



STANDARD PURCHASE ORDER TERMS AND CONDITIONS

1. Definitions. As used herein, the following terms have the meanings indicated:

- a. **"Items"** means goods and/or services ordered by Buyer from Seller pursuant to a Purchase Order.
- b. **"Purchase Order"** means a Transmission by Buyer to Seller electronically through a computer network or otherwise, by mail of hard copy, or by such other means as may be agreed (each a "Transmission"), containing a purchase order number, supplier code number, item number, identification or specification number, engineering change number or material code number and/or such other information evidencing an offer to Seller by Buyer relating to the purchase of Items.
- c. **"Purchase Order Release"** means a Transmission specifying quantities and shipping or delivery dates.
- d. **"Purchase Order Revision"** means a Transmission revising the information contained in a Purchase Order.
- e. **"Buyer"** means Franklin Tubular Products Inc, 66 Van Raalte Street, Franklin, North Carolina, 28734.
- f. **"Seller"** means the entity indicated as Supplier on the Purchase Order.

2. Acceptance of Purchase Order. Any Purchase Order referencing these Terms and Conditions is an offer to Seller by Buyer to enter into the purchase agreement described by such Purchase Order. These Terms and Conditions along with any other specifications or requirements transmitted to Seller by Buyer in connection therewith shall be the complete and exclusive statement of such agreement. Seller shall be deemed to have agreed to the Purchase Order (including any specifications or requirements stated therein) and these Terms and Conditions when Seller:

- a. executes and returns a signed writing indicating its intent to be bound by the Purchase Order; or
- b. delivers to Buyer any of the Items ordered; or
- c. renders for Buyer any of the services ordered (where Items ordered are, or include, services).

Any Items received by Buyer shall only be upon the terms of the Purchase Order (including these Terms and Conditions), notwithstanding any terms contained in any quotation, acknowledgment, invoice, or other document issued by Seller, or Buyer's act of accepting or paying for any shipment or any other act. Seller's acceptance of any Purchase Order is unqualified, unconditional and subject only to these Terms and Conditions and any of Buyer's terms specifically set forth on the Purchase Order or any signed documents referenced in Buyer's Purchase Order. Buyer expressly rejects any additional or different terms and conditions, including those which appear in any quotation, acceptance, shipping documentation, invoice or acknowledgment of Seller. Seller may not assert, as a defense to the enforcement of these Terms and Conditions any conditions or limitations made in a quotation, acceptance, shipping documentation, invoice or acknowledgment. Upon Seller's acceptance of the applicable Purchase Order, these Terms and Conditions shall enter into force and constitute the entire agreement between Buyer and Seller. Seller waives signed acceptance of the Purchase Order by Buyer. Seller waives any right to contest the validity of these Terms and Conditions, or assert that they are void for any reason, upon Seller's acceptance of the Purchase Order(s) referencing these Terms and Conditions.

3. Entire Agreement; Governing Law. No agreement or understanding to modify or supplement any Purchase Order or these Terms and Conditions shall be binding upon Buyer unless in writing and signed by Buyer's authorized agent which writing must specifically acknowledge that these Terms and Conditions are superseded by such agreement or understanding. Any modifications proposed by Seller are not part of the agreement absent such written agreement. However, all specifications, drawings, and data submitted to Seller by Buyer in connection with any Purchase Order are a part of the agreement of the parties relating to that Purchase Order. These Terms and Conditions and any Purchase Order shall be governed by and construed under the laws of the jurisdiction where the office of Buyer issuing the Purchase Order is located. No remedy herein provided shall be deemed exclusive of any other remedy allowed by law or equity.

4. Quantities; No Quantity Guarantee. Unless quantities and shipping schedules are specified, Buyer makes no representations or guarantees as to the quantity of Items it will purchase from Seller, and Purchase Orders are issued to cover the purchases of Items described thereon for an indefinite period or until canceled, with shipping schedules and quantities to be determined by Buyer and indicated to Seller via a Purchase Order Release.

5. Termination. Buyer may at any time terminate, cancel or suspend all or any part of undelivered Items or quantities on any outstanding Purchase Order, Purchase Order Revision or Purchase Order Release. Seller agrees that its sole remedy as a consequence of any such termination or cancellation is the reimbursement by Buyer of the reasonable costs of materials and labor actually and directly incurred by Seller on Items terminated or canceled by Buyer prior to Seller's knowledge of such termination or cancellation. Seller further agrees to take all steps reasonably possible to mitigate such charges.

Seller may only terminate a Purchase Order or Purchase Order Release after giving Buyer reasonable notice of such termination and an opportunity to identify and set up an alternate supplier.

