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Special Commercial Terms and Conditions for Procurement of Capital Goods at **XXX**
[Complete Supplier Name]

Formatvorlagendefinition: Kopfzeile: Schriftart: 12 Pt.

Formatiert: Links

Date: **JJJJ-MM-DD**

TABLE OF CONTENTS

1	Definitions	2
2	Entire Agreement.....	2
3	Offer; Acceptance of Terms by Seller; No Modification	2
4	Product Fabrication; Shipping Schedules	2
5	Delay in Delivery.....	3
6	Risk of Loss: Liens	3
7	Title to Goods; Progress Payments and Security Interest	3
8	Payment Not Acceptance.....	3
9	Buyer Materials and Special Tools.....	43
10	Breach of Purchase Order	4
11	Buyer's Remedies	4
12	Seller's Obligation	5
13	Termination for Convenience	5
14	Audit Rights.....	5
15	Price Overview	5
16	Payment Terms.....	6
17	Delivery Terms.....	7
18	Schedules, Delivery and Payment Terms	98
19	Warranty and Availability Guarantees.	9
20	Additional Supplies and Services.	10
21	Required Standards and Guidelines.	1211
22	Acceptance Conditions and Transfer of Risk.	1342
23	Additional Terms and Conditions.	1514

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1 Definitions

- 1.1 The word "Buyer," whenever used herein, shall mean ThyssenKrupp Presta Danville, LLC. The party with which a Purchase Order is placed is referred to herein as "Seller." The goods and/or labor or services covered by a Purchase Order are referred to herein as the "Products," which term includes both goods and services unless the context clearly requires otherwise, and, as to goods, includes all parts, portions, items, attachments, repairs, replacements and substitutions thereof. The terms "Purchase Order," "herein" and "hereto" refer to and include the face of this document, these General Terms and Conditions, releases against blanket Purchase Orders that incorporate the terms of a Purchase Order by reference, and all other documents specifically made a part of a Purchase Order by Buyer whether in printed or electronic form. "Buyer's Plant" means the plant of Buyer the address of which appears on the face hereof. "Interest" means interest on the principal amount owed accruing from demand through the date of payment at the prime rate of Citibank Delaware, as adjusted from time to time, plus one percent (1%) per annum. "Party" means any natural person, corporation, partnership, governmental authority or other legal entity. "Third Party" means any Party, including Buyer's Buyer, other than Buyer or Seller. "Seller Document" means any bill of lading, quotation, acknowledgment, invoice or other document, whether in electronic or printed form, issued by Seller.

2 Entire Agreement

- 2.1 This is the entire agreement between the parties respecting the Products and no modification of a Purchase Order shall be effective unless in writing and signed by Buyer's authorized representative. Any agreements, negotiations or understandings of the parties prior to the date of a Purchase Order, whether written or oral, are merged herein and superseded hereby. Reference in a Purchase Order to any Seller Document does not imply acceptance of any terms and conditions therein, which, if in addition to or inconsistent with the terms and conditions contained herein, shall not be part of the agreement between the parties.

3 Offer; Acceptance of Terms by Seller; No Modification

- 3.1 A Purchase Order is an offer to Seller by Buyer to enter into a contractual relationship. Seller's commencement of work under a Purchase Order will constitute unconditional acceptance of the offer with or without written acceptance from Buyer. Any Seller Document, to the extent containing terms in addition to or inconsistent with the terms of a Purchase Order, or constituting a rejection of any term of a Purchase Order, shall be deemed to be a counter offer to Buyer and shall not be binding upon Buyer unless specifically accepted in writing by Buyer. This clause shall constitute a continuing objection to any such terms or rejections not specifically so accepted by Buyer. However, commencement of performance by Seller, in the absence of written acceptance of such counter offer by Buyer, shall be deemed to be performance in accordance with the terms of a Purchase Order and an acceptance hereof, notwithstanding prior dealings or usage of trade.

4 Product Fabrication; Shipping Schedules

- 4.1 Seller shall not fabricate any of the Products or procure any of the materials required in their fabrication, and Buyer shall have no obligation as to the same, except to the extent expressly authorized in a Purchase Order or in written instructions forwarded to the Seller by Buyer. Deliveries are to be made in

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quantities and at the times specified on the face hereof and as specified in Section 18 herein, but Buyer may from time to time change such quantities and times, or direct temporary suspension of the scheduled deliveries, without any liability whatsoever.

5 Delay in Delivery

5.1 If Seller, for any reason, excluding force majeure does not comply with Buyer's delivery schedule, as to which time is of the essence, Buyer at its option may (a) approve a revised delivery schedule; (b) require shipment of any of the Products by a more expeditious method of transportation at Seller's cost; or (c) terminate a Purchase Order without liability to Buyer on account thereof.

6 Risk of Loss; Liens

6.1 Risk of loss of the Products shall remain with Seller until the Products have been delivered to and accepted by Buyer at Buyers' Plant. Seller agrees neither to create nor suffer to exist any liens, including without limitation tax or inventory liens, which could be superior to Buyer's rights in the Products, and Seller agrees to sign any documents reasonably required by Buyer to perfect all rights granted herein.

Seller hereby waives all mechanics' liens and claims and agrees that none shall be filed or maintained against Buyer's premises on account of any Products and shall cause all its subcontractors, material men and suppliers (and subcontractors of such parties) to provide similar waivers and agreements in form satisfactory to Buyer.

