

SHINWA USA

THE PURCHASE ORDER IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS AS WELL AS THOSE APPEARING ON THE FACE OF THE PURCHASE ORDER.

GENERAL: The purchase order constitutes an offer by buyer to seller upon the terms and conditions stated herein and in the body of the purchase order, and shall become a binding contract upon acceptance thereof by seller. Commencement of performance by the seller will constitute seller's acceptance of the purchase order and these terms and conditions. The purchase order is limited to the terms and conditions contained herein and no terms and conditions from seller, which are inconsistent with or in addition to these terms and conditions shall be binding upon the parties unless agreed to in writing by buyer.

PRICE AND QUANTITIES: The prices stated in this purchase order are for completed work. No increase or decrease in price will be allowed unless provided for in written amendments to the purchase order. All invoices for shipments applying against the purchase order are to be filled strictly in accordance with the terms and conditions hereof concerning price, the description of materials and supplies purchased hereunder, quantity, and terms of payment and delivery. Any quantity shipped in excess of that ordered may be returned to seller, at buyer's option, and seller shall be liable for all carriage and other charges incident to the return of such excess shipments. Buyer shall not be liable for any packing, crating or carriage charges unless the purchase order specifically so provides. All materials and supplies purchased are to be suitably prepared and packed for shipment so as to secure safe delivery, and to meet carrier's requirements, unless otherwise called for in the purchase order.

RISK OF LOSS: Buyer will not accept or pay any charges for insurance unless specified on the purchase order. Risk of loss or damage shall remain with seller until accepted by buyer, buyer's agent, or end-user (as defined herein), as the case may be, at the delivery point specified on the purchase order or designated by buyer's agent or end-user.

DELIVERY: In the event seller's deliveries fail to meet the schedule specified herein, buyer reserves the right to cancel all or any part of this purchase order, or, at its option, to designate in writing revised delivery schedules. Seller agrees to pay all excess carriage charges in the event buyer elects to accept deliveries pursuant to revised schedules.

NON-ACCEPTANCE AND REJECTIONS: If any of the materials and/or supplies purchased hereunder are found at any time to be defective in material or workmanship, damaged because of inadequate packaging by seller, or otherwise not in conformity in any respect with this purchase order and/or the accompanying drawings, specifications and approved sample, if any (in any event, such defective or non-conforming goods the "non-confirming goods"), then in such event, and in addition to any other rights or remedies which buyer may have hereunder or otherwise, buyer shall have the right to (i) not accept the non-confirming goods, (ii) reject its acceptance and return the non-confirming goods, at seller's expense, and/or (iii) upon written request, require seller to replace any or all of the non-confirming goods, at seller's expense. On the event buyer invokes any of the foregoing remedies, buyer shall also be entitled to a full refund of the purchase price for the non-confirming goods, which are returned to seller, or alternatively, a credit, in the amount of the purchase price, against subsequent purchase orders with seller.

INSPECTION RIGHTS: Seller acknowledges that buyer may purchase materials and supplies hereunder for resale to its corporate parent or affiliate(s) in Japan, and that such party may in turn resell such materials and supplies to a third-party end-user (any such party, and "end-user"). Accordingly, and notwithstanding any provision of the purchase order or any provision of the applicable version of the Uniform Commercial Code to the contrary, seller agrees that buyer's rights to inspect materials and supplies purchased hereunder shall extend to and include a reasonable time after arrival of such materials and supplies at the delivery point designated any such end-user.

BUYER'S PROPERTY: (a) Unless buyer otherwise agrees in writing, layouts, models, tools, gauges, designs, sketches, drawings, blueprints, patterns, dies, specifications, engineering data or other technical or proprietary information, special appliances and other equipment or material or every description and any reproductions thereof furnished to seller by buyer and any replacement thereof (collectively, or with respect to any item or group of items, the "property"), shall remain the property of buyer. (b) The obligations of the seller pursuant to this paragraph shall continue as long as the seller has possession or control of the property.

PATENT RIGHTS: Any and all discoveries, inventions and designs, whether or not patentable or subject to copyright, conceived or reduced to practice by seller or its employees in connection with the performance of this purchase order, which are paid for in whole or in part by buyer, shall be promptly disclosed to buyer and shall become the property of buyer. Seller and its employees, upon request, shall execute all papers necessary to assign such discoveries, inventions, and designs to buyer and/or to cause at buyer's expense patent applications to be filed thereon in favor of buyer. The decision of whether to file and prosecute patent applications shall be made by buyer.