6. Shipping Instructions.

a. **Freight.** Shipping will be as directed by Buyer on the Purchase Order, Purchase Order Release, or Purchase Order Revision or if not specified shall be DDP Buyer's receiving facility INCOTERMS 2010. If a carrier or method of shipment is used that is not specified in the Purchase Order, a Purchase Order Release, a Purchase Order Revision or in these Terms and Conditions without the advance written approval of Buyer, Seller shall be debited for any increase in the cost of the shipment.

b. **Packaging; Classification; Labeling.** If Buyer has provided Seller with a copy of Buyer's Materials Standard Practice No. 20, Seller must label the outside of all packages utilizing bar code labels in Buyer's AIAG format as described therein. Seller shall ensure that all Items are properly described, classified, packaged, marked and labeled and are in proper condition for transportation according to applicable regulations, including but not limited to, U.S. Department of Transportation, International Air Transport Association and the International Maritime Dangerous Goods Code regulations ("IMDG Code").

c. **Packing Slips.** Seller shall include the packing slip in a waterproof envelope secured to a package on all shipments. The packing slip must show the Purchase Order No., Supplier Code No., Item No., Quantity, Identification or Specification No. and Engineering Change No. or Material Code exactly as shown on the Purchase Order.

d. **Shipping Notices.** Seller shall send Buyer appropriate separate notice of shipment, including the same information that is contained on the packing slip plus all information relating to shipment date and handling.

e. **Bills of Lading.** Seller shall include the Purchase Order No. and the Supplier Code on all bills of lading.

f. **Early Shipments; Overshipments.** On shipments made earlier than the period specified on the Purchase Order, Buyer, at its option, may return the Items at Seller's expense and/or withhold payment until the otherwise applicable payment date. Buyer may return overshipments to Seller at Seller's expense. In either case, if Buyer so returns Items, Seller's account shall be debited for the total amount of any invoices (including, but not limited to, shipping expenses and taxes) paid thereon.

g. **Shipments of Hazardous Materials.** "Hazardous Materials" are defined for purposes of these Terms and Conditions as any substances regulated as contaminants, or as threats or potential threats to human health, safety or the environment, by any Environmental Requirements (as herein defined). In addition to Sections 6(a)-(f), Seller must comply with the following requirements for shipment of Hazardous Materials:

(1) The shipping term, risk of loss and title transfer shall be DDP Buyer's receiving facility INCOTERMS 2010.

(2) Seller shall ensure that all personnel shall receive hazardous materials training as required by applicable regulations. Seller shall further ensure that a valid 24-hour emergency response number (domestic and international) is supplied on the shipping documents for Hazardous Materials and that the appropriate material safety data sheet has been given to the proper emergency response organization prior to shipment. Seller shall be shown as the "shipper" on all documents relating to the shipment of any Hazardous Materials provided under the Purchase Order. Buyer is not to be shown as the "shipper" on any such documents.

(3) Seller may use Buyer designated carriers for the shipment of Hazardous Materials provided that all the conditions in this Section are met. Seller must use the "Buyer Straight Bill of Lading for Hazardous Material Shipments" for all shipments to non-Caterpillar facilities. The following fields must be completed on the bill of lading form: Fac., Dk. and Acct. Distribution. Questions regarding this information should be directed to the Buyer's purchasing representative. Upon shipment, Seller shall fax a copy of the completed bill of lading form to (828) 369-9958.

(4) Hazard Communication. For all Items, Seller shall provide Buyer with the appropriate hazard classifications and warning messages that should appear on product labels as required by Environmental Requirements, and other laws and regulations of the United States and non-United States jurisdictions in which such Items will be distributed. Seller shall develop, revise, update and transmit an electronic copy of the current (prepared or revised not more than three years prior to the date of the relevant Purchase Order) material safety data sheets ("MSDSs") for all Items purchased, in the appropriate language and format that may be required by the laws of the jurisdictions in which the Items will be distributed. When applicable, Seller shall format such MSDSs and labels to identify the Item as a Caterpillar-branded product. "Environmental Requirements" means all United States and foreign (non-United States) federal, state, provincial, or local laws, regulations, ordinances, orders, or other pronouncements now in effect or as hereafter amended, that have the force or effect of law, relating to human health or safety and the protection, preservation, or remediation of the environment, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., the Clean Air Act, 42 U.S.C. Section 7401 et seq., the Clean Water Act, 33 U.S.C. Section 1251 et seq., the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq., the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq., the Federal Hazardous Substances Act, 15 U.S.C. Section 1261 et seq., and the Emergency Planning and Community Right to Know Act, 42 U.S.C. Section 11011 et seq.

(5) Seller shall comply with all laws administered by the U.S. Department of Transportation ("USDOT"), and USDOT and United Nations/North America (UN/NA) rules and regulations, including but not limited to the U.S. Federal Hazardous Materials Transportation Act, 49 U.S.C. Section 5101 et seq., the UN/NA 1993 regulation regarding flammable liquids, international regulations issued by the International Civil Aviation Organization (ICAO Technical Instructions), and the IMDG Code, that regulate

the transportation of Hazardous Materials and apply to transportation of the Items while under Seller's possession or reasonable control.

7. Warranty. Seller, in addition to any express or implied warranties of additional scope given to Buyer by Seller or implied by law, hereby warrants that Items furnished by Seller will be in full conformity with Buyer's instructions, specifications, drawings and data, and Seller's samples or representations, and will be free from defects in design (to the extent that Seller furnishes the design), materials and workmanship. Seller may not change any specifications, engineering processes, materials or design without the prior written consent of Buyer. To the extent that the Items include services to Buyer, Seller warrants that it is properly licensed, certified, and trained (in compliance with the applicable standards set forth by relevant governmental or industry association authorities), and that such services will be provided with a degree of care and competence that, at minimum, accords with customary industry standards and practice. Seller agrees that this warranty shall survive acceptance of the Items. Seller shall be responsible for every claim for compensation in respect of damage or injury that is based on a breach of the foregoing warranty, and, at Buyer's option, Seller shall handle any such claims or shall provide all reasonable assistance to Buyer in Buyer's handling of such claims.