7 Title to Products; Progress Payments and Security Interest

7.1 Title to all Products subject to a Purchase Order shall remain with Seller until delivery and acceptance of the Products at Seller's Plant. Nevertheless, if the Products are to be paid for by Buyer with progress payments, Buyer will have a security interest in such Products effective when the first such payment is made, and title to such Products shall pass to Buyer at the time Buyer pays for same. In the event the Products are part of an assembly, Buyer shall have a security interest in the entire assembly at the time any progress payment is made which covers any part thereof. Said security interest shall secure all rights Buyer has under a Purchase Order or applicable law including, without limitation, the right to be repaid all moneys advanced as progress payments or otherwise in respect of a Purchase Order in the event the Products are not accepted by Buyer. Seller shall cooperate with Buyer in the execution and filing of any documents required to perfect such security interest. All requests for progress payments shall specify the Products for which payment is requested. Such Products shall be marked to indicate Buyer's ownership thereof, and Buyer may inspect same at reasonable times. Upon payment of the first progress payment on any Products, Buyer shall have the right to have and use all of Seller's plans, drawings and specifications, together with any other information or Product in Seller's possession, which is reasonably necessary for the limited purpose of completing the manufacture of the Products.

8 Payment Not Acceptance

8.1 Payment for Products shall not constitute acceptance, and all Products shall be subject to Buyer's inspection and rejection at Buyer's Plant. Neither payment nor acceptance shall constitute acknowledgment of the absence of breach of warranty or limit any of Buyer's rights hereunder. Buyer at its option may reject and, upon reasonable notice, return at Seller's risk and expense, or retain and correct Products that fail to conform to the requirements of a Purchase Order even if the nonconformity

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does not become apparent until the manufacturing, processing, or assembly stage. If Buyer elects to correct the Products, it will consult with Seller on the method of correction. Seller will reimburse Buyer for all reasonable expenses resulting from rejection or correction.

9 Buyer Materials and Special Tools

9.1 Title to all materials, designs, tools, patterns, drawings, specifications and other information supplied by Buyer to Seller for use in the manufacture of Products under a Purchase Order shall be and remain in Buyer. Except as authorized by Buyer in writing, all such items shall be used solely in the performance of work ordered by Buyer, shall be subject at all times to disposition as Buyer may direct, shall not be commingled with property of Seller or others and, upon demand, shall be delivered to Buyer in the same condition as when received, reasonable wear and tear excepted. Seller agrees to maintain inventory control, as approved by Buyer, of all such items and to furnish inventories thereof. If the price stated in a Purchase Order includes the cost of any dies, tools or patterns acquired by Seller for the purpose of filling the Purchase Order, such dies, tools or patterns shall become the property of Buyer, upon acquisition by Seller, and to the extent feasible, shall be identified by Seller as such. Seller shall assume risk of loss for all such items from the time Seller receives possession until delivery to and acceptance by Buyer.

10 Breach of Purchase Order

10.1 Notice of Breach. If Seller shall fail to comply with the specifications or drawings in any material respect, or if it shall fail substantially to comply with any other provision of a Purchase Order, then Buyer may, without prejudice to any other right or remedy, and upon giving fifteen (15) days' prior written notice of such failure to Seller, declare Seller to be in breach of the Purchase Order. Grounds for such declaration of breach shall include, without limitation, (i) the failure by Seller to make reasonable progress toward completion of the goods, which failure, in Buyer's reasonable opinion, results in a substantial risk of inadequate performance, or non-performance of a Purchase Order; (ii) the failure by Seller to make delivery as provided in a Purchase Order or written instructions issued pursuant thereto; (iii) the occurrence of any of the following: insolvency of Seller, filing of a voluntary or involuntary petition in bankruptcy which is not vacated within 30 days from the date of filing, the appointment of a receiver or trustee for Seller, or the execution by Seller of an assignment for the benefit of its creditors; or (iv) at any time, in the Buyer's sole judgment, Seller's financial or other condition or progress on a Purchase Order shall be such as to endanger timely performance.

11 Buyer's Remedies

11.1 In the event notice of breach is given to Seller as provided above, and Seller does not correct any such breach within fifteen (15) days (or such longer period as the parties agree to be reasonable), Buyer shall be entitled to (i) cancel a Purchase Order in whole or in part, returning to Seller such Products as are covered by the canceled portion of the Purchase Order without liability except to pay the contract price for Products delivered and accepted prior to notice of cancellation; (ii) reject all or part of the Products; (iii) recover its damages for breach from Seller, whether or not the manufacture of the Products has been completed or the Products have been received at the Buyer's facility; (iv) require the Seller to repair or replace any or all Products, at Buyer's option and at Seller's sole expense, either at Buyer's Plant or at any other location designated by Buyer; (v) require Seller to pay all transportation and other charges arising from delivery, storage and return of Products; (vi) purchase from

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a Third Party replacement Products ordered hereunder. No such cancellation shall, however, affect either party's obligations hereunder with respect to any Products delivered to Buyer prior to cancellation and which are fully usable thereafter by Buyer with no reduction in efficiency and performance. Upon Buyer's return to Seller of the Products that are covered by such cancellation, Seller will refund the purchase price of such Products to Buyer. No failure by Buyer to exercise any of its rights hereunder promptly upon expiration of the applicable cure period shall constitute a waiver of any such rights.

12 Seller's Obligation

12.1 Upon notice of breach by Buyer and failure to cure by Seller, Seller will (i) promptly return all moneys previously paid to Seller by Buyer for any Products which have been rejected; and (ii) promptly pay to Buyer its damages, including without limitation: (a) all costs incurred by Buyer in preparation for any rejected or canceled Products (including without limitation shipping, training, systems programming, site preparation, and cost of supplies), excepting only such costs which can be applied to replacement Products obtained from any other manufacturer; and (b) the difference in Buyers cost between the Products and comparable substitute goods.

