



Hoffman Engineering Corporation

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Stamford, CT U.S.A. 06907-0430

**TERMS AND CONDITIONS
HOFFMAN ENGINEERING CORPORATION
PURCHASING AGREEMENT**

1. **ACCEPTANCE** - This purchase order is expressly limited to the terms and conditions set forth herein. No acknowledgement, delivery receipt or other document forwarded by Seller to Purchaser after date of this purchase order, containing terms or conditions other than those specified herein, shall be binding on Purchaser. This purchase order shall become a binding contract upon Seller's acceptance by any lawful means, including but not limited to, Seller's (i) written acceptance on the reverse side hereof, or otherwise, (ii) timely delivery of any conforming goods, (iii) beginning of requested performance, or (iv) acceptance of any payment under this purchase order.
2. **PLACE OF PERFORMANCE** - The place of performance of this agreement shall be the shipping address designated on the purchase order.
3. **PARTNERSHIP INTENDED OR CREATED** – Nothing in this agreement is intended to, or shall be deemed to constitute a partnership or joint venture between the parties.
4. **GIFTS** – Seller shall not make or offer gifts or gratuities of any type to Purchaser's employees or members of their families. Such gifts or offerings shall be construed as Seller's attempt to improperly influence Purchaser and its agents.
5. **PRICES** – (a) Seller represents that prices quoted to or paid by Purchaser shall not exceed current prices charged to any other customer of Seller for items which are the same or substantially similar to the goods and quantity then purchased hereunder and Seller will forthwith refund any amounts paid by Purchaser in excess of such price. (b) Seller represents that prices quoted include charges for use of Government property, facilities or tooling required by the Seller in performance in this Order. (c) In no event shall Seller increase its prices in respect to goods covered by this purchase order without first securing Purchaser's written consent.
6. **PACKAGING AND OTHER CHARGES** – All goods shall be boxed, crated or stored, packed and/or packaged in such a manner as to insure proper protection for such good. Loss of or damage to any goods not protected in the aforementioned manner shall be borne by Seller. Each package of goods shipped shall be described on bills of lading and contain a memorandum showing Seller's name, contents of package by item number and /or Purchaser's part number and the purchase order number on the face thereof. No other charges will be paid by Purchaser for any purpose, including without limitation, for packaging, boxing or cartage unless specified on the face thereof.
7. **INVOICE** – Seller shall separately state on all invoices any taxes imposed. No tax shall be included for which an exemption is available and in the event any tax included was not required, Seller shall notify Purchaser and promptly take all necessary and proper steps to procure a refund and pay such amount to Purchaser.

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8. **PAYMENT DISCOUNTS** – Time for Payment will be computed from date of final acceptance of the goods purchased hereunder or from date of receipt by Purchaser of a correct invoice or voucher, whichever is later. Payment shall be deemed to be made, for the purpose of earning the discount, per the mailing date of the Purchaser's check.

9. **DELIVERY** – Time is expressly made of the essence in regard to the performance by Seller hereunder. Seller shall deliver the goods to the location specified and/or render services hereunder, as required and on the date or dates specified on the face hereof, unless prior written approval of any change in such delivery date or dates is given by Purchaser, Seller shall be liable for all excess transportation or other charges or costs resulting from failure or neglect to follow and meet Purchaser's routing instructions or delivery schedules. Unless otherwise specified on the face of this purchase order, all deliveries hereunder shall be F.O.B. destination as ordered by Purchaser.

10. **QUALITY; QUANTITY** – The quality of the goods and/or services rendered hereunder shall be as specified on the face hereof. The quantity of goods stated on the face hereof shall not be exceeded without written approval of Purchaser's authorized representative.

11. **SATISFACTION OF NAMED PERSON AT TEST OF PERFORMANCE** – The contract shall be performed by Seller in a manner satisfactory and acceptable to Purchaser who shall be the sole judge of quality of performance.