8. Limitation on Liability. In no event shall Buyer be liable to Seller for incidental or consequential damages, or damages for lost profits, including but not limited to compensation, reimbursement or damages on account of lost profits on sales or anticipated sales by Seller, or on account of investments or commitments made in connection with a Purchase Order, or in connection with the establishment, development or maintenance of the business or goodwill of Seller.

9. Product Regulations. The term "Product Regulations," as used in these Terms and Conditions, shall mean Environmental Requirements, labeling, marking, license, authorization, certification, country of origin, hazard communication, and other United States, non-United States, and international entity regulatory requirements applicable to the import, export, manufacture, sale, or distribution of Items pursuant to Purchase Order(s). Such Product Regulations specifically include, but are not limited to, California Health & Safety Code Section 25249.5 et seq. ("Proposition 65"), Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, European Union ("EU") European Conformity ("CE") marking requirements (including the declaration of conformity, Technical Construction File and user's manual, where applicable); and the following EU Directives, which may apply to the Items: Registration, Evaluation and Authorization of Chemicals ("REACH"); Restriction on Hazardous Substances ("ROHS"); Machinery Directive; General Product Safety Directive; Directive on Noise Emissions; Directive on Classification, Packaging and Labeling of Dangerous Substances; Limitations Directive (applying to carcinogenic lubricating oils); Directive on Waste Electrical and Electronic Equipment; Directive on Classification, Packaging and Labeling of Dangerous Preparations; Construction Products Directive; Battery Directive; and Gas Appliance Directive. Seller is solely responsible for the compliance of the Items with applicable Product Regulations. Seller agrees to provide to Buyer all information and documentation, including but not limited to supply chain data, necessary for Buyer to comply with all Product Regulations applicable to Buyer.

On an annual basis or more frequently if requested by Buyer, Seller shall disclose to Buyer any Items Seller delivered to Buyer that contain tin, tantalum, tungsten, gold, or other materials that may be designated as a conflict mineral by the U.S. government ("Conflict Minerals"). Seller shall have a supply chain policy for Conflict Minerals and shall undertake (1) a reasonable inquiry into the country of origin of Conflict Minerals incorporated into Items it provides Buyer; (2) due diligence of its supply chain, as necessary, to determine (i) if Conflict Minerals incorporated into Items it provides Buyer are sourced from the Democratic Republic of the Congo or adjoining countries and if so, (ii) whether such Conflict Minerals directly or indirectly support conflict in these countries, and (3) risk assessment and mitigation actions as may be necessary to implement the reasonable country of origin inquiry and due diligence procedures. Seller agrees to provide to Buyer all supporting information and documentation substantially in the format requested by Buyer, including, but not limited to, supply chain data necessary or desirable for Buyer to comply with its obligations under Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act and its implementing regulations. All such supporting information and documentation shall be retained by Seller for a minimum of five years and be subject to audit by Buyer upon reasonable notice. Seller shall include the substance of this Section 9 in all subcontracts awarded by Seller for work under this Purchase Order.

10. Inspection. Items are subject to Buyer's inspection, testing and approval. Buyer, at its option, may reject or refuse acceptance of Items that do not meet the requirements of the Purchase Order or any applicable warranty. Items rejected or not accepted by Buyer shall be returned to Seller at Seller's expense, and Seller agrees to refund to Buyer any payments (including, but not limited to, shipping expenses and taxes) made by Buyer for such Items. Payment by Buyer for any Items shall not be deemed an acceptance thereof. Acceptance of any Item shall not relieve Seller from any of its obligations, representations or warranties hereunder or pursuant hereto.

11. Work in Process; Quality Program; Capacity. Buyer shall have the right, at any reasonable time or times, to inspect materials, work in process, finished Items and parts, and records relating thereto, at any facilities at which Items are manufactured or such records are kept. Buyer assumes no responsibility and waives no rights as a result of any such inspection.

Seller shall maintain a quality assurance program satisfactory to Buyer to ensure that Items consistently satisfy Buyer's quality requirements. Seller shall maintain sufficient production capacity to ensure that Buyer's firm orders for Items are promptly and regularly filled.

12. Price, Payment Terms and Invoices. Seller represents that the price charged to Buyer for Items is at least as low as the price charged by Seller to buyers of a class similar to Buyer under conditions similar to those specified in

the Purchase Order and that prices comply with applicable government laws and regulations in effect at time of quotation, sale and delivery. Seller agrees that any price reduction regarding any Items that is implemented prior to shipment or rendering of such Items shall be applied to the Purchase Order for all shipments or rendering of Items following such price reduction. Buyer may withhold payment until proof of the absence of any liens or encumbrances on the Items is given to Buyer, upon Buyer's request. Further, in addition to any other rights or remedies available to Buyer, Buyer may withhold any payment for non-delivery of Items, or delivery of nonconforming or poor quality Items by Seller, its subcontractors or its agents.

