



EXCEPT AS MAY OTHERWISE BE SPECIFICALLY PROMOTED IN BUYER'S PURCHASE ORDER, THE PARTIES AGREE THAT THE FOLLOWING TERMS AND CONDITIONS SHALL GOVERN THE TRANSACTION DESCRIBED IN BUYER'S PURCHASE ORDER.

1. **ACCEPTANCE AND MODIFICATION:** Any purchase order issued from Buyer to Seller ("Order") can be accepted only upon the terms and conditions expressed herein, which may not be modified, amended or waived except by express written consent signed by an officer of Buyer. Objection is hereby given to any additional or different terms or conditions whether or not material, contained in any acknowledgment or confirmation of this Order. This Order and all of the provisions herein contained shall be deemed accepted by Seller upon signing the Acceptance Copy or by commencing performance hereunder, or by any other means which reasonably manifest Seller's assent to be bound by the provisions hereof.
 2. **COMPETITIVE OFFERS:** If at any time during the duration of this Order, Seller sells or offers to sell comparable quantities of similar grades of products as the goods to be provided hereunder at a price lower than Seller's price to Buyer than in effect on other terms and conditions more favorable to buyers than the terms and conditions hereof, Seller shall promptly notify Buyer thereof and offer such lower price or such other more favorable terms and conditions to Buyer during the period in which such lower price or such other more favorable terms and conditions are in effect.
 3. **PERFORMANCE:** Time is of the essence of Buyer's Order pertaining to this Contract, and performance must actually be completed within the time stated on the face side of Buyer's purchase orders. In the event of Seller's delay in performance or failure to perform, Buyer reserves the right, in addition to all other rights provided by law, to cancel this Order immediately upon giving notice and hold Seller liable for any excess cost incurred, plus all other allowable damages. Neither Seller nor Buyer shall be liable for delay in performance or failure to perform if such delay or failure is caused by any occurrence or contingency beyond the reasonable control of the affected party, which by the exercise of due diligence such party would be unable to overcome, or by compliance in good faith with any applicable foreign or domestic governmental requirement provided the affected party notifies the other party of such occurrence. Quantities affected by any such delay or failure may be deleted from this Order. Seller shall deliver all goods to and perform all services at the premises designated on the face side of Buyer's purchase orders, and all prices stated herein shall be for such delivery or performance, free of all other costs and expenses. Buyer may inspect all goods provided and all services performed hereunder prior to being obligated to make payment, whether partial, full or final, on account thereof. Seller agrees to sell or otherwise make available to Buyer spare and replacement parts and component systems for each item of equipment or other goods to be provided hereunder on commercially reasonable terms and conditions throughout the entire reasonable life expectancy of each such item.
 4. **CHANGES:** Buyer reserves the right at any time to make changes in drawings, design, and/or specifications pertaining to all goods, work, and/or services to be provided hereunder. Any difference in price or time for performance resulting from such changes shall be equitably adjusted and this purchase order and/or schedule shall be modified in writing accordingly. Seller will not make any changes in the design or composition of any goods to be provided hereunder without prior written approval of Buyer. No payment shall be issued for changes without a written purchase order change signed by Buyer.
 5. **SHIPMENTS:** Each shipment hereunder shall be covered by a separate itemized invoice showing the date of shipment and all other relevant information. At the time of each shipment Seller shall mail such itemized invoice directly to the Accounts Payable Department at the location specified on the Order, and Seller shall forward with each shipment a shipping memorandum (stating Order number, describing the transaction and providing all other relevant information), a bill of lading and on foreign shipments all requisite import documents, including those required for compliance with ISPM requirements for wood packing material. Partial shipments must be identified as such on shipping memoranda and invoices and be marked "partial". Completed shipments must be marked thereon as "final". Except as otherwise provided in an Order, Seller will make shipments in accordance with the following:
 - a) All shipments will be consigned to Buyer.
 - b) All shipments will be made DDP Buyer's specified destination according to the latest version of Incoterms published by the International Chamber of Commerce.
 - c) Seller will forward complete set of original negotiable Bills of Lading or Airway Bills to Buyer via courier within either (i) five (5) days after shipment for ocean shipments or, (ii) within one (1) day after shipment for air shipments. Seller will confirm courier dispatch of original shipping documents by immediate fax transmission to Buyer.