12. **REJECTED SHIPMENTS AND PURCHASER'S REMEDIES** – If the goods shipped or to be shipped and/or services rendered or to be rendered hereunder are rejected, in whole or in part by Purchaser by reason of Seller's failure to comply with any of the terms, conditions and/or specifications contained herein, Purchaser, after so notifying Seller in writing, may (a) either (1) return the rejected portion of such goods and/or rejected portion of such services to Seller at Seller's expense, or (2) hold the same for such disposal as Seller shall indicate without invalidating the remainder of this purchase order; or (b) reject the entire shipment of such goods and/or reject the entire services and cancel this purchase order for any undelivered balances of goods and/or unrendered services. If goods shipped or to be shipped and/or services rendered or to be rendered are rejected as hereinabove provided, Purchaser may as it deems commercially practicable purchase like goods elsewhere and/or obtain like services elsewhere and charge Seller with any loss or damage, either direct or indirect, sustained by Purchaser (including but not by limitation, any difference between the price paid by Purchaser for such like goods and/or services and the price specified on the face hereof) plus all costs of collecting the same (including but not by way of limitation, attorney's fees and court costs). Purchaser shall not be obligated to pay for any goods shipped and/or services rendered which are rejected by it.

13. **WARRANTY** – By accepting this order Seller hereby warrants (a) that the goods and /or services to be furnished hereunder shall be in precise compliance with Purchaser's specifications drawings and /or data as set forth or referred to herein, or Seller's samples, and (b) that the goods furnished hereunder will be fit for the use and purposes intended by Purchaser if such use and purpose is disclosed by Purchaser to Seller, and; (c) that the goods shall be merchantable and free from defects in workmanship and/or materials. Seller agrees that all warranties which are part of this order shall survive acceptance of the goods or services for a period of not less than one year. All warranties referred to herein shall be in addition to warranties provided or implied by law and or any warranty which Seller offers to any other of its customers, including the U.S. Government, for the same type or similar quality of goods purchased

hereunder which benefit Purchaser. All warranties of Seller herein shall extend to and include Purchaser's customers. Purchaser shall promptly be reimbursed for all costs and expenses of handling inspection and return of defective goods. Seller expressly assumes all risk of loss or damage to goods returned by Purchaser while at the same are in transit.

14. **PATENTS** – Seller warrants that the goods furnished hereunder do not infringe upon any United States or foreign patent trademark or copyright, that it will defend any suit that may arise in respect thereto; and that it will defend, indemnify and hold Purchaser harmless from and against all loss which Purchaser may incur (including, but not by way of limitation, attorney's fee and court costs) by reason of assertion of any patent, trademark or copyright rights with respect to the goods furnished hereunder whether by reason of Purchaser's purchase, use or otherwise, except however, this indemnity shall not be applicable to any infringement which results from the use of an apparatus patent due to fabrication, installation or operation of such apparatus in accordance with plans of specifications furnished by Seller by Purchaser.

15. **CONFIDENTIAL INFORMATION** – Seller shall not, without first obtaining written consent of Purchaser, in any manner advertise or publish the fact the Seller has contracted to sell Purchaser the goods purchased hereunder. Seller shall not disclose to any person outside of its employ, or use for any purpose other than to fulfill its obligations under this order, any information received from Purchaser pursuant to this order which has been disclosed by Seller by Purchaser in confidence, except such information which is otherwise publicly available or is publicly disclosed by Purchaser subsequent to Seller's receipt of such information or is rightfully received by Seller from a third party. Upon termination of this order, Seller shall return to Purchaser upon request all drawings, blueprints, descriptions or other material received from Purchaser and all materials containing said confidential information. Also, Seller shall not disclose to Purchaser any information which Seller deems to be confidential and it is understood that any information received by Purchaser, including manuals, drawings and documents, will not be of a confidential nature or restrict in any manner the use of such information by Purchaser. Seller agrees that any legend or other notice or any information supplied by Seller, which is inconsistent with the provisions of this article does not create any obligation on the part of Purchaser.