Unless otherwise specified thereon, prices quoted on any Purchase Order or Purchase Order Revision include any and all charges for the Items ordered (including but not limited to, any charges for boxing, packing, crating, cartage, taxes or other additional charges).

Seller hereby waives any applicable lien over the Items, whether such Items are being supplied to Buyer or Buyer's subcontractors.

Seller shall include on invoices the same information that is required on Packing Slips, and, unless otherwise instructed on a Purchase Order, shall send such invoices in an electronic format specified by Buyer and to the electronic location provided by Buyer to Seller. Prices contained in a Purchase Order are exclusive of all taxes, including VAT (as defined below). In the event that any Items supplied by Seller pursuant to a Purchase Order are properly subject to VAT, and where Buyer has agreed in writing to pay such VAT, Buyer shall, in addition to the price payable for any Items, pay to Seller the appropriate amount of VAT provided that Seller has first issued to Buyer a compliant invoice in accordance with the provisions of the relevant VAT legislation. Where Buyer has agreed in writing to pay any taxes relating to any Purchase Order, applicable taxes shall be listed separately on the invoice. "VAT" means value added tax or goods and services tax or any other similar transaction tax, but not U.S. sales and use tax. Buyer shall pay all correct itemized electronic invoices received from Seller pursuant to Buyer's then current "Standard Settlement Schedule" or, if no such Standard Settlement Schedule exists, pursuant to Buyer's then current payment terms, a current version of which has been provided to Seller.

13. Resale Certification. If a Purchase Order is marked "Resale," Buyer certifies that Items purchased thereunder are purchased for purpose of resale.

14. Property Furnished to Seller by Buyer. Except as specified below, all patterns, dies, molds, tools, models, jigs, core boxes, piece parts, samples, materials, drawings, specifications, test reports, technical material, advertising material, and any other personal property furnished to Seller by Buyer, or specifically paid for by Buyer for use in performance of a Purchase Order (collectively "Materials"), shall be and remain the property of Buyer, shall be subject to disposition according to Buyer's instruction, and shall be used only in filling orders from Buyer. Title to and full ownership of the Materials shall remain with Buyer at all times. Seller shall not claim any rights of ownership in any of the Materials and shall not mortgage, encumber, transfer, dispose of, remove or allow the removal of any of the Materials from Seller's facility to which such Materials are initially delivered, except as permitted or instructed by Buyer in writing. Seller shall take all necessary precautions and actions to preserve and maintain the Materials in good working condition. Seller shall perform any further act and execute, acknowledge, and deliver any further documents that Buyer may reasonably request in order to protect Buyer's title to the Materials. Seller shall at all times clearly identify the Materials as the property of Buyer by labeling the Materials with distinctive markings, and to the extent reasonable, shall keep the same separate and apart from the property of others, including Seller, located in the same facility. Seller shall bear the risk of any damage to or loss of such Materials while in the possession of or under the control of Seller or Seller's agents. Any waste materials or byproducts generated by or resulting from operations on, use of or processing of Materials furnished to Seller by Buyer shall be and remain the property of Seller, and Buyer shall have no responsibility in connection therewith.

Any Materials furnished to Seller by Buyer for use in connection with a Purchase Order are provided in AS-IS condition, and Buyer makes no representations or warranties of any kind, including warranties relating to the condition of such Materials or their suitability for the purposes required by Seller. BUYER DISCLAIMS ANY AND ALL WARRANTIES ASSOCIATED WITH SUCH MATERIALS, INCLUDING, BUT NOT LIMITED TO, EXPRESS OR IMPLIED WARRANTIES, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

15. Confidential Information; Proprietary Rights. Seller shall take all necessary steps to protect Buyer Confidential Information (as defined below) with at least the same degree of care that Seller uses to protect its own confidential and proprietary information of like kind, but in no event less than reasonable care. "Buyer Confidential Information" means all information relating to Buyer's products or operations that is disclosed to Seller or created during the performance of any Purchase Order. Buyer Confidential Information includes all business or technical information that is disclosed to Seller, directly or indirectly, in writing, orally or visually, but does not include information that (a) was already in Seller's possession before its receipt from Buyer without restriction on its use or disclosure, (b) is or becomes available to the general public through no act or fault of Seller, or (c) is rightfully disclosed to Seller by a third party without restriction on its use or disclosure. Except as otherwise expressly agreed to in writing by Buyer, Seller shall not (i) use any Buyer Confidential Information except to conduct business with or on behalf of Buyer or (ii) disclose to any third party any Buyer Confidential Information except to conduct business with or on behalf of Buyer, in which event Seller shall (A) first ensure that such third party has signed a written confidentiality agreement having terms at least as restrictive as the terms of this Section 15 and (B) Buyer has consented in writing to such disclosure.

At any time upon Buyer's request, Seller shall promptly return or destroy any media containing any Buyer Confidential Information.

