

PURCHASING TERMS & CONDITIONS

1. **PARTIES.** Whenever the word SUPERIOR is used in this Purchase Order ("Order") it shall be deemed to refer to SUPERIOR TUBE COMPANY, INC., and whenever the word SELLER is used herein it shall be deemed to refer to the other contracting party hereto whether this Order be one for the purchase of goods, for the procurement of services, or both.

2. **ACCEPTANCE.** SELLER acknowledges that it has reviewed these Purchasing Terms and Conditions. This Order is SUPERIOR'S offer to SELLER and becomes a binding contract pursuant to the terms and conditions set forth herein by SELLER'S acceptance in any manner of this Order, and the same shall not be changed or modified except by writing signed by a duly authorized employee of SUPERIOR. SUPERIOR HEREBY NOTIFIES SELLER THAT THE TERMS AND CONDITIONS INCLUDED HEREIN ARE THE ONLY TERMS AND CONDITIONS UNDER WHICH SUPERIOR AGREES TO BE BOUND.

3. **PRICE.** If the price payable to SELLER for completing this Order is a fixed price, all charges for packing, boxing, crating and shipping are deemed to be included therein and no additional charges of any kind, including, without limitation, charges for packing, boxing, crating, shipping and insurance of any kind upon safe delivery of any shipment or other charges or expenses, will be allowed unless specifically agreed to in writing in advance by SUPERIOR. If said price is not a fixed price, but is to be determined on a cost-plus-basis, SELLER'S cost shall comprise the total sums actually expended by SELLER in wages and for materials used in completing this Order, with all materials to be charged at the same amounts as invoiced to SELLER, and, in every such case, SELLER shall be obligated to keep accurate and detailed records of all sums thus expended in wages and for materials and to furnish certified statements thereof to SUPERIOR upon request. Except as otherwise provided in this Order, the price includes all applicable federal, state and local taxes occasioned by this Order.

4. **TITLE OF GOODS.** Immediately prior to the transfer of ownership to SUPERIOR of any and all goods purchased hereunder, SELLER shall have good and marketable title to such goods, free and clear of all pledges, liens, security interests, claims and other restrictions or encumbrances or charges of any kind.

5. **SHIPMENT OF GOODS.** SELLER shall exercise due care in packing, boxing and crating for shipment under this Order and shall make all shipments in strict compliance with SUPERIOR'S shipping instructions. SELLER shall be strictly liable for any excess shipping charges incurred and also for any damage or loss sustained in transit, storage, delivery or otherwise as a consequence of improper packing, boxing, crating or shipping on SELLER'S part. The term F.O.B., when used herein, refers only to the responsibility for payment of transportation costs and any price set forth herein includes all transportation costs to the F.O.B. point. No charges for insurance of any kind upon safe delivery of any shipment will be allowed. Goods purchased hereunder must be shipped complete and in the proper sequence. All materials delivered shall have attached identification. If applicable, SELLER shall furnish to SUPERIOR copies of the instructions and operation and maintenance manuals. These manuals shall include drawings of all equipment. Any and all samples, test reports, certificates of compliance, warranties, guaranties or the like, in connection with the goods purchased hereunder shall be furnished at no additional cost. SUPERIOR shall not be liable for any delays, suspensions or cost escalations.

6. **DELIVERY SCHEDULE.** Firm delivery requirements will be issued by SUPERIOR. Failure to comply with the delivery requirements may be deemed a material breach of this Order by SELLER. Time is of the essence of this contract and, if SELLER fails to comply with the delivery schedule provided hereby, SUPERIOR, reserving the right to claim damages for such failure, may either approve a revised delivery schedule or terminate the within contract without liability to SELLER on account thereof. If delivery hereunder is made by the vehicles or conveyances of SELLER or its carrier, SELLER shall be responsible for any injury or damage to persons or property resulting from the operation of said vehicles while on the premises of SUPERIOR, the site of delivery or trucking to or from said site.

7. **TERMINATION.** This Order may be terminated at any time by SUPERIOR without cause, and SELLER shall be entitled to payment only for goods delivered or services performed and accepted by SUPERIOR pro-rated to the total price and in no case to profit on undelivered goods or unperformed services.