16. **SPECIAL TOOLING** – Any and all jigs, dies, fixtures, molds, patterns, special gauges, special tapes, special test equipment, manufacturing aids, or other special equipment, or any replacements thereof, or any materials affixed or attached thereto (hereinafter called special tooling) at any time furnished to Seller or paid for by Purchaser or the cost of which or any charge or allowance to cover any depreciation and/or amortization thereof that is included in providing the price specified in this order, or paid for separately by Purchaser, of which is based upon any design or process confidential or proprietary to Purchaser, shall be and remain the sole property of Purchaser. Each item of special tooling shall be plainly marked or adequately identified by Seller as "Property of Hoffman Engineering Corporation" and shall be safely stored apart from Seller's property. Special tooling while in Seller's custody, possession or control shall be kept in good condition and shall be replaced by Seller and Seller shall bear all risk of loss thereof and damage thereto, normal wear and tear excepted. Purchaser shall be entitled to sole and exclusive possession of any and all special tooling upon demand. If and when Purchaser requests possession, Seller shall prepare such special tooling for shipment and shall deliver same to Purchaser at Purchaser's expense, Seller shall not directly or indirectly use any special tooling paid for by Purchaser to or for the benefit of a third party whatever, nor will Seller ever permit the use of any such tooling so that it in any way accrues to the benefit of any competitor or Purchaser or to the detriment of Purchaser in any way. Seller agrees not to mortgage, pledge, sell lease or otherwise encumber, dispose of or subject to a lien or security interest any special tooling that is the subject of or covered by this order.

17. RESPONSIBILITY AND INDEMNIFICATION – All work to be performed by Seller hereunder and all goods and/or services to be furnished or rendered shall be performed, furnished or rendered entirely at the risk of Seller and Seller shall defend, indemnify and hold harmless Purchaser, its affiliates, subsidiaries or parent corporation, their divisions, agents, servants, representatives, and employees, respectively from and against any and all loss (including without limitation, loss of use) liability, claims demands, action and/or proceeding and all costs and expenses connected with any thereof (including without limitation, attorney's fees) or whatsoever nature on account of any and all damages to or loss or destruction of any property (including property of Purchaser) or injury or death of any person (including without limitation, employees of Purchaser) arising directly or indirectly out of, or in connection with the performance of work, furnishing of goods or rendering of services by Seller hereunder. Without limiting the generality of the foregoing, Seller agrees to indemnify and hold Purchaser harmless from and against all claims and liens of any and all persons based upon furnishing or labor and/or materials in connection with the goods sold and/or services rendered by Seller hereunder.

18. TERMINATION OR SUSPENSION FOR CONVENIENCE – For reason other than Seller's default, Purchaser, solely for reason of convenience may terminate or suspend the performance of work under this Agreement in whole or in part at any time or from time to time by written notice to Seller. Upon receipt of such notice from Purchaser, Seller shall take such action as Purchaser may direct and parties hereto agree to negotiate an equitable settlement for any such termination, cancellation or suspension. Upon termination by Purchaser for convenience, Purchaser's liability shall be limited to purchasing or paying for completed items, work in process, or raw materials procured to the extent such production or procurement was necessary to meet specified delivery schedules based on Seller's standard published or normal lead time not to exceed sixty (60) days excepting such as is readily usable or resalable by Seller or unless otherwise negotiated by Purchaser and Seller. If Purchaser and Seller fail to agree upon the amount to be paid to Seller for such termination, cancellation or suspension within six (6) months after notice of same. Purchaser's sole liability shall be for goods purchased hereunder which are completed and delivered to Purchaser in accordance with this order.

19. DEFAULT OF SELLER – Purchaser may, by giving notice of default to Seller, cancel or terminate the whole or any part of this Purchase Order. (1) If Seller fails to make delivery of goods or to perform the work or services within the time specified herein or any extension thereof granted by Purchaser, or, (2) If Seller fails to perform and/or comply with any other provision of this purchase order, or so fails to make progress or to perform the work as to endanger the timely performance of this purchase order, and in either of these two circumstances does not cure such failure or provide adequate assurance of due performance within a period of ten (10) days after receipt of notices from Purchaser specifying such failure, or; (3) If any petition in bankruptcy is filed by or against the Seller, in the event Seller is ordered or adjudged bankrupt, upon the insolvency or commencement of the liquidation of Seller, upon the appointment of a receiver for all or a substantial part of Seller's assets, upon the admission of Seller to the benefit of any procedure for the settlement of its debts, or upon the seizure or attachment of all or a substantial part of the assets of Seller by any judicial or government procedure.

In the event that Purchaser terminates the purchase order in whole or in part for Seller's default and whether or not Purchaser has in fact terminated all or only a part of this order, Purchaser, in addition to recovering so much of the price as has been paid, may procure upon such terms and in such manner as Purchaser may deem appropriate, goods, work or services similar to those so terminated and Seller shall be liable to Purchaser for any costs in excess of the purchase price for such similar items, work or services and

Seller shall, in addition, be liable to Purchaser for any incidental and consequential damages sustained or incurred by Purchaser's as a result thereof (but less any costs or expenses saved by Purchaser in consequence of the Seller's breach). In all events, the Seller shall continue the performance of this purchase order to the extent not terminated under the provisions of this paragraph. In addition to any other rights of Purchaser hereunder upon any rightful rejection, Purchaser shall have a security interest in any goods in its possession or control for any payments made on account of the price hereunder as part of consideration for this purchase order.