Except for Seller's Financial Statements (as defined in this paragraph), Seller shall not disclose any confidential or proprietary information to Buyer unless Buyer first agrees in writing to the receipt of such confidential or proprietary information. Seller's "Financial Statements" means independently audited financial statements (income statement, balance sheet, and cash flow statement) for the previous two (2) fiscal years and interim financial statements through the current fiscal year-to-date period. Upon Buyer's request, Seller will promptly provide its or Seller's ultimate parent company's, as required by Buyer, Financial Statements to Buyer. Buyer shall hold and safeguard such Financial Statements by using the same degree of care it uses to protect its own Financial Statements, provided, however, that Buyer may disclose Seller's Financial Statements to a third party contracted to assist Buyer with analyzing Seller's Financial Statements provided such third party is obligated to maintain the confidentiality of Seller's Financial Statements to the same extent as Buyer is so required under this Section 15. Seller acknowledges that, except as otherwise expressly agreed to in writing by Buyer, all technical information previously or hereafter disclosed by Seller to Buyer in connection with any Purchase Order has been disclosed on a non-confidential basis.

Buyer may have valuable Intellectual Property Rights (as defined below) in tooling, documents, information, and other materials provided to Seller. Seller shall not acquire any right, title, or interest in any Intellectual Property Rights of Buyer. Seller may use the Intellectual Property Rights of Buyer only in the production and supply of Items to Buyer and affiliates of Buyer as Buyer may approve in writing. Without limiting the foregoing, Seller agrees that Items manufactured based on Buyer's Confidential Information, including drawings or specifications and other Confidential Information, may not be used for Seller's own use or sold to third parties without Buyer's prior express written consent. "Intellectual Property Rights" means patents, copyrights, trade secrets, and industrial design rights.

If a Purchase Order includes development services, such as the design of a unique product or modification of an existing Seller product, Seller grants to Buyer and its affiliates a perpetual, worldwide, paid-up, royalty-free, nonexclusive license, with the right to sublicense, to make, have made, use, offer to sell, sell, export and import all inventions or other results of Seller's development work that Seller conceives, develops, acquires, or reduces to practice in the course of performing work under the Purchase Order and Seller shall provide to Buyer all documentation, information, and other materials including, without limitation, all drawings, prints, specifications, data, instructions, and manuals related to such inventions or other results of Seller's development work, necessary for Buyer to receive the full benefit of such license.

Notwithstanding anything contained herein to the contrary, Buyer shall own all Intellectual Property Rights that derive from or incorporate any Buyer Confidential Information or Intellectual Property Rights owned by or licensed to Buyer. Seller shall promptly disclose and assign, and hereby does assign, all of Seller's right, title and interest in such Intellectual Property Rights to Buyer or shall cause the same to be so assigned. Further, Seller shall execute, or cause to be executed, at Buyer's expense, all applications, assignments, or other instruments that Buyer may deem necessary in connection with such Intellectual Property Rights.

Seller grants to Buyer and its affiliates the right to repair and reconstruct any Item (including, for example, the right to rebuild the Item and the right to remanufacture any Item by disassembling its constituent components and reassembling old and new components into a remanufactured Item) and the right to have the same done by others on behalf of Buyer and its affiliates.

Seller grants to Buyer and its affiliates a perpetual, worldwide, paid-up, royalty-free, nonexclusive license under each copyright that Seller owns, controls, or has a right to license to reproduce, prepare derivatives of, sublicense, distribute, perform, and display any software that is embedded or loaded in the Items ("Embedded Software") in conjunction with the use or sale of the Items. In addition, Seller grants to Buyer and its affiliates a perpetual, worldwide, paid-up, royalty-free, nonexclusive license under each copyright that Seller owns, controls, or has a right to license in any work of authorship other than Embedded Software fixed in any tangible medium of expression delivered by Seller under a Purchase Order (including, without limitation, drawings, prints, manuals, and specifications) to reproduce, prepare derivatives of, distribute, perform, and display such work.

In each subcontract of Seller's work performed pursuant to a Purchase Order, Seller shall obtain for Buyer all of the rights and licenses granted to Buyer under this Section 15.

Seller warrants that the Items do not infringe on any Intellectual Property Rights or other proprietary rights of any third party because or on account of the use, offer to sell, or sale of any such Items alone or in combination with other Items or materials, except and solely to the extent that such Items are specifically constructed in exact accordance with Buyer's designs or technical specifications. If any of the Items furnished to Buyer become the subject of an alleged infringement of any Intellectual Property Right of any third party, Seller shall, at its expense, either (i) procure for Buyer the right to continue using the Items; (ii) replace or modify the Items so that they are non-infringing; provided, however, that such replacement or modified Items must provide equal or greater functionality than the original Items; or (iii) if, after exhausting commercially reasonable efforts, Seller is unable to obtain either of the above two results, refund Buyer's full purchase price.

Seller shall have no right to apply and further shall not apply to Items any trademark, logo, or trade dress owned by Buyer, including without limitation **FTP, or FRANKLIN TUBULAR PRODUCTS** (hereinafter "Buyer's Trademarks"). Notwithstanding the foregoing, if Buyer desires for any of Buyer's Trademarks to be applied to an Item, the drawing or print that accompanies the Purchase Order shall so state or shall specifically call out the 1E0198 specification.