 6. **WARRANTY:** Acceptance of this Order constitutes an express warranty by Seller that (a) Seller warrants all goods to be provided hereunder for a period of two (2) years from the date of shipment, (b) with respect to all goods to be provided hereunder Seller has, or at the time of performance shall have, and shall transmit to Buyer good and marketable title thereto, free and clear of liens and encumbrances of any kind whatsoever, (c) all services to be performed hereunder shall be performed in a good and workmanlike manner and in accordance with sound generally accepted practices, involve no unreasonable risk of injury or damage, conform to all applicable specifications and governmental requirements, and be without fault and free from all defects, and (d) all goods to be provided hereunder shall be merchantable, fit for the purpose intended and of first quality, involve no unreasonable risk of injury or damage when used as intended, conform to all applicable specifications and samples and be free from all defects in design, materials and workmanship. Buyer may accept or reject any or all goods or services which are in breach of this provision and, in any event, hold Seller liable for all damages resulting from such breach.
 7. **SAFETY:** Seller agrees to observe all safety and security rules, instructions and requests of Buyer and/or Buyer's customer whenever in its performance hereunder Seller or its employees or agents enter upon any Buyer or Buyer's customer location. If the goods provided or to be provided or the services performed or to be performed hereunder involve or may involve any risk of injury or death to persons or damage to property, Seller shall provide Buyer with a written description of the nature and extent of any such risk, including a description of any precautions which should be taken to minimize the risk of death, injury or damage occurring and to minimize the injury, damage or loss in the event of any such occurrence. Upon request, Seller agrees to complete Buyer's standard chemical control form currently entitled "Material Safety Data Sheet" with respect to any chemical substance to be provided hereunder.
 8. **INSURANCE:** For all goods to be provided and all work or services to be performed hereunder by Seller or its employees or agents, Seller shall maintain at its sole expense in form satisfactory to Buyer:
 - a) Worker's Compensation Insurance providing statutory benefits, for the states where the goods are to be furnished or where the work or services are to be performed including where applicable U.S. Longshoremen's and Harbor Workers' Act and Jones Act endorsements;
 - b) Employer's Liability Insurance in the states referred to above with a limit of at least \$250,000 for each accident; and
 - c) Comprehensive General Liability Insurance, including Products-Completed Operations and Blanket Contractual Liability, and, for vehicles utilized by Seller, Comprehensive Automobile Liability Insurance; each type of insurance with a separate limit of at least \$500,000 for each person and \$1,000,000 for each occurrence for bodily injury and \$500,000 for each accident and \$1,000,000 combined single limit respectively for each coverage or such larger amounts and such additional coverage as Buyer may reasonably request.
- CERTIFICATES EVIDENCING THE ABOVE COVERAGE WITH 30-DAY WRITTEN NOTICE OF ALTERATION OR CANCELLATION CLAUSE AND NAMING BUYER, BUYER'S CUSTOMER, ARCHITECT, ENGINEER, GENERAL CONTRACTOR, AND THE ULTIMATE END USER OF BUYER'S WORK, AS BUYER DEEMS APPROPRIATE, AS ADDITIONAL INSURED SHALL BE PROMPTLY SUBMITTED TO THE APPROPRIATE PURCHASING AGENT FOR BUYER PRIOR TO SELLER COMMENCING PERFORMANCE UNDER THIS ORDER.**
9. **INDEMNIFICATION:** Seller shall indemnify and hold harmless Buyer, its agents and employees, from and against all claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting from all goods provided and all services performed hereunder. The obligations of Seller hereunder shall not extend to any liability with respect to or arising out of any claim, damage, loss or expense which is solely attributable to an act or omission of Buyer, its agents or employees.
 10. **PAYMENTS:** Except as Buyer may otherwise direct through written communication to Seller, as a condition precedent to any payment to Seller, Seller shall submit completed waivers, releases and sworn statements from Seller and all of Seller's Sub-suppliers, complying with requirements of applicable construction lien laws and such other evidence as may be required by Buyer or Buyer's customer.
