

## FISCHER AMERICA, INC. TERMS AND CONDITIONS

1. Acceptance of Contract. The Purchase Order attached hereto, these terms and conditions, and all specifications, drawings and other data submitted by FISCHER AMERICA, INC. ("Buyer") to Supplier prior to the date of the Purchase Order concerning goods and services to be purchased hereunder shall constitute the entire agreement between Buyer and Supplier resulting from acceptance by Supplier of this offer (this "Contract"). Acknowledgment or commencement of performance by Supplier shall constitute acceptance of this Contract including all terms and conditions stated herein. Acknowledgement may be made via return mail or facsimile transmission. Reference to any proposal of Supplier is only for the purpose of specifying basic information concerning price, quantity, and description of goods or services to the extent such terms are consistent with the terms of the Contract. Conditions stated by Supplier in its quotation, acknowledgement, invoice or otherwise shall not affect Buyer's offer, and shall not be binding on Buyer if in conflict with or in addition to any of the provisions of this Contract unless expressly agreed to in writing by an authorized representative of Buyer.

2. Changes. Buyer reserves the right to make changes in quantities, delivery dates, drawings, specifications, materials and other descriptions as to goods or services covered by this Contract, and Supplier agrees to promptly make such changes. If such changes cause an increase or decrease in the cost or time required for Supplier's performance of this Contract, Buyer and Supplier shall negotiate an equitable adjustment. Whenever there is a change in drawings, specifications, material and/or other descriptions, Buyer may provide Supplier with an opportunity to rebid by issuing a written request for quotation. No agreement or understanding to modify this Contract shall be binding upon Buyer unless in writing and signed by Buyer's authorized representative. All specifications, drawings, and data submitted to Supplier with this order or referred to by this order are hereby incorporated herein and made a part hereof.

3. Price and Payment. If Supplier's quoted prices for the goods and services covered hereby are reduced prior to shipment or performance (whether as a price reduction, rebate, allowances, or additional discounts offered to anyone), Supplier agrees that the price to Buyer for such goods and services shall be reduced accordingly, and that Buyer shall be billed at such reduced prices. To the extent possible, Supplier shall provide Buyer 30 days advance notice of such price reduction. Unless otherwise stated on the face of this order, the prices quoted are inclusive of any Federal, state, or local taxes imposed directly upon the manufacture of sale of items and/or services to be furnished. The price stated on the face hereof is conclusive, and no extra charge shall be made by Supplier. Unless provided otherwise in the Contract or unless the parties agree otherwise, payment shall be made by Buyer on the second day of the second month following Buyer's acceptance of the goods. Buyer may withhold payment pending receipt of evidence, in such form and detail as buyer may direct, of the absence of any liens, encumbrances or claims on the goods or services under this Contract.

4. Delivery. Time is of the essence in this contract, and if delivery of the goods is not made in the quantities and the time specified in delivery releases, or the rendering of services is not completed at the time specified for whatever reason including those set forth in Section 8 hereof, Buyer reserves the right, at the sole cost and expense of Supplier, in addition to its other rights and remedies to: (a) direct expedited routing of goods; (b) terminate this contract and thereby relieve Buyer of any obligation to accept and pay for such goods and/or work; (c) terminate, without charge, all or any part of the undelivered portion of the order and place a purchase order elsewhere for an equal or less quantity of goods and/or work of the same or substantially equivalent quality and charge Supplier with any loss so incurred. Unless otherwise stated in this Contract, all deliveries shall be made F.O.B. the ship to address shown on the Purchase Order. Buyer reserves the right to change delivery schedules or direct temporary suspension of scheduled shipments. Buyer shall have the right to reject any goods or services which are tendered by Supplier in advance of the date scheduled for delivery, to accept early delivery of goods or services and defer payment until after the scheduled delivery date, or to accept early delivery of goods and place such goods in storage at Supplier's expense until the scheduled delivery date. In the event Supplier anticipates any delay in delivery, Supplier shall immediately notify Buyer, provide an estimated date of delivery and confirm such notice in writing. Such notice shall not be deemed to waive any breach of this Contract resulting from such delay. The risk of loss with respect to goods shall remain with the Supplier until goods have been received and inspected by Buyer.

5. Packaging. All material shall be suitably packaged and marked to secure lowest transportation cost and in accordance with the requirements of common carriers. No separate charge will be allowed for packing, boxing, crating, marking, cartage or storage, unless so stipulated herein, it being assumed that the price includes these items.

The damage to any goods not packaged to insure proper protection if accepted by Buyer will be charged to Supplier. Buyer's count will be considered as final and conclusive on all shipments.