Alternatively, Seller may be separately authorized to apply any of Buyer's Trademarks to an Item if such authorization is specifically set forth on the Purchase Order or otherwise authorized by Buyer in writing. Seller agrees and acknowledges that it shall obtain all design artwork for Buyer's Trademarks from Buyer, that it will not recreate any design aspects of Buyer's Trademarks, and that it will correctly apply Buyer's Trademarks to an Item according to the 1E0198 specification. If Seller cannot correctly apply Buyer's Trademarks to an Item, it must reject the Purchase Order. Further, Seller shall only apply Buyer's Trademarks to those Items specifically referenced in the Purchase Order. Seller shall acquire no right whatsoever in Buyer's Trademarks, either express or implied, by estoppel or by implication, through its action in fulfilling a Purchase Order. Seller shall not apply any trademarks, logos, or trade dress of Seller or any third party to any Items that are specifically designed for Buyer without Buyer's prior express written consent. Seller shall have no right to apply and further shall not apply to any other goods sold by Seller any of any number, letter, symbol, or combination thereof that is affixed to or embedded in any Item to a part or drawing number associated with the Item (hereinafter "Buyer's Part Numbers"). Notwithstanding the foregoing, if Buyer desires for any of Buyer's Part Numbers to be applied to an Item, the drawing or print that accompanies the Purchase Order shall so state. Alternatively, Seller may be separately authorized to apply any of Buyer's Part Numbers to an Item if such authorization is specifically set forth on the Purchase Order or otherwise authorized by Buyer in writing. To the extent Seller lawfully offers goods to others similar to Items, Seller will not state or otherwise indicate that such goods of Seller are equivalent to Items unless provable without reference or reliance on Seller's sale of Items to Buyer or any Buyer Confidential Information.

16. Indemnification. Seller agrees to indemnify, defend and hold harmless Buyer, Buyer's affiliates, and Buyer's and Buyer's affiliates' respective directors, officers, employees, shareholders, agents, successors, assigns, consultants and business invitees from and against any and all claims and demands, liabilities, losses, damages, costs, enforcement procedures and expenses, of whatsoever nature (including costs, litigation expenses and counsel fees incurred in connection therewith) arising out of injury to, or death of, any person whatsoever or injury or damage to property of any kind by whomsoever owned, or the environment, arising out of or related to, directly or indirectly, the following:

- a. the performance or nonperformance by Seller, Seller's subcontractors or Seller's agents of any work which is the subject of the Purchase Order;
- b. Seller's non-compliance with Seller's obligations under any Purchase Order or these Terms and Conditions or any laws or regulations, including, without limitation, those applicable to the packaging, classification, labeling, training, handling and transportation of Hazardous Materials, whether such action is brought by a governmental agency or other person or entity, except to the extent that such claims result from Buyer's gross negligence or willful misconduct;
- c. Seller's noncompliance with Seller's obligations listed in Section 17(a) or any injury or illness to Buyer's employees, Seller's employees, Seller's subcontractors or agents, their respective employees, or any other person, caused by that noncompliance;
- d. any claim of defect in the design, materials, manufacture or sale of the Items;
- e. any recall caused by Items provided by Seller or its agents;
- f. Seller's breach of any representation, warranty or covenant in these Terms and Conditions or in any Purchase Order;
- g. Seller's noncompliance with Environmental Requirements or Product Regulations; or
- h. the EU Product Liability Directive 1999/34/EC of the European Parliament and of the Council of May 10, 1999.

17. INSURANCE REQUIREMENTS. Seller and its subcontractors will maintain insurance coverage and will provide proof of insurance coverage as required by Buyer upon request.

18. WORKER'S COMPENSATION. Seller agrees to be responsible for all documentation, processing, and management of workers' compensation claims and related procedures for individuals assigned by Seller to perform Services for Buyer (Seller's "Workers"). The parties agree to cooperate in maintaining compliance with applicable workers' compensation laws, regulations, decrees and governmental orders related to workers' compensation in all jurisdictions which govern the Services and the Workers' conduct or work.

Upon request by the other party, each party agrees to provide whatever information may be in its possession regarding any Worker who may be injured in the course of performing Services for Buyer. This requirement does not apply, however, to any information or documents or information which one party is prohibited from providing to the other party because of laws or recognized legal privileges regarding confidentiality. Seller will be responsible for investigating all claims, including but not limited to fraudulent claims, and coordinating all procedures for handling workers' compensation inquiries. Buyer agrees to fully cooperate, within reason, with any such investigation. Seller agrees to be responsible for maintaining all documents relating to workers' compensation matters for Seller's Workers, including documents and other information required by local, state, and federal governmental bodies.

It is the intention of the parties that Workers are Seller's employees, not Buyers. Seller agrees to protect, defend, hold harmless and indemnify Buyer and Buyer's officers, directors, employees, agents, successors and assigns, from and against any and all claims, suits, allegations, judgments, actions, liabilities, losses, damages, costs and expenses (including, without limitation, reasonable attorney and expert witness fees), and all other liability of any nature whatsoever: (i) arising from, or alleged to arise from, Seller's performance of, or failure to perform, Seller's

responsibilities under this Section, or (ii) in any instance where the Worker's status as Seller's employee is an element required for recovery, whether under any workers' compensation law or under any other law. Maintaining the insurance coverage required by this Order shall in no way be interpreted as relieving Seller of any responsibility under this Section. The indemnification provision in this Section shall survive termination, cancellation, or expiration of this Order.

