

Purchase Order General Terms and Conditions

- 1. ACCEPTANCE:** This Purchase Order is Buyer's offer to Seller. Acceptance is expressly limited to the terms of this Purchase Order. Seller's commencement of performance, or acceptance of this Purchase Order in any manner, will evidence Seller's agreement to this Purchase Order. Buyer will not be bound by, and specifically objects to, any terms or conditions that are different from or are in addition to this Purchase Order, whether or not such terms or conditions would materially alter the order. This Purchase Order may not be modified by any reference to, or attachment of, Seller's terms and conditions, or any notation made on Seller's acceptance of this Purchase Order.
- 2. DEFINITIONS:**
"Buyer" means ShinMaywa Industries Ltd. acting through its authorized agent ShinMaywa (California), Ltd. and/or other authorized representatives.
"Customer" means any customer of Buyer, any subsequent owner, operator or user of the Goods, and any other individual, partnership, corporation, or entity which has or acquires an interest in the Goods from or through Buyer.
"Goods" means all of the goods, services, documents, data, software, and other information or items furnished to Buyer pursuant to this Purchase Order.
"Purchase Order" means the face of this purchase order, these Purchase Order General Terms and Conditions, any other Purchase Order clauses referenced on the face of or attached to this purchase order by Buyer, and all of the specifications, technical descriptions, statements of work, drawings, designs, documents and other requirements and provisions attached to, incorporated in or otherwise made part of this purchase order by written agreement of the parties.
"Seller" means the party indicated in the "For" block on the face of this Purchase Order.
- 3. PACKING AND SHIPPING:** Unless otherwise specified, Goods must be boxed, crated, carted and stored without charge and must be packed and packaged to insure safe arrival at their ultimate destination and to comply with all requirements of common carriers. Buyer's Purchase Order numbers and symbols must be plainly marked on all invoices, packages, bills of lading and shipping orders. Buyer's count and weight will be final and conclusive for shipments not accompanied by packaging lists. Goods must be routed in accordance with Buyer's instructions. When Goods are specially packed to avoid contamination or climatic exposure or if Goods are temperature or age-sensitive, notation to this effect must be prominently placed on the bill of lading, packaging sheet and packages. Seller will be liable for all damage to the Goods and loss suffered by Buyer as a result of Seller's failure to comply with this Section 3.
- 4. DELIVERY:** Seller must ship and deliver the Goods strictly in accordance with the quantities, delivery schedules and other requirements specified in this Purchase Order. If at any time Seller anticipates that it will not be able to deliver the Goods in accordance with the specified delivery schedule, it will promptly notify Buyer of the anticipated delay in delivery. If Seller fails to deliver the Goods pursuant to the delivery schedule, Buyer may require Seller to expedite shipments. Unless the delay in delivery arises out of causes beyond Seller's control and without Seller's fault, Seller will pay the difference between the cost of the shipping method specified in this Purchase Order and expedited shipping costs. If Goods are shipped in advance of schedule, Buyer may either pay the amount owing for such Goods on the normal due date without loss of discount privileges or duration of warranty coverage, or return the Goods to Seller at Seller's expense, including a charge for Buyer's handling and packaging and additional freight charges incurred. Warranty coverage will be deemed to start on the scheduled delivery date rather than the earlier delivery date. Buyer may retain all Goods delivered in excess of the amount ordered, taking into account contractually authorized tolerance, if any, at no cost to Buyer.
