

TERMS AND CONDITIONS

1. **Definitions.** The work "Buyer" whenever used herein, shall mean UNIVERSAL TUBE INC. The party with which this Purchase Order is placed is referred to herein as "Seller." The goods and/or labor or services covered by this Purchase Order are referred to herein as the "Products," which term includes both goods and services unless the context clearly requires otherwise, and, as to goods, includes all parts, portions, items, attachments, repairs, replacements and substitutions thereof. The terms "Purchase Order," "herein," "hereof" and "hereunder" refer to and include the face of this document, those General Terms and Conditions and any other document(s) specifically made a part of this Purchase Order. "Buyer's Plant" means the plant of Buyer the address of which appears on the face hereof. "Interest" means interest on the principal amount owed and accruing from demand through the date of repayment at the prime rate of The Chase Manhattan Bank, as adjusted from time to time, plus one percent (1%) per annum. "Party" means any natural person, corporation, partnership, governmental authority or other legal entity. "Third Party" means any Party other than Buyer or Seller. "Seller Document" means any bill of lading, quotation, acknowledgement, invoice or other document issued by Seller.

2. **Entire Agreement.** This is the entire agreement between the parties respecting the Products and no modification of this Purchase Order shall be effective unless in writing and signed by Buyer's authorized representative. Any agreements, negotiations or understandings of the parties prior to the date of this Purchase Order, whether written or oral, are merged herein and superseded hereby. Reference in this Purchase Order to any Seller Document does not imply acceptance of any terms and conditions therein, which, if in addition to or inconsistent with the terms and conditions contained herein, shall not be part of the agreement between the parties.

3. **No Modifications: Acceptance.** Any Seller Document which contains terms additional to or inconsistent with the terms of this Purchase Order, or a rejection of any term of this Purchase Order, shall be deemed to be a counter offer to Buyer and shall not be binding upon Buyer unless specifically accepted in writing by Buyer. This clause shall constitute a continuing objection to any such terms not specifically accepted by Buyer. However, commencement for performance by Seller, in the absence of written acceptance of such counter offer by Buyer, shall be deemed to be performance in accordance with the terms of this Purchase Order and an acceptance hereof, notwithstanding prior dealings or usage of trade.

4. **Product Fabrication, Shipping Schedules.** Seller shall not fabricate any of the Products or procure any of the materials required in their fabrication, and Buyer shall have no obligation as to the same, except to the extent expressly authorized in this Purchase Order or in written instructions forwarded to the Seller by Buyer. Deliveries are to be made in quantities and at the times specified on the face hereof or in written instruction forwarded to the Seller by Buyer, but Buyer may from time to time change such quantities and times, or direct temporary suspension of the scheduled deliveries, without any liability whatsoever.

5. **Delay in Delivery.** If Seller, for any reason, does not comply with Buyer's delivery schedule, of which time is of the essence, Buyer at its option may either approve a revised delivery schedule or may terminate this Purchase Order without liability to Buyer on account thereof.

6. **Payment Not Acceptance.** Payment for Products shall not constitute acceptance, and all Products shall be subject to Buyer's inspection and rejection at Buyer's Plant. Neither payment nor acceptance shall constitute acknowledgement of the absence of breach of warranty or limit any of Buyer's rights hereunder.

7. **Taxes.** Except as may be otherwise provided on the face of this Purchase Order, the Seller shall pay, out of the purchase price, all federal, state and local taxes applicable to any provision of the Products.

8. **Infringement: Use of Products Licensed.** Seller warrants that the Products and the sale and/or use thereof (before or after incorporation into products during manufacture) do not and will not infringe any patents or other intellectual property rights, United States or foreign. Seller warrants that it is aware of the uses to which the Products are to be put, and grants the Buyer, and each party or entity to which the Products are provided, a free, unrestricted, irrevocable and perpetual license to use, repair and reconstruct the Products in any manner, and warrants that Seller has full right to grant said license.

9. Warranties: Remedies

(a) In addition to any other express and implied warranties provided by law or otherwise, Seller warrants that each Product (whether goods or services) shall: (i) be new and conform to this Purchase Order in all respects, (ii) conform to all specifications, drawings, samples and other descriptions furnished and/or specified by Buyer, (iii) be merchantable and fit for the purpose for which intended, and (iv) be free from all defects in design, workmanship and materials and be of highest quality and workmanship. Seller's warranty term for Products shall be coterminous with the warranty extended by Buyer to its customers. Seller's liability for breach of warranties given herein may be determined by Buyer's analysis of a sample of Product against which claims are made that the Product is defective. Seller may participate in such analysis in accordance with Buyer's procedure.