19. Compliance with Laws; Government Procurement. Seller represents that it has read, understands, has complied, and during the performance of any Purchase Order shall continue to comply, with the provisions of all applicable laws, rules, regulations, directives, ordinances, orders, or statutes (collectively, the "Laws") from which liability may accrue to Buyer for any violation thereof, and including but not limited to, compliance with all wood packing regulations of the country of destination, Environmental Requirements, Product Regulations, the Fair Labor Standards Act of 1938, the U.S. Foreign Corrupt Practices Act and any applicable anti-bribery Laws of other countries, the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, the sanctions regulations administered by the U.S. Treasury Department Office of Foreign Assets Control and the U.S. Department of State, the Sarbanes-Oxley Act, and government procurement Laws, all as amended. Seller agrees that it: (i) will provide Buyer with U.S. export classification information regarding all Items within 10 (ten) business days of receipt of Purchase Order, unless the Items are classified as "EAR99", and (ii) is responsible for obtaining and maintaining any required, applicable export and import licenses and authorizations for Purchase Order shipment(s) of the Items, unless otherwise mutually agreed to in writing. Child labor is not tolerated by the Company. The minimum employment age is the age of completion of compulsory school, but never less than 15 years.

Seller shall not deliver Counterfeit Product to Buyer under any Purchase Order or Purchase Order Release. "Counterfeit Product" means an Item that is itself or contains an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified part from the original manufacturer, a source with the express written authority of the original manufacturer, or an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics. Seller shall use commercially reasonable efforts to detect and avoid providing Counterfeit Products to Buyer. Seller shall flow down the substance of this clause to its subcontractors and suppliers in the performance of this Purchase Order or Purchase Order Release. In the event that an Item delivered under a Purchase Order or Purchase Order Release is a Counterfeit Product, Seller shall, at its expense, promptly notify Buyer and replace such Counterfeit Product with genuine Items conforming to the requirements of the applicable Purchase Order or Purchase Order Release. Seller shall be liable for its own costs and expenses relating to the detection, avoidance, removal and replacement of Counterfeit Product. The remedies contained in this Section are in addition to any other right, remedy, or election Buyer may have hereunder or at law or in equity.

Items may be used by Buyer in fulfilling a U.S. government prime contract subcontract. Therefore, Seller is subject to the applicable U.S. government procurement Laws in effect at the time of accepting the Purchase Order, including but not limited to, Federal Acquisition Regulation (FAR) 52.211-15; 29 CFR Part 471, Appendix A to Subpart A; 41 CFR 60-1.4(a); and all applicable clauses listed in FAR 52.212-5(e) and DFARS 252.212-7001(c). In these provisions, the term "Contractor" as used therein shall refer to Seller, and the terms "Government" and "Contracting Officer" as used therein shall refer to Buyer.

Buyer and Seller shall abide by the requirements of 41 CFR 60-741.5(a) and 41 CFR 60-300.5(a). These regulations prohibit discrimination against qualified individuals based on their status as a protected veteran or individual with a disability and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities. Buyer has developed and implemented equal employment opportunity and affirmative action policies and programs and requests Seller to take the appropriate action to ensure full compliance.

By submitting a proposal or invoice to Buyer, Seller is representing to Buyer that, at the time of submission: (1) neither Seller nor its principals are presently debarred, suspended, or proposed for debarment by the U.S. government (see FAR 52.209-6); (2) Seller has filed all compliance reports required by the Equal Opportunity clause (see FAR 52.222-22); and (3) Seller's representations to Buyer about U.S. Small Business Administration or state and local classifications, including but not limited to size standards, ownership, and control, are accurate and complete. Seller recognizes that it has a duty to maintain its size requirements for the duration of this Purchase Order and must immediately notify Buyer if there is a change in its size standard, ownership, or control. Where a purchase of Items is for fulfillment of a specific U.S. government prime contract or subcontract, additional information and/or terms and conditions may be included in an attached supplement to the Purchase Order.

20. Utilization of Small, Small Disadvantaged, and Women-Owned Businesses by Large Businesses for Purchase Orders over \$650,000. Sellers classified as "Large Businesses" as established by the North American Industry Classification System (NAICS) are required to comply with FAR 52.219-8 "Utilization of Small Business Concerns" and FAR 52.219-9 "Small Business Subcontracting Plan." Large Businesses may choose to structure their subcontracting plans in a manner similar to Buyer's subcontracting plan. Buyer's plan is summarized as follows:

a. When selecting subcontractors and suppliers, due consideration is to be given to:

(1) Small business (SB) concerns,

(2) Small disadvantaged business (SDB) concerns owned and controlled by socially and economically disadvantaged individuals,

(3) Women-owned small business (WOSB) concerns owned and controlled by women,

(4) Historically underutilized business zones (HUBZones) small business concerns,

(5) Service-disabled veteran owned small business (SDVO) concerns, and

(6) Veteran-owned small business (VOSB) concerns.

b. Small business status qualifications are as established by the U.S. Small Business Administration, the Department of Veterans Affairs, and the FAR.

Seller's process of selecting subcontractors and suppliers shall provide all types of small, small disadvantaged, and women-owned businesses the maximum practical opportunity to compete to become a subcontractor or supplier, consistent with efficient performance (price, quality, delivery, and service) and sound purchasing practices.