- 5. INVOICE AND PAYMENTS:** Seller must issue a separate invoice for each delivery specified in this Purchase Order, which must include Buyer's Purchase Order and part numbers. No invoice will be accepted for payment prior to the delivery date set forth in this Purchase Order. Payment for the Goods will be made after receipt of both the Goods and correct invoice. The payment term on the face of this Purchase Order will be calculated from the date of receipt of the Goods or the correct invoice, whichever is later. Delays in delivering the invoice, errors or omissions on the invoice or lack of supporting documentation required by this Purchase Order, will be cause for withholding payment without loss of discount or payment term privileges. Seller must promptly refund to Buyer any amounts paid in excess of amounts due to Seller.
- 6. CHANGES:**
(a) Buyer may from time to time direct changes in writing within the general scope of this Purchase Order including, but not limited to, changes to any of the following:
(1) technical requirements;
(2) specifications;
(3) statement of work;
(4) drawings or designs;
(5) shipment or packaging methods;
(6) place of delivery;
(7) inspection and acceptance;
(8) quantities;
(9) delivery schedules; or buyer furnished material.
(b) Seller will promptly comply with such change directions in a manner designed to avoid unnecessary costs. An equitable adjustment will be made in the Purchase Order price and schedules to reflect cost and time adjustments required to implement the directed changes. Seller may submit a claim for adjustment by submitting its proposed adjustment to Buyer within 30 days after receipt of the change direction. Buyer will review the claim and make a good faith determination on the final adjustments. If Seller does not submit its claim for proposed adjustment within the 30-day period, Buyer will determine the adjustment, if any, based on information available to it.
(c) Seller will comply with change directions only from Buyer's authorized purchasing representative. Seller will immediately notify Buyer in writing if Seller receives change directions from any other person. If Seller considers that the conduct of any of Buyer's employees constituted a change direction hereunder, Seller shall notify Buyer immediately in writing as to the nature of such conduct and its effect upon Seller's performance. Pending direction from Buyer's authorized representative. Seller shall take no action to implement any such change.
- 7. EXAMINATION OF RECORDS:** Seller must maintain complete and accurate records and supporting data to permit Buyer to evaluate services performed, allowances claimed, and all costs incurred by Seller in performing this Purchase Order. Such records must be capable of verification by audit and must be made available to Buyer upon the request of Buyer or its authorized representative. All information acquired by Buyer in such audit will be treated as confidential.
- 8. INSPECTION/REJECTION:**
(a) Seller must maintain an inspection system for the Goods that will ensure compliance with this Purchase Order. Seller will tender to Buyer for acceptance only Goods that have been inspected in accordance with such system and found by Seller to conform to Purchase Order requirements. Seller must prepare and maintain complete records evidencing all inspections made under the system and the results thereof. These records must be maintained in unalterable written form that is capable of retention and retrieval and must be maintained for Buyer's review during Purchase Order performance and for five years after the last scheduled delivery under the order. Buyer may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. Buyer's right of review will not relieve Seller of its obligations under this Purchase Order.
(b) Buyer may inspect and test all Goods at all places and times, including the point of manufacture or delivery, before accepting them. Buyer will accept or reject Goods as promptly as practicable after receipt at destination, unless otherwise provided in this Purchase Order. If Buyer performs inspections or tests on the premises of Seller or a subcontractor, Seller will furnish, and must require subcontractors to furnish, without additional charge to Buyer, all reasonable facilities and assistance for the safe and convenient performance of Buyer's activities. Seller will be responsible for all costs incurred by Buyer as a result of Seller's failure to be prepared for Buyer's scheduled inspection of the Goods or as a result of the need to re-inspect or retest Goods.

