



MANUFACTURING SUPPLY TERMS AND CONDITIONS

THESE MANUFACTURING SUPPLY TERMS AND CONDITIONS (this "Agreement") apply to the purchase and sale of iron castings (the "Products") by and between Waupaca Foundry, Inc. ("Seller") and the entity ordering the Products ("Buyer") (Buyer together with Seller, the "Parties", and each, a "Party"). The Parties agree as follows:

1. Purchase and Sale of Products.

1.1 Purchase and Sale. By placing a Purchase Order (as defined below) for Products with Seller, Buyer accepts and is bound by this Agreement. Seller may update this Agreement without prior written notice at any time, in its sole discretion, and any changes to this Agreement will be in effect for any Purchase Orders placed thereafter by Buyer. "Purchase Order" means Buyer's purchase order issued to Seller hereunder, including, at minimum, (a) an adequate description of the Products being ordered (e.g., part number), (b) the price to be paid for the Products ordered, (c) the Products quantity and time of delivery, and (d) the place or places of delivery. For the avoidance of doubt, any references to Purchase Orders hereunder also include any applicable delivery releases from Buyer.

1.2 Terms of Agreement Prevail Over Buyer's Purchase Order. The Parties intend for the express terms and conditions contained in this Agreement to exclusively govern and control each of the Parties' respective rights and obligations regarding the subject matter of this Agreement, and this Agreement is expressly limited to such terms and conditions. Without limitation of the foregoing, any additional, contrary, or different terms contained in any Purchase Order or other request or communication from Buyer pertaining to the sale of Products by Seller, and any attempt to modify, supersede, supplement or otherwise alter this Agreement, will not modify this Agreement or be binding on the Parties unless such terms have been fully approved in a signed writing by authorized representatives of both Parties.

1.3 Right to Manufacture and Sell Competitive Products. This Agreement does not limit Seller's right to manufacture or sell or preclude Seller from manufacturing or selling to any other party or entering into any agreement with any other party for the manufacture or sale of other products that are similar to or competitive with the Products.

2. Ordering Procedure.

2.1 Buyer's Forecasts. Buyer may provide Seller a forecast indicating Buyer's future Product requirements ("Forecasts"). The quantity of Products forecasted shall be firm and binding on Buyer and Buyer shall be obligated to submit a Purchase Order for and purchase the quantities of Products set forth in such binding portion of each Forecast as set forth below:

Forecast first 90 days:	100% firm and binding on Buyer
Forecast 91-120 days:	75% firm and binding on Buyer
Forecast 121-180 days:	50% firm and binding on Buyer
Forecast >180 days:	0% firm and binding on Buyer

2.2 Purchase Orders.

Buyer shall issue to Seller Purchase Orders in written form. By issuing a Purchase Order to Seller, Buyer makes an offer to purchase Products pursuant to the terms and conditions of this Agreement and on no other terms. For the avoidance of doubt, any variations made to the terms and conditions of this Agreement by Buyer in any Purchase Order are void and have no effect.

2.3 Acceptance, Rejection, and Cancellation of Purchase Orders. Seller accepts a Purchase Order by confirming the order in writing or by delivering the applicable Products to Buyer, whichever occurs first. Seller may reject a Purchase Order or cancel a previously accepted Purchase Order, which it may do without liability or penalty, and without constituting a waiver of any of Seller's rights or remedies under this Agreement or any Purchase Order, by providing written notice to Buyer specifying the applicable date of rejection or cancellation: (a) if any one or more of the events described under Sections 5.1(a)-(d) has occurred; (b) pursuant to Seller's rights under Section 4.5; or (c) pursuant to Seller's rights under Section 4.7.

3. Shipment, Delivery, Acceptance, and Inspection.

3.1 Shipment. Unless otherwise expressly agreed by the Parties in writing, Buyer shall select the method of shipment of and the carrier for the Products. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Products to Buyer. Each shipment will constitute a separate sale and Buyer shall pay for the Products shipped, in accordance with the payment terms specified in Section 4.4, whether such shipment is in whole or partial fulfillment of a Purchase Order.

3.2 Packaging and Labeling. Seller shall pack, mark, and ship the Products using Seller's standard methods and provide Buyer with shipment documentation showing the Purchase Order number, Seller's identification number for the subject Products, the quantity of pieces in shipment, the number of cartons or containers in shipment, Seller's name, the bill of lading number and the country of origin.

3.3 Delivery. Unless otherwise expressly agreed by the Parties in writing, Seller shall deliver the Products FCA Seller's facility, using Seller's standard methods for packaging and shipping such Products. All Prices are FCA Seller's facility.

3.4 Late Delivery. Any time quoted for delivery is an estimate only; provided, however, that Seller shall use commercially reasonable efforts to deliver all Products on or before the requested delivery date. If Seller has delayed shipment of all or any Products for more than thirty (30) days after the requested delivery date and if such delay is not due to any action or inaction of Buyer or otherwise excused in accordance with the terms and conditions of this Agreement, Buyer may, as its sole remedy therefor, cancel the portion of the related Purchase Order covering the delayed Products by giving Seller written notice. Subject to Buyer's rights under this Section 3.4, no delay in the shipment or delivery of any Product relieves Buyer of its obligations under this Agreement, including accepting delivery of any remaining installment or other orders of Products.

