



TERMS AND CONDITIONS OF PURCHASE

Please read these terms and conditions carefully. They materially affect the parties' obligations. Midwest Engineered Systems Inc. (MWES) is bargaining for and will do business only on the terms and conditions of this form.

1. Acceptance; Contrary Terms; Entire Agreement. This order is an offer to purchase the goods and/or services ("Articles") described on the front side of this form. MWES may revoke this offer at any time prior to its acceptance by Seller. Commencement of delivery or other indications of acceptance by Seller will result in a firm contract containing all terms and conditions on this form. NOTWITHSTANDING THE CONTENTS OF ANY FORM FROM SELLER. THE ONLY EFFECT THEREOF WILL BE TO ACCEPT THIS ORDER ON MWES' TERMS AND CONDITIONS. ANY PROVISION OF ANY FORM OR OTHER WRITING INCONSISTENT WITH THESE TERMS AND CONDITIONS WILL NOT CONSTITUTE A PART OF THE CONTRACT OF SALE. MWES' performance is conditional upon Seller's assent to these terms and conditions. If any of these terms and conditions is not acceptable to Seller, MWES must be notified promptly. This writing is intended by the parties to be the final expression of their agreement and is intended also as a complete and exclusive statement of the terms and conditions thereof. No modification of any term or condition will be valid or binding upon MWES entries approved by Beyer in writing.

2. Indemnification. Seller agrees to defend, indemnify, and hold MWES, its employees, customers, successors and assigns, harmless against any claims or demands, action or proceeding, liability, loss or expense whatsoever, including reasonable attorneys' fees arising from any actual or alleged (a) defect in the Articles, (b) failure to comply with specifications in the agreement or with the express and implied warranties of Seller, (c) violation of the Articles or in their manufacture or sale, of any statute, ordinance or administrative order, rule or regulation, (d) Infringement by any Article not manufactured, packaged or labeled in accordance with MWES' design, of any patent, trademark, or other trade designation, trade secret, copyright, or other intellectual property right which shall have been in effect at the time this order is accepted by Seller, (e) performance of the subcontract involving personal injury, sickness, disease, death or property damage, including loss of use of property resulting therefrom but not damage to the subcontract work itself, caused in whole or in part by the negligent or willful acts or omissions of subcontractor or subcontractor's suppliers, manufacturers, or other persons or entities for whose acts subcontractor may be liable. This indemnification provision does not negate, abridge, or reduce any other rights or obligations of the persons and entities described herein with respect to indemnity. If any claim, demand, action or proceeding is commenced against MWES by reason of any of the above matters, MWES agrees to give Seller notice thereof in writing.

3. Warranty-Product. In addition to all warranties prescribed by law, Seller specifically warrants that the Articles ordered will be merchantable; free from defects in material or workmanship; to the extent the Articles are not manufactured in accordance with MWES' design, free from defects in design; and fit for the purposes for which such Articles are intended and ordinarily employed. Seller warrants that the Articles will conform to any specifications, drawings, and other descriptions. Such warranties, including warranties prescribed by law, will run to MWES, its successors, assigns, and customers, and to users of the Articles.

4. Packing, Shipping, Taxes. The Articles will be packed and shipped by Seller in accordance with any instructions by MWES and in accordance with good commercial practices to ensure that no damage results from weather or transportation. Unless otherwise specified on this form, the prices charged to MWES are F.O.B. MWES' premises, and include any applicable federal, state and local taxes, charges or duties (exclusive of sales taxes). If delivery is not made by the date indicated in this Order, MWES may, in addition to its other rights, cancel this Order, without any liability whatsoever. If in order to comply with MWES's required delivery date it becomes necessary for Seller to ship by a more expensive way than specified in this purchase order, any increased transportation costs resulting there from shall be paid for by Seller unless the necessity for such rerouting or expedited handling has been caused by MWES.

5. Inspection; Rejection. Articles purchased hereunder are subject to inspection and approval at MWES' designated destination. MWES reserves the right to reject and refuse acceptance of Articles that are not In accordance with MWES' instructions, specifications, drawings, and data or Seller's warranties (express and implied). Seller will reimburse MWES for inspection costs of rejected Articles. Rejected or refused Articles will be returned to Seller at Seller's expense. Payment for any of the Articles hereunder will not be deemed an acceptance thereof.

6. MWES Furnished Property. Seller will not disclose to any other party, or use, reproduce, or appropriate, any material, tooling, dies, drawings, designs, and other property or data furnished by MWES, nor will Seller use the same to produce or manufacture more Articles than are required hereunder. Title to such property or data will remain with MWES at all times. Seller will bear the risk of loss or damage to such MWES furnished property unless such loss or damage is solely, directly and proximately caused by MWES. All MWES furnished property, together with spoiled and surplus materials, will be



TERMS AND CONDITIONS OF PURCHASE

returned to MWES at termination or completion of this agreement or upon MWES' demand, unless MWES otherwise directs.

7. Trademarks. MWES warrants that all of the trademarks MWES requests Seller to affix to the Articles are owned or authorized for use by MWES and Seller will not acquire or claim any right, title or interest therein or use of any such trademarks on any articles produced for anyone other than MWES.