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(c) Buyer may reject or require correction of nonconforming Goods. Goods are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with Purchase Order requirements or standards otherwise established by law. When tendering corrected or previously rejected Goods, Seller must disclose the rejection and requirement for correction, and the corrective action taken. If Seller fails to promptly replace or correct rejected Goods, Buyer may replace or correct the Goods and charge the cost to Seller or cancel this Purchase Order for default, or both. Buyer may require Seller, at Seller's expense, to correct or replace the defective or nonconforming Goods at the original point of delivery or at Seller's plant, and in accordance with a reasonable delivery schedule agreed upon by Buyer and Seller. Buyer may require a reduction in the Purchase Order price if Seller fails to meet such delivery schedule. If Buyer elects to return Goods without requiring correction or replacement, Seller must repay any previously paid portion of the price for such Goods. Buyer may, at its option, obtain reimbursement for rejected Goods by way of a debit against amounts owed to Seller or by direct payment from Seller. When Goods are returned to Seller, Seller must bear the transportation cost from the original point of delivery to Seller's facility or other original point of shipment. Buyer's failure to inspect and accept or reject the Goods shall not relieve Seller from responsibility for nonconforming Goods.

(d) If Seller fails to perform as required under this Section 8 and does not cure such failure within ten days after receipt of notice from Buyer, Buyer may contract for or otherwise replace or correct non-conforming Goods and charge to Seller all costs caused by Seller's failure. This clause shall not affect any of the rights or obligations of the parties under Section 9 (Warranties).

9. WARRANTIES: Seller warrants to Buyer and Customers that Goods will: (a) comply with all requirements of this Purchase Order and applicable law, (b) be free from defects in materials and workmanship, (c) be merchantable and fit for their intended purpose and (d) to the extent not manufactured pursuant to designs furnished by Buyer, be free from all defects in design. Seller's warranties, and warranties made by Seller's suppliers, together with its service guarantees will run to Buyer and its Customers. Seller will, at Buyer's election, replace, repair or issue credit for any Goods that are determined by Buyer to be defective or otherwise non-conforming to this warranty.

10. INDEMNIFICATION: Seller will indemnify, defend and hold Buyer and its Customers harmless from all claims, suits, actions, awards, liabilities, losses, damages, costs and attorneys' fees arising out of (i) any claim that the Goods infringe any United States or foreign patent, copyright, trademark or other intellectual property right, (ii) bodily injury to, or death of, any person arising from the negligence or wrongful acts of Seller, its employees, agents, subcontractors or representatives, or (iii) property damage or destruction arising from the negligence or acts or omissions of Seller, its employees, agents, subcontractors or representatives.

11. TERMINATION FOR CONVENIENCE:

(a) Buyer may terminate performance of work under this Purchase Order in whole or, from time to time, in part for any reason or no reason.

If Buyer elects to terminate for convenience, it will deliver to Seller written notice of termination specifying the extent of termination and the effective date.

(b) After receipt of a written notice of termination, and except as directed by Buyer, Seller must immediately proceed with the following obligations, regardless of any delay in determining any amounts due under this Section 11:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders for materials, services or facilities (referred to as subcontracts in this clause), except as necessary to complete the continuing portion of this Purchase Order.

(3) Terminate all subcontracts to the extent they relate to the terminated work.

(4) As sign to Buyer, as directed by Buyer, all rights, title and interest of Seller under the terminated subcontracts, in which case Buyer will have the right to settle or to pay any settlement arising out of the subcontract terminations.

(5) With Buyer's approval or ratification to the extent required by Buyer, settle all outstanding liabilities and conclude settlement proposals arising from termination of subcontracts.

(6) As directed by Buyer, transfer title and deliver to Buyer:

(A) the fabricated and un-fabricated parts, work in process, completed work, supplies and other material produced or acquired for the terminated work; and

(B) the completed and partially completed plans, drawings, information and other property that, if this Purchase Order had been completed, would be required to be furnished to Buyer.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that Buyer may direct, for the protection and preservation of the property related to this Purchase Order that is in Seller's possession and in which Buyer, a Customer or a governmental body has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by Buyer, any property of the types referred to in subparagraph (6) above; provided, however, that Seller:

(A) is not required to extend credit to any purchaser; and

(B) may acquire the property under the conditions and prices approved by Buyer.

The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Buyer under this Purchase Order, credited to the price or cost of the work, or paid in any other manner as determined by Buyer.

(c) After termination in whole or in part, Seller may submit a termination settlement proposal to Buyer in the form and with the certification prescribed by Buyer. Seller must submit the proposal promptly, but no later than 90 days after the termination date, unless the time is extended in writing by Buyer within this 90-day period. Buyer will review the proposal in good faith and confer with Seller to determine the amount to be paid, if any, due to the termination. The payment amount may include a reasonable allowance for profit on work done. However, the payment amount may not exceed the total Purchase Order price, as reduced by the amount of the payments previously made and the price for work not terminated. If Seller fails to submit its proposal within the time allowed, Buyer will determine on the basis of available information the amount, if any, to be paid to Seller upon termination and will pay the amount so determined.

(d) If the termination is partial, Seller may submit a proposal to Buyer for an equitable adjustment of the prices(s) of the remaining portion of this Purchase Order. Seller must make any proposal for an equitable adjustment within 45 days after the effective date of termination unless this deadline is extended in writing by Buyer. Buyer will make any equitable adjustment agreed upon by the parties and this Purchase Order will be adjusted accordingly.