3.5 Transfer of Title and Risk of Loss. Title to Products and risk of loss to Products shipped under any Purchase Order passes to Buyer upon Seller's tender of the Products to the carrier at Seller's facility.

3.6 Inspection. Buyer shall inspect Products received under this Agreement within thirty (30) days of receipt of such Products ("Inspection Period") and either accept or, only if any such Products are Nonconforming Products (as defined below), reject such Products. Buyer will be deemed to have accepted Products unless it provides Seller with written notice of any Nonconforming Products within five (5) days following the Inspection Period, stating with specificity all defects and nonconformities, and furnishing such other written evidence or other documentation as may be reasonably required by Seller (including the subject Products, or a representative sample thereof, which Buyer contends



are Nonconforming Products). All defects and nonconformities that are not so specified will be deemed waived by Buyer, such Products shall be deemed to have been accepted by Buyer, and no attempted revocation of acceptance will be effective. If Buyer timely notifies Seller of any Nonconforming Products, Seller shall determine, in its reasonable discretion, whether the Products are Nonconforming Products. If Seller determines that such Products are Nonconforming Products, Seller shall, in its sole discretion, either: (a) replace such Nonconforming Products with conforming Products; or (b) credit to Buyer such amount paid by Buyer to Seller for such Nonconforming Products returned by Buyer to Seller. Buyer shall ship, at Buyer's expense and risk of loss, all Nonconforming Products to Seller's facility or to such other location as Seller may instruct Buyer in writing. If Seller exercises its option to replace Nonconforming Products, Seller shall ship to the delivery location, at Seller's expense and risk of loss, the replacement Products. **THE REMEDIES SET FORTH IN THIS SECTION 3.6 ARE BUYER'S EXCLUSIVE REMEDY FOR THE DELIVERY OF NONCONFORMING PRODUCTS, SUBJECT TO BUYER'S RIGHTS UNDER SECTION 8.5 WITH RESPECT TO ANY SUCH PRODUCTS FOR WHICH BUYER HAS ACCEPTED DELIVERY UNDER THIS SECTION 3.6.** "Nonconforming Products" means any products received by Buyer from Seller pursuant to a Purchase Order that: (x) do not conform to the part number listed in the applicable Purchase Order; (y) do not fully conform to Buyer's written specifications; or (z) materially exceed the quantity of products ordered by Buyer pursuant to this Agreement or any Purchase Order. Where the context requires, Nonconforming Products are deemed to be Products for purposes of this Agreement.

3.7 **Limited Right of Return.** Except as provided under Section 3.6, Section 8.5, and Section 8.7, Buyer has no right to return Products shipped to Buyer pursuant to this Agreement.

4. **Price and Payment.**

4.1 **Base Price.** Buyer shall purchase the Products from Seller at the prices set forth on its Purchase Order ("Base Price"). Seller will review and may, in its reasonable discretion, adjust the Base Price for the Products to reflect changes in cost of production (including costs related to direct and indirect labor, equipment, maintenance, production systems, packaging, quality control, insurance, warehousing, governmental regulations, waste disposal, environmental, and health and safety) for each of the Products. Seller may adjust such Base Prices upon thirty (30) days prior written notice to Buyer.

4.2 **Surcharges.** In addition to Base Price, Buyer shall pay Seller the material and energy surcharges as adjusted monthly by Seller ("Surcharges", and, together with Base Prices, the "Prices"). Seller shall review each month its cost of materials and energy and will adjust the Surcharges according to its standard formulas.

4.3 **Shipping Charges, Insurance, Taxes, Dunnage.** Buyer shall pay for, and shall hold Seller harmless from, all shipping charges and insurance costs. In addition, all Prices are exclusive of, and Buyer is solely responsible for and shall pay, and shall hold Seller harmless from, all taxes, with respect to, or measured by, the manufacture, sale, shipment, use, or Prices of the Products (including interest and penalties thereon); provided, however, that Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, or real or personal property or other assets. Buyer shall, at its cost and freight prepaid, return to Seller all returnable dunnage for shipping Products delivered to Buyer, or, at Seller's option, purchase non-returnable dunnage.

4.4 **Payment Terms.** Seller shall issue invoices to Buyer for all Products ordered setting forth in reasonable detail the amounts payable by Buyer under this Agreement. Buyer shall pay to Seller all invoiced amounts within thirty (30) days from the date of such invoice. Buyer shall make all payments in US dollars.

