

## PURCHASE ORDER TERMS AND CONDITIONS

### 1. Applicability.

(a) This purchase order is an offer by Hebeler (the "**Buyer**") for the purchase of the goods and services and all required documentation and testing as specified on the face of this purchase order (the "**Goods**") from the party to whom the purchase order is addressed (the "**Seller**") in accordance with and subject to these terms and conditions (the "**Terms**"; together with the terms and conditions on the face of the purchase order, the "**Order**"). This Order, together with any documents incorporated herein by reference or amendments to this Order, constitutes the sole and entire agreement of the parties with respect to the Order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Order. The Order expressly limits Seller's acceptance to the terms of the Order. These Terms prevail over any terms or conditions contained in any other documentation and expressly exclude any of Seller's general terms and conditions of sale or any other document issued by Seller in connection with this Order.

(b) These Terms apply to any repaired or replacement Goods provided by Seller hereunder.

(c) Buyer is not obligated to any minimum purchase or future purchase obligations under this Order.

2. **Acceptance.** This Order is not binding on Buyer until Seller accepts the Order in writing (the "**Order Acknowledgment**"). If Seller does not provide the Order Acknowledgment within two (2) days of Seller's receipt of the Order, Buyer may, in its sole discretion, cancel the Order with no recourse to Seller. Buyer may withdraw the Order at any time before it is accepted by Seller.
3. **Delivery Date.** Seller shall deliver the Goods in the quantities and on the date(s) specified in this Order or as otherwise agreed in writing by the parties (the "**Delivery Date**"). If no delivery date is specified, Seller shall deliver the Goods within five (5) days of Seller's receipt of the Order. Timely delivery of the Goods is of the essence. If Seller fails to deliver the Goods in full on the Delivery Date, Buyer may, in Buyer's sole discretion, terminate the Order immediately by providing written notice to Seller or Buyer may elect to not terminate the Order. Whether Buyer elects to terminate the Order to not terminate the Order, Seller shall indemnify Buyer against any losses, claims, damages, consequential damages, and reasonable costs and expenses directly attributable to Seller's failure to deliver the Goods on the Delivery Date. If Buyer elects not to terminate the Order, Seller shall deliver the Goods as soon as possible to Buyer using expedited, next day delivery methods and shall be solely responsible for any and all expediting costs. Buyer has the right to return any Goods delivered prior to the Delivery Date at Seller's expense and Seller shall redeliver such Goods on the Delivery Date. If Delivery is made more than 5 days prior to the Delivery Date, Buyer may charge Seller reasonable storage and handling fees, as determined in Buyer's sole discretion.
4. **Quantity.** If Seller delivers more than the quantity of Goods ordered, Buyer may reject all or any excess Goods. Any such rejected Goods shall be returned to Seller at Seller's risk and expense. If Buyer does not reject the Goods and instead accepts the delivery of Goods at the increased or reduced quantity, the Price for the Goods shall be adjusted on a pro-rata basis.
5. **Delivery Location.** All Goods shall be delivered to the address specified in this Order (the "**Delivery Location**") during Buyer's normal business hours or as otherwise instructed by Buyer.
6. **Shipping Terms.** Delivery shall be made in accordance with the terms on the face of this Order. If no shipping terms are specified on the face of this Order, shipping shall be Incoterms 2010 DDP. Deliveries shall be made as specified without additional charge for boxing, crating, or storage. Seller shall give written notice of shipment to Buyer when the Goods are delivered to a carrier for transportation. Seller shall provide Buyer all shipping documents, including the commercial invoice, packing list, air waybill/bill of lading, and any other documents necessary to release the Goods to Buyer on the date that Seller delivers the Goods to the transportation carrier. Buyer's order numbers and symbols and identification numbers must be plainly marked on all invoices, packages, bill of lading, and shipped orders. Packing lists shall accompany each box or package shipment showing Buyer's order number and symbol, item number, and description materials. Buyer's counts or weight shall be final and conclusive on shipments not accompanied by packing lists. The Order number must appear on all shipping documents, shipping labels, bills of lading, air waybills, invoices, correspondence and any other documents pertaining to the Order.
7. **Title and Risk of Loss.** Both Title to and Risk of Loss of the Goods delivered under the Order shall pass to Buyer upon Buyer's acceptance of delivery of the Goods.
8. **Packaging.** All goods shall be packed for shipment according to Buyer's instructions as listed on the Order or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition. Seller must provide Buyer prior written notice if it requires Buyer to return any packaging material. Any return of such packaging material shall be made at Seller's expense.
9. **Amendment and Modification.** No change to this Order is binding upon Buyer unless acknowledged by Buyer in an amended Order and is signed by an authorized representative of Buyer.
10. **Inspection and Rejection of Nonconforming Goods.** The Buyer has the right to inspect the Goods on or after the Delivery Date. Buyer may, upon reasonable notice, inspect the Goods and any work-in-process at facilities where Seller is manufacturing or storing the Goods. Buyer, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If Buyer rejects any portion of the Goods, Buyer has the right, effective upon written notice to Seller, to: (a) rescind the Order in its entirety; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require replacement of the rejected Goods. If Buyer requires replacement of the Goods, Seller shall, at its expense, within 4 days replace the nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Goods. If Seller fails to timely deliver replacement Goods, Buyer may replace them with goods from a third party and charge Seller the cost thereof and terminate this Order for cause pursuant to **Section 20**. If Buyer rejects any portion of the Goods, Seller must perform a root cause analysis to determine why the Goods did not meet Buyer's specifications as identified in the Order. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller's obligations under the Order, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions.
11. **Contractual Documentation.** Seller shall deliver to Buyer all documents required by the Order within the specified time and in accordance with the procedures set forth in the Order. Such documents constitute an essential part of the Order. Delivery will be considered completed when the following conditions are satisfied, if applicable: when packing lists approved by the Buyer and materials actually delivered by Seller are received, technical documentation is delivered to and approved by Buyer, test certificates, manuals, and final certificates are received by Buyer. If the Seller does not deliver such documents within the established deadlines, Buyer shall be entitled to refuse delivery, suspend payment, or terminate the Order pursuant to Section 20.
12. **Price.** The price of the Goods is the price stated in the Order (the "**Price**"). The Price must be agreed upon before shipment of the Goods under the order. Unless otherwise specified in the Order, the Price includes all packaging, transportation costs to the Delivery Location, insurance, customs duties, and fees and applicable taxes including, but not limited to, all sales, use or excise taxes. No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Buyer.