Seller shall maintain goals and records relating to its subcontracting regarding the small business categories identified above, as well as a contact person with responsibility for reporting results. Seller shall promptly provide Buyer with reports and records regarding Seller's subcontracting upon request.

21. International Trade Reporting and Documentation. Seller agrees to provide all information necessary for Buyer to comply with all applicable laws, regulations and any related legal reporting, notification or other types of approval obligations in the country(ies) of origin and destination, including, without limitation, permits, authorization, licensing, reporting, disclosure or certification information required under the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, the sanctions regulations administered by the U.S. Treasury Department Office of Foreign Assets Control, Product Regulations, and Hazard Communication information (see Section 6(g)(4) of these Terms and Conditions). Seller agrees to provide all documentation and/or electronic transaction records to allow Buyer to meet all Customs or export-related obligations, any local content/origin requirements, and to obtain all tariff and trade program duty avoidance(s) and/or refund benefits, where applicable.

Seller agrees to assume, and to indemnify Buyer against, any and all financial responsibility arising from Seller's failure to comply with these requirements and/or to supply Buyer with the information required to meet legal reporting or approval obligations, including, without limitation, any fines, penalties, forfeitures, settlement amounts, unnecessary duties or counsel fees incurred or imposed as a result of actions taken by the importing or exporting country's government.

22. Supply Chain Shipment Security. If and to the extent Seller is shipping Items from jurisdictions outside the United States into the United States, Seller accepts responsibility for, and shall implement security measures to ensure, the safe and secure transportation of goods throughout the supply chain and adhere to all applicable security requirements (including but not limited to factory and shipping container security) of the country in which it operates, consistent with the security criteria required under the Customs-Trade Partnership Against Terrorism ("C-TPAT") sponsored by the United States Customs and Border Protection Agency. Seller's obligations hereunder shall continue until such time as the Item(s) are delivered to Buyer in accordance with the agreed Incoterm or other specified delivery point; provided that, Seller must immediately notify the relevant Buyer facility manager or distribution center manager upon learning of any compromising of a container seal. Seller shall comply with all U.S. Customs laws, defined for purposes of these Terms and Conditions as any laws, regulations or legally binding rules issued or enforced by the U.S. Customs and Border Protection Agency regarding the export or import of goods, materials, equipment, or any tangible Item from or into the United States, any designated U.S. port or entry zone, or any U.S. territory, including, specifically, the security measures required by C-TPAT. Seller shall promptly notify Buyer upon its formal acceptance into the C-TPAT program and regarding any changes to its status under or identified non-compliance with C-TPAT or its requirements, or any similar security program sponsored by Sellers' country. Seller shall take no action that adversely affects Buyer's status under the C-TPAT program.

23. Assignment. Any Purchase Order(s) accepted by Seller shall not be assigned by transfer, disposition, sale or otherwise, without the written consent of Buyer. It is understood and agreed that these Terms and Conditions shall be binding upon and inure to the benefit of the parties and their respective parent(s), subsidiaries, representatives, attorneys, agents, successors and permitted assigns.

24. Set Off. In addition to any right of setoff or recoupment provided by law, Buyer may at any time and without notice recoup, deduct or set-off claims by Seller or Seller's affiliates (or its assignee or financing institution) for amounts due or to become due from Buyer against any claims that Buyer or any Buyer affiliate has or may have arising out of this or any other transaction between Buyer or Buyer's affiliates and Seller or Seller's affiliates.

25. Change in Ownership and Control. During the term of the applicable Purchase Order(s), if there is a change in the ownership or control of Seller, Buyer shall have the option of terminating the Purchase Order(s) immediately by giving written notice thereof. For purposes of this Section, a change in the ownership and control of Seller or a parent company of Seller, as appropriate, shall be deemed to have occurred if and when any one or more persons acting individually or jointly purchases substantially all of the assets of Seller or is or becomes a beneficial owner, directly or indirectly, of securities representing twenty-five percent (25%) or more of the combined voting power of the then outstanding securities of Seller or the parent company of Seller.

26. Severability; No Waiver. Invalidation of any of the provisions contained in these Terms and Conditions, or the application of such invalidation thereof to any person, by legislation, judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person, and the same shall remain in full

force and effect, unless enforcement as so modified would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes hereof.

No failure of either party to enforce at any time any of the provisions of any Purchase Order or these Terms and Conditions, or any rights or remedies with respect thereto, or to exercise any election herein provided, shall constitute a waiver of any such provision, right, remedy or election or in any way affect the validity thereof or of these Terms and Conditions. The exercise by either party of any of its rights, remedies or elections under a Purchase Order or these Terms and Conditions shall not preclude or prejudice such party's right to exercise at any other time the same or any other right, remedy or election it may have. The rights of termination provided herein are in addition to any other right, remedy or election a party may have hereunder or at law or in equity.

27. Headings. The headings to sections of these Terms and Conditions are solely for convenience of reference, and shall not govern, limit or aid in the interpretation of any terms or provisions hereof or of any Purchase Order.

28. UN Convention on Contracts for International Sale of Goods. The United Nations Convention on Contracts for the International Sale of Goods, the United Nations Convention on the Limitation Period in the International Sale of Goods of 1974 and Protocol of 1988 (amending the Limitation Period Convention) shall not be applicable to any transaction pursuant to these Terms and Conditions.