13 Termination for Convenience

13.1 Buyer may, at its option, terminate a Purchase Order, in whole or in part, for its convenience, by written, facsimile, electronic or telegraphic notice to Seller. Upon such termination, Seller shall forthwith stop work under the Purchase Order, or the terminated portion thereof, and shall place no further orders or incur no further costs chargeable to Buyer as to the terminated portions, except as to such costs as are reasonably required to protect property in Seller's possession in which Buyer has or may acquire an interest. In the event of such termination, Seller shall be entitled to the following payments in full settlement: (a) the Purchase Order price for Products completed and accepted by Buyer; (b) the actual costs incurred by Seller which are properly allocable under generally-accepted accounting principles to the terminated portion of the Purchase Order; (c) reasonable expenses of the Seller in making settlement under Seller's subcontracts; and (d) such allowance for profit on work performed as may be reasonable under the circumstances. Payments under this provision shall in no event exceed the aggregate price specified in the Purchase Order. Seller will transfer title to and deliver on Buyer's instructions, any property, the cost of which is reimbursed hereunder.

14 Audit Rights

14.1 Buyer retains the right at any reasonable time to send its authorized representatives to examine all pertinent documents and materials in the possession or under the control of Seller relating to any of Seller's obligations under a Purchase Order or any payments requested by Seller pursuant to a Purchase Order. Seller shall maintain all pertinent books and records relating to a Purchase Order for a period of two years after completion of services or delivery of Products pursuant to a Purchase Order.

15 Price Overview

15.1 See Purchase Order

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16 Payment Terms

16.1 Progress Payments:

- (a) 1st installment: 30% after receipt of a duly signed copy of a Purchase Order and presentation of a corresponding and irrevocable letter of credit/bank guarantee according to Buyer's template.
- (b) 2nd installment: 30% after pre-acceptance at Seller's site, submittal of an executed pre-acceptance protocol and receipt of equipment at Buyer's site. [optional]
- (c) 2nd installment: 60% [30%] after final acceptance at Buyer's site, submittal of an executed final acceptance protocol, completed after installation.
- (d) 3rd installment (final payment): 10% after submittal of an irrevocable letter of credit/bank guarantee for 10% of the contract amount. The effective termination of the letter of credit/bank guarantee is no earlier than the expiration of the warranty period agreed-upon.

16.2 Payment Schedules. The Seller, in accepting a Purchase Order, agrees to allow the Buyer to make payment of invoices rendered by Seller, for the Products covered by such Purchase Order, as follows:

- (a) Discount Invoices
 - (i) Dates 1st through the 15th - payable on the 25th of the current month.
 - (ii) Dated 16th through the final day of the month - payable on the 10th of the following month.
- (b) Net Invoices
 - (i) Dated 1st through the 15th - payable on the 10th of the following month.
 - (ii) Dated 16th through the final day of the month - payable on the 25th of the following month.

The payment period shall be calculated from the date acceptable invoices are received or the date the conforming Products are received, whichever last occurs.

16.3 At regular intervals, a representative of Buyer has the right but is not obligated to inspect the progress of the project at Seller's site. Installments as set forth herein shall be dependent upon proper progress. If substantial discrepancies exist between the status of the project and payments made, the parties shall set new dates for payment. The Buyer, under such circumstance, retains its right to invoke penalties as herein set forth.

16.4 Set Off. Buyer shall be entitled at any time to set off any sums owing by Seller to Buyer or to any of Buyer's affiliated companies, against sums payable by Buyer in connection with any of Seller's accounts regardless of the purchase orders or contracts from which such debits or credits arise.

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16.5 Taxes. The Buyer shall pay any taxes or Duties associated in getting the product into the United States. (DAP, Incoterms 2010)

17 Delivery Terms

17.1 DAP according to INCOTERMS 2010.

17.2 Adequate protective packing, suitable to the Product, shall be provided by Seller, sufficient for door to door treatment, and Seller shall, in all respects, keep the Product clear and preserve the same in a suitable condition.

17.3 The Buyer shall return returnable packaging materials to Seller in good condition on a pre-paid basis.

17.4 The Product shall be loaded and secured on a truck at Seller's cost, risk and expense.

17.5 Custom clearance fees and duties, including import/export tax, shall be paid by Buyer unless otherwise agreed.

17.6 Any and all taxes, fees, and duties that may become due in the country of destination upon importation of the Product shall be paid by Buyer.

17.7 Insurance for unloading, placement, and set-up at Buyer's plant shall be paid by Seller.

17.8 Insurance for transport, unload/placement, final set-up at Buyer's site, assembly, install/ optimization, start-up, final acceptance at Buyer's site, and training and instruction of Buyer's personnel shall be provided by Seller.

17.8

17.9 Seller, or its mover, shall provide insurance against any harm to Buyer or its employees, Seller's or the mover's employees, or the public arising out of the delivery of Products to Buyer's site. The minimum combined single limit of such insurance is to be five million dollars (\$5,000,000) written by an insurer reasonably acceptable to Buyer. In addition, Seller shall maintain Broad Form Property Damage, Seller shall maintain Broad Form Liability insurance covering the activities described herein. All policies shall name Buyer as an additional insured. The certificates of insurance are to be presented to Buyer upon request.

Seller agrees to furnish to Buyer promptly upon request a certificate from its insurance brokers or agent showing that it carries adequate Workers' Compensation and Comprehensive General Liability insurance coverage, including Contractual Liability insurance applicable to this Purchase Order. The certificate must show the amount of coverage, policy number, and date of expiration and must require the broker or agent to give Buyer thirty (30) days prior written notice of any lapse or cancellation of any policy. Buyer shall also be shown as an Additional Insured on the Comprehensive General Liability policy reflected on the certificate of insurance if services are to be performed on Buyer's premises. If Seller is self-insured for Workers' Compensation coverage, it will, if requested by Buyer, provide to Buyer the applicable state certificate reflecting such status.