(e) If the total payments by Buyer exceed the amount finally determined to be due to Seller, Seller shall repay the excess to Buyer upon demand, together with interest at the legal rate. Interest shall be computed for the period from the date the excess payment is received by Seller to the date the excess is repaid.

12. CANCELLATION FOR DEFAULT:

(a) Buyer may cancel this Purchase Order in whole or, in part, effective as of the date specified by Buyer if:

(1) Seller fails to deliver the Goods, perform the services, or comply with any other requirement of this Purchase Order within the time specified in the order or any extension granted by Buyer, and such failure is not cured within ten days after receipt of notice from Buyer specifying the failure;

(2) Seller fails to make progress towards performance of this Purchase Order and such failure is not cured within ten days after receipt of notice from Buyer specifying the failure; or

(3) Seller ceases doing business or becomes insolvent or becomes subject to any law relating to bankruptcy, insolvency, or relief of debtors.

(b) If Buyer cancels this Purchase Order in whole or in part for default, it may acquire, under the terms and in the manner it considers appropriate, goods and services reasonably equivalent to those canceled. Seller will be liable for and will promptly pay to Buyer on Buyer's first demand the amount by which the cost of such replacement goods and services exceeds the Purchase Order price.

(c) Upon receipt of cancellation notice from Buyer's authorized purchasing representative, Seller will stop work as directed by Buyer, and transfer title and deliver to Buyer in the manner directed, any tools, material, Buyer supplied technical data and design information, and completed Goods. However, Seller shall continue the work not canceled.