6. Acceptance of Goods. Buyer's acknowledgement of receipt of goods shall not constitute acceptance of goods on acknowledgement of the quantity of goods shipped. Acceptance, as that term is defined in the Michigan Uniform Commercial Code, shall occur only when Buyer, after a reasonable opportunity to inspect and test the goods, issues to Supplier a written notice of acceptance or incorporates the goods into a product produced by Buyer. This sole method of acceptance is intended to exclude all other methods of acceptance contemplated under the Michigan Uniform Commercial Code or otherwise. If as a result of sampling inspection any portion of a shipment of like goods is found to not be in conformity with this Contract, Buyer may reject and return the entire shipment without further inspection; or Buyer, at its option, may complete inspection of all goods in the shipment and then reject and return any or all non-conforming goods or accept them at a reduced price. Buyer's acceptance of any non-conforming goods shall not constitute a waiver of any requirements under this Contract for goods subsequently delivered hereunder. Any rejected goods shall be returned at Supplier's expense and Supplier shall be liable to Buyer for any other expenses incurred by Buyer in connection therewith.

7. Year 2000 Compliance. Supplier warrants to Buyer that all software used by Supplier to produce goods to be delivered to buyer under this Contract is Year 2000 Compliant or, if not Year 2000 Compliant, Supplier has implemented a program to assure such software is Year 2000 Compliant prior to December 31, 1999. "Year 2000 Compliant" means the software operates in accordance with its specifications so that date data is input and correctly recorded, stored, processed, used, calculated and, where appropriate, inserted and, if the software is indexed to a CPU clock, so that the software correctly performs all functions indexed to the CPU clock. Date data is any data or input giving any indication of or reference to the date and also included providing specific days or dates and calculating spans of dates including the year 2000.

8. Force Majeure. Neither Buyer nor Supplier shall be liable for delays or defaults due to causes beyond its control and without its fault or negligence, such as, by way of example and not by way of limitation, acts of God, actions by any governmental authority, fires, floods, natural disasters, and war, provided that written notice of such delay including the efforts to prevent, work around or compensate for or otherwise minimize the effects of such delay or inability to perform. Buyer at its option may acquire possession of all finished goods, work in progress and parts and materials produces or acquired for the work under a Purchase Order, and Supplier will deliver such articles to such location as directed by Buyer. During the period of delay and a reasonable period thereafter, Buyer, at its option, may purchase goods from other sources in quantities and at times request by Buyer, at the price set forth in this Contract.

9. Notice of Labor Disputes. Whenever Supplier has knowledge that an actual or potential labor dispute is delaying or threatens to delay its timely performance under this purchase order, Supplier shall immediately give written notice thereof to Buyer. Such notice shall not be deemed to waive any breach of this Contract resulting from such delay.

10. Warranty. Supplier acknowledges that Supplier knows of Buyer's intended use and expressly warrants that all goods and/or work ordered according to drawings, plans, specifications or samples furnished or approved by Buyer will conform thereto and will be **MERCHANTABLE AND FIT AND SUFFICIENT FOR THE PURPOSE ORDERED AND WILL BE FREE FROM DEFECT IN MATERIAL AND WORKMANSHIP**. All warranties shall run to Buyer, its successors, assigns and customers and to users of its products and shall be construed as conditions as well as warranties and shall not be deemed to be exclusive. The warranty period shall be that provided by applicable law, except that if Buyer offers a longer warranty to its customers for goods incorporated into Buyer's products, such longer period shall apply.

11. Warranty Claims. If any good delivered hereunder is found not to meet the warranty under Section 10, upon notice thereof, Buyer shall notify Supplier in writing within a reasonable period. In such case, Supplier shall, at no charge, supply a replacement good meeting the warranty requirements of Section 10, to such destination, at such time and in such manner as designated by Buyer, and Supplier shall be liable to Buyer for any loss, cost or damage incurred by Buyer as a result of such breach of warranty, including, without limitation: (a) costs relating to inspection, sorting, replacing and/or repairing defective goods; (b) costs relating to repair or replacement of defective goods; (c) any claim for personal injury or property damage caused by defective goods; and (d) reasonable attorneys' fees.

12. Proprietary Rights. All technical information, including, without limitation, designs, blueprints, specifications, engineering data for production, product know-how and any other information which is supplied to

Supplier by Buyer in the course of performance of this Contract shall, unless otherwise agreed by Buyer in writing, be maintained in confidence by Supplier and Supplier shall not use such information except in the performance of this Contract. Supplier, including its agents, employees, representatives and subcontractors, shall exercise extreme caution to prevent disclosure of such information to third parties. Additionally, Supplier agrees to assign to the Buyer and not otherwise to make use of any invention, improvement or discovery (whether or not patentable) conceived or reduced to practice in the performance of this Contract by any employee of the Supplier or other person working under Seller's direction and such assignment shall be considered as additional consideration for the making of this contract. Upon completion of performance of this contract the Supplier shall deliver to the Buyer any and all information relating to such invention, improvement or discovery and shall cause employees or others subject to Seller's instruction to sign, as appropriate, all documents necessary or convenient to enable the Buyer to file application for patents throughout the world and to obtain title hereto. All such information shall be returned to Buyer upon request. The obligations of this Section 12 shall survive termination of this Contract.

