

APPLICABLE CONTRACT PROVISIONS

“Buyer” means the entity issuing the Order, and any affiliates, subsidiaries, successors or assigns thereof. “Seller” means the person, firm or company to whom the Order is addressed. “Materials” means all the products and/or services to be supplied by Seller under the Order. “Order” means the purchase order issued by Buyer for the supply of Materials, which may be an oral communication or a written or electronic document, and may also include particular shipping instructions and/or other specifications required by Buyer for the Materials.

This offer shall become an “Agreement” upon acceptance by Seller. Seller shall be deemed to have accepted this offer by commencement of performance called for in the Order, by delivery of the Materials to Buyer, by written acceptance or confirmation of this Agreement (preferred), or by any other act or communication constituting legal acceptance, whether or not any such acceptance or confirmation purports to state terms additional to or different from those stated herein

PURCHASE PRICE AND TERMS OF PAYMENT

Materials shipped against this Agreement shall be invoiced at the price set forth in the Order

SHIPMENT, DELIVERY AND ACCEPTANCE

Seller shall deliver the Materials F.O.B. to the place designated for shipment by Buyer in the Order and use the carrier specified selecting Collect on Bill of Lading. Seller shall follow any shipping instructions provided by Buyer and shall properly and carefully package the Materials for shipment. All packing slips and Invoices shall have the Buyer’s Purchase order number, quantity inside each package and part number with revision when applicable.

Seller accepts full responsibility for the completeness and accuracy of all transport and customs documentation (“Shipping Documents”) provided to Buyer.

WARRANTY PROVISIONS

Seller hereby warrants to Buyer that, in addition to any and all express and implied warranties provided under the Uniform Commercial Code, the Materials: shall be provided in a competent, professional manner and in accordance with the highest standards and best practices of Seller’s industry; shall be free from defects in materials and workmanship, and shall be merchantable and fit for their particular purpose; shall conform to and perform in accordance with all specifications, drawings, samples and other requirements referred to in the Order and provided by Seller;

INDEMNIFICATION

Seller agrees to indemnify and hold Buyer harmless from and in respect of any damages, losses or expenses which Buyer may suffer or incur (including reasonable attorneys’ fees) arising out of, relating to or concerning any claim, action or allegation that any of the Materials (or the use of same in an intended manner) infringes any patent or intellectual property rights claimed by any third party; provided that Buyer shall notify Seller in writing of any such claim, act or allegation promptly after learning of the same and shall assist and cooperate in the defense or settlement thereof. Such defense or settlement shall be at Seller’s sole expense, and Seller shall pay all damages and costs finally awarded against Buyer as a result of any such suit or proceeding. Proceedings will be held in the State of West Virginia.

INSURANCE

Prior to delivery of any Materials, Seller will provide to Buyer certificate(s) of Liability insurance once a year evidencing that Seller maintains insurance in accordance with the foregoing requirements. Buyer shall have no obligation to examine such certificate(s) or to advise Seller in the event the insurance is not in compliance with Buyer’s requirements. Buyer’s receipt and/or acceptance of certificate(s) not in compliance with Buyer’s requirements shall not be construed as a waiver of such insurance requirements, which constitute a material condition to this Agreement. Further, the insurance coverage and amounts to be maintained are not intended to and shall not in any manner limit or qualify the liabilities and obligations of Seller.

GENERAL PROVISIONS

Seller shall furnish, at Seller’s expense, all labor, materials, equipment, transportation, facilities and other items that are necessary to meet the Order requirements. Time is of the essence in Seller’s performance. Seller must immediately notify Buyer whenever Seller has knowledge of an actual or potential delay to the timely performance of the Order. In the event of Seller’s refusal or failure to meet the delivery date(s) specified in the Order, Buyer may, without limiting its other rights and remedies, direct expedited routing and charge excess costs incurred thereby to Seller, or cancel all or part of the Order.