

## TERMS AND CONDITIONS

1. **Order Acceptance:** Seller and Buyer shall be bound by the terms and conditions of this purchase order ("Order") upon the earlier of: (a) Buyer's receipt of Seller's executed acknowledgment of this Order; (b) Seller's delivery to Buyer of the goods and/or services ordered herein; or (c) Seller's commencement of work in connection with this Order. This Order expressly limits acceptance to the terms and conditions stated herein. Any additional or different terms proposed by Seller are hereby rejected and of no effect unless agreed to in a separate writing signed by Buyer. No contract shall exist except as herein provided. To the extent this Order is in any way deemed to be an acceptance of Seller's proposal or other offer of Seller, any such acceptance is expressly conditioned upon the consent of Seller to these terms and conditions.
2. **Changes:** Buyer may at any time request, in writing, changes in drawings, proprietary information, specifications, manufacturing data, data sheets or standards (collectively, "Specifications"), or changes in materials, packing, time and place of delivery, or method of shipment. For any change which will cause an increase or decrease in the cost or time required for Seller's performance hereunder, Buyer and Seller shall agree on an equitable adjustment and this Order shall be modified in writing accordingly. Seller shall accept any such change subject to the terms of this paragraph.
3. **Warranty:** Seller expressly warrants that all goods and/or services furnished herein (a) shall conform to the Specifications, (b) shall be new and free of all liens and encumbrances, (c) shall be free from defects in material and workmanship; (d) shall be merchantable, (e) shall be fit for the purpose for which goods or services of that kind are intended to be used by Buyer and (f) shall conform to the Multivac Machine Build Standard attached hereto as Exhibit A. No substitutions of materials or accessories may be made without written permission from Buyer.
4. **Nonconformance.** If at any time within one (1) year from date of Buyer's use or eighteen (18) months from the date of delivery, whichever occurs last, it appears that the goods or services or any part thereof do not conform to the warranties herein or to the Specifications, and if Buyer notifies Seller within a reasonable time thereafter, Seller shall promptly correct such nonconformity to the satisfaction of Buyer, at Seller's sole expense, including material, labor, and freight costs. If Seller fails to correct defects in or replace nonconforming goods or services promptly, Buyer, after reasonable notice to Seller, may make such corrections or replace such goods and services and charge Seller for the costs incurred.
5. **Pricing:** Seller warrants that the prices for the goods and/or services sold herein are not less favorable than those currently extended to other customers for the same or similar quantities as of the date of this Order. Seller warrants that prices listed in this Order are complete, and no additional charges of any type shall be added without Buyer's express written consent. Such additional charges include, but are not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing, freight, and crating. In the event Buyer is required by law to pay or collect any taxes, then such amount shall be paid by Seller and listed separately on Seller's invoice to Buyer.
6. **Force Majeure:** Except as otherwise provided herein, neither Seller nor Buyer shall be

considered to be in default in the performance of its obligations under this Order, to the extent and for the period of time that performance of any such obligation is prevented, interrupted, or delayed by fire, flood, earthquake or other natural disaster, acts of terrorism, war or other cause, which is beyond the reasonable control of the affected party; provided, however if performance of any obligation by Seller is so prevented, interrupted, or delayed for a period in excess of thirty (30) days, Buyer, may, at its option, cancel this Order upon not less than three (3) days prior written notice to Seller and Buyer shall pay Seller for any conforming services properly performed or conforming goods accepted by Buyer prior to the date of such termination.

7. **Termination:** Buyer may terminate this Order or any part hereof, upon not less than three (3) days prior written notice to Seller, (a) for Seller's default of this Order or (b) if Buyer's ultimate customer for the goods and/or services cancels its order to Buyer for any reason. Without limitation, late deliveries, deliveries of goods and/or services which are defective or which do not conform to this Order, and Seller's failure to provide Buyer, upon request, with adequate assurance of satisfactory future performance or any other failure to comply with the terms and conditions hereof shall constitute defaults allowing Buyer to terminate this Order for cause. If termination occurs, Buyer shall not be liable to Seller for any amount, and Seller shall be liable to Buyer for any and all damages or losses sustained by reason of the default which gave rise to the termination.

8. **Indemnification:** Seller shall indemnify, defend, and hold harmless Buyer, its subsidiaries and affiliated corporations and related entities and all of their respective officers, directors, agents, contractors and employees and their successors and assigns (collectively, "Indemnitees") from and against all claims, suits, actions, losses, damages, obligations, liabilities, and expenses (including, without limitation, attorneys fees, costs and expenses) (collectively, "Claims"), and for injury or harm, including death, to persons or damage to property in each case resulting from, arising out of, or in any way connected with any defect or nonconformity in the goods and/or services purchased herein, from any act or omission of the Seller, its agents, employees and subcontractors or failure to comply with the terms hereof by the Seller, its agents, employees or subcontractors. This indemnification shall survive any termination or completion of this Order.

9. **Confidential Information:** All Specifications transmitted to Seller are the property of Buyer or Buyer's customer. Specifications shall be solely for the purpose of Seller's performance of this Order and on the express condition that neither the Specifications nor the information contained therein shall be disclosed to any third party nor used for any purpose other than in connection with this Order without the prior written consent of Buyer, which may be withheld in Buyer's sole and absolute discretion. Such Specifications are to be returned to Buyer promptly upon written request thereof or upon any termination or completion of this Order. Unless expressly agreed to in writing by Buyer, no information or knowledge disclosed to Buyer, in the performance of or in connection with this Order, shall be deemed to be confidential or proprietary, and any such information or knowledge shall be free from any restrictions as part of the consideration for this Order. Seller shall indemnify, defend and hold harmless Indemnitees for any violation of the terms of this paragraph. The obligations of this paragraph shall survive any termination or completion of this Order.