8. **WARRANTY.** SELLER hereby warrants, and each such warranty shall survive delivery by SELLER and payment therefor by SUPERIOR, that the goods purchased and the services performed hereunder shall be in full conformity with SUPERIOR'S specifications, drawings and instructions, free from defects, patent or latent, and capable of being used by SUPERIOR in accordance with SUPERIOR'S manufacturing processes, and, in the event this Order provides for the performance of services on SELLER'S part, then SELLER warrants and guarantees the same against all defects of material and workmanship, agreeing to correct and remedy any and all such defects at SELLER'S own cost and expense. SELLER further guarantees that any machinery, equipment or other devices purchased as well as any work done or installation made hereunder will strictly comply with all applicable safety requirements and standards. Furthermore, any warranty or guaranty supplied to SELLER by a third party, including, without limitation, any supplier of SELLER, in connection with the goods, in whole or part, purchased hereunder shall transfer to SUPERIOR to the fullest extent permitted or be held by SELLER for SUPERIOR'S benefit.

9. **RIGHTS AND REMEDIES RESERVED TO SUPERIOR.** In the event this Order is one either for the purchase of goods or for the performance of services by SELLER in relation to any personal property, or both, then SUPERIOR shall have the right to inspect and approve any of the goods so purchased and any of the services so ordered both during the process of manufacture or performance, as the case may be, and in the completed stage, at either SELLER'S location, SUPERIOR'S location or in transit, with the right reserved to SUPERIOR to reject either the goods or services, in whole or in part, within a

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reasonable time following actual discovery of any patent or latent defect therein. In case of the purchase of any goods which may be found defective, whether used or unused, SUPERIOR, at its option, may either return to SELLER all or any part thereof for credit by SELLER to SUPERIOR or hold all or any part thereof at SELLER'S disposition and, in either such event, terminate the within contract without further liability to SELLER. All goods so rejected, whether returned to SELLER or held by SUPERIOR at SELLER'S disposition, shall be credited by SELLER to SUPERIOR at the price or prices charged hereunder plus any expenses reasonably incurred by SUPERIOR in the inspection, receipt, transportation, care or custody thereof. In the event that the credits to which SUPERIOR is entitled as a consequence of such rejection exceed the sums owing by SUPERIOR to SELLER, then, SELLER shall refund forthwith to SUPERIOR all such excess credits. In the case of performance of any services by SELLER which may be found defective, SUPERIOR shall have the right to require SELLER to correct the same without cost to SUPERIOR.

The remedies herein reserved to SUPERIOR shall be cumulative and additional to any other remedies provided in law or equity and no waiver by SUPERIOR of a breach of any provision of this contract shall constitute a waiver of any other breach of any other provision hereof.

10. IMPROVEMENTS TO REAL PROPERTY. In the event this Order requires SELLER to do any work to or upon SUPERIOR'S real property, including, but not limited to, improvements, additions, new construction and repairs, then SELLER covenants as follows: (I) to be alone responsible for injury to person, including death, and damage to property resulting from performance of the work and for any claims for workmen's compensation arising therefrom; (II) to maintain insurance, in form and amounts satisfactory to SUPERIOR, for both general liability and workers' compensation, with certificates thereof to be provided to SUPERIOR before commencing any work; (III) no lien or claim against the premises covered in this Order shall inure to, or be filed by, either SELLER or SELLER'S sub-contractors or material men for any labor or materials furnished hereunder; (IV) to deliver such waiver or release liens, or other documents, for labor and materials as SUPERIOR may, at any time prior to either commencement of work or final payment hereunder, require; and (V) to obtain, at SELLER'S cost, any permit or license required by any Federal, State or local law or regulation in connection with the work. SELLER guarantees all work performed hereunder against any defects of material and workmanship for a period of one (1) year following completion and acceptance by SUPERIOR.

11. INTELLECTUAL PROPERTY. SELLER warrants that the sale or use of the goods purchased hereunder and that the services performed according to the requirements hereof, as the case may be, will not infringe any patent, copyright, trademark or other intellectual property right, whether registered in the United States or any foreign country or unregistered