13. Indemnification. Supplier shall defend, indemnify and hold harmless Buyer and its employees, agents, customers, successors, and assigns from any losses, claims, damages, or expenses, including reasonable attorneys' fees, arising or alleged to arise from: (a) the infringement of any valid U.S. or foreign patent, trademark, or copyright due to the use of any of the goods delivered hereunder; (b) any asserted deficiencies or defects in the goods; (c) Supplier's failure to adequately mark the goods or packaging with any warnings or other notices required by any federal, state or local law, or administrative rule or regulation; (d) the breach of any terms or conditions stated herein; or (e) any act or omission of Supplier; irrespective of whether such loss, claim, damage or expense is caused, or alleged to be caused, in whole or in part by the joint, several, comparative, but not sole, negligence, breach of contract or warranty, or any other breach of duty by Buyer, or whether such claim, damage, or expense is asserted under a strict or product liability theory or any other legal theory. Supplier's obligations pursuant to this Section 13 shall survive termination of this Contract.

14. Insurance and safety Policy Form. If this contract covers the performance of labor for Buyer, Supplier agrees to defend, indemnify and hold harmless Buyer and its employees against all liability, claims or demands for injuries or damages to any person or property arising out of performance of the Contract. Upon request of Buyer, Supplier agrees to furnish certificates of insurance showing that Supplier has adequate insurance coverage (as determined by Buyer in its discretion) for the type of services to be performed by Supplier including, without limitation, workers compensation as an additional insured on its policies. If this Contract includes a sale of goods manufactured in whole or in part to Supplier's designs or specifications, Supplier agrees to provide Buyer with a current certificate of product liability insurance and a vendor's endorsement naming Buyer as an additional insured on Supplier's policy.

15. Termination for Cause. Buyer, at its option, may terminate this Contract without any obligation to Supplier, upon (a) the filing of a voluntary or involuntary petition under any bankruptcy or insolvency law or a petition for the appointment of a receiver, or an assignment for the benefit of creditors; (b) the occurrence of any act or omission by Supplier that constitutes a material breach, including without limitation breach of warranty, of this Contract and the failure by Supplier to remedy such breach within 10 days after written notice of breach is given to Supplier; (c) the failure by Seller to perform services or deliver goods as specified by Buyer; (d) the failure by Supplier to make progress so as to endanger timely and proper completion of services or delivery of goods if Supplier does not correct such failure or breach within 10 days (or shorter period if commercially reasonable); or (e) the dissolution of Supplier. Upon termination of this Contract pursuant to the foregoing sentence, Supplier shall, at Supplier's expense, promptly return to Buyer all of the Buyer's Tools and any drawings, specifications or other technical information pertaining to this Contract. Termination of this Contract shall not affect any liabilities which have arisen prior to termination or may arise after termination based on a transaction made prior to termination, nor any obligations which are, from the context hereof, intended to survive termination of this Contract.

16. Termination at Will. In addition to the foregoing, Buyer may at its option terminate all or part of this order, at any time, for any reason, by giving written notice to Supplier. Upon receipt of the notice of termination Supplier will promptly terminate all work under this purchase order. Buyer's obligation to Supplier under this section shall be the following amounts without duplication: (a) the order price for all goods or services under this order which have been completed in accordance with this order and not previously paid for; and (b) the actual cost of work-in-process and raw materials incurred by Supplier in furnishing the goods or services under this order, less, the reasonable value or cost (whichever is higher) of any goods or materials used or sold by Supplier with Buyer's written

consent, and the cost of any damaged or destroyed goods or material. Buyer will make no payments for finished goods, work-in-process or raw materials, fabricated or procured by Supplier in amounts in excess of those authorized in delivery releases, nor for any undelivered goods which are in Supplier's standard stock or which are readily marketable. Except as provided in this paragraph, Buyer shall not be liable for and shall not be required to make payments to Supplier, directly or on account of development and engineering costs, facilities and equipment rearrangements costs or rental, unamortized depreciation costs, and general and administrative burden charged from termination of this order.