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- 17.10 Set-up, final assembly, and installation at Buyer's site shall be paid by Seller.
- 17.11 Transport and insurance costs from the Seller's site to Buyer's site shall be paid by Seller. Seller retains full responsibility for completion of acceptance testing until final acceptance.
- 17.12 The following information shall be provided by Seller to Buyer prior to three (3) weeks before the date of delivery in case that Buyer and Seller agreed-upon deviating delivery terms other than DAP (Incoterms 2010):
 - (a) The exact address/street of the pick-up location;
 - (b) The exact transport weight (i.e. packaging included) in kilograms;
 - (c) The outside dimensions of the packed units (length x width x height in millimeters);
 - (d) The type of packaging and number of packed units (e.g. whether units are secured). Unloading, internal movements within Buyer's facility, and set-up of the Product at Buyer's site in accordance with the Buyer's layout plan shall be handled by Buyer with the assistance of Seller's personnel, if necessary. In any event, Buyer shall be fully responsible for unloading, the movements aforesaid, and set up of Product at Buyer's site. Buyer shall secure riggers for unload with Sellers supervision. Final set-up and assembly, installation, start-up, training and instruction, as well as final acceptance shall be completed, free of charge to Buyer, by qualified personnel of Seller, with the assistance of Buyer's non-billing personnel. Travel, lodging and other work expense of Seller's employees/agents shall be included within the price.

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17.13 Seller shall submit, upon final acceptance, to Buyer two (2) copies of technical documentation, one (1) of which shall be on CD with searchable Index and one (1) of which shall be in the English language, all in accordance with Buyer's TS 1800, dated April 05, 2004, which is incorporated herein by its terms.

18 Schedules, Delivery and Payment Terms

- 18.1 Project milestones/time schedule: See Purchase Order
- 18.2 Project Schedule. Seller shall provide Buyer with an order confirmation and detailed project schedule within two (2) weeks of having received Buyer's written Purchase Order. The project schedule shall outline all activities and steps that shall be taken in the execution of the project from commencement to the final acceptance at Buyer's site, including, but not limited to, activities and time schedules for construction, purchasing, production/manufacturing, assembly/installation (mechanical and electrical), testing, start-up and preliminary inspection at Seller's plant, cleaning, disassembly, conservation, packing, transport, loading and unloading, setting up and assembly at Buyer site, start-up at Buyer site, and repair and adjustment of possible non-conformities and faults.
- 18.3 Access. Seller shall grant Buyer access to its plants during normal business hours upon twenty-four (24) hours prior notice to inspect and review whether the project is being executed on schedule, and in accordance with the Buyer's technical specifications and instructions.
- Progress Reports. On request, Seller shall provide Buyer with progress reports no less than every other week, indicating which parts of the project have been completed and whether the project is on schedule.
- 18.5 Penalties/Liquidated Damages. The parties agree that the pre-acceptance, final acceptance and completion of the Project shall bear a deadline of "See purchase Order". Should Seller fail to meet this deadline, the penalty per commenced calendar week shall be 1% of the total Purchase Order value, but limited overall to a maximum of 10% of the total Purchase Order value. Seller may not defend any breach hereunder by alleging failure in performance by a third party.
- 18.6 Deadlines as set forth herein shall not be applicable in the event of delays occasioned by Buyer. If such delays do occur, the Seller's deadlines herein set forth shall be extended in a one day for one day format.
- 18.7 The unconditional delayed accepted receipt of the Product by the Buyer shall not absolve the Seller's duty to pay any penalty.

19 Warranty and Availability Guarantees

19.1 Warranty. Seller warrants that the Products will be new, merchantable and free from defects in design (to the extent Seller provides the design), material and workmanship, will conform to the all specifications, drawings, samples and other descriptions furnished by the Buyer, will be suitable for their intended use, and will be of the highest quality and workmanship. This warranty shall run to Buyer and to Buyer's customer(s) and is in addition to those otherwise provided or implied by law, or customarily given by Seller with respect to similar goods, all of which remain in full effect. The same warranty shall apply to replacement component parts of the Products (other than wear parts), whether such components are replaced by Seller pursuant to this warranty, or purchased by Buyer from Seller sub-

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sequent to the expiration thereof. Seller further warrants the accuracy of all information furnished to Buyer hereunder, including without limitation specifications, operating instructions, or performance claims, delivered to Buyer before or during Seller's performance of the Purchase Order. Seller expressly warrants that title to all of the Products shall be vested in Buyer free and clear of any and all liens and encumbrances of whatsoever nature and kind. All warranties of Seller, express and implied, and remedies of Buyer, in this Section or elsewhere, shall survive indefinitely any delivery, inspection, tests, acceptance and payment and shall apply notwithstanding any inspection of the Products, or any part thereof, on, before, or after delivery to Buyer. Seller acknowledges that Buyer has advised it as to the purpose for which the Products are required, that Buyer is relying on Seller's skill and judgment and the Products are of a type which it is Seller's business to supply. Seller warrants to Buyer the Product under normal operating conditions and service for a period of two (2) years w/o shift limitations from Buyer's final acceptance at Buyer's site. This warranty does not cover parts subject to wear or consumption, including, but not limited to, filters and wear surface lubricants, provided their failure results from normal wear and tear.

- 19.2 Availability Guarantees. The Seller shall guarantee the performance of the Product to the extent of 98% utilizing the performance guidelines of VDI 3423. This standard shall apply not only to the Product itself but also its components, tooling and handling.
- 19.3 The performance guarantee shall be applied at Seller's pre-acceptance and at Buyer's final acceptance testing, and must be documented in the pre-acceptance and final acceptance protocols.
- 19.4 Subject to Paragraph 19.3, the performance guarantee shall commence at final acceptance at Buyer's site and shall extend, without limitation, for Two (2) years there from.
- 19.5 With regard to such performance guarantee, the Buyer shall be obliged to strictly observe the following points to insure the aforesaid performance levels:
 - a) The Product shall be operated with all due care by qualified personnel only.
 - b) The Product shall be maintained in accordance with Seller's maintenance instructions.
 - c) The Product shall have a continuous supply of all required media and utilities.
- 19.6 If the performance guarantee of VDI 3423 of 98% has not been achieved 2 months after final acceptance, Buyer reserves the right to continue to use the Product at no charge to Buyer until a necessary replacement shall be found. In addition, the Buyer shall have the right, at its election, to terminate its contractual relationship and demand that any and all payments it has tendered to Seller be returned within fourteen (14) days.