8. Changes. Cancellation and Termination.

(a) MWES may, at any time before delivery of the order, make changes in quantities, specifications, delivery schedules, and methods of shipping and packing. If such changes cause an increase or decrease in prices or in time required for performance, Seller will notify MWES thereof within 15 days of receipt of such change by Seller and an equitable adjustment will be made. Changes will not be binding on MWES unless evidenced by a change order issued and signed by MWES.

(b) MWES may terminate this agreement in whole or in part at any time for any reason (including the commencement of any reorganization or proceeding involving Seller based on actual or alleged insolvency) without liability, by notice to Seller in writing. When Seller receives such notice, it will, to the extent specified therein, stop work end the placement of subcontracts under this agreement, terminate work under subcontracts outstanding hereunder, and take any necessary action to protect the property in Seller's possession in which MWES has or may acquire an interest. Any termination claim must be submitted to MWES within 60 days after the effective date of the termination. MWES reserves the right to accept or reject any such claim in whole or in part.

9. Compliance with Laws. Seller will comply with all applicable federal, state and local laws, regulations and orders. This includes, without limitation, the requirement that Seller certify in writing that the Articles were produced in compliance with and meet all applicable requirements and standards of the Fair Labor Standards Act and the regulations and orders of the United States Department of Labor issued hereunder, the Occupational Health and Safety Act, and applicable affirmative action laws.

10. Setoff. MWES may set off any amount due from Seller, whether or not under this agreement, against any amount due Seller hereunder.

11. Subcontracting; Assignment. Seller may subcontract its obligations with respect to Articles made to MWES' design only with MWES' prior written consent. Seller may not assign any of its rights, duties, or obligations under this agreement without MWES' prior written consent. Any attempted assignment without such consent, even if by operation of law, will be void. Any consent by MWES to Seller's subcontracting or assignment will not relieve Seller from its obligations, from any liability for breach, or from any duty to perform hereunder.

12. Notice of Delay. Whenever any occurrence or event affecting Seller or its subcontractors or suppliers delays or threatens to delay the timely performance of this order, Seller will immediately give written notice thereof to MWES.

13. Notices. Any notice relating to this agreement must be in writing and will be considered given when deposited, postage prepaid, in an United States Post Office or authorized depository and addressed to the other party at the address given herein.

14. Excuse from Performance. Either party is excused from performance if performance is rendered impracticable by any accident; breakdown; riot; war; delay; strike, labor or transportation problem; act of God; or other causes and conditions, whether of like or different nature, that are beyond such party's reasonable control. Written notice of delay or failure to perform must be given by the affected party within 10 days of the cause or condition. In the event of Seller's delay or failure to perform, MWES may, at its option, require the Seller to provide the Articles from other sources or purchase the Articles itself from other sources and reduce its obligation to Seller hereunder by the quantities purchased, without liability to Seller. At MWES' request, Seller will provide adequate assurances that the delay or failure to perform will not exceed 30 days. If Seller fails to provide such assurances within 10 days of MWES' request or fails to perform within the 30 days period, MWES may immediately cancel the agreement without liability.

15. No Identification After Breach. If MWES wrongfully rejects or revokes acceptance of any Article, fails to make any payment due on or before delivery, or repudiates with respect to any Article covered by this agreement, Seller will have no right to identify any goods to the contract after it learns of the rejection, revocation, breach or repudiation.

16. Reservation of Rights; Waiver. MWES explicitly reserves its rights to all remedies available to it under applicable law, including, without limitation, any rights it may have to incidental and consequential damages. The waiver by MWES of a breach by Seller of any term or condition hereunder will not be deemed a waiver of future compliance and such term or condition will remain in full force and effect.



TERMS AND CONDITIONS OF PURCHASE

17. Corrections. Clerical and stenographic errors are subject to correction.
18. Applicable Law. The validity, construction, and enforcement of this order will be governed by and interpreted under the laws of the State of Wisconsin.
19. Subcontractor Insurance. Prior to the start of subcontract work, subcontractor shall procure for the subcontract work and maintain in force worker's compensation insurance, employer's liability insurance, comprehensive automotive liability insurance, comprehensive work or commercial general liability insurance, on an occurrence basis, and any other insurance required of subcontractor under the subcontract. Subcontractor shall furnish a certificate of insurance setting forth the amounts of coverage, policy numbers and dates of expiration prior to commencement of subcontract work.

Midwest Engineered Systems Inc. shall be named as additional insured on each of these policies except for worker's compensation. The coverage shall be primary and non-contributory. Subcontractor's insurance shall include contractual liability insurance covering subcontractor's obligations under this contract.

Subcontractor's comprehensive or commercial general liability insurance, comprehensive automotive liability insurance and umbrella insurance shall be written with limits of liability not less than the following:

Comprehensive General Liability Insurance, Including Completed Operations:

- combined single limit bodily injury and property damage \$1,000,000 each occurrence, \$2,000,000 aggregate or bodily injury and property damage \$1,000,000 each occurrence, \$2,000,000 aggregate;
- property damage \$1,000,000 each occurrence, \$2,000,000 aggregate.

Commercial General Liability Insurance:

- each occurrence limit, \$1,000,000;
- general aggregate per job, \$2,000,000;
- products completed operations aggregate, \$2,000,000;
- personal and advertising injury limit, \$1,000,000.