

Movement by Perfection



The Royal League in ventilation, control and drive technology

General Terms and Conditions of Purchase

September 2017



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THIS DOCUMENT (INCLUDING THE TERMS AND CONDITIONS OF PURCHASE INCLUDED WITH, ATTACHED TO OR CONTAINED IN THIS ORDER), TOGETHER WITH ANY WRITTEN SUPPLY AGREEMENT SIGNED BY BOTH PARTIES RELATED TO THE PURCHASE OF PRODUCT FROM SELLER AND ANY DOCUMENT PREVIOUSLY SUBMITTED BY PURCHASER TO SELLER, CONSTITUTES THE COMPLETE AND FINAL AGREEMENT OF PURCHASER AND SELLER, AND MAY NOT BE ADDED TO, MODIFIED, SUPERSEDED OR ALTERED EXCEPT BY WRITTEN AGREEMENT OR MODIFICATION SIGNED BY PURCHASER'S AUTHORIZED REPRESENTATIVE, NOTWITHSTANDING ANY TERMS AND CONDITIONS WHICH MAY NOW OR IN THE FUTURE APPEAR ON ANY QUOTATION, ACKNOWLEDGMENT, CONFIRMATION, INVOICE, OR OTHER DOCUMENT OF SELLER. THIS ORDER IS NOT AN ACCEPTANCE BY PURCHASER OF ANY TERMS AND CONDITIONS CONTAINED IN ANY QUOTATION, ACKNOWLEDGMENT, CONFIRMATION, INVOICE, OR OTHER DOCUMENT OF SELLER, AND ANY SUCH ADDITIONAL TERMS ARE HEREBY OBJECTED TO WITHOUT FURTHER NOTICE TO SELLER. PURCHASER'S OFFER TO PURCHASE PRODUCT IS EXPRESSLY CONDITIONED ON SELLER'S ACCEPTANCE OF THIS ORDER AND THE TERMS AND CONDITIONS OF PURCHASE INCLUDED WITH, ATTACHED TO OR CONTAINED IN THIS ORDER.



General Terms and Conditions of Purchase of ZIEHL-ABEGG Inc.

§ 1 Definitions

- 1.1. "Contract" shall mean the agreement between the Parties consisting exclusively of this Order (including its Terms and Conditions of Purchase) together with the terms of any written supply agreement signed by both Parties related to the purchase of Product by Purchaser from Seller and any document previously submitted by Purchaser to Seller. In the event of a conflict between a term appearing in any document previously submitted by Purchaser to Seller and a term appearing in the Contract, the Contract shall control.
- 1.2. "Delivery Date" has the meaning set forth in Section 4.
- 1.3. "Delivery Location" has the meaning set forth in Section 6.
- 1.4. "Force Majeure Event" has the meaning set forth in Section 26.
- 1.5. "Indemnitees" has the meaning set forth in Section 17.
- 1.6. "Losses" has the meaning set forth in Section 17.
- 1.7. "Notice" has the meaning set forth in Section 25.8.
- 1.8. "Order" shall mean this purchase order (including its Terms and Conditions of Purchase).
- 1.9. "Parties" shall mean the Seller and Purchaser, collectively.
- 1.10. "Price" has the meaning set forth in Section 12.
- 1.11. "Product" shall mean the goods specified on the face of this purchase order to be supplied by Seller pursuant to this Contract.
- 1.12. "Purchaser" shall mean Ziehl-Abegg, Inc., