shall provide such internal quality control documentation with respect to the ordered goods with each shipment or prior to each shipment of goods.

(e) If Seller has supplied goods similar to or the same as the goods specified in this order within the past 24 months, Seller shall supply the goods specified in Buyer's order using the same manufacturing processes, plant locations and raw material sources as previously used. If Seller does not or cannot comply with the foregoing, Seller shall promptly inform Buyer of any changes to the foregoing and obtain Buyer's approval prior to producing the goods specified in Buyer's order.
9. **INSPECTION.** Buyer may inspect ordered goods or services during their manufacture, construction, or preparation at reasonable times and at the time of their delivery and/or completion. Buyer may request and inspect representative samples of goods (including each delivery where applicable) prior to delivery. All goods are subject to final inspection and acceptance by Buyer after delivery to Buyer. If the tendered goods do not meet the specifications or otherwise do not conform to the requirements of Buyer's order, Buyer shall, at its option, and at any time, in addition to any other rights that it may have under applicable warranties or otherwise, have the right to: (1) reject and return such goods at the risk and expense of Seller and charge Seller for any losses or damages; (2) reject or revoke its acceptance of any goods or services within a reasonable time after Buyer discovers defects or nonconformities; (3) correct or have corrected the nonconformity at Seller's expense. Items rejected shall be removed promptly by Seller at its expense and at its risk.
10. **PROPERTY.** Except as expressly provided within any agreement between Buyer and Seller, and signed by Buyer, in connection with the performance of any Engineering Services, all ideas, improvements, documents and information, including all drawings, specifications, data, measurements, test results, calculations, notes and other documents provided to Seller or created by Seller, and all commercial, financial and technical information, know-how and experience Seller may derive from Buyer in connection with or during the performance of Buyer's order (collectively, "Information") shall be the sole property of Buyer. Seller shall not use any Information for any other purpose or disclose any Information to any third party. Seller shall at all times use reasonable efforts to prevent the disclosure of Information to third parties. Seller shall provide Information to Buyer at Buyer's request. Information shall not include information which (a) is or becomes public knowledge other than through unauthorized disclosure in breach of these Terms, (b) is obtained from a third party not under any duty of confidentiality to Buyer and who did not obtain the Information through unauthorized disclosures, (c) is independently know or developed by the supplier without any reference, derivation or use of an Information or (d) is required to be disclosure by law, in which case Seller will take all reasonable steps to assist Buyer in disclosing such Information only to the extent necessary and maintaining the confidentiality of the Information to the extent possible. Buyer shall own exclusively all rights in any ideas, inventions, works of authorship created in the process of or resulting from the Engineering Services, including but not limited to all patent rights, copyrights, and all other proprietary and intellectual property rights. Seller agrees to execute any assignments necessary to achieve such result.
11. **CHANGES.** Buyer shall have the right to make changes to its order at any time for its convenience, upon written notice to Seller, subject to an equitable adjustment of the time for performance as to the changed portion of the order and price if such change

represents a material change in scope. Seller shall notify Buyer of such adjustments prior to performance, and written supported claims for adjustment must be made within twenty (20) business days after the submission of a change order by Buyer.

12. **CONFIDENTIAL INFORMATION.** Seller shall not use for its own or any third party's benefit, or, except as required by law, disclose, any information, drawings, specifications, or data furnished by Buyer. Except as required for the efficient performance of this order, for internal use only, Seller shall not make copies or permit copies to be made of any such information, drawings, specifications or data without the prior written consent of Buyer.
13. **TOOLING.** Unless otherwise specified in Buyer's order, all special dies, molds and tooling (collectively "Tooling") required to produce the ordered goods shall be the exclusive property of Buyer and shall be deemed to have been purchased and paid for by Buyer as a component of the purchase price of the goods and services purchased by Buyer hereunder. All Tooling shall be furnished by Seller, shall be maintained in good condition, and replaced when necessary, including for normal wear and tear, all at Seller's expense. Seller shall not produce any goods for its own use, or for others, using the Tooling, or using Buyer's proprietary drawings and/or designs, without prior written approval in each instance from Buyer. Seller shall be responsible for all losses or damages to Tooling while in its possession, and insure all Tooling against loss or destruction, in an amount equal to the full replacement cost thereof. Seller shall not modify Tooling in any way without Buyer's prior written consent. Seller shall keep Tooling free from security interests or other liens and encumbrances, and cause all Tooling to be segregated from the property of Seller and others and to be subject to inspection and removal by Buyer at any time and for any reason whatsoever. Seller acknowledges that its failure to return the Tooling to Buyer on demand shall cause Buyer to sustain irreparable harm warranting immediate and injunctive relief, and further agrees that in the event of such failure, Buyer's damages would be impossible to calculate and Seller shall pay as liquidated damages (and not as a penalty) to Buyer the amount of \$50,000 per day plus all legal fees and costs associated with Buyer's enforcement of this section and recovery of tooling and parts. All taxes levied with respect to Tooling while in Seller's possession shall be borne by Seller. Upon completion, cancellation or termination of Buyer's order, all Tooling, together with operation sheets or process data necessary to show the use thereof, shall be held free of charge pending instructions from Buyer. Seller grants to Buyer a purchase money security interest in all Tooling, any portion thereof, work in progress, raw materials, drawings and other items dedicated to constructing Tooling and agrees to perform any act and execute any document reasonably necessary to perfect the Buyer's security interest in the Tooling. Buyer has the right at any time, with or without reason and without payment of any kind to retake possession of or require the return of any Tooling, without the necessity of obtaining any court order. Upon Buyer's request, Seller will promptly deliver all Tooling to Buyer F.O.B. the location specified by Buyer. To the maximum extent permitted by law, Seller waives any lien or other rights that Seller might otherwise have (including, without limitation, any statutory lien rights) with respect to any Tooling. Seller acknowledges and agrees that (i) Buyer is not the manufacturer of the Tooling nor the manufacturer's agent nor a dealer therein; (ii) Buyer is bailing the Tooling to Seller for Seller's benefit; and (iii) Seller has inspected the Tooling and is satisfied that the Tooling is suitable and fit for its purposes, and (iv) BUYER HAS NOT MADE AND DOES NOT MAKE ANY WARRANTY OR REPRESENTATION WHATSOEVER, EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS, CONDITION, MERCHANTABILITY, DESIGN OR OPERATION OF THE TOOLING OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. Buyer shall not be liable to Seller for any loss, damage, injury or expense of any kind or nature caused, directly or indirectly, by the Tooling, including, without limitation, its use or maintenance, or its repair, service or adjustment, or by any interruption of service or for any loss of business whatsoever or howsoever caused, including, without limitation any anticipatory damages, loss of profits or any other direct or indirect, special or consequential damages. Seller authorizes Buyer to file a UCC-1 financing statement or similar document with the appropriate filing authority to give notice of Buyer's ownership interest in the Tooling.
14. **DEFAULT.** If Buyer incurs damages as a result of Seller's delay in delivery as specified in the order, Seller shall be liable for all such damages, except as set forth in Paragraph 24. Buyer may by written notice of default to Seller (a) terminate the whole or any part of its order in any one of the following circumstances: (i) if Seller fails to perform within the time specified in the order or any extension thereof approved in writing by Buyer; or (ii) if Seller fails to perform any of the other provision of the order, or so fails to make progress as to endanger performance of the order in accordance with its Terms; or (iii) if the Seller shall become insolvent or make a general assignment for the benefit of creditors or if a petition under any bankruptcy act or similar statute is filed by or against the Seller, and in any of these circumstances does not cure such failure within a period of five (5) business days or such longer period as Buyer may authorize in writing; and (b) upon such termination Buyer may procure, upon such terms as it shall deem appropriate, supplies or services similar to those so terminated, in which case Seller shall continue performance of the order to the extent not terminated and shall be liable to Buyer for any excess costs for such similar supplies or services, including any expedited transportation expenses. Buyer, at its sole discretion, may also elect (a) to extend the delivery schedule and/or (b) to waive other deficiencies in Seller's performance, in which case an equitable reduction in the order price shall be granted. Buyer shall have the right at any time to require assurance from Seller. In the event Seller for any reason anticipates difficulty in complying with the required delivery date or performance schedule, or in meeting any of the other requirements of the order, Seller shall promptly notify Buyer in writing. If Seller does not comply with Buyer's delivery schedule or performance schedule, Buyer may require delivery by fastest means and charges resulting from the expedited transportation must be fully prepaid and absorbed by the Seller. The rights and remedies of the Buyer provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the order or these Terms.

Upon any termination for default of Seller, Buyer may require Seller to transfer title and deliver, as directed by Buyer, (a) any completed products, (b) partially completed products, and (c) such Tooling, materials, parts, plans, drawings, information and contract rights as seller has produced or acquired for performance of the order to enable Buyer to complete or to obtain completion of performance of the order; and Seller shall, at Buyer's direction, protect and preserve property in Seller's possession in which Buyer has any right or interest.

Seller shall have the right to cancel Buyer's order upon Buyer's failure to comply with any of its obligations under Buyer's order (including these Terms) if such failure continues for a period of five (5) business days after written notice thereof is given.