20. FORCE MAJEURE – If by reason of fire, earthquake, flood, explosion, accident, difference with or inability to secure workmen, lack of material, lack of facilities, act of God or of any public enemy, voluntary or involuntary compliance with any valid or invalid law, order, regulation, request or recommendation of any governmental agency of authority, lack of transportation facilities, failure of source of supply, or any cause which is beyond the immediate and direct control of Purchaser, whether or not of the kind or nature hereinbefore specified or if performance by Purchaser hereunder has been made commercially impracticable by the occurrence of a contingency the no-occurrence of which was a basic assumption on which the purchase order was issued. Purchaser may, by giving written notice to Seller, (a) Cancel this purchase order in whole or in part as to any undelivered portion of such goods and/or unrendered portion of such services, or (b) Suspend in whole or in part, deliveries of goods and/or the rendering of services during the continuance of and to the extent of such cause. Seller's remedies for Force Majeure shall be as specified in Section 2615 of the Uniform Commercial Code.

21. NOTICE OF LABOR DISPUTES – (a) Whenever an actual or potential labor dispute delays or threatens to delay the performance of this purchase order, Seller shall immediately give notice thereof. Such notice shall be confirmed in writing. (b) Seller agrees to include this paragraph in all subcontracts issued under this purchase order.

22. ASSIGNMENTS AND SUBCONTRACTS – (a) None of the sums due or to become due shall be assigned in whole or in part by Seller without the prior written consent of Purchaser. (b) Seller shall not subcontract, without Purchaser's written order other than the amount and of the nature indicated on Sellers' quotation.

23. WORKER'S COMPENSATION/EMPLOYER'S LIABILITY – If Seller does not have Worker's Compensation or Employer's Liability Insurance, Seller shall indemnify Purchaser against any and all damages sustained by Purchaser resulting from Seller's failure to have such insurance.

24. COMPLIANCE WITH LAWS AND REGULATIONS – Seller warrants that it will comply with all federal, state and local laws and regulations and all orders and regulations of the Executive and other departments, agencies or instrumentalities of the United States Government applicable to the work to be performed, the goods to be furnished and/or the services to be rendered hereunder. Award of this purchase order is specifically subject to Seller compliance with (a) Section 12 of the Fair Labor Standards Act, as amended; (b) Section 202 of the Executive Order No. 11246, as amended; (c) the Occupational Safety and Health Act of 1970; (d) Robinson-Patman Act of 1936 as amended, 15 U.S.C. Section 13; (e) the Walsh Healy Public Contract Act, whenever applicable.

24. **DISPUTES** - This purchase order shall be constructed and all disputes hereunder, shall be settled in accordance with the laws of the State of Connecticut.

25. **DISAVOWAL OF EXTRANEIOUS REPRESENTATIONS – EXTRANEIOUS AS TO VALUE** – There have been no representations of the reasonable value of any of the properties herein described made by or to either party to this contract. Each party is relying upon its own judgment of such values after a personal inspection of the properties.

27. **CLAUSE HEADINGS** – The clause headings appearing in the agreement have been inserted for the purpose of convenience and ready reference. They do not purport to, and shall not be deemed to define, limit or extend the scope of intent of the clauses to which they appertain.

28. **SEVERABILITY** – It is understood and agreed by the parties hereto that if any part, term or provision of this contract is by the courts held to be illegal or in conflict with any law of the state where made, the validity of the remaining portions or provision shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular part, term or provision held to be invalid.

29. **CHANGES TO TERMS AND CONDITIONS** – There may be no modification of this agreement, except in writing, executed with the same formalities as this instrument signed by the party against whom the modification is to be charged.

30. **CONTRACT INTEGRATION** – This instrument embodies the whole agreement of the parties, with respect to the subject matter hereof. There are no promises, terms, conditions, or obligations other than those contained herein, and this contract shall supersede all previous communications, representations, or agreements, either verbal or written between the parties hereto related to such subject matter.