4.5 **Buyer's Unsatisfactory Credit Status.** Each issuance of a Purchase Order to Seller will constitute Buyer's representation and warranty that Buyer is solvent and is able to pay for the Products identified in such Purchase Order in accordance with the terms of this Agreement. Buyer shall furnish Seller with statements accurately and fairly evidencing Buyer's financial condition as Seller may, from time to time, reasonably request. Buyer shall be in compliance with all obligations to Buyer's creditors as and when such obligations are due and owing in the ordinary course of Buyer's business. Buyer shall notify Seller, in writing, immediately of any and all events that have had or may have a material adverse effect on Buyer's business or financial condition, including any change in management, sale, lease, or exchange of a material portion of Buyer's assets, a change in control of Buyer, or the breach of any loan covenants or other material obligations of Buyer to its creditors. If, at any time, Seller determines in its sole discretion that Buyer's financial condition or creditworthiness is inadequate or unsatisfactory, then in addition to Seller's other right under this Agreement, at law or in equity, Seller may without liability or penalty, take one or more of the following actions: (a) on written notice, modify the payment terms specified in Section 4.4 for outstanding and future purchases, including requiring Buyer to pay for Products on a cash in advance or cash on delivery basis; (b) reject any Purchase Orders received from Buyer; (c) cancel any previously accepted Purchase Orders; (d) delay or withhold any further shipment of Products to Buyer; (e) stop delivery of any Products in transit and cause such Products in transit to be returned to Seller; (f) on written notice, terminate this Agreement; or (g) accelerate the due date of all amounts owing by Buyer to Seller. No action taken by Seller under this Section 4.5 (nor any failure of Seller to act under this Section 4.5) constitutes a waiver by Seller of any of its rights and remedies under this Agreement, including its right to enforce Buyer's obligation to make payments as required hereunder.

4.6 **Invoice Disputes.** Buyer shall notify Seller in writing of any dispute with any invoice (along with substantiating documentation and a reasonably detailed description of the dispute) within five (5) days from the date of such invoice. Buyer will be deemed to have accepted all invoices for which Seller does not receive timely notification of dispute and shall pay all amounts due under such invoices within the period set forth in Section 4.4. The Parties shall seek to resolve any such disputes expeditiously and in good faith in accordance with the dispute resolution provisions set forth in Section 16.16. Notwithstanding anything to the contrary, Buyer shall continue performing its obligations under this Agreement during any such dispute, including Buyer's obligation to pay all due invoice amounts in accordance with the terms of this Agreement.

4.7 **Late Payments.** Except for invoiced payments that Buyer has successfully disputed, Buyer shall pay interest on all late payments, calculated daily and compounded monthly, at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable statute, law, ordinance, regulation, rule, code, constitution, treaty, common law, governmental order, or other requirement or rule of law of any governmental authority ("Law"). Buyer shall also reimburse Seller for all costs incurred by Seller in collecting any late payments, including attorneys' fees and court costs. In addition to all other remedies available under this Agreement or at Law (which Seller does not waive by the exercise of any rights under this Agreement), if Buyer fails to pay any amounts when due under this Agreement, Seller may (a) suspend the delivery of any Products, (b) reject Buyer's Purchase Orders or cancel accepted Purchase Orders pursuant to the terms of Section 2.3 or (c) terminate this Agreement pursuant to the terms of Section 2.3(a).



4.8 **No Set-off Right.** Buyer shall not, and acknowledges that it will have no right, under this Agreement, any Purchase Order, any other agreement, document or Law to, withhold, offset, recoup or debit any amounts owed (or to become due and owing) to Seller or any other party that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such party ("Affiliates"), whether under this Agreement or otherwise, against any other amount owed (or to become due and owing) to it by Seller or Seller's Affiliates, whether relating to Seller's or its Affiliates' breach or non-performance of this Agreement, any Purchase Order, any other agreement between (a) Buyer or any of its Affiliates and (b) Seller or any of its Affiliates, or otherwise.

4.9 **Security Interest.** To secure Buyer's prompt and complete payment and performance of any and all present and future indebtedness of Buyer to Seller, Buyer hereby grants Seller a security interest, in all inventory of products purchased under this Agreement (including Products and Nonconforming Products) by Buyer from Seller, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. Seller may file a financing statement for such security interest and Buyer shall execute such statements or other documentation necessary to perfect Seller's security interest in such Products. Buyer also authorizes Seller to execute, on Buyer's behalf, such statements or other documentation necessary to perfect Seller's security interest in such Products. Seller shall be entitled to all applicable rights and remedies of a secured party under applicable Law.

5. **Termination.**

5.1 **Seller's Right to Terminate.** Seller may terminate this Agreement, by providing written notice to Buyer: (a) if Buyer fails to pay any amount when due under this Agreement ("Payment Failure"); (b) if Buyer is in material breach of any representation, warranty or covenant of Buyer under this Agreement (other than committing a Payment Failure), and either the breach cannot be cured or, if the breach can be cured, it is not cured by Buyer within a commercially reasonable period of time (in no case exceeding fifteen (15) days) after Buyer's receipt of written notice of such breach; (c) if Buyer (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due, (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law, (iii) makes or seeks to make a general assignment for the benefit of its creditors, or (iv) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business; or (d) if without obtaining Seller's prior written consent, (i) Buyer sells, leases, or exchanges a material portion of Buyer's assets, (ii) Buyer merges or consolidates with or into another party, or (iii) a change in control of Buyer occurs. Any termination under this Section 5.1 will be effective on Buyer's receipt of Seller's written notice of termination or such later date (if any) set forth in such notice.