20 Additional Supplies and Services

- 20.1 Sample material/raw material. Buyer shall provide a suitable quantity of sample material and raw material that may be required for tests and pre-acceptance at Seller's site and for final acceptance at Buyer's site.
- 20.2 Gages and tools for pre-acceptance. If and when required, Seller shall provide gages and tools for pre-acceptance.
- 20.3 Layout, electrical control plans and electrical data. Buyer shall be obliged to take all necessary steps to prepare for the set-up and installation of the Product before the arrival of Seller's qualified personnel

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at Buyer's site. Seller shall furnish Buyer with detailed instructions and specifications for media, utilities and floor space requirements four (4) weeks before delivery of the Product to Buyer's site.

20.4 Training/Instruction of Buyer's operators and maintenance personnel. Training and instruction will commence at pre-acceptance, installation and final acceptance at the respective sites of Seller and Buyer. The number of personnel of Buyer to be trained shall be agreed upon by the parties. Seller shall insure that its assembly and set up personnel is qualified to train and instruct Buyer's personnel in the course of project development at Seller's and Buyer's sites. The training and instruction shall be provided for Buyer's electrical technicians, electronic technicians, hydraulics and pneumatic technicians, mechanical technicians, operator personnel, and maintenance personnel. Buyer shall bear all costs and expenses for travel, food, lodging and accommodation for its personnel while being trained at Seller's site. Additional time needed beyond that stipulated in the Seller's proposal and included in the contract documents, due to circumstances beyond the Seller's control, will be billed at Seller's current service rates. The Seller shall pay all other expense.

20.5 ~~Auxiliary Personnel and Product. Should Seller require any auxiliary personnel and/or product (i.e., tools, scaffolding, cranes, and forklifts) for the execution of its work at Buyer's site, it shall notify Buyer four (4) weeks in advance in order to make the necessary arrangements. Should Seller require the assistance of personnel of Buyer for the completion of its responsibilities at Buyer's site, such personnel shall be acting as agents of Seller. The Seller shall be solely and fully liable, and shall indemnify Buyer, for any damage or loss/costs incurred in the execution of the work.~~

~~20.5~~ ~~Auxiliary Personnel and Product. Should Seller require any auxiliary personnel and/or product (i.e.,~~

21 Required Standards and Guidelines

21.1 Technical Requirements. The parties acknowledge and agree that a reference material entitled Buyer's "Technical Specifications" (hereinafter "TS") is hereby made a part hereof. The execution and completion of a Purchase Order is subject to the technical requirements as per Buyer's TS 1801 thru TS

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1808, dated April 5, 2004, including Buyer's technical requirements for electric, electronic and control PLC, TS 1818-TS 1850, dated April 5, 2004. Seller shall adhere to the entirety of Buyer's technical requirements reflected in said material.

- 21.2 The final drawings for the Product shall require the prior written approval of the Buyer before commencement of the manufacturing process.
- 21.3 Prior to commencement of the manufacturing process, Seller shall submit to Buyer a complete Master Bill of Material for approval of the individual materials, parts and components.
- 21.4 The Buyer shall notify Seller in writing of its approval of the final drawings and the Master Bill of Material as aforesaid. If no modification is made within fourteen (14) days, confirmation of the aforesaid documents can be assumed.
- 21.5 Machine Capability. The machine capability is established upon a Cmk test result of = (equal) or > (greater) than 1.67.
- 21.6 Process capability. The process capability is established upon a Cpk test result of = (equal) or > (greater) than 1.33.
- 21.7 Gage Capability. Please refer to MSA manual, which is hereby incorporated herein as an Exhibit hereto.
- 21.8 Process Data Collection. The collection of the operating data shall be done by the PLC unit/control system. Seller may demonstrate existing solutions at Buyer's site, final parameters of which are to be mutually agreeable by the parties.
- 21.9 Spare Parts, Special Tools, and Components. Seller shall warrant and insure the availability and supply of spare parts, special tools and components for the Product for a duration of fifteen (15) years from the successful final acceptance at Buyer's site.
- 21.10 Before final acceptance Buyer and Seller need to create and agree upon a critical spare parts list. In addition, the storage location of possible consigned goods needs to be mutually determined.
- 21.11 Seller shall, for a period of ten (10) years from final acceptance, or as long as product is current, retain spare parts in stock, with a reaction time of not more than twenty-four (24) hours for delivery time of such parts, measured from the phone call/fax request by Buyer. If parts are going to become obsolete Buyer needs a list and/or drawings of such items for chance to stock or outsource such products.
- 21.12 Service and Maintenance readiness. Seller shall insure a twenty-four (24) hour service for Buyer, meaning that qualified maintenance and/or service engineers of Seller shall be available within twelve (12) hours between the first request of Seller by phone or fax pursuant to Section 21.13 and arrival of the required service and maintenance personnel at the Buyer's site. All such services provided pursuant to warranty shall be free of charge to Buyer.
- 21.13 When requesting technical assistance of Seller, Buyer shall provide detailed information and data and shall follow the following steps:
 - (a) Seek to find a solution for the technical problem via telephone;
 - (b) Seek to find a solution for the technical problem via modem;

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- (c) Request qualified service or maintenance personnel to be sent to Buyer's site, if the Buyer, through the other avenues and/or through other options, cannot resolve the issues to its satisfaction. Such personnel of Seller shall only be sent to Buyer's site if Buyer's personnel is unable to resolve the issue through other avenues.

22 Acceptance Conditions

22.1 Pre-acceptance.

22.1.1 The mechanical and electrical pre-acceptance as well as the training and instructions for Buyer's operating personnel shall be done at Seller's site under normal operating conditions. The Product must run 24 hours without any disruptions or difficulties, including, but not limited to, handling, functions, performance, execution of contractual work and scope of supplies and services, strict compliance with Buyer's TS as well as the rules, regulations, specifications and instructions; cycle times, machine and process capability, demonstration and certification of the required performance guarantee; quality of the produced parts and production process.