(b) Seller also expressly warrants that title to all of the Products shall be vested in Buyer free and clear of any and all liens and encumbrances of whatsoever nature and kind. All warranties of Seller, express and implied and remedies of Buyer, in this Section or elsewhere, shall survive indefinitely any delivery, inspection, tests, acceptance and payment.

(c) Upon any breach of warranty, in addition to all other remedies hereunder or under applicable law or in equity, Buyer may (i) cancel all or any portion of this Purchase Order; (ii) require the Seller to repair or replace any or all Products at Buyer's option and at Seller's sole expense, either at Buyer's Plant or at any other location designated by Buyer; (iii) require the Seller to pay all transportation and other charges arising from delivery, storage and return of Products; (iv) purchase replacement Products from a Third Party and charge the same to Seller; and/or (v) collect from Seller all costs and expenses (including attorneys' fees) incurred by Buyer as a result of Seller's unreasonable denial or enforcement of the warranties provided herein.

10. **Default.** Seller shall be in default hereunder if (a) Seller does not comply with this Purchase Order in all respects, or (b) Seller makes an assignment for the benefit of creditors, or proceedings, in bankruptcy or insolvency are instituted by or against Seller, or (c) Seller fails to provide Buyer with adequate assurance of Seller's ability to perform its obligations under this Purchase Order within five (5) days of written notice by Buyer of Buyer's concern that Seller's financial or other condition or progress on this Purchase Order endangers timely performance. Upon any default hereunder, in addition to all other remedies hereunder at law or in equity, Buyer may cancel all or any part of this Purchase Order without liability except to pay the contract price for Products delivered prior to notice of cancellation, purchase from a Third Party replacement Products ordered hereunder and recover from Seller on demand any and all increased costs or other damages relating thereto, plus interest and any attorneys' fees incurred. Buyer as a result of said default, costs of suit and other damages.

11. **Remedies Cumulative: Not By Waiver.** Buyer's remedies relating hereto shall be cumulative and in addition to any other remedies provided herein or by law or in equity. No delay by Buyer in the enforcement of any provision of this Purchase Order shall constitute a waiver thereof, and no waiver thereof shall constitute a waiver of any other provision.

12. **Indemnification.** Seller agrees to indemnify, defend and hold harmless the Buyer, its affiliates, customers and each other Party to which Products are provided, and each of their shareholders, directors, officers, employees and agents, on demand, from and against any and all claims, demands, actions, causes of action, suits, costs, fees, penalties, damages (consequential and otherwise), attorneys' fees and all other liabilities and obligations whatsoever ("Losses") arising out of or relating to: (a) personal injuries, damages or death to any natural person or damages to any property (including, but specifically not limited to, injuries, death or damages to the Seller, its agents, servants, employees and/or property) or any spill, discharge or emission of Products or otherwise and any claim of a Third Party relating to any Products or their quality; (c) any breach of this Purchase Order or any other agreement between Buyer or Seller; (d) any recall campaign in which Buyer or any customer participates in connection with inclusion of Products in goods sold by Buyer, and/or (e) patent or copyright infringement claims against goods or services provided by Seller, even if they are made to Buyer's specifications.

To the maximum extent permitted by applicable law, Seller's indemnification shall be applicable even as to Losses caused in whole or in part by an indemnitee's negligence, but shall not apply to the extent that Losses are clearly shown to have resulted solely and directly from the gross negligence or willful misconduct or such indemnitee.

In furtherance and not in limitation of the foregoing, Seller agrees that it will pay interest to Buyer, on demand, on all indemnification amounts owed, and Buyer may at its option participate in the defense of any Third Party claim with its own counsel, at Seller's expense.

13. **Change or Cancellation for the Convenience of Buyer.** Buyer reserves the right, for any reason, to cancel any undelivered portion of this Purchase Order or make changes in the specifications, amount, type, etc., of the Products. Upon such cancellation or change, and subject to the other provisions hereof, Buyer shall pay to Seller only the following amounts, without duplication, in complete and final satisfaction of any liabilities relating to this Purchase Order: (a) the purchase price for all Products received by Buyer prior to cancellation or change and accepted in accordance with this Purchase Order, (b) the reasonable direct out-of-pocket costs incurred by Seller in connection with Products covered by this Purchase Order and not shipped prior to cancellation or change and a reasonable profit based on such costs; provided that, the Seller shall use its best efforts to resell or re-use Products or components not shipped, and the amount set forth in this subsection (b) shall be reduced by the amount received therefor; and (c) an equitable price adjustment for any changes.