5.2 **Effect of Expiration or Termination.** Upon the expiration or earlier termination of this Agreement, all indebtedness of Buyer to Seller under this Agreement of any kind, shall become immediately due and payable to Seller, without further notice to Buyer. Expiration or termination of the Agreement will not affect any rights or obligations of the Parties that: (a) come into effect upon or after termination or expiration of this Agreement; or (b) otherwise survive the expiration or earlier termination of this Agreement pursuant to Section 16.4 and were incurred by the Parties prior to such expiration or earlier termination. Any notice of termination under this Agreement automatically operates as a cancellation of any deliveries of Products to Buyer that are scheduled to be made subsequent to the effective date of termination, whether or not any orders for such Products had been accepted by Seller. With respect to any Products that are still in transit upon termination of this Agreement, Seller may require, in its sole discretion, that all sales and deliveries of such Products be made on either a cash-only or certified-check basis. Upon the expiration or earlier termination of this Agreement, Buyer shall: (x) return to Seller all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on Seller's Confidential Information; (y) permanently erase all of Seller's Confidential Information from its computer systems, except for copies that are maintained as archive copies on its disaster recovery and/or information technology backup systems; and (z) certify in writing to Seller that it has complied with the requirements of this clause. Termination of this Agreement will not constitute a waiver of either Party's rights, remedies or defenses under this Agreement, at law, in equity or otherwise.

6. **Certain Prohibited Acts.** Notwithstanding anything to the contrary in this Agreement, neither Buyer nor any Buyer agent, employee, contractor, or subcontractor shall: (a) make any representations, warranties, guarantees, indemnities, similar claims, or other commitments on behalf of Seller to any customer or other party with respect to the Products, which are additional to or inconsistent with any then-existing representations, warranties, guarantees, indemnities, similar claims, or other commitments in this Agreement or any written documentation provided by Seller to Buyer; or (b) engage in any unfair, competitive, misleading, or deceptive practices respecting Seller, Seller's trademarks or the Products, including any product disparagement.

7. **Compliance with Laws.** Buyer shall at all times comply with all Laws applicable to this Agreement, Buyer's performance of its obligations hereunder, and Buyer's use or sale of the Products. Without limiting the generality of the foregoing, Buyer shall (a) at its own expense, maintain all certifications, credentials, licenses, and permits necessary to conduct its business relating to the purchase, use or resale of the Products and (b) not engage in any activity or transaction involving the Products, by way of resale, lease, shipment, use or otherwise, that violates any Law.

8. **Representations and Warranties.**

8.1 **Buyer's Representations and Warranties.** Buyer represents and warrants to Seller that: (a) it is duly organized, validly existing, and in good standing; (b) it is duly qualified to do business in every jurisdiction in which such qualification is required; (c) it has the full right, power and authority to enter into this Agreement and to perform its obligations hereunder; (d) this Agreement has been duly authorized by all necessary action on the part of Buyer; (e) performance of this Agreement by Buyer will not violate, conflict with, require consent under or result in any breach or default under (i) any of Buyer's organizational documents, or (ii) any applicable Law; (f) this Agreement constitutes the legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with its terms; (g) it is in compliance with all applicable Laws; (h) it has obtained all licenses, authorizations, approvals, consents, or permits required by applicable Laws to conduct its business generally and to perform its obligations under this Agreement; (i) it is not insolvent and is paying all of its debts as they become due; and (j) all financial information that it has provided to Seller is true and accurate and fairly represents Buyer's financial condition.

8.2 **Seller's Representations and Warranties.** Seller represents and warrants to Buyer that: (a) it is duly organized, validly existing, and in good standing; (b) it is duly qualified to do business and is in good standing in every jurisdiction in which such qualification is required; (c) it has the full right, power and authority to enter into this Agreement and to perform its obligations hereunder; (d) this Agreement has been duly authorized by all necessary action on the part of Seller; (f) the performance of this Agreement by Seller will not violate, conflict with,



require consent under or result in any breach or default under (i) any of Seller's organizational documents or (ii) any applicable Law; (g) this Agreement constitutes the legal, valid, and binding obligation of Seller, enforceable against Seller in accordance with its terms; (h) it is in compliance with all applicable Laws; and (i) it has obtained all licenses, authorizations, approvals, consents, or permits required by applicable Laws to conduct its business generally and to perform its obligations under this Agreement.

8.3 **Limited Product Warranty.** Subject to the provisions of Sections 8.4 through 8.7, Seller warrants to Buyer that: (a) for a period of twelve (12) months from the date of shipment of a Product (the "Warranty Period"), each Product will be free from significant defects in material and workmanship in accordance with Buyer's written specifications, except those defects ascertainable only through radiographic gamma ray or other nondestructive or non-visual testing methods; and (b) Buyer will receive good and valid title to all Products, free and clear of all encumbrances and liens of any kind ("Product Warranty"). For the avoidance of doubt, Seller makes no representations or warranties for the design or specifications of Products and Buyer assumes full responsibility for the design and specifications of Products.

8.4 **Product Warranty Limitations.** The Product Warranty does not apply to any Product that: (a) has been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions or use contrary to any instructions issued by Seller; (b) has been reconstructed, repaired, or altered by a party other than Seller or its authorized representative; or (c) has been used with any third-party products, hardware, or product that has not been previously approved in writing by Seller.