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- (d) Upon cancellation, an equitable settlement will be made between Seller and Buyer for costs of partially completed and completed Goods conforming to this Purchase Order and any other payments due Seller by Buyer. The amount of the settlement will be equal to the verified amount due Seller for the termination of this Purchase Order less Buyer's costs for procurement or manufacture of the terminated portion of the order. Seller's claims relating to such settlement are subject to verification by Buyer's audit of Seller's records relating to this Purchase Order.
- 13. ASSIGNMENT OF RIGHTS / SUBCONTRACTING:** Seller may not assign any of its rights or delegate any of its duties or obligations under this Purchase Order, or subcontract any part of its performance of the order, to a third party without Buyer's prior written consent. Buyer's approval is not required for Seller's purchase of standard commercial goods or raw materials. This Purchase Order will be binding upon and inure to the benefit of the parties and their respective successors and assigns (if permitted).
- 14. PERFORMANCE OBSERVATION / PROGRESS REPORTS:** Buyer may observe all aspects of performance of Seller's work under this Purchase Order. During observation, Buyer agrees to comply with Seller's safety regulations and avoid interfering with its business operations. Upon Buyer's request, Seller will report to Buyer on the progress of performance of this Purchase Order. Seller's reports must contain all information necessary to determine the progress of performance and, at a minimum, will include information on production schedules, manufacturing plans, inventory control records and a raw material summary.
- 15. ACCESS:** Seller will permit Customers and governmental agencies to visit the facilities of Seller and Seller's supplier(s) for the purpose of confirming compliance with all Customer and regulatory requirements. In addition, Buyer, Customers and regulatory agencies may observe and review Seller's quality control program. Seller agrees to adjust its quality control procedures as reasonably necessary to meet the requirements of this Purchase Order.
- 16. RESPONSIBILITY FOR PROPERTY:** Seller is responsible for loss of or damage to materials, data, parts, tooling and other property furnished by Buyer to Seller for this Purchase Order. Seller agrees to pay Buyer for all such lost or damaged tooling, articles, or material. Buyer's furnishing to Seller of any tooling, articles or material in connection with this Purchase Order does not vest title thereto in Seller, unless expressly agreed by Buyer. After completion of this Purchase Order, all materials furnished by Buyer must be returned to it in the condition furnished except for reasonable wear and tear and for material consumed in the performance of the order.
- 17. RESPONSIBILITY FOR GOODS:** Seller is responsible for the risk of loss of, and damage to, the Goods until delivered to Buyer's plant or to such other place as designated in this Purchase Order, regardless of the point of inspection. Seller also bears the risk of loss of, and damage to, rejected Goods after receipt of Buyer's notice of rejection; provided, however, Buyer shall bear such risk as to loss or damage caused by the willful or negligent acts of its employees acting within the scope of their employment.
- 18. RIGHTS AND RESERVATIONS:**
- (a) All drawings, designs, information, tools, patterns, equipment, and other items supplied by Buyer, and proprietary rights embodied therein, are reserved by Buyer, and may not be used or reproduced by Seller for any purpose except the performance of this Purchase Order.
 - (b) In all cases where Buyer pays for experimental, developmental or research work hereunder, Seller will promptly disclose to Buyer the results of this work. In addition, Seller agrees to assign to Buyer all inventions and data resulting from such work and all intellectual property rights therein. Seller will take all acts necessary and/or beneficial to obtain the transfer to Buyer of all such inventions, data and intellectual property rights.
 - (c) Unless expressly agreed in writing by the parties (and except as provided in the preceding paragraph), information which Seller discloses in connection with the performance of this Purchase Order will be deemed non-confidential and non-proprietary and Buyer will be entitled to use the information without restriction.
- 19. PUBLIC RELEASE OF MATERIALS:** Seller will not issue any news release, advertisement or public announcement regarding this Purchase Order or any program hereunder without Buyer's prior written approval.
- 20. CONFLICTING TERMS:**
In the event of conflict between these Purchase Order General Terms and Conditions, Purchase Order "P-Clauses", specifications or drawings applicable thereto, Seller will immediately contact Buyer for clarification.