- 13. Payment Terms.** Seller shall issue an invoice to Buyer on or any time after the completion of delivery and only in accordance with the Terms. Unless specified on the face of the Order, Buyer shall pay all properly invoiced amounts due to Seller within one hundred and twenty (120) days after the later of when Buyer receives Seller's invoice for this Order, when Buyer receives Goods from Seller under this Order, or the Delivery Date as specified on this Order. Buyer shall not pay any amounts disputed by Buyer in good faith under this Order. Buyer shall only pay for Goods actually delivered under this Order and shall not pay for any Goods on the Order that have not been delivered by Seller. All payments hereunder must be in US dollars. In the event of a payment dispute, Buyer shall deliver a written statement to Seller no later than thirty (30) days prior to the date payment is due on the disputed invoice listing all disputed items and providing a reasonably detailed description of each disputed item. Amounts not so disputed are deemed accepted and must be paid, notwithstanding disputes on other items, within the period set forth in this Section 13. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under the Order notwithstanding any such dispute.
- 14. Liquidated Damages.** In addition to any other rights or remedies Buyer has at law or under this Order, if liquidated damages for delay in delivery or completion are set forth in the Order, Seller expressly agrees that (a) such liquidated damages were specifically negotiated by Buyer and Seller and are in lieu of Buyer's actual damages for delay, which both Buyer and Seller agree that such damages would be difficult or impossible to calculate; (b) such liquidated damages constitute a fair and reasonable estimate of the amount of damages that would be incurred by Buyer in the event of such delays in delivery or completion of the Order in light of anticipated harm, and the difficulties of proof of and inconvenience or non-feasibility of obtaining any adequate remedy; (c) such liquidated damages are not intended as and shall not be deemed or construed as penalties; and (d) Seller waives any right to contest the validity or enforceability of such liquidated damages.
- 15. Set-off.** Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller under the Order.
- 16. Warranties.** Seller warrants to Buyer that for a period of forty eight (48) months from the date the Goods are placed into service, all Goods will: (a) be free from any defects in workmanship, material and design; (b) conform to applicable specifications, drawings, designs, samples and other requirements specified by Buyer; (c) be fit for their intended purpose and operate as intended; (d) be merchantable; (e) be free and clear of all liens, security interests or other encumbrances; and (f) not infringe or misappropriate any third party's patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by Buyer. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the Goods with the foregoing warranties. If Buyer gives Seller notice of noncompliance with this Section, Seller shall, at its own cost and expense, promptly replace or repair the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods to Seller and the delivery of repaired or replacement Goods to Buyer.
- 17. General Indemnification.** Seller shall defend, indemnify and hold harmless Buyer and Buyer's parent companies, their subsidiaries, affiliates, successors or assigns, and their respective directors, officers, shareholders and employees, and Buyer's customers (collectively, "**Indemnitees**") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "**Losses**") arising out of or occurring in connection with the products purchased from Seller or Seller's negligence, willful misconduct or breach of the Terms. Seller shall not enter into any settlement without Buyer's or Indemnitee's prior written consent.
- 18. Intellectual Property Indemnification.** Seller shall, at its sole expense, defend, indemnify and hold harmless Buyer and any Indemnitee against any and all Losses arising out of or in connection with any claim that Buyer's or Indemnitee's use or possession of the Goods infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Seller enter into any settlement without Buyer's or Indemnitee's prior written consent.
- 19. Insurance.** During the term of the Order, and for the duration of the warranty period, Seller shall, at its sole expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than one million (\$1,000,000) with financially sound and reputable insurers. Upon Buyer's request, Seller shall provide Buyer with a certificate of insurance from Seller's insurer evidencing the insurance coverage specified in this Order. The certificate of insurance shall name Buyer as an additional insured. Seller shall provide Buyer with 30 days' advance written notice in the event of a cancellation or material change in Seller's insurance policy. Except where prohibited by law, Seller shall require its insurer to waive all rights of subrogation against Buyer's insurers and Buyer or the Indemnitees.
- 20. Compliance with Law.** Seller is in compliance with and shall comply with all applicable laws, regulations and ordinances. Seller has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Order. Seller shall comply with all export and import laws of all countries involved in the sale of Goods under this Order. Seller assumes all responsibility for shipments of Goods requiring any government import clearance. Buyer may terminate this Order if any government authority imposes antidumping duties, countervailing duties or any retaliatory duties on the Goods or on Seller.
- 21. Termination.** Buyer may terminate this Order, in whole or in part, at any time with or without cause for undelivered Goods on five (5) days' prior written notice to Seller. In the event Buyer terminates this order for undelivered Goods, Seller shall pay Buyer for all costs associated with acquiring replacement Goods including any costs in excess of what Buyer was to pay Seller for Goods under the Order, shipping, handling, expedition costs, and delivery. In addition to any remedies that may be provided under these Terms, Buyer may terminate this Order with immediate effect upon written notice to the Seller, either before or after the acceptance of the Goods, if Seller has not performed or complied with any of these Terms, in whole or in part. If the Seller becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, then the Buyer may terminate this Order upon written notice to Seller. If Buyer terminates the Order for any reason, Seller's sole and exclusive remedy is payment for the Goods received and accepted by Buyer prior to the termination.
- 22. Limitation of Liability.** Nothing in this Order shall exclude or limit (a) Seller's liability under Sections 15, 16, 17, 18, and 23 hereof, or (b) Seller's liability for fraud, personal injury or death caused by its negligence or willful misconduct.
- 23. Waiver.** No waiver by any party of any of the provisions of the Order shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in the Order, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Order shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
- 24. Confidential Information.** All non-public, confidential or proprietary information of the Buyer, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the Order is confidential, solely for the use of performing the Order and may not be disclosed or copied unless authorized by Buyer in writing. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer.