22.1.2 Pre-acceptance shall be made in the presence of authorized representatives of Buyer and Seller.

22.1.3 Except as may otherwise be provided herein, any and all costs and expenses for travel and accommodation of Buyer's personnel shall be paid by Buyer; any and all costs and expenses for travel and accommodation of Seller's personnel shall be paid by Seller.

22.1.4 Pre-acceptance shall be contingent upon approval of the written pre-acceptance protocol approved by the parties setting forth the responsibilities of the parties. If the aforesaid protocol lists items to be completed by Seller, the same shall be completed in a timely manner as set forth within the protocol. If not completed by Seller, an additional written protocol shall be implemented by the parties. Work responsibilities of Seller that do not affect the performance of the Product, shall be completed within five (5) days, the implementation thereof not affecting pre-acceptance.

22.1.4

22.1.5 There shall be a maximum of two (2) Pre-acceptance formats by and between the parties. After a second pre-acceptance that is not successful in its implementation at Seller's premises, the Buyer may, at its election, terminate the Contract. If termination occurs, Buyer shall be entitled to be reimbursed and/or paid for all costs and installment payments which have been made, which such reimbursement and/or payment shall be made within fourteen (14) days of demand. If the entirety of the payment is not made by Seller within said time, then the parties agree that the Buyer shall have the absolute right to possession of the Product, which such right shall continue until the reimbursement and/or payment is made.

22.1.6 Delays in the project that are attributable to the Buyer shall not be chargeable to the Seller for any purpose set forth herein.

22.1.7 Pre-acceptance shall be complete when the written protocol has been completed at Seller's site. Any and all installments of the purchase price due and payable after pre-acceptance, pursuant to Contract, shall be payable upon completion.

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22.2 Final Acceptance

- 22.2.1 The final acceptance can only occur when all prior contractual conditions have been approved and completed without reservation, with regard to: delivery, performance, functionality, problem-free operation and production, the reproduction of operating conditions at Buyer site as existed at pre-acceptance stage, cycle time, proof of machine process and gauge capabilities as well as quality of production parts, in relation to the process and proof of performance and technical warranties as set forth in the Contract.
- 22.2.2 The final acceptance shall be concluded after set-up, assembly, installation as well as start-up have occurred at Buyer's site. Such final acceptance shall be concluded in the presence of representatives of both Buyer and Seller, at which time the Product must run under normal working conditions, without any disruptions or non-conformities within the contractual scope of delivery and performance, otherwise final acceptance shall be repeated.
- 22.2.3 Final acceptance shall be contingent upon approval of the written final acceptance protocol approved by the parties setting forth the responsibilities of the parties. If the aforesaid protocol lists items to be completed by Seller, the same shall be completed in a timely manner as set forth within the protocol. If not completed by Seller, an additional written protocol shall be implemented by the parties. Work responsibilities of Seller that do not affect the performance of the Product, shall be completed within five (5) days, the implementation thereof not affecting final acceptance.
- 22.2.4 There shall be a maximum of two (2) final acceptance formats by and between the parties. After a second final acceptance that is not successful in its implementation at Seller's occasion, the Buyer may, at its election, terminate the Contract. If termination occurs, the Buyer shall be entitled to be reimbursed and/or paid for all costs of installment payments which have been made, which such reimbursement and/or payment shall be made by Seller within fourteen (14) days of demand. If the entirety of the reimbursement and/or payment is not made by Seller, then the parties agree that the Buyer shall have the absolute right to possession of the Product, which such right shall continue until the reimbursement and/or payment is made.
- 22.2.5 Final acceptance shall be complete when the written protocol has been completed at Buyer's site. Any and all installments of the purchase price remaining due and payable at final acceptance shall be paid upon completion.

23 Additional Terms and Conditions

23.1 Compliance with Laws.

- (a) Seller agrees to comply with all applicable federal, state, provincial, and local laws, rules, regulations and ordinances in connection with the manufacture, sale, delivery and use of the Products, including without limitation obtaining or making all approvals and filings, and, upon request, Seller will submit to Buyer evidence of such compliance.
- (b) In furtherance and not in limitation of (a) above:
 - i. all invoices must carry the following certificate, and Seller agrees to comply therewith as to all Products: "We hereby certify that these Products were produced in compliance with all applicable requirements of Sections 6, 7 and 12 of the Fair La-

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- bor Standards Act, as amended, and of regulations and orders of the United States Department of Labor issued under Section 14 thereof."
- ii. During the performance of this Purchase Order, Seller agrees to comply with all provisions of the Equal Opportunity clause (41 CFR 60-1.4(a)); the Affirmative Action Obligations (41 CFR 60-250); the Listing of Employment Openings clause (41 CFR 60-250.4(b) - (h)); the Employment of the Disabled clause (41 CFR 60.741.5); and any applicable laws pertaining to small/small disadvantaged business concerns. Further, Seller agrees to conform to Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973 (29 USC Section 793) and Section 402 of the Vietnam Era Veteran Readjustment Assistance Act (38 USC Section 4012), not to discriminate against any employee or applicant for employment because of race, religion, sex, creed, color, national origin, or disabled or veteran's status, and Seller certifies that it does not maintain any unlawful segregated facilities. This Purchase Order shall be deemed to incorporate by reference all the clauses required by the provisions of said regulations and laws and wherever the term "Contractor" is used in said clauses it will be deemed to refer to Seller.
 - iii. To the extent that any of the Products are to be used by Buyer in connection with its manufacturing or assembly operations, including any activities incidental thereto, Seller hereby certifies and represents that said Products comply with all applicable rules and regulations issued under the Occupational Safety and Health Act (Public Law 91-596).
- (c) To the extent any of the statutory or regulatory provisions cited above are amended, supplemented or replaced, or additional statutory or regulatory provisions are enacted, Seller's obligations under this Purchase Order shall be automatically amended to take the same into account and the Seller Documents shall contain all legends and other disclosures required by the same.