- 21. NON WAIVER AND PARTIAL INVALIDITY:**
- (a) Buyer's failure or refusal to enforce any provision of this Purchase Order or to require performance of any provision will not be construed as a waiver of such provision or any other provision of this order, or the right of Buyer thereafter to enforce each and every provision hereof.
 - (b) For any provision of this Purchase Order that becomes void or unenforceable as a result of law or court order, the parties will adopt a replacement provision that complies with such law or order. In any event, the remainder of this Purchase Order will remain valid and enforceable.
- 22. CONFIDENTIAL INFORMATION:** Seller agrees to keep confidential and protect from disclosure all
- (a) confidential, proprietary, and/or trade secret information;
 - (b) tangible items containing, conveying, or embodying such information; and
 - (c) tooling obtained from and/or belonging to Buyer in connection with this Purchase Order (collectively referred to as "Proprietary Materials"). Seller will use Proprietary Materials of Buyer only in the performance of and for the purpose of this Purchase Order. The restrictions on disclosure or use of Proprietary Materials by Seller apply to all materials derived by Seller or others from Buyer's Proprietary Materials.
- Upon Buyer's request at any time, and in any event upon the completion, termination or cancellation of this Purchase Order, Seller must return to Buyer all of its Proprietary Materials, and all materials derived from such materials, unless directed otherwise in writing by Buyer. Seller will not, without the prior written authorization of Buyer, sell or otherwise dispose of (as scrap or otherwise) any materials containing, conveying, embodying, or made in accordance with or by reference to Buyer Proprietary Materials. Prior to disposing of such materials as scrap, Seller will render the materials unusable. Buyer may audit Seller's compliance with this Section 22. Seller may disclose Proprietary Materials to its subcontractors as required for the performance of this Purchase Order, provided that each such subcontractor first assumes, by written agreement, the same obligations imposed on Seller under this Section 22; and Seller shall be liable to Buyer for any breach of such obligation by such subcontractor. The provisions of this Section 22 are effective in lieu of, and will apply notwithstanding the absence of, any restrictive legends or notices applied to Proprietary Materials.
- 23. COMPLIANCE WITH LAWS/GOVERNMENT CERTIFICATION:** Seller will comply with all laws and regulations applicable to its performance under this Purchase Order. Seller will certify that Goods covered by this Purchase Order are produced in compliance with applicable laws whenever such certification is required under applicable law or contract. Seller further agrees, in connection with its performance, not to discriminate against any employee or applicant for employment because of race, sex, religion, color, national origin, disability, covered veteran's status or other protected classification as mandated by applicable law. Seller will promptly notify Buyer of any obligation under this Purchase Order which is prohibited under applicable law sufficiently in advance of Seller's performance of such obligation so as to enable the identification of alternative methods of performance. In addition, Seller will promptly notify Buyer of any pending or newly enacted laws of which Seller becomes aware that will affect the performance of this Purchase Order or the Goods.
- 24. SANCTIONS:** Seller represents and warrants to Buyer that the Goods purchased under this Purchase Order do not originate from a country subject to a U.S. trade sanction, according to the list published by the U.S. Office of Foreign Assets Control ("OFAC"), Department of the Treasury. In the event Seller learns any fact that is contrary to the foregoing representations and warranties or that otherwise puts Buyer in violation of a U.S. trade sanction, Seller will immediately notify Buyer. Buyer will, within three days after receipt of such notice or within a reasonable time after Buyer learns of the violation through other means, notify Seller whether Buyer elects to terminate this Purchase Order for default with respect to the delivery at issue or instead to apply to OFAC for an appropriate license. In the event Buyer applies for a license but OFAC fails to issue a license within a reasonable time following receipt of Buyer's application, Buyer may elect to terminate this Purchase Order for default. Seller must reimburse Buyer for any loss resulting from market price movements calculated as the difference between the market price for the Goods on the original delivery date under this Purchase Order and that on the date of cancellation.