12. INDEMNITY. To the fullest extent permitted by law, SELLER agrees to indemnify and save harmless and promptly and punctually to defend, at SELLER'S cost, SUPERIOR, its affiliates and their respective employees, officers, directors, agents representatives, parents and subsidiaries, and any person selling or using SUPERIOR'S products from any and all losses, damages, claims, liabilities, charges, actions, suits, proceedings, fines, penalties, costs, expenses (including, without limitation, reasonable attorneys' fees and expenses), settlement amounts and other amounts, including, without limitation, costs and expenses and claims for profits by reason of any actual or alleged infringement by SUPERIOR or persons selling or using SUPERIOR'S products of any patent, copyright, trademark or other intellectual property right (collectively, "Losses"). arising out of or resulting from (a) any breach by SELLER of any representations, warranties or covenants of SELLER pursuant to this Order, (b) any injuries (including, without limitation, death) to any person (including, without limitation, SELLER'S employees), (c) any damage to any property arising out of or in any manner connected with the delivery or use of the goods or the performance of the services, whether or not due, in whole or part, to any act, omission, negligence or strict liability of SUPERIOR, or any of SUPERIOR'S representatives, employees or subcontractors, whether known or unknown to SUPERIOR and/or SELLER or (d) any negligence, recklessness, strict liability or intentional misconduct on the part of SELLER or its affiliates, officers, directors, employees, agents, representatives, parents or subsidiaries in connection with this Order.

13. INSURANCE.

(a) SELLER shall maintain insurance coverage of at least the following amounts: (i) commercial general liability insurance with a minimum limit of liability of \$1,000,000 per occurrence, \$1,000,000 products liability/completed operations aggregate limit and \$2,000,000 general aggregate limit; (ii) commercial automobile liability insurance including owned, hired and non-owned vehicles with a minimum limit of \$1,000,000 each accident; (iii) workers' compensation insurance which provides statutory benefits and employers liability insurance with limits of \$500,000 (each accident and each employee by disease) and (iv) any other insurance as may be required by law.

(b) SELLER shall provide its own property insurance on all materials that are part of this Order until such time as the materials are accepted by SUPERIOR. In addition, SELLER is required to provide its own property insurance for its own equipment, materials and tools that are used by SELLER in connection with the delivery of such materials that are not part of this Order.

(c) SELLER waives all rights of recovery or subrogation against SUPERIOR for damage caused by fire or other perils to the extent covered by insurance obtained pursuant to this Order, whether or not such damage was caused by the negligence, strict liability or other actions or inactions of SUPERIOR or not.

14. RIGHTS OF INSPECTION. SUPERIOR, its customers and regulatory agencies shall have the right, upon reasonable notice to Seller and during regular business hours, to inspect and audit the facilities being used by Seller for manufacture or production of goods in order to assure compliance by Seller with applicable rules and regulations and with other provisions, specifications and conditions of this Order.

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15. **ASSIGNMENT.** SELLER may not assign this Order, or any of SELLER'S rights or obligations created hereunder, or subcontract any part hereof, by operation of law or otherwise, without the prior written consent of SUPERIOR, which consent may be withheld in SUPERIOR'S sole discretion. If SELLER attempts to assign or transfer this Order without the prior written consent of SUPERIOR, such assignment or transfer shall be null and void and have no legal effect.

16. **AMENDMENT.** Subject to applicable law, the terms and conditions of this Order may be amended, modified or supplemented only by written agreement of the parties hereto.

17. **SUPPLIER INFORMATION.** If requested by SUPERIOR, SELLER shall furnish SUPERIOR within ten (10) days complete information regarding sources of supply for all purchased materials required for its performance under this Order, including names and addresses of sources, responsible persons representing sources and purchase order and shipping data provided, however, that SELLER shall not be required hereunder to release information concerning prices or costs of such purchased materials.

18. **QUANTITY OF ORDER AND OVERSHIPMENTS.** Goods delivered in error or in excess of the quantity provided by this Order may, at the option of SUPERIOR and at SELLER'S expense and risk, either be held by SUPERIOR at SELLER'S disposition or returned by SUPERIOR to SELLER.

19. **RENTAL EQUIPMENT.** In the event this Order includes the leasing, renting or use of rental equipment, SELLER and any person providing the rental equipment shall assume the responsibility for providing insurance in the amount of the full value of said equipment and shall hold SUPERIOR harmless from any damage or loss to said equipment whether or not such damage or loss was caused, in whole or part, by the negligence, strict liability or other actions or inactions of SUPERIOR. Any conflict that may exist between the terms and conditions hereof and any additional lease, rental agreement or other document pertaining to the use of rental equipment shall be resolved in accordance with the terms and conditions of this Order.