8.5 **Buyer's Exclusive Remedy for Defective Products.** Notwithstanding any other provision of this Agreement (except for Section 8.7), this Section 8.5 contains Buyer's exclusive remedy for Defective Products (as defined below). Buyer's remedy under this Section 8.5 is conditioned upon Buyer's compliance with its obligations under Section 8.5(a) and Section 8.5(b) below. During the Warranty Period, with respect to any allegedly Defective Products: (a) Buyer shall notify Seller, in writing, of any alleged claim or defect within ten (10) days from the date Buyer discovers, or upon reasonable inspection should have discovered, such alleged claim or defect (but in any event before the expiration of the applicable Warranty Period); (b) Buyer shall ship, at its expense, such allegedly Defective Products to Seller's facility for inspection and testing by Seller; (c) if Seller's inspection and testing reveal, to Seller's reasonable satisfaction, that such Products are Defective (as defined below) and any such defect has not been caused or contributed to by any of the factors described under Section 8.4 above, subject to Section 8.5(a) and Section 8.5(b), Seller shall in its sole discretion and at its expense, repair or replace such Defective Products; and (d) Seller shall ship to Buyer, at Seller's expense and risk of loss, the repaired or replaced Products to a location designated by Buyer. Buyer has no right to return for repair, replacement, credit, or refund any Product except as set forth in this Section 8.5. In no event shall Buyer reconstruct, repair, alter or replace any Product, in whole or in part, either itself or by or through any third party. SUBJECT TO SECTION 8.7, THIS SECTION 8.5 SETS FORTH BUYER'S SOLE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED PRODUCT WARRANTY SET FORTH IN SECTION 8.3. "Defective" means not conforming to the Product Warranty in Section 8.3. "Defective Products" means products shipped by Seller to Buyer pursuant to this Agreement that are Defective.

8.6 **DISCLAIMER OF OTHER REPRESENTATIONS AND WARRANTIES: NON-RELIANCE.** EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 8.2 AND THE PRODUCT WARRANTY SET FORTH IN SECTION 8.3, (A) NEITHER SELLER NOR ANY PERSON ON SELLER'S BEHALF HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER, EITHER ORAL OR WRITTEN, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT OR PERFORMANCE OF PRODUCTS OR PRODUCTS TO STANDARDS SPECIFIC TO THE COUNTRY OF IMPORT, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED, AND (B) BUYER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY SELLER, OR ANY OTHER PERSON ON SELLER'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN SECTIONS 8.2 AND 8.3 OF THIS AGREEMENT.

8.7 **Withdrawal of Products.** If Seller determines that any Products sold to Buyer may be Defective, at Seller's request, Buyer shall withdraw all similar Products from sale and, at Seller's option, either return such Products to Seller (pursuant to the terms of Section 8.5(b)) or destroy the Products and provide Seller with written certification of such destruction. Notwithstanding the limitations of Section 8.5, if Buyer returns all withdrawn Products or destroys all withdrawn Products and provides Seller with written certification of such destruction within ten (10) days following Seller's withdrawal request, in either case, consistent with Seller's instructions, unless any such defect has not been caused or contributed to by any of the factors described under Section 8.4, Seller shall (a) repair or replace all such returned Products or (b) replace such destroyed Products, in either case, pursuant to the terms of Section 8.5(d). THIS SECTION 8.7 SETS FORTH BUYER'S SOLE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY PRODUCTS THAT ARE WITHDRAWN PURSUANT TO THIS SECTION 8.7.

9. **Indemnification.**

9.1 **Mutual Indemnification.** Subject to the terms and conditions of this Agreement, including those set forth in Sections 9.2 and 9.3, each Party (as "Indemnifying Party") shall indemnify, defend and hold harmless the other Party and its affiliates and each of their respective personnel, officers, directors, partners, shareholders, attorneys, third-party advisors, successors, and permitted assigns (collectively, "Indemnified Party") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, fees and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers, incurred by Indemnified Party (collectively, "Losses"), arising out or resulting from any third-party claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory, or other, whether at law, in equity or otherwise (a "Claim") alleging: (a) a material breach or non-fulfillment of any representation or warranty or covenant set forth in this Agreement by Indemnifying Party or Indemnifying Party's agents, employees, contractors, or subcontractors; (b) any grossly negligent or more culpable act or omission of Indemnifying Party or its agents, employees, contractors, or subcontractors (including any recklessness or willful misconduct) in connection with the performance of this Agreement; (c) any bodily injury, death of any party or damage to real or tangible personal property caused by the willful or grossly negligent acts or omissions of Indemnifying Party or its agents, employees, contractors, or subcontractors; or (d) any failure by Indemnifying Party or its agents, employees, contractors, or subcontractors to materially comply with any applicable Laws. Notwithstanding



anything to the contrary in this Agreement, this Section 9.1 does not apply to any Claim (whether direct or indirect) for which a sole or exclusive remedy is provided for under another section of this Agreement.

9.2 **Buyer Indemnification.** Buyer agrees and acknowledges that Seller has no design responsibility for the Products and Buyer shall indemnify, defend and hold harmless Seller and its Affiliates and each of their respective personnel, officers, directors, partners, shareholders, attorneys, third-party advisors, successors, and permitted assigns from any Losses arising out or resulting from any Claim alleging a design defect in the Products.