CHANGES: By written change order, buyer may at any time unilaterally (i) suspend work on the purchase order, in whole or in part, for a stated time period, and/or (ii) make changes in one or more of the following elements: designs, drawings, or specifications, the method of shipment or packaging, place or time or delivery, or quantities to be furnished; provided that any acceleration in the delivery rate shall require the advance consent of seller. If such suspension or change causes an increase or decrease in the cost of, or the time required for, furnishing the materials and/or supplies hereunder, an equitable adjustment shall be made in the purchase order price, delivery schedule, or both. If the price and/or schedule adjustment is not included in the issued change order, no increase in price or delay in delivery will be allowed unless seller asserts a claim in writing within 15 days from the date of the change order, with the claim to be followed as soon as practicable with written specification of the claim along with supporting data. Noting contained in this paragraph shall relieve or excuse seller from proceeding with delay in performance the purchase order as changed.

ASSIGNMENT AND SUBCONTRACTING: The purchase order shall not be assigned without the buyer's written consent, which may be withheld for any reason or no reason. Seller shall not procure or contract for the performance of any time covered by the purchase order in completed or substantially completed form without the buyer's prior written approval; provided that seller's obtaining parts and materials normally purchased by seller and required in the normal course of business.

INDEMNIFICATION: (a) Seller shall defend, indemnify and hold harmless buyer, its successors, assigns, customers and agents, from any loss, damages of liability, including reasonable and necessary attorney's fees, incurred by reason of any and all claims of any kind, including without limitation claims charging personal or property injury, or claims of infringement of any patent, trademark or copyright arising out of the sale or use of any materials and/or supplies furnished hereunder; provided that seller shall have no liability with respect to materials supplied or manufacturer pursuant to buyer's specifications.

(b) Seller shall, upon request, obtain and maintain product liability, public liability, property damage, professional liability insurance, builder's risk insurance, employer's and independent contractor's liability and workers compensation insurance, naming buyer as an additional insured, in amounts and on terms and conditions acceptable to buyer in the reasonable exercise of its discretion. Insurance certificates will be provided by seller to buyer on request.

WARRANTIES: By accepting the purchase order, seller warrants that all materials and supplies delivered under this purchase order (i) will be "merchantable" as defined in Section 2-314 of the Uniform Commercial Code and,

together with all services provided hereunder, will be free from defects in materials and workmanship, including damage due to inadequate packaging by seller; (ii) will conform to buyer's specifications, drawings and approved sample, if any; (iii) to the extent not manufactured pursuant to detailed designs furnished by buyer, will be free from defects in design; (iv) will be suitable for the intended purposes, if the purpose is made known to seller and buyer relies on seller's judgment and selection, and (v) will be free of defects in title. These warranties shall remain in effect, as to each material or supply furnished, serviced and/or repaired hereunder for a period of time consistent with the warranty life normally offered by the seller. The benefits of the warranties shall accrue to buyer's customers and assigns to the same extent they shall accrue to buyer.

TERMINATION AND DEFAULT: Buyer reserves the right to terminate the purchase order, in whole or in part, and to cancel all or any part of the undelivered portion of the purchase order (each of the following an "Event of Default"): (i) if seller shall become insolvent or make a general assignment for the benefit of creditors, or a receiver or liquidator for seller is appointed or applied for, or seller admits in writing its inability to pay its debts as they become due; (ii) if any proceeding under any applicable federal or state bankruptcy or insolvency law is brought by or against seller, (iii) if seller shall so fail to make progress in the work as to endanger performance hereunder, (iv) if seller fails to deliver the materials and/or supplies or perform the service by the time specified in this purchase order or in accordance with the specifications of buyer, (v) if seller otherwise repudiates this purchase order or breaches any of the other terms and conditions hereof, including the warranties or, (vi) if buyer rejects seller's tendered performance or revokes its acceptance of such performance.