 11. **PAYMENT RELIANCE:** Seller acknowledges that it relies on the credit and ability to pay of Buyer's customer, and not the Buyer, for payment for work performed. Seller agrees that as a condition precedent to Buyer's obligation to make any payment to Seller, the Buyer must first receive payment from its customer. If Buyer does not receive any part of the payment from its customer in respect to Seller's work, whether because of a claimed defect or deficiency in Seller's work or for any other reason, Buyer shall not be liable to Seller for any sums in any respect. If Buyer incurs any cost or expense of any nature in preparing for the prosecution of, and prosecuting any claim against the Buyer's customer, whether by means of negotiations, arbitration or legal action, arising out of Buyer's customer's refusal to pay Buyer for work done by Seller, Buyer shall be entitled to deduct such costs and expenses, including actual attorney's fees, from the amount due Seller.
 12. **INSTALLMENT PAYMENTS:** Except as otherwise provided in the Order, Buyer may, in its absolute discretion, retain up to 10% of any or all installments until completion of the performance due hereunder, at which time the retained sums less any sums deducted from the total as set-off recoupment, will be paid to Seller.
 13. **ADVANCE PAYMENTS:** Except as otherwise provided in Buyer's Order, Buyer will only make payments to Seller prior to Buyer's receipt and acceptance of goods or services under this Contract. If Seller has met the following conditions:
 - a) Seller has furnished Buyer with adequate security of corresponding value and on terms acceptable to Buyer.
 - b) Security is in the form of an Irrevocable Letter of Credit, Unlimited Bank Guarantee, or other instrument acceptable to Buyer.
 - c) Security must be delivered to Buyer as a precondition to payment and, unless otherwise specified in the Order, must remain valid until at least one month after Buyer has received, accepted, and acquired unencumbered legal title to all goods and services furnished by Seller under this Contract.
 14. **TAXES-DUTIES:** Unless otherwise provided, Seller will be responsible for any tax, import or export duty or fee imposed by any federal, state, local or municipal Authority arising out of the sale, manufacture, shipment, or installation of the equipment or performance covered by this Contract.
 15. **INSOLVENCY:** If reasonable grounds for insolvency as to the solvency of either party arise, if either party shall liquidate or wind-up all or a material portion of its business, dissolve or terminate its existence, become insolvent, be unable to pay its debts as they mature, commit any act of bankruptcy, make an arrangement, composition or assignment for the benefit of creditors, have filed against it or consent to the filing of any petition in bankruptcy for liquidation or reorganization or otherwise be the subject of insolvency proceedings of any kind of nature, if a receiver or trustee is appointed or for any of either party's property or business, or if either party shall be levied or garnished upon an account of any alleged sum it owed to the other, then the non-defaulting party may cancel this Order immediately upon giving notice.
 16. **LIENS:** Seller shall immediately satisfy any lien or encumbrance which because of any act or omission of Seller is filed, or threatened to be filed, against the goods to be provided hereunder or against any property of Buyer, and Seller shall save Buyer harmless from all resulting loss and expense including attorneys' fees. Buyer may, in its absolute discretion deduct from any sums owing Seller under this Order any amount necessary to satisfy any such lien or encumbrance and/or any such resulting loss and expense.
 17. **PATENTS, INDUSTRIAL DESIGN, COPYRIGHTS:** Seller: (a) agrees to defend and hold harmless Buyer, its successors and customer against all suits and from all damages arising out of suits or claims for actual or alleged direct or contributory infringement of, or inducement to infringe, any patent, industrial design or copyright by reason of the manufacture, use or sale of the goods and/or services ordered, including infringement arising

- out of compliance with specifications furnished by Buyer; (b) agrees not to assert any claim against Buyer under the Patent Act, Copyright Act, Industrial Design Act or any sale of goods, statutes or otherwise, including any hold harmless or similar claim related in any way to any claim asserted against Seller or Buyer for patent or copyright infringement or the like arising out of performance under this Contract, including infringement arising out of compliance with specifications furnished by Buyer, and (c) hereby grants to Buyer a non-exclusive, royalty free irrevocable license to repair and have repaired, to reconstruct and have reconstructed the goods ordered hereunder. Seller hereby assigns to Buyer all right, title and interest in and into copyright and any copyrightable material created or produced for Buyer under this Contract. Buyer may choose to be separately represented by counsel of its own choosing at Buyer's expense. The use of materials, purchased by Buyer herein, by Buyer, its subsidiaries, affiliated companies, and customers in combination with other materials or in the operation of any process not designed or provided by Seller is beyond the control of Seller, and Seller shall have no obligation or liability whatsoever in connection with any suit claiming infringement by means of the use of such materials.