23.2 Jurisdiction/Governing Law. The state and federal courts of Illinois shall have exclusive jurisdiction and venue over the subject matter hereof. Any Purchase Order shall be governed by and interpreted in accordance with the laws of the State of Illinois, without regard to its conflicts of laws principles.

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23.3 Indemnification. Seller agrees to indemnify, defend and hold harmless the Buyer, its affiliates, customers and each other party to which Products are provided, and each of their shareholders, directors, officers, employees and agents, on demand, from and against any and all claims, demands, actions, causes of actions, suits, costs, fees, interest, penalties, damages (consequential, punitive, exemplary and otherwise), attorneys' fees and all other liabilities and obligations whatsoever ("Losses") arising out of or related in any way to Seller's performance or obligations under this Purchase Order including, without limitation:

- (a) Personal injuries, illness or death of any natural person (including, without limitation, Seller's agents and employees) or damage to any property (including without limitation, the Seller's property) or any spill, discharge or emission of hazardous wastes or substances which relates to, in whole or in part, (i) any manufacturing, design or other defect, failure to warn, improper handling, improper removal, moving or installation of production machinery,

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- improper operating installation instructions or other act or omission of Seller with respect to any of the Products, or (ii) the performance by Seller of any services, whether on property of Buyer, Seller or any Third Party;
 - (b) Any breach of warranty set forth in paragraph 19.1 or made by or on behalf of Seller with respect to the Products or otherwise and any claim of a Third Party relating to any Products or their quality;
 - (c) Any breach of a Purchase Order or any other agreement between Buyer and Seller;
 - (d) Any recall campaign in which Buyer or any customer participates in connection with inclusion of Products in goods sold by Buyer; and/or
 - (e) Claims alleging violation or infringement of any patent, copyright, or other intellectual property or proprietary right relating to Products provided by Seller, or any alleged improper disclosure or use of any trade secret arising from the manufacture, use or sale of any goods delivered as a result of the Purchase Order even if they are made to Buyer's specifications.
- 23.4 To the maximum extent permitted by applicable law, Seller's obligation to defend and indemnify will apply even as to Losses caused in whole or in part by an indemnitee's negligence, but Seller's indemnification shall not apply to the extent that Losses are clearly shown to have resulted solely and directly from the negligence or willful misconduct of such indemnitee. Seller's obligation to defend and indemnify under this Paragraph 23.4 above will apply regardless of whether the claim arises in tort, breach of warranty or contract. The indemnification obligation under this Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the benefit of Seller under Workers' Compensation Acts, occupational disease acts, disability benefits acts or other employee benefits acts.
- 23.5 In furtherance and not in limitation of the foregoing, Seller agrees that it will pay Interest to Buyer, on demand, on all indemnification amounts owed, and Buyer may at its option participate in the defense of any Third Party claim with its own counsel, at Seller's expense.
- 23.6 Infringement; Use of Products Licensed.
- 23.6.1 Seller warrants that the Products and the sale and/or use thereof (before or after incorporation into products during manufacture) do not and will not infringe any patents or other intellectual property rights, United States or foreign.

23.6.1

- 23.6.2 Seller will furnish to Buyer, without restrictions on use or disclosure, all information and data Seller acquires or develops in the course of Seller's activities under a Purchase Order. At Buyer's request, Seller also will discuss with Buyer or another party designated by Buyer, without restrictions on use or disclosure, any potential design, quality or manufacturing problems with Products Seller worked on or produced pursuant to a Purchase Order.
- 23.6.3 Seller grants to Buyer and to any affiliated company of Buyer a nonexclusive license under reasonable terms and conditions to make, have made, use, have used and sell under any other patents now or hereafter owned or controlled by Seller which cover any application of the technology embodied in the information or data Seller acquires or develops in the course of Seller's ac-

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tivities under a Purchase Order. At Buyer's request, Seller will furnish to Buyer all other information and data of Seller which Buyer deems necessary to understand the operation and to maintain the goods and Products delivered under a Purchase Order, and to understand and apply the information and data of this Section hereof, with no restrictions on use other than Seller's patent rights.

23.6.4 Seller warrants that it is aware of the uses to which the Products are to be put, and grants to Buyer, and each party or entity to which the Products are provided, a free, unrestricted, irrevocable and perpetual license, with a right to sublicense to others, to use, repair and reconstruct the Products in any manner, and warrants that Seller has full right to grant said license.

23.7 Proprietary Information

23.7.1 Any information or knowledge which Buyer may have disclosed or may hereafter disclose to Seller in connection with a Purchase Order and any and all services to be rendered and/or work to be performed pursuant to this Purchase Order is and shall be deemed confidential and proprietary information of Buyer. Seller shall not, without authorization in writing from Buyer, use, communicate or disclose the confidential and proprietary information of Buyer. Seller agrees to safeguard the confidential and proprietary information of Buyer by using reasonable efforts, consistent with those used in the protection of its own proprietary information of a similar nature, to prevent its disclosure to third parties. Seller agrees to cause its employees, contractors, officers, directors, agents and representatives to be bound by and comply with the foregoing restrictions regarding the use or disclosure of such confidential and proprietary information. Seller further agrees not to assert any claims (other than a claim for patent infringement) with respect to any technical information that Seller shall have disclosed or may hereafter disclose to Buyer in connection with the Products.

23.7.2 All documents containing proprietary information relating to the Products produced or acquired by Seller under a Purchase Order will belong to Buyer. All drawings, know-how, and confidential information supplied to Seller by Buyer and all rights therein will remain the property of Buyer and will be kept confidential by Seller in accordance with Paragraph 23.7.1 above.