14. **Buyer's Property.** Seller shall not purchase for the account of Buyer or charge to Buyer any tools, jigs, molds, dies, fixtures, patterns, or other equipment (collectively, "Tools") used or useable for producing Products pursuant to this

Purchase Order, unless such Tools have been listed on Seller's invoice and approved by Buyer in writing. Seller acknowledges that all Tools so approved, all Tools otherwise supplied by Buyer, and all Products returned by Buyer for repair or pending replacement (collectively, "Buyer Property") are and shall be owned by Buyer and used only for the production of Products for Buyer. Seller shall have only temporary possession of Buyer Property and shall deliver all or any part thereof to Buyer immediately upon demand or automatically upon any bankruptcy or insolvency filing or other event. Seller at its own expense shall keep all Buyer Property in working condition and fully insured for the benefit of Buyer at all times while in Seller's possession, will keep it segregated from all other assets and labeled as being the property of Buyer, will immediately sign and file any UCC-1 forms required by Buyer in respect thereof. Seller hereby grants Buyer the option of purchasing, at the lower of book value or current market value, any Tools which are not Buyer Property and have been used exclusively for the manufacture of the Products.

15. **Services Performed on Buyer's Property, Insurance.** If Seller's work under this Purchase Order involves operations by Seller on the premises of Buyer or the premises of one or more of its customers. Seller and its employees, agents and subcontractors, shall abide and agree to be bound by all applicable rules and regulations of the Buyer. Rules and regulations for contractors and subcontractors, are available for inspection at any time by Seller, its employees, agents and subcontractors at Buyer's security office and such rules and regulations are hereby incorporated by reference and made a part of this Purchase Order. Seller shall take all necessary precautions to prevent the occurrence of any injury to person(s) or property during the progress of such work. Seller hereby waives all mechanics' liens and claims and agrees that none shall be filed or maintained against Buyer's property on account of any work performed or materials furnished under this Purchase Order and shall cause all its subcontractors, materialmen and suppliers (and subcontractors of such parties) to provide similar waivers and agreements in form satisfactory to Buyer.

Seller shall be responsible for obtaining and maintaining insurance coverage in amounts not less than the following: (a) Workers' Compensation - Statutory Limits for the state or states in which this purchase Order is to be performed (or evidence of authority to self-insure); (b) Employer's Liability - \$1,000,000 per accident, \$1,000,000 Bodily Injury by Disease Policy Limit and \$1,000,000 Bodily Injury by Disease Per Employee; (c) General Liability (including General Aggregate, Products/Completed Operations, Broad Form Property Damage, and Blanket Contractual Liability) - \$1,000,000 per occurrence; and (d) Automobile Liability (including owned, non-owned, hired and leased vehicles) - \$1,000,000 combined single limit for Bodily Injury and Property Damage. At Buyer's request, Seller shall promptly furnish to Buyer certificates of insurance setting forth the amount(s) of coverage, policy number(s) and date(s) of expiration for insurance maintained by Seller and such certificates shall name Buyer as an Additional Insured and require the insurer to give Buyer thirty (30) days prior written notice of any termination, reduction in the amount or scope of coverage under any policy. Seller's purchase of appropriate insurance coverage or the furnishing of certificates of insurance shall not release Seller of its obligations or liabilities under this Purchase Order. In the event of Seller's breach of this provision, Buyer shall have the right to cancel the undelivered portion of any Products covered by this Purchase Order and shall not be required to make further payments except for conforming Products delivered or rendered prior to cancellation.

16. **Force Majeure.** Seller shall not be liable for a reasonable delay or default in furnishing Products hereunder and Buyer shall not be liable for failure to perform any of its obligations hereunder, to the extent that such delays or defaults on the part of Seller or such failure on the part of Buyer, are due to causes beyond their reasonable control including without limitation acts of God, fire, flood, storm, governmental action, war, civil disturbance, sabotage, embargo or any other unforeseen condition beyond the reasonable control of the party experiencing the event of force majeure, and not due to its negligence; provided that either party has given the other prompt notice of the commencement of the occurrence that caused the delay, default or failure and shall continue to tender partial performance if the same is possible. Notwithstanding the foregoing, if any delay in delivery by Seller caused by an event force majeure will, in Buyer's opinion, cause a delay in delivery to Buyer's customers, Buyer shall have the opinion to immediately terminate all or a portion of this Purchase Order in order to obtain the products elsewhere, without liability to Buyer on account thereof.

17. **Set Off.** Buyer shall be entitled at any time to set off any sums owing by Seller to Buyer or to any Buyer's affiliated companies, against sums payable by Buyer in connection with this Purchase Order.

18. **Buyer's Liability.** In no event shall Buyer be liable for anticipated profits, interest, or penalties or incidental, consequential, punitive, exemplary or other damages or liabilities in connection with this Purchase Order, whether for breach of contract, late payment, property damage, personal injury or death or otherwise, beyond the sum set forth in Section 13 hereof, or, if not applicable, the price for Products accepted by Buyer.