20. **LITIGATION.** In the event of litigation between SUPERIOR and SELLER, if SUPERIOR prevails, SELLER will be liable for all awards or judgments as well as professional fees and costs, including, without limitation, attorneys' fees incurred by SUPERIOR. SELLER also consents to join in any proceeding brought against SUPERIOR by any party arising out of the work or any claim related thereto.

21. **COMPLIANCE WITH LAWS.** SELLER shall in the fulfillment of this Order comply with all applicable federal, state, and local laws, rules, orders and regulations, including, without limitation, the requirements of Executive order 11246, Part II, Subpart B, Section 202(1) through (7); the Rehabilitation Act of 1973; the Veterans Readjustment Assistance Act of 1974, and the regulations promulgated thereunder. The Equal Opportunity Clause, 41 C.F.R. S60-1.4; the Affirmative Action Clause for the Handicapped, 41 C.F.R. S60-741.4; and the Affirmative Action Clause for Disabled Veterans and Veterans of the Vietnam Era, 41 C.F.R. S60-250.4 (all as amended or superseded), are incorporated by reference in this Order as if fully set forth herein.

22. **APPLICABLE LAW.** This contract shall be governed by and construed in accordance with the law of the Commonwealth of Pennsylvania (regardless of the laws that might otherwise govern under applicable Pennsylvania principles of conflicts of law) as to all matters, except where Pennsylvania law is preempted by federal law, in which event federal law shall govern. Each party agrees that suit may be instituted at any federal court in the Eastern District of Pennsylvania or in State Court in Lehigh County in the Commonwealth of Pennsylvania and each waives any objection which such party may now or hereafter have to the laying of the venue of any such action, suit or proceeding, and irrevocably submits to the jurisdiction of any such court.

23. **CONFIDENTIALITY.** Each party agrees that it will not use, other than for purposes of the business relationship, or reveal or make known to any person, firm or entity, other than such party's employees with a need to know, any Confidential Information (as defined herein) disclosed to it by the other in connection with this Order. "Confidential Information" includes, without limitation, information that relates to the financial status, business plan, product research and development plans, client relationships, supplier relationships, project or sales opportunities, proposal or bid strategies, or corporate strategies, and any other information that has been marked "Confidential" by the disclosing party, or if orally disclosed identified as confidential at the time of disclosure. Each party agrees to use at least the same degree of care to avoid disclosure or dissemination of the other party's Confidential Information as it would for its own Confidential Information, but in no event less than a reasonable degree of care. Notwithstanding anything to the contrary set forth herein, Confidential Information does not include and the obligations of this Order shall not apply to any information that (a) at the time of disclosure, is part of the public domain, (b) subsequent to the time of disclosure, becomes part of the public domain other than through breach of the receiving party, (c) is furnished to the receiving party by a third party who is in lawful possession of such information and who lawfully conveys that information or (d) is required to be disclosed by any applicable court order, state rule or regulation of any court of competent jurisdiction or federal rule or regulation of any court of competent jurisdiction, provided the receiving party provides prompt notice to the disclosing party so as to afford the disclosing party the opportunity to seek an appropriate protective order from such court.

24. **SEVERABILITY.** Except for Section 4, any provisions of this Order that are determined to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability in such jurisdiction, without rendering invalid or unenforceable the remaining provisions hereof or affecting the validity or enforceability of any of the provisions of this Order in any other jurisdiction.

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25. **THIRD PARTY BENEFICIARIES.** Except as expressly stated herein, nothing in this Order is intended to confer benefits, rights or remedies unto any person, firm or entity other than the parties hereto or their permitted successors or assigns.

26. **ENTIRE AGREEMENT.** These Purchasing Terms and Conditions, the Order to which they are attached and any other exhibits attached hereto constitute the entire agreement (this "Agreement") between the parties hereto with respect to the subject matter hereof and thereof. This Agreement supersedes all prior or simultaneous representations, discussions, negotiations, letters, proposals, agreements and understandings between the parties hereto with respect to the subject matter hereof or thereof, whether written or oral. Unless specifically agreed in writing, any conflict that may exist between this Agreement and the terms and conditions contained in a master supplier agreement or master service provider agreement between the parties hereto and pertaining to the goods purchased hereunder or services provided hereunder shall be resolved in accordance with the terms and conditions of such master agreement.

27. **HEADINGS.** The headings contained in this Order are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Order.