9.3 **Exceptions and Limitations on Indemnification.** Notwithstanding anything to the contrary in this Agreement, an Indemnifying Party is not obligated to indemnify or defend (if applicable) an Indemnified Party against any Claim if such Claim or corresponding Losses arise out or result from the Indemnified Party's or its agents, employees, contractors, subcontractors: (a) gross negligence or more culpable act or omission (including recklessness or willful misconduct); (b) bad faith failure to comply with any of its obligations set forth in this Agreement; or (c) use of the Products in any manner not otherwise authorized under this Agreement.

9.4 **EXCLUSIVE REMEDY.** THIS SECTION 9 SETS FORTH THE ENTIRE LIABILITY AND OBLIGATION OF EACH INDEMNIFYING PARTY AND THE SOLE AND EXCLUSIVE REMEDY FOR EACH INDEMNIFIED PARTY FOR ANY DAMAGES COVERED BY THIS SECTION 9.

10. **Limitation of Liability.**

10.1 **NO LIABILITY FOR CONSEQUENTIAL OR INDIRECT DAMAGES, EXCEPT FOR BUYER'S OBLIGATIONS TO MAKE PAYMENT UNDER THIS AGREEMENT.** IN NO EVENT SHALL EITHER PARTY OR THEIR REPRESENTATIVES BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT THE OTHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

10.2 **MAXIMUM LIABILITY FOR DAMAGES.** IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID BY BUYER TO SELLER PURSUANT TO THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

11. **Intellectual Property Rights.**

11.1 **Ownership.** Each Party acknowledges and agrees that: (a) any and all Intellectual Property Rights (as defined below) of each Party are the sole and exclusive property of such Party or its licensors, including such Party's trademarks; (b) neither Party shall not acquire any ownership interest in any of the other Party's Intellectual Property Rights under this Agreement; (c) any goodwill derived from the use by a Party of the other Party's Intellectual Property Rights inures to the benefit of the other Party or its licensors, as the case may be; and (d) each Party shall use the other Party's Intellectual Property Rights only in accordance with this Agreement and any instructions of the other Party. "Intellectual Property Rights" means all industrial and other intellectual property rights comprising or relating to: (u) patents; (v) trademarks, service marks, trade dress, trade names, brand names, logos, corporate names and domain names; (w) internet domain names, whether or not trademarks, registered by any authorized private registrar or governmental authority, web addresses, web pages, website, and URLs; (x) works of authorship, expressions, designs, and design registrations, whether or not copyrightable, including copyrights and copyrightable works, software and firmware, data, data files, and databases and other specifications and documentation; (y) trade secrets; and (z) all industrial and other intellectual property rights, and all rights, interests, and protections that are associated with, equivalent or similar to, or required for the exercise of, any of the foregoing, however arising, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, such rights or forms of protection pursuant to the Laws of any jurisdiction throughout in any part of the world.

12. **Confidentiality.**

12.1 **Scope of Confidential Information.** From time to time, either Party (as the "Disclosing Party") may disclose or make available to the other Party (as the "Receiving Party") information about its business affairs, products and services, confidential information and materials comprising or relating to Intellectual Property Rights, trade secrets, third-party confidential information, and other sensitive or proprietary information. Such information, whether orally or in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," is collectively referred to as "Confidential Information" hereunder. Notwithstanding the foregoing, Confidential Information does not include information that at the time of disclosure: (a) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of this Section 12 by the Receiving Party or any of its representatives; (b) is or becomes available to the Receiving Party on a non-confidential basis from a third party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (c) was known by or in the possession of the Receiving Party or its representatives prior to being disclosed by or on behalf of the Disclosing Party; (d) was or is independently developed by the Receiving Party without reference to or use of, in whole or in part, any of the Disclosing Party's Confidential Information; or (f) is required to be disclosed pursuant to applicable Law.

12.2 **Protection of Confidential Information.** The Receiving Party shall from disclosure of such Confidential Information: (a) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (b) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and (c) not disclose any such Confidential Information to any party, except to the Receiving Party's representatives who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Agreement. The Receiving Party shall be responsible for any breach of this Section 12 caused by any of its representatives. On the expiration or earlier termination of this Agreement, the Receiving Party and its representatives shall, pursuant to Section 5.2, promptly return all Confidential Information and copies thereof that it has received under this Agreement.

13. **Tooling.** Unless the Tooling (as defined below) was provided or paid for by Buyer, all Tooling used to manufacture the Products is owned by Seller and Buyer has no right, title, or interest in the Tooling. If Buyer provides or pays for the Tooling, Seller shall have temporary



possession of Buyer's Tooling and Buyer has the right to remove such Tooling upon expiration or any termination of this Agreement. At Buyer's request, Buyer's Tooling will be released to Buyer or its designees or delivered to Buyer's designated carrier at Seller's facility at Buyer's expense. Seller is not responsible for ordinary wear and tear of Buyer's Tooling, and Buyer shall be responsible for all maintenance and repair costs associated with Buyer's Tooling. Unless otherwise agreed in writing by the Parties, Buyer shall pay for fifty percent (50%) of the Tooling costs immediately upon issuance of a Purchase Order for the Tooling and the remaining fifty percent (50%) of the Tooling costs within the earlier of (a) thirty (30) days from Buyer's part production approval, or (b) sixty (60) days after sample submission by Seller. If Buyer's Tooling remains at Seller's facility without being utilized or refurbished for twelve (12) consecutive months, Seller may charge Buyer an annual storage fee of \$1,000. "Tooling" means, collectively, all tooling, dies, test and assembly fixtures, gauges, jigs, patterns, casting patterns, cavities, molds, and documentation (including engineering specifications and test reports) used by Seller in connection with its manufacture and sale of the Products, together with any accessions, attachments, parts, accessories, substitutions, replacements and appurtenances thereto.