19. **Limitation on Assignment.** This Purchase Order is issued to the Seller in reliance upon its personal performance of the duties imposed and by accepting same the Seller agrees not to assign this Purchase Order or delegate the performance of its duties hereunder, except for the procurement of raw materials, without prior written consent of the Buyer Failure to comply with provisions in this Section shall effect, at the option of the Buyer, a cancellation of the Buyer's obligations hereunder without liability.

20. Compliance with Laws

(a) Seller agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances in connection with the design, manufacture, sale, delivery and use of the Products, including limitation obtaining or making all approvals and filings, and, upon request, Seller will submit to Buyer evidence of such compliance.

(b) In furtherance and not in limitation to (a) above:

(i) all invoices must carry the following certificate, and Seller agrees to comply therewith as to all Products: "We hereby certify that these Products were produced in compliance with all applicable requirements of Section 6, 7 and 12 of all Fair Labor Standards Act, as amended, and of regulations and orders of the United States Department of Labor issued under Section 14 thereof."

(ii) During the performance of this Purchase Order, Seller agrees to comply with all provisions of the Equal Opportunity Clause set forth in Title 41 of the Code of Federal Regulations 60-1.4(a); the listing of Employment Openings clause set forth in Title 41 of the Code of Federal Regulations 50-250.2; and the Employment of the Handicapped clause set forth in Title 41 of the Code of Federal Regulations 60-741.4. This Purchase Order shall be deemed to incorporate by reference all the clauses required by the provisions of said regulations and law and wherever the term "Contractor" is used in said clauses it will be deemed to refer to Seller. Further, Seller agrees to conform to Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973 (29 USC Section 793) and Section 402 of the Vietnam Era Veteran Readjustment Assistance Act (38 USC Section 2012), not to discriminate against any employee or applicant for employment because of race, sex, creed, color, national origin, or handicapped or veteran's status, and Seller certifies that it does not maintain any unlawful segregated facilities.

(iii) To the extent that any of the Products are to be used by Buyer in connection with its manufacturing or assembly operations, including any activities incidental thereto, Seller hereby certifies and represents that said Products comply with all applicable rules and regulations issued under the Occupational Health and Safety Act (Public Law 91-596).

(c) To the extent any of statutory or regulatory cited above are amended, supplemented or replaced, or additional statutory or regulatory provisions are enacted, Seller's obligations under the Purchase Order shall be automatically amended to take the same into account and the Seller Documents shall contain all legends and other disclosures required by the same.

21. **Governing Law: Arbitration.** This Purchase Order shall be construed and governed by the laws of the State of Michigan. Any dispute, controversy, difference or claim arising out of or relating to this Purchase Order, or the breach thereof, shall be exclusively settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. The arbitration shall be conducted in Oakland County Michigan. The decision of the arbitrator(s) shall be final and binding, without a right of appeal, and may be entered in any court of competent jurisdiction.

22. **Severability.** If any provisions of this Purchase Order, or portion of any provision, is declared or found to be unenforceable, the balance of this Purchase Order or such provision shall be interpreted and enforced to the greatest extent possible as if the unenforceable provision or portion had never been a part hereof, in particular, if any interest rate provided for herein is higher than that permitted by applicable law it shall automatically be amended to the highest legal rate.

23. **Inventions.** All work performed by Seller under this Purchase Order shall be on a "work-for-hire" basis and Buyer shall own the entire right, title and interest in and to all such work. If this Purchase Order involves or results in: (i) any experimental, developmental or research activities, including engineering related thereto; (ii) any reduction to practice of any patentable or copyrightable subject matter, application or discovery at Buyer's expense; or (iii) any improvement in the design of the Products or any alternative or improved method of accomplishing the objectives of this Purchase Order, all information developed in the course thereof shall be owned by Buyer and be deemed confidential and proprietary property of Buyer, whether patentable or not, and Seller shall cooperate (and cause his employees to cooperate) in executing any documents and taking any other actions necessary or convenient to patent or otherwise perfect or protect for the benefit of Buyer any inventions conceived, developed or reduced to practice in performance of this Purchase Order.

24. **Proprietary Information.** Any information or knowledge which Buyer may have disclosed or may hereafter disclose to Seller in connection with this Purchase Order shall be deemed confidential and proprietary information of Buyer and shall not be disclosed by Seller without Buyer's prior written approval. All information or knowledge heretofore and hereinafter disclosed by Seller to Buyer in connection with the Products covered by this Purchase Order shall be deemed received on a non-confidential and non-proprietary basis. Seller agrees to assert any claims (other than a claim for patent infringement) with respect to any disclosed Seller information or knowledge.