15. **TERMINATION FOR CONVENIENCE.** Buyer may terminate its order, in whole or in part, for its own convenience, by written notice to Seller. In such event, Seller shall stop work on the order to the extent specified immediately, and Buyer shall pay Seller for any goods or services received up to the date of termination and reimburse Seller for its reasonable and necessary expenses incurred in

the performance of Buyer's order up to the date of termination, but Buyer shall not be liable for any other loss or damage of any kind, including but not limited to loss of profits, direct or indirect, or any other consequential damages of Seller.

16. **TAXES.** Seller's prices shall be exclusive of any federal, state or local sales, use or excise taxes levied upon the sale or use of the goods furnished hereunder. Seller separately shall list on its invoice any such tax lawfully applicable to any such goods and payable by Buyer, with respect to which Buyer does not furnish to Seller evidence of exemption.
17. **SET-OFF.** Buyer shall be entitled at all times to set-off any amount owing at any time from Seller to Buyer or any of Buyer's affiliates against any amount payable at any time by Buyer in connection with any order.
18. **REMEDIES.** Buyer's remedies under these Terms shall be cumulative, not exclusive, exercisable at Buyer's discretion, and in addition to any other remedies provided by law or in equity.
19. **COMPLIANCE WITH LAWS.** Seller shall, in its performance under Buyer's order, including in regard to all goods and services, fully comply with all applicable federal, state or local laws, rules, codes, regulations, ordinances or standards and shall indemnify and hold Buyer harmless from any liability resulting from failure to so comply. Without limiting the foregoing, in the performance of Buyer's order, Seller agrees to comply with the requirements of the following Acts and Executive Orders, if applicable: the Fair Labor Standards Act, the Occupational Safety and Health Act of 1970, as amended, and the standards thereunder, Executive Order 11246 on equal employment opportunity including the requirements set forth at 41 CFR Part 60, the Vietnam Era Veteran's Readjustment Assistance Act on employment of veterans including the requirements of 41 CFR Part 250, Section 503 of the Rehabilitation Act of 1973, Executive Order 11758 on employment of the handicapped, Executive order 11625 on subcontracting to minority business enterprises, Executive Order 12138 on subcontracting to women's business enterprises, and Executive Order 11141 on discrimination based on age. Seller shall obtain and pay for any licenses, permits, or inspections by public bodies required in connection with the manufacture, completion, or delivery of the goods and services.
20. **WORK ON THE PREMISES.** If work is to be performed by Seller on premises specified by Buyer, Seller represents that it has or will examine the premises and any specifications or other documents furnished to Seller and satisfy itself as to the condition of the premises and site. Seller agrees that no allowance shall be made in respect of any error as to any of the foregoing on the part of Seller. Seller shall at all times keep the premises free from accumulations of waste materials or rubbish. At the completion of the services or delivery of the goods, Seller shall leave the premises broom-clean.

Risk of loss or damage to Seller's materials or equipment while the same are on premises specified by Buyer shall remain with Seller, and Buyer shall have no responsibility or liability to Seller or anyone claiming through Seller in respect of any loss or damage thereto, notwithstanding the fact that storage space on such premises is provided by Buyer.

Seller shall abide by all plant safety regulations of Buyer in performing any work in connection with the provision of goods or services on premises specified by Buyer.

Seller shall carry insurance in accordance with the terms set forth below in Section 21.

21. **MECHANIC'S LIENS.** Seller hereby waives its rights to any mechanic's liens or other such liens under any applicable statutes or otherwise for work done or materials furnished in connection with the provision of goods or services. As a condition to payment, Seller shall, upon Buyer's request, furnish Buyer evidence that all subcontractors or materialmen used by Seller in connection with provision of the goods and services have been paid in full and have released all mechanic's liens or other such liens held by such subcontractors or materialmen against the work done or materials furnished. Upon Buyer's request, Seller shall, at its expense, promptly discharge any mechanic's liens or other such liens held by Seller or its subcontractors or materialmen against the work done or materials furnished or the affected premises or obtain a bond to satisfy such liens. In any event, Seller shall indemnify Buyer against and hold Buyer harmless from any and all costs, expenses, liabilities, and damages, including attorneys' fees and expenses, which Buyer may incur in connection with or as the result of the existence or discharge of any such liens.
22. **HAZARD COMMUNICATION.** In accordance with the OSHA Hazard Communication Standard (29 CFR 1910.1200, as amended) (the "Standard"), Seller shall provide Buyer with a fully completed Material Safety Data Sheet (MSDS) and any other notices and information required by any applicable Federal, State or local law, rule or regulation either prior to or with the initial shipment of any hazardous chemical or material, and all containers shall be properly labeled with the identity of the contents, appropriate hazard warning, and the name and address of the manufacturer or responsible party. Seller shall maintain these MSDSs and labels current and shall provide updated copies to Buyer as necessary. If the goods supplied hereunder are exempt from the labeling and MSDS requirements under the Standard, Seller shall provide Buyer a signed statement of such exemption on its company letterhead.
23. **INSURANCE.** Seller shall maintain the following minimum amounts of coverage for the following types of insurance, that provide, where applicable, under the terms of the primary policy or by contractual liability endorsement if necessary, coverage in respect of all claims involving bodily injury or property damage arising out of or in connection with the goods or services:
 - Products liability and completed operations insurance of \$2,000,000 per occurrence;
 - General liability insurance of \$2,000,000 per occurrence;
 - Umbrella liability coverage of \$5,000,000 if Seller will be using large equipment and/or providing electrical, plumbing, or other services using or in the vicinity of hazardous materials ("Hazardous Services") or, if Seller will not be providing Hazardous Services, umbrella liability coverage of \$3,000,000;
 - Vehicular insurance coverage in amounts mandated by the state where Seller performs the services; and
 - Workers' compensation coverage in amounts mandated by the state where Seller performs the services.