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- 25. PROCUREMENT:** Buyer's policy is to maintain high standards of integrity in procurement. Buyer's employees must ensure that no favorable treatment compromises their impartiality in the procurement process. Accordingly, Buyer's employees must strictly refrain from soliciting or accepting any payment, gift, favor, or thing of value that could improperly influence their judgment with respect to issuing a purchase order or administering this Purchase Order. Consistent with this policy, Seller agrees not to provide or offer to any Buyer employee any payment, gift or favor for the purpose of improperly obtaining favorable treatment in connection with any purchase order. Seller will conduct its own procurement practices, and ensure that its suppliers conduct their procurement practices, consistent with these standards. If Seller has reasonable grounds to believe this policy has been violated, Seller must immediately report such possible violation to the appropriate Buyer representative.
- 26. DISPUTES:**
- (a) Pending resolution of any dispute involving this Purchase Order Seller shall proceed with performance including delivery of Goods in accordance with Buyer's instructions.
- (b) Both parties shall work in good faith to resolve any dispute under this Purchase Order. Seller may submit to Buyer's authorized representative a written demand for Buyer's final decision regarding any dispute or issue between the parties relating to this Purchase Order unless Buyer has already rendered a final decision. Any final decision by Buyer shall be in writing, expressly identified as such, and shall be rendered within 45 days after receipt of Seller's written demand. If no final decision is issued within 45 days after receipt of Seller's written demand, Buyer shall be deemed to have made a final decision to reject Seller's demand.
- (c) If Seller disagrees with Buyer's decision, Seller must initiate arbitration pursuant to this Section 26 within 90 days after the date of Buyer's final decision or one year following the accrual of Seller's cause of action, whichever is later.
- (d) Any dispute arising under this Purchase Order that is not settled by arrangement between the parties will be resolved by binding arbitration in accordance with the Commercial Rules of the American Arbitration Association. The arbitration will be conducted by a single arbitrator in the City of Los Angeles, California. The award of the arbitrator must be made in writing and will be final and binding upon the parties. Judgment upon the award may be entered in any court of competent jurisdiction. Pending a final judgment in the arbitration proceedings or the settlement of any disputes arising from this Purchase Order, Seller must proceed diligently with the performance of the order in accordance with Buyer's instructions.
- 27. GOVERNING LAW/VENUE:** This Purchase Order and performance hereof is governed by the laws of the State of California, without regard to the choice of law rules thereof or the United Nations Convention on Contracts for the International Sale of Goods. The venue for any arbitration or lawsuit will be in Los Angeles, California.
- 28. ATTORNEYS' FEES.** In the event of any arbitration, litigation, or other dispute arising as a result of or by reason of this Purchase Order, the prevailing party in any such arbitration, litigation or other dispute shall be entitled to, in addition to any other damages assessed, its reasonable attorneys' fees, and all other costs and expenses incurred in connection with settling or resolving such dispute.
- 29. ENTIRE AGREEMENT:** This Purchase Order sets forth the entire agreement of Buyer and Seller, and supersedes all prior agreements, understandings and communications between them related to the subject matter of the order. This Purchase Order may be amended or modified solely by a written instrument signed by Buyer's duly authorized representative. The rights and remedies afforded to Buyer and Customers pursuant to this Purchase Order are in addition to any other rights and remedies available under contract or law.
- 30. LIMITATION OF LIABILITY:** IN NO EVENT SHALL BUYER BE LIABLE FOR ANTICIPATED PROFITS OR FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF BUYER'S PERFORMANCE OR FAILURE TO PERFORM HEREUNDER. BUYER'S LIABILITY ON ANY CLAIM OF ANY KIND OR FOR ANY LOSS OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH THIS PURCHASE ORDER SHALL IN NO EVENT EXCEED THAT PORTION OF THE PURCHASE ORDER PRICE ALLOCABLE TO THE GOODS OR PORTION OF THE GOODS WHICH GIVES RISE TO THE CLAIM. ANY ACTION BY SELLER AGAINST BUYER ARISING FROM THIS PURCHASE ORDER, INCLUDING BUYER'S BREACH THEREOF, MUST BE COMMENCED WITHIN ONE YEAR AFTER THE CAUSE OF ACTION AROSE.
- 31. SURVIVAL:** All obligations of a continuing nature and warranties will continue in full force and effect after completion, termination or cancellation of this Purchase Order and will not be extinguished by payment of the purchase price.
- P-1. HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA:** Seller must submit a Material Safety Data Sheet (MSDS) (Department of Labor Form ASH-20), as prescribed in Federal Standard No. 313A 29 CFR 1910.1200, HAZARD COMMUNICATION STANDARD, AND CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTION 5194, for all hazardous material five days before delivery of the Goods whether or not listed in Appendix A of the Standard. This obligation applies to all Goods delivered under this Purchase Order which involve exposure to hazardous materials or Goods containing these materials. Seller agrees to identify all hazardous materials and label each container of hazardous material in accordance with Federal Standard 29 CFR 1910.1200, Hazard Communication Standard, and California Code of Regulations, Title 8, Section 5194. At least five days before delivery of the Goods, Seller must forward one copy of the MSDS to Buyer. Seller shall forward an updated MSDS when there is any material change in composition of the Goods. Seller shall include a copy of the MSDS with each shipment of Goods. Seller agrees to comply with applicable laws and regulations, including all requirements for hazardous material licenses and permits.
- P-2. OFFLOAD AND SUBCONTRACT PAINTING OPERATIONS:** Seller must comply with all applicable local air quality district regulations. Use of coatings that violate these regulations is strictly forbidden. If the coating(s) specified in this Purchase Order violates applicable local regulations, Seller must notify Buyer immediately.
- P-3. BUYER'S RESIDENT OFFICE:** Buyer may elect, at its sole discretion and at any time during the performance of this Purchase Order, to establish a Resident Office (hereinafter referred to as "BRO") at Seller's facility on either a full time, part time or periodic visit basis, as program needs dictate, staffed as appropriate to meet mutual program objectives. The functions of the BRO will be to facilitate coordination and communication between Buyer and Seller, monitor Seller's progress, and initiate corrective measures to effect compliance with Purchase Order requirements. Seller will ensure that the BRO personnel have access to all levels of Seller's management and manufacturing areas on a noninterference basis, to permit adequate liaison, coordination, progress visibility and evaluation, and initiation of necessary corrective actions.
- P-4. COMPLIANCE WITH INTERNATIONAL TRAFFIC IN ARMS REGULATION (ITAR) AND EXPORT ADMINISTRATION REGULATION (EAR) REQUIREMENTS:** Seller is notified that technical data furnished with this Purchase Order may relate to articles appearing on the Munitions List of the Office of Munitions Control (OMC), U.S. Department of State or the Commodity Control List of the Bureau of Export Administration, U.S. Department of Commerce and may therefore be subject to export licensing requirements and limitations on disclosure to foreign nationals. Federal criminal and civil penalties may be imposed for any violation of these provisions.