18. **CONFIDENTIALITY:** Seller, on behalf of itself, its employees and agents, agrees that any ideas, inventions, concepts, information or processes (collectively referred to as "information") acquired from Buyer or created by Seller arising from performance of this Order are the property of Buyer and shall be kept in confidence by Seller and shall neither be disclosed nor used by Seller except as is necessary for the proper performance of this Order, unless the information is or becomes legally available to the general public. Buyer may disclose information to third persons to the extent required for proper performance of this Order, but only under the same obligations relating to use and disclosure undertaken by Seller herein.
19. **MATERIAL FURNISHED BY BUYER:** Any materials furnished by Buyer on other than a charge basis, with respect to all goods provided hereunder, shall be deemed as held by Seller upon consignment. Despite the fact that both parties agree Buyer owns such materials, Seller grants Buyer a purchase money security interest in any such materials. Seller agrees to segregate Buyer's material from other materials and to clearly and prominently mark all such items "Property of Durr Systems, Inc.". All such materials not required for use in the manufacture of the goods provided hereunder shall, as directed, be returned to Buyer at Buyer's expense, and if not accounted for or so returned, shall be paid for by Seller.
20. **CANCELLATION:** Buyer may cancel this Order if Seller fails to perform or observe any term or condition hereof, or for no reason at all, by giving Seller two (2) days written notice of cancellation. Seller will immediately cease all performance upon receipt of Buyer's notice of cancellation. If Buyer cancels this Order for Seller's failure to perform or observe any term or condition, Seller will be liable to Buyer for any and all damages, including reasonable attorneys' fees and other expenses, and Buyer will be entitled to retain any payments that Seller may have been entitled to as compensation for Buyer's damages. Cancellation shall not prevent Buyer from utilizing any other remedy available by law or from seeking such damages to which it may be entitled under law.
21. **COMPLIANCE WITH APPLICABLE LEGAL STANDARDS:** Seller, and any goods or services supplied by Seller, will comply with all applicable laws, rules, regulations, orders, conventions, ordinances and standards of the country(ies) of origin and destination or that relate to the manufacture, labeling, transportation, importation, exportation, licensing, approval or certification of the goods or services, including, but not limited to, those relating to environmental matters, wages, hours and conditions of employment, immigration, subcontractor selection, discrimination, occupational health/safety and motor vehicle safety. Neither Seller nor any of its subcontractors will utilize slave, prisoner or any other form of forced or involuntary labor in the supply of goods or services under this Contract.
 - a) The Seller represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Reform and Control Act of 1986, including but not limited to the provisions of the Act prohibiting hiring and continued employment of unauthorized aliens, requiring verification and record keeping with respect to identity and eligibility for employment, and prohibiting discrimination on the basis of national origin, United States citizenship, or intending citizen status.
 - b) During the performance of this Order, the Seller agrees to comply with all provisions of all local, state and federal immigration and labor laws, statutes, rules, codes, orders and regulations, including, without limitation, the Immigration Reform and Control Act of 1986, as amended, the Immigration and Nationality Act, as amended, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, the Fair Labor Standards Act, as amended, and any successor statutes, laws, rules and regulations thereto (collectively, the "Immigration and Labor Laws"). Seller agrees to indemnify, defend, and hold harmless Buyer and Buyer's customer from any and all liability, including fines, attorneys' fees and court costs, assessed against Buyer or Buyer's customer due to noncompliance with the Immigration and Labor Laws by Seller or any of its sub-suppliers.
 - c) Upon Buyer's request, Seller will certify in writing its compliance with the foregoing. Seller will defend, hold harmless and indemnify Buyer from and against any liability, claims, demands, damages or expenses (including reasonable attorney or other professional fees and disbursements) arising from or relating to Seller's noncompliance with this Article.
22. **ASSIGNMENT:** Performance under this Order is personal to Seller, and Seller may neither assign this Order nor delegate performance hereunder without Buyer's prior written approval.
23. **SET-OFF:** In addition to any right of set-off provided by law, all amounts due Seller shall be considered net of indebtedness of Seller to Buyer and its parent, subsidiaries or affiliates, and Buyer may deduct any amounts due to or become due from Seller to Buyer pursuant to this or any other contract between Buyer and Seller, their parents, subsidiaries, or affiliates.