Such insurance shall, upon Buyer's request, declare Buyer as a named insured. Such policies of insurance shall not be cancellable except upon thirty days' written notice to Buyer, and Seller shall furnish proof of such insurance to Buyer upon Buyer's request. In addition to showing the coverage amounts indicated above, any certificate of insurance to be furnished by Seller hereunder shall show the name of the insurance company, the policy number, the termination date of the policy, and a contact number for the

insurance provider. The certificate must be approved by Buyer and in Buyer's possession prior to Seller entering Buyer's premises and prior to delivery of any goods or the performance of any services hereunder.

24. FORCE MAJEURE. Neither party shall be liable to the other party for any delay in performance or non-performance directly or indirectly caused by or arising from, any cause or causes (whether or not of a similar nature to those listed below) beyond a party's reasonable control, including but not limited to, fires, floods, riots, acts of God, wars or other conflicts, governmental interference or embargoes, strikes, or acts by the other party. If a party becomes aware of a cause that may affect its performance, it must notify the other party as soon as practicable, and the parties shall cooperate to minimize the disruption arising from such cause or causes. In the event that Seller's performance is delayed as set forth under this specific provision for more than five (5) business days, Buyer may terminate its order without penalty or liability of any kind.
25. ADVERTISING. Seller shall not, without first obtaining the written consent of Buyer, in any manner advertise or publish the fact that Seller has furnished or contracted to furnish Buyer with the goods or services hereunder, or disclose any of the details connected with Buyer's order to any third party, except as may be required to perform this order.
26. ASSIGNMENT. Seller shall not assign Buyer's order or subcontract all or any of its rights or obligations under Buyer's order without the prior written consent of Buyer. Any attempted assignment without Buyer's prior written consent shall be void.
27. LIMITATION ON BUYER'S LIABILITY. In no event shall Buyer be liable to Seller for anticipated profits or for incidental or consequential damages of any kind. Buyer's liability for a claim of any kind for any loss or damage arising out of or in connection with or resulting from Buyer's order or these Terms, or from any performance or breach, shall in no case exceed the price allocable to the goods or services that directly give rise to the claim.
28. GOVERNING LAW AND VENUE. Buyer's order and these Terms, and any claim arising out of or relating thereto, shall be exclusively governed by, subject to, and construed in accordance with the laws of the State of Ohio, and not by the law of any other state or by any other foreign or international law, convention or treaty, including the United Nation's Convention on Contracts for the International Sale of Goods (application of which is expressly excluded), regardless of any choice of law or conflict of law provision or rule of any jurisdiction that would cause the application of the laws of any other jurisdiction. Buyer and Seller hereby consent to the exclusive jurisdiction, for all purposes including conducting discovery, of the federal and state courts located in Montgomery County, Ohio (and of the appropriate appellate courts therefrom) in any suit, action or proceeding arising out of, or relating to, the Products, Buyer's orders, these Terms, and any related agreements, or the breach, termination, invalidity or performance thereof. The parties specifically consent and submit to the jurisdiction and venue of such state or federal courts, and further waive any objections either may have based on improper venue or forum non conveniens to the conducting of any proceeding in any such court.
29. WAIVER. Buyer's failure to insist upon strict compliance shall not be deemed to be a waiver of any right granted Buyer herein. Buyer shall not be deemed to waive any such right unless such waiver is express and in writing, signed by Buyer's Director of Procurement; such waiver shall not constitute a waiver of any prior, concurrent or subsequent breach of the same or any other right.
30. ENTIRE AGREEMENT. The order and these Terms constitute the entire agreement between the parties and contain all of the agreements and conditions of sale; no course of dealing or usage of the trade shall be applicable unless expressly incorporated in the order. The terms and conditions set forth in the order and these Terms may not be added to, modified, superseded or otherwise altered except by a written modification signed by Buyer's Director of Procurement.