(b) Upon the occurrence of an Event of Default where seller fails to deliver or repudiates, and in addition to its right to terminate and cancel, buyer may, at its option, (i) require seller to transfer title and deliver to buyer any satisfactorily completed materials and supplies and such work in process as seller has specifically produced or specifically acquired for the performance of such part of the order as has been cancelled or (ii) have specific performance of this purchase order. Buyer shall have no obligations to seller in respect to the cancelled portion of this purchase order, and buyer's liability shall be limited to payment for the delivered portion of this purchase order at the rate specified on the face hereof (reflecting quantity prices as though this purchase order had been performed to completion). (c) Upon the occurrence of the Event of Default, and in addition to all other remedies provided buyer hereunder, buyer may also (i) recover from seller so much of the purchase price as has been paid, and/or (ii) cover (as that term is defined in Section 2-712 of the Uniform Commercial Code) and have a claim for damages as to all materials and supplies affected by seller's default. (d) Except with respect to default of subcontractors, seller shall not be liable for any excess cost arising out of failures or delays which arise out of causes beyond control and without the fault or negligence of seller. If the failure or delay is caused by the default or a subcontractor at any tier, and it arises out of the causes beyond the control of both seller and its subcontractors, and without the fault or negligence of either of them seller shall not be liable to buyer for any excess cost unless the materials or services to be furnished by subcontractor are obtainable from their sources in sufficient time to permit the seller to meet the purchase order requirements. The term "causes beyond the control" as used herein may include but is not restricted to acts of God, acts of government (federal, state or local), in its sovereign capacity, fires, floods, strikes, freight embargoes or usually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of seller and subcontractor, as the case may be the rights and remedies of buyer provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this order.

USE OF DESIGNS, DATA ETC.: Seller agrees that it will keep confidential the futures of any equipment, tooling, gauges, patterns, designs, engineering data or other technical or proprietary information furnished by buyer, and, without buyer's prior written consent, will use such items only in the performance of the purchase order. Upon completion or termination of the purchase order, or upon demand by buyer seller shall return to buyer all such items and any reproductions of such items in the seller's possession or control or make such other disposition thereof as may be directed or approved by buyer.

TAXES: Buyer shall not be liable for any federal, state or local taxes unless separately stated on this purchase order and billed as a separate item. No sales/use tax shall be added to the price hereunder when an exemption is indicated on the face of this purchase order.

COMPLIANCE WITH LAWS: Seller shall comply, in the performance of the purchase order, with all applicable federal, state and local laws, audiences, rules, regulations and standards, including without limitation the Fair Labor Standard Act, The Consumer Product Safety Act, The Occupational Safety and Health Act and acts pertaining to equal employment opportunity. Seller agrees to indemnify buyer for any fines, penalties or other assessments imposed on buyer by any governmental body which result from the sale/use by buyer of the material and supplies provided by seller hereunder that are produced or provided in contravention of any of foregoing.

CONTINGENCIES: Buyer reserves the right, at its option, to direct suspension of shipment of the materials and supplies covered by the purchase order, or to cancel the purchase order, in whole or part, at any time when such suspension or cancellation is caused by acts of the government (federal, state, or local) freight embargoes, inability to secure transportation facilities, strikes, or other contingencies beyond the control of buyer.

MODIFICATION AND WAIVER: These terms and conditions constitute the final, complete and exclusive agreement between seller and buyer. No modification of or addition to these terms and conditions shall bind buyer unless approved in writing by an authorized officer of buyer. No failure or delay of buyer to exercise any right hereunder shall operate as a waiver of such right or of any other right.

GOVERNING LAW: The validity construction and interpretation of all documents relating to this sale, including the purchase order of the terms and conditions, and rights and duties of the parties thereto shall be governed by the laws of the Commonwealth of Kentucky, USA.

SEPARABILITY: If any provision of this purchase order, or the application thereof to any person, entity or circumstances, shall be invalid or unenforceable to any extent, the remainder of this purchase order, and the application of such provision to other such persons, entities or circumstances, shall not be affected thereby, and in all events, this purchase order shall be enforced to the greatest extent permitted by law.

NOTICE: All notice or requests contemplated by this purchase order shall be in writing and either personally delivered against written receipt or transmitted by registered or certified mail, return receipt required. Notices, addressed to the parties at the addresses given on the face of this purchase order, shall be deemed given upon receipt if personally delivered and/or upon deposit with the postal service if mailed.

ADDITIONAL CLAUSES: Additional clauses, when necessary, will be specified on the face of the purchase order or added as an attachment hereto.