14. Access and Audit Rights. Each Party hereby grants the other Party limited access to its records related to the Products for the purpose of ensuring the Party's compliance with the terms of this Agreement. Each Party shall maintain all pertinent books and records for a period of three (3) years after expiration or termination of this Agreement. Each Party shall also cooperate fully with the other Party with respect to all reasonable requests of the Party relating to the foregoing access rights; provided that any physical inventory inspection may take place no more frequently than annually.

15. Insurance. Each Party shall, at its own expense, maintain and carry in full force and effect, subject to appropriate levels of self-insurance, at a minimum, those insurance coverages, financially sound and reputable insurers, set forth below:

Commercial General and Products Liability:	
bodily injury and/or property damage:	USD \$1,000,000 each occurrence
general policy aggregate:	USD \$2,000,000
products/completed operations aggregate:	USD \$2,000,000
Excess and/or Umbrella Liability:	USD \$2,000,000 per occurrence / USD \$2,000,000 aggregate

Each Party shall also maintain at its sole cost and expense workers' compensation insurance in amounts not less than the statutory requirements in the state or other jurisdiction where the work is performed, even if such coverage is elective in that jurisdiction. Upon a Party's reasonable request, the other Party shall provide the requesting Party with a certificate of insurance evidencing the insurance coverage specified in this Section. The certificate of insurance shall name the other Party as an additional insured. Each Party shall provide the other Party with thirty (30) days' advance written notice in the event of a cancellation or material change in such insurance policy. Buyer's compliance with this Section shall not release Buyer from, or limit in any way, Buyer's obligations or liabilities under the Agreement.

16. Miscellaneous.

16.1 Further Assurances. Upon a Party's reasonable request, the other Party shall, at its sole cost and expense, execute and deliver all such further documents and instruments, and take all such further acts, necessary to give full effect to this Agreement.

16.2 Relationship of the Parties. The relationship between Seller and Buyer is solely that of vendor and vendee, and they are independent contracting parties. Nothing in this Agreement creates any agency, joint venture, partnership, or other form of joint enterprise, employment, or fiduciary relationship between the Parties. Neither Party has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement, or undertaking with any third party.

16.3 Entire Agreement. This Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

16.4 Survival; Statute of Limitations. Subject to the limitations and other provisions of this Agreement: (a) the representations and warranties of the Parties contained herein will survive the expiration or earlier termination of this Agreement for a period of twelve (12) months after such expiration or termination; and (b) any provision that, in order to give proper effect to its intent, should survive such expiration or termination, will survive the expiration or earlier termination of this Agreement for the period specified therein, or if nothing is specified for a period of twelve (12) months after such expiration or termination. All other provisions of this Agreement will not survive the expiration or earlier termination of this Agreement. Notwithstanding any right under any applicable statute of limitations to bring a claim, no claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory, or other, whether at law, in equity or otherwise based upon or arising in any way out of this Agreement may be brought by either Party after the expiration of the applicable survival or other period set forth in this Section 16.4 and the Parties waive the right to file any such any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory, or other, whether at law, in equity or otherwise after the expiration of the applicable survival or other period; provided, however, that the foregoing waiver and limitation do not apply to the collection of any amounts due to Seller under this Agreement.

16.5 Notices. All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement must be in writing and addressed to the other Party at its principal office address (or to such other address that the receiving Party may designate from time to time in accordance with this Section). All notices must be delivered by personal delivery, nationally recognized overnight courier, certified or registered mail (in each case, return receipt requested, postage prepaid), or e-mail (with confirmation of transmission). Except as otherwise provided in this Agreement, a notice is effective only (a) on receipt by the receiving Party, and (b) if the Party giving the notice has complied with the requirements of this Section.

16.6 Interpretation. For purposes of this Agreement: (a) the words "include," "includes" and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (x) to sections, exhibits,



schedules, attachments, and appendices mean the sections of, and exhibits, schedules, attachments and appendices attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder.

16.7 **Headings.** The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

16.8 **Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability does not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

16.9 **Amendment and Modification.** No amendment to this Agreement is effective unless it is in writing and signed by an authorized representative of each Party.

16.10 **Waiver.** No waiver under this Agreement is effective unless it is in writing and signed by an authorized representative of the Party waiving its right. Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated, and does not operate as a waiver on any future occasion. None of the following constitutes a waiver or estoppel of any right, remedy, power, privilege, or condition arising from this Agreement: (a) any failure or delay in exercising any right, remedy, power or privilege or in enforcing any condition under this Agreement; or (b) any act, omission, or course of dealing between the Parties.