24. **REMEDIES:** The remedies herein reserved shall be cumulative and additional to any other or further remedies provided at law or at equity. No waiver at any time of the provisions or conditions of this contract shall be construed as a waiver of the other provisions or conditions thereof, nor shall the waiver of any such provision or condition be construed as a right to subsequent waiver of the same provision or condition.
25. **LAW:** The laws of the State of Michigan excluding any choice of law rules, and including, when applicable, the Uniform Commercial Code, will govern all Orders issued by Buyer. Litigation in connection with any Order shall only be submitted to courts of applicable jurisdiction and venue located within the County of Oakland, State of Michigan or the U.S. District Court for the Eastern District of Michigan. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Contract.
26. **DISPUTE RESOLUTION:** Except as specifically provided for in subparagraph (G) below, the parties intend to finally resolve all disputes arising under or related to this Order, exclusively as per this Article 26. This Article shall remain effective even in event of any bankruptcy petition, an assignment for the benefit of creditors, or any insolvency proceeding.
 - A. All disputes and claims relating to this Order or the breach, termination or invalidation thereof shall upon written notice, be referred to a senior management representative from each of the parties who will confer in good faith to attempt to resolve the matter. The party sending the first written notice (the "Initial Notice") shall (i) set forth in detail all of its claims or issues in dispute and (ii) designate a representative. The other party shall have 5 business days to designate its representative and add additional claims not identified in the Initial Notice. The representatives shall have 30 days from the date of the Initial Notice to resolve the identified issues. If they are unable to do so, either party may refer the matter to mediation through the American Arbitration Association (AAA). Such mediation shall be started within 30 days from the date of referral and concluded within 30 days from the start date.
 - B. If the dispute or claim is not fully resolved pursuant to paragraph (b), either party may, after 90 days, but not later than 120 days from the date of the Initial Notice, make a written demand for binding arbitration through the AAA by any arbitrator in accordance with its commercial arbitration rules. Judgment on the award may be entered in any court of competent jurisdiction. A party's failure to make a timely demand for arbitration shall result in the forfeiture of all claims and issues that party identified in its written notice.
 - C. Arbitration proceedings shall be conducted within Oakland County, Michigan. Each party may depose one individual, limited to no longer than four hours. No other discovery shall be conducted except by the written agreement of both parties. All arbitration and/or mediation expenses shall be shared equally by the parties. However, each party shall bear the expense of its own counsel, witnesses, travel, and proofs. The arbitrator shall have authority to award punitive or other damages beyond actual damages and shall not make any ruling or finding. The arbitration award shall be in writing and specify a factual and legal basis. The right to appeal the award shall be governed by Michigan law, and such appeal shall be brought in a court of general jurisdiction located in Oakland County, Michigan.
 - D. (e) Either party may at any time, without inconsistency with this Order and only to avoid irreparable injury, seek from a court of general jurisdiction located in Oakland County, Michigan any equitable, interim, or provisional relief.
 - E. (f) All statements made and documents provided or exchanged in connection with this dispute resolution process shall be confidential and neither party shall disclose the existence, content, or result of the dispute to third parties other than outside counsel, except with the prior written consent of the other party.
 - F. (g) The provisions of this Article shall not modify or displace the procedures specified in Article 20 Cancellation.
 - G. This Article shall not apply to nor bar, any party's proprietary or intellectual property right claims.
27. **OTHER TERMS AND CONDITIONS:** If the Order received from Buyer requires work or services to be performed at Buyer's plants or properties or if Seller is to perform any work or provide services at Buyer's customer's plants or properties, the Durr Systems, Inc. Subcontract Terms and Conditions are also a part of this Contract. If Seller is providing professional or consulting services, Durr Terms and Conditions (Consultant) are also a part of this Contract. If any conflict exists between Buyer's documents, the provisions imposing the more stringent obligations on the Seller take precedence. **PLEASE READ YOUR PURCHASE ORDER CAREFULLY AS THESE, AND ANY OTHER BUYER TERMS AND CONDITIONS THAT FORM PART OF THIS CONTRACT, ARE SPECIFIED ON THE FACE OF THE ORDER ISSUED TO YOU BY BUYER. NOTE: BUYER WILL NOT TRANSMIT THESE DOCUMENTS TO YOU. IT IS SELLER'S RESPONSIBILITY TO OBTAIN COPIES OF THESE DOCUMENTS FROM BUYER'S WEBSITE SPECIFIED ON THE ORDER.**