23.7.3 Seller shall, within five (5) business days of Buyer's request or the cancellation or termination of this Purchase Order, return all confidential and proprietary information (including all copies, notes and/or extracts thereof) furnished by Buyer pursuant to this Purchase Order. In addition, that portion of the confidential or proprietary information that consists of analyses, compilations, studies or other documents prepared by Seller, or by its directors, officers, employees, or advisers, will be destroyed.

23.7.4 Seller will ensure that any Third Party to whom Seller subcontracts any of the work hereunder is bound by all of the terms and conditions relating to such work to which Seller is bound under a Purchase Order.

23.7.5 The parties hereto agree that any process, product, idea, invention, compound that is developed during the manufacturing process that is not directly or indirectly associated with the Buyer design or drawings, shall be and remain the product of the Seller.

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- 23.7.6 With regard to the completed Product, the parties agree that the Buyer retains all rights of property to, and usage of, Product after final acceptance. Should any problems occur during any test run hereof, the complete test run must be repeated for final acceptance.
- 23.7.7 The parties agree that all machining, tooling, and electrical documents/drawings, as well as Bills of Materials, shall be copied in alternate media, such as compact disk format, such copies to be retained by an attorney designated by the parties. The parties shall share all costs associated therewith.
- 23.7.8 Inventions. If a Purchase Order involves or results in: (i) any invention or any experimental, development or research activities, including engineering related thereto, (ii) any reduction to practice or any subject matter, application or discovery which could be patented or copyrighted, or (iii) any improvement in the design of the Products or any alternative or improved method of accomplishing the objectives of this Purchase Order (collective, "Inventions"), such Inventions shall be owned by Buyer and be deemed confidential and proprietary property of Buyer, whether such Inventions or any portions thereof can be copyrighted or patented or not, and Seller shall cooperate (and cause its employees to cooperate) in executing any documents and taking any other actions necessary or convenient to patent, copyright, or otherwise perfect or protect such Inventions for the benefit of Buyer.
- 23.7.9 Advertising. Seller may not, without the prior written consent of Buyer, in any manner advertise or publish the fact that Seller has furnished or contracted to furnish any goods to Buyer.
- 23.7.10 Severability. If any provision of a Purchase Order, or portion of any provision, is declared or found to be unenforceable, the balance of the Purchase Order or such provision shall be interpreted and enforced to the greatest extent possible as if the unenforceable provision or portion had never been a part hereof. In particular, if any interest rate provided for herein is higher than that permitted by applicable law it shall automatically be amended to the highest legal rate.

23.8 Construction. Captions as used herein are for convenience or reference only, and shall not be deemed or construed as in any way limiting or extending the language of the provisions to which such captions may refer. Any conflicts between the provisions hereof and any provision written by Buyer on the face of any Purchase Order issued hereunder shall be resolved in favor of the provision written on the Purchase Order.

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23.9 Force Majeure. Except as may be specifically provided for herein, neither the Seller nor Buyer shall be liable to the other for damages for any delay in or failure of performance (except as to any payment obligations required under this agreement) caused by events beyond the reasonable control and without fault and negligence of such party, including, but not limited to: act of God, flood, war, insurrection, epidemic, fire, earthquake, labor dispute, embargo, governmental action imposing quotas not heretofore imposed, a change in laws adversely affecting the import or export of products, if the Seller or Buyer gives prompt written notice to the other party describing the claimed event force majeure with reasonable specificity. The excuse of performance shall be for the period of delay or in-

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ability to perform due to such event(s) provided that after a delay of sixty days in performance, the other party may terminate this Agreement.

23.10 Remedies Cumulative; No Waiver. Buyer's remedies relating hereto shall be cumulative and in addition to any other remedies provided herein or by law or in equity. The failure of Buyer to enforce at any time any of the provisions hereof, or to exercise any option herein provided, or to require at any time performance by Seller of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor shall such failure in any way affect the validity of this Purchase Order, or the rights of Buyer thereafter to enforce each and every such provision without any notice other than as may be explicitly required herein.

23.11 Buyer's Liability. In no event shall Buyer be liable for anticipated profits, interest, or penalties or incidental, consequential, punitive, exemplary or other damages or liabilities in connection with a Purchase Order, whether for breach of contract, late payment, property damage, personal injury, illness, or death or otherwise, beyond the sum set forth in Section 15 hereof, or, if not applicable, the price for Products accepted by Buyer.

23.12 Limitation on Assignment. A Purchase Order is issued to the Seller in reliance upon its personal performance of the duties imposed and by accepting same the Seller agrees not to assign the Purchase Order or delegate the performance of its duties hereunder, except for the procurement of raw materials, without prior written consent of the Buyer. Failure to comply with the provisions in this paragraph shall effect, at the option of the Buyer, a cancellation of the Buyer's obligations hereunder without liability.

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23.13 Dispute Resolution. Seller and Buyer shall attempt to resolve by amicable discussion any dispute, controversy or claim arising out of, or relating to this Agreement. If any such dispute, controversy or claim is not resolved by amicable discussion within thirty (30) calendar days after the initiation of the discussion, then it shall be finally resolved by arbitration to be conducted in Chicago, Illinois, under the rules of the American Arbitration Association. Seller and Buyer shall attempt in good faith to select a single arbitrator. If they fail to do so within thirty (30) calendar days after the date of filing of the initial notice of arbitration by the complaining party, then each Buyer and Seller shall appoint an arbitrator within forty-five (45) calendar days after such filing date and the two arbitrators so appointed shall appoint a neutral third arbitrator within fifty (50) calendar days after such filing. The arbitration panel shall use its best efforts to reach a decision within three (3) months after the date of appointment of the third arbitrator. Each party agrees that the decision of the arbitration panel shall be final and binding and that the judgment upon the award rendered by the panel may be entered in any court having jurisdiction thereof.

Danville, date

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