17. Labor and Material. Unless otherwise specified in this Contract, all labor, materials, equipment, machinery, parts, tooling and other items required for Supplier's performance of this Contract shall be provided and maintained by Supplier at its expense. If this order calls for work to be performed by Supplier, all work performed and all materials used in connection therewith shall be at the risk and expense of and shall be replaced by Supplier in the event of any damage or destruction thereof prior to delivery to and acceptance of by Buyer. If this order calls for work to be performed by Supplier upon any premises owned or controlled by Buyer and/or Buyer's customer, Supplier will keep the premises and the work free and clear of all mechanics' liens and will furnish Buyer with certificate and waiver as provided by law. Whenever any property of Buyer or Buyer's customers is in possession of Supplier or Supplier's suppliers, Supplier shall be deemed an insurer thereof and shall be responsible for its safe return to Buyer.

18. Claims Adjustment. Buyer may, at any time and without notice, set off the amount of any claim of Buyer under this Contract against any payment due Supplier under this Contract or otherwise.

19. Audit. Supplier shall maintain accurate and complete books and records (whether in printed, electronic or other format) in support of work performed, charges invoiced to Buyer or dealings with Buyer's employees. All such information, including details regarding entertainment, gifts and/or business, financial or other transactions between Supplier and/or its affiliates and Buyer's employees shall be made available, without exception, to accredited audit representatives of Buyer. Records shall be retained for the duration of this agreement, and for no less than three (3) years thereafter. Supplier shall require its sub-contractors and suppliers to maintain similar records for the same minimum time periods, and require that they provide access to same by Buyer's accredited representatives. Failure to cooperate with the foregoing shall constitute a material breach of this Agreement.

20. Compliance with Laws. Supplier, and any goods or services provided by Supplier, shall comply with all applicable laws, rules, regulations, orders conventions, ordinances or standards of the Country(ies) of destination or that relate to the manufacture, labeling, transportation, importation, exportation, licensing, approval or certification of the goods or services provided, including but not limited to, those relating to environmental matters, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety and motor vehicle safety. At Buyer's request Supplier shall certify in writing its compliance with the foregoing. Supplier shall indemnify and hold Buyer harmless from and against any liability claims, demands or expenses (including attorney's or other professional fees) arising from or relating to Supplier's noncompliance.

21. Hazardous Materials. A Material Safety Data Sheet (MSDS) must be provided by Supplier to Buyer with any shipments containing hazardous materials. If requested by Buyer, Supplier shall promptly furnish to Buyer in such form and detail as Buyer may direct: (a) a list of all ingredients contained in goods; (b) the amount of all ingredients; and (c) information concerning any changes in or additions to such ingredients.

22. Remedies. In the event of any breach of this Contract by Supplier, Supplier shall be liable for all costs, expenses, and damages, whether direct, indirect, incidental, or consequential, arising from or relating to such breach.

23. Assignment and Subcontracting. The obligations of Supplier under the Contract may not be assigned or subcontracted in whole or in part, nor may any assignment of any money due or to become due under this Contract be made by Supplier without the prior written consent of Buyer.

24. Advertising. Supplier shall not, without first obtaining the written consent of Buyer in any manner advertise or publish the fact that Supplier has contracted to furnish Buyer the goods or services herein ordered, or use any trademarks or tradenames of Buyer in Supplier's advertising or promotional materials. In the event of Supplier's breach of this provision, Buyer shall have the right to cancel the undelivered portion of any goods or services covered by this order and shall not be required to make further payments except for conforming goods delivered or services rendered prior to cancellation.

25. Relationship of Parties. Supplier and buyer are independent contracting parties, and nothing in this order shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf or in the name of the other.

26. Waiver and Severability. Buyer's failure to insist upon the performance of any term or condition of this Contract or to exercise any right thereunder on one or more occasions shall not constitute a waiver or relinquishment of Buyer's right to demand future performance of such term or condition or to exercise such right in the future. In the event that any provision of this Contract shall be found to be invalid or unenforceable, the remaining portions shall remain in full force and effect as if the invalid or unenforceable portion were not a part hereof.

27. Assignment. Supplier may not assign or delegate its rights or obligations under this Contract without the prior written consent of the Buyer.

28. Entire Agreement and Amendment. This Contract constitutes a final expression of the agreement between Supplier and Buyer with respect to the subject matter hereof, and is a complete and exclusive statement of the terms of this agreement, superseding any and all other oral or written arrangements, representations, or communications by or between Supplier and Buyer relating to the subject matter hereof. This Contract may not be amended except by a written agreement signed by an authorized representative of Buyer.

29. Governing Law/Jurisdiction. This Contract shall be governed and construed in accordance with the laws of the State of Michigan without regard to provisions concerning conflict of laws, and Supplier agrees that any controversy or claim, legal or equitable arising out of or relating to this Contract, or a breach hereof, shall be settled by a single arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration proceeding shall take place in the State of Michigan. The arbitration shall be conducted in the English language. The award of the arbitrator shall be final and binding upon the parties and may be entered in any court having jurisdiction thereof.