10. **Public Releases:** No news release, advertisement, public announcement, denial or confirmation of same, of any kind regarding any part of the subject matter of this Order shall be made without the prior written consent of Buyer, which may be withheld in Buyer's sole and absolute discretion.

11. **Patents and Other Infringements:** Seller shall indemnify, defend and hold harmless Buyer, its Indemnitees, customers and users of Seller's goods from and against any and all Claims resulting from any actual or alleged infringement of any copyright, trademark, trade secret, United States or foreign letters of patent, or other intellectual property rights resulting from or arising in connection with any goods sold and/or supplied to Buyer under this Order, and Seller shall, when notified, defend any Claims of such infringement at its sole cost and expense. This indemnity shall survive any termination or completion of this Order.

12. **Insurance:** Seller and its agents, contractors and employees shall perform all services required hereunder as an independent contractor and not as an employee of Buyer. Seller shall maintain all necessary insurance required by Buyer for any services or work performed on Buyer's property, (including, without limitation, commercial general liability of at least *Two Million Dollars* (\$2,000,000), automobile liability of at least *Two Million Dollars* (\$2,000,000) and workers' compensation coverage as required by law) with carriers having deductibles and containing waivers of subrogation in favor of Buyer, and Seller shall furnish to Buyer certificates (including renewal certificates) evidencing that each such policy of insurance is in full force and will not be canceled without ten (10) days prior written notice to Buyer. The certificates shall also list Buyer as an additional named insured and loss payee.

13. **Inspection/Testing:** All goods ordered herein shall be subject to inspection and testing by Buyer at all reasonable times and places, prior to acceptance. Seller shall permit access to its facilities at all reasonable times for inspection of goods by Buyer and will provide all tools, facilities, and assistance necessary at no additional cost to Buyer. It is expressly agreed that inspections and/or payments prior to delivery shall not constitute final acceptance and that all goods shall be subject to final inspection after delivery to Buyer. If the goods delivered do not meet the requirements of this Order or the Specifications, Buyer shall have the right to reject them as nonconforming goods. Goods delivered and rejected in whole or in part may, at Buyer's option, be returned to Seller for full reimbursement, credit or replacement or may be held for disposition at Seller's expense and risk. Notwithstanding the foregoing, nothing herein shall require Buyer to perform an inspection of the goods supplied by Seller.

14. **Invoices:** Invoices shall be submitted in duplicate immediately upon shipment of goods or performance of services. Unless otherwise specified in this Order, payment terms shall be net sixty (60) days from the date of Buyer's receipt of Seller's invoice. All invoices must show Buyer's Order number and contact name.

15. **Delivery:** Time is of the essence; and if delivery of goods or rendering of services is not completed by the time promised, Buyer reserves the right without liability, in addition to its other rights and remedies, to terminate this Order by notice effective when received by Seller as to items not yet shipped or services not yet rendered and to purchase substitute items or services elsewhere and charge Seller for any loss incurred.

16. **Risk of Loss:** Seller shall bear all risk of loss, damage, spoilage and deterioration, and all other risks of all goods covered by this Order until conforming goods have been received and accepted by the Buyer at Buyer's designated location. Unless otherwise specified on the face hereof, shipment terms are F.O.B. destination.

17. **Entire Agreement:** This Order and any Specifications or other Purchase Order Documents referred to herein, constitute the entire agreement between the parties and supercedes all prior agreements (verbal or written) concerning the goods and/or services covered by this Order. This Order may not be amended or modified except in writing signed by authorized representatives of

the Buyer and Seller.

18. **Waiver:** Buyer's failure to insist on strict performance of all of the terms and conditions herein or to exercise any right or privilege or Buyer's waiver of any breach herein shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type.

19. **Government Regulation/Compliance With Laws:** Seller shall comply with all applicable state, federal, local and other applicable laws, rules, and regulations, including those pertaining to packaging, food, handling, labeling, product safety or shipping of any goods and, in general, the performance of the Seller covered hereby.

20. **Limitation on Buyer's Liability:** In no event shall Buyer be liable for anticipated profits or for incidental, exemplary, punitive, special or consequential damages. Buyer's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this Order or from the performance or breach thereof shall in no case exceed the price allocable to the goods or services or unit thereof which gives rise to the claim. Buyer shall not be liable for penalties of any description. Any action resulting from any breach on the part of Buyer as to the goods and/or services delivered herein must be commenced no later than one (1) year after Seller had actual or constructive knowledge of Buyer's breach.

21. **Governing Law:** The rights of the parties hereof shall be construed under and governed by the substantive laws of the state of Missouri. The Buyer and Seller acknowledge that any claim, dispute or controversy involving this Order shall be brought in the appropriate state or federal courts located in Platte County, Missouri, USA, and the Buyer and Seller each hereby waive their right to object to such forum on the basis that it constitutes an inconvenient forum or that such courts lack in personam jurisdiction.

22. **Assignment:** Seller shall not assign or otherwise transfer any of its rights or duties or delegate its obligations under this Order without the prior written consent of Buyer.

23. **Severability:** If any provision of this Order is held to be unenforceable, invalid or void, such provision shall be inoperative only to the extent necessary to comply with applicable law and shall be severed from and not impair the effect of the remainder of this Order or any other application hereof.

24. **Successors:** This Order is binding on the successors and permitted assigns of the parties hereto.

25. **Set-off:** Buyer shall be entitled to set-off any amounts owing by the Buyer hereunder against amounts owing to either the Seller or its affiliates.