16.11 **Cumulative Remedies.** All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties or otherwise. Notwithstanding the previous sentence, the Parties intend that Buyer's rights under Section 3.6, Section 5.1, Section 8.5, and each of the Parties' rights under Section 9 are such Party's exclusive remedies for the events specified therein.

16.12 **Equitable Remedies.** Each Party acknowledges and agrees that (a) a breach or threatened breach by such Party of any of its obligations under Section 12 would give rise to irreparable harm to the other Party for which monetary damages would not be an adequate remedy and (b) in the event of a breach or a threatened breach by such Party of any such obligations, the other Party shall, in addition to any and all other rights and remedies that may be available to such Party at law, at equity or otherwise in respect of such breach, be entitled to seek equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction, without any requirement to post a bond or other security, and without any requirement to prove actual damages or that monetary damages will not afford an adequate remedy. Each Party agrees that such Party will not oppose or otherwise challenge the appropriateness of equitable relief or the entry by a court of competent jurisdiction of an order granting equitable relief, in either case, consistent with the terms of this Section 16.12.

16.13 **Assignment.** Neither Party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party, except that a Party may assign any of its rights or delegate any of its obligations to any Affiliate or to any third-party acquiring all or substantially all of the Party's assets. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves the assigning or delegating Party of any of its obligations under this Agreement.

16.14 **Successors and Assigns.** This Agreement is binding on and inures to the benefit of the Parties and their respective permitted successors and permitted assigns.

16.15 **No Third-Party Beneficiaries.** This Agreement benefits solely the parties to this Agreement and their respective permitted successors and permitted assigns, and nothing in this Agreement, express or implied, confers on any other party any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

16.16 **Dispute Resolution.** Within seven (7) days after a written notice of a dispute is received by either Party from the other, Buyer and Seller personnel who are senior (when possible) to the people with responsibility for administering this Agreement and who have the authority to resolve the dispute will meet, at a mutually agreeable time and location, and attempt in good faith to resolve the dispute (the "Initial Executive Meeting"). Except as otherwise described herein, any dispute, controversy, difference or claim arising out of or relating to this Agreement, including the existence, validity, interpretation, performance, or breach thereof or any dispute regarding non-contractual obligations arising out of or relating to this Agreement, and which have not been resolved between the Parties themselves at the Initial Executive Meeting (including instances in which the Parties are unwilling or unable to conduct an Initial Executive Meeting), shall be finally resolved by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") applicable at the time of submission of the dispute, controversy, or claim to arbitration, and the conduct of the arbitration shall be under the authority of the AAA. All arbitration proceedings shall take place before a sole neutral arbitrator in Waupaca County, Wisconsin, unless a different number of arbitrators or a different location is mutually agreed upon by the Parties. Except as mutually agreed by the Parties, or otherwise provided under the Commercial Arbitration Rules of the AAA or under the laws of Wisconsin, there will be no discovery carried out in the arbitration proceedings. Arbitration under this Agreement will be in lieu of all other remedies and procedures available to the Parties, provided that either Party may seek provisional measures (including without limitation, specific performance, preliminary injunctive or other interlocutory relief) prior to the commencement of or during the arbitration proceedings in any court of competent jurisdiction in order to prevent or address irreparable injury. Each Party will proceed in good faith to conclude the arbitration proceedings as quickly as reasonably possible. The arbitration proceedings will be confidential between the Parties and their respective legal counsel. The arbitrator's determination will be binding and conclusive and the arbitration award may be recognized in any court having proper jurisdiction. Buyer and Seller will each bear its own costs and expenses incurred in connection with the arbitration proceedings, and each Party will pay one-half of the costs and expenses of the arbitration, including the fees and expenses of the arbitrator. Any payments or reimbursements required by the decision of the arbitrator will be made within thirty (30) days following the date of the arbitrator's decision is announced to the Parties.

16.17 **Governing Law.** This Agreement and all matters arising out of or relating to this Agreement, are governed by and construed in accordance with, the Laws of the State of Wisconsin, United States of America, without regard to the conflict of laws provisions thereof. The Parties agree that the United Nations Convention on Contracts for the International Sale of Products does not apply to this Agreement.

16.18 **Force Majeure.** No Party shall be liable or responsible to the other Party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Buyer to make payments to Seller hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's



(“Impacted Party”) reasonable control, including, without limitation, the following force majeure events (“Force Majeure Event(s)”: (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; and (h) telecommunication breakdowns, power outages or shortages, lack of warehouse or storage space, inadequate transportation services, or inability or delay in obtaining supplies of adequate or suitable materials. The Impacted Party shall give notice within thirty (30) days of the Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party’s failure or delay remains uncured for a period of one hundred twenty (120) consecutive days following written notice given by it under this Section, the other Party may thereafter terminate this Agreement upon thirty (30) days’ written notice.

16.19 **No Public Announcements or Trademark Use.** Unless expressly permitted under this Agreement, Buyer shall not: (a) make any statement (whether oral or in writing) in any press release, external advertising, marketing, or promotion materials regarding Seller or its business unless it has received the express written consent of Seller, or (b) use Seller’s trademarks, service marks, trade names, logos, symbols or brand names, in each case, without the prior written consent of Seller.