- Buyer shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) known to the Seller at the time of disclosure; or (c) rightfully obtained by the Seller on a non-confidential basis from a third party.
25. **Force Majeure.** Neither party shall be liable to the other for any delay or failure in performing its obligations under the Order to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable ("**Force Majeure Event**"). *Force Majeure* Events include, but are not limited to, acts of God or the public enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, war, invasion, hostilities, terrorist acts, riots, embargoes or industrial disturbances. Seller's economic hardship or changes in market conditions are not considered *Force Majeure* Events. Seller shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any *Force Majeure* Event are minimized and resume performance under the Order. If a *Force Majeure* Event prevents Seller from carrying out its obligations under the Order for a continuous period of more than five (5) business days, Buyer may terminate this Order immediately by giving written notice to Seller pursuant to **Section 20**.
  26. **Assignment.** Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under the Order without the prior written consent of Buyer. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Seller of any of its obligations hereunder. Buyer may at any time assign, transfer or subcontract any or all of its rights or obligations under the Order without Seller's prior written consent.
  27. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in the Order shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. No relationship of exclusivity shall be construed from this Order.
  28. **No Third-Party Beneficiaries.** This Order is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.
  29. **Governing Law.** All matters arising out of or relating to this Order shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule whether of the State of New York or any other jurisdiction that would cause the application of the laws of any jurisdiction other than those of the State of New York.
  30. **Submission to Jurisdiction.** Any legal suit, action or proceeding arising out of or relating to this Order shall be instituted in the federal courts of the United States of America or the courts of the State of New York in each case located in the City of Buffalo and County of Erie, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.
  31. **Cumulative Remedies.** The rights and remedies under this Order are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.
  32. **Notices.** All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth on the face of this Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission), email (with read receipt required) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Order, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.
  33. **Severability.** If any term or provision of this Order is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
  34. **Survival.** Provisions of this Order which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Order including, but not limited to, the following provisions: Set-off, Warranties, General Indemnification, Intellectual Property, Indemnification, Insurance, Compliance with Laws, Confidentiality, Governing Law, Submission to Jurisdiction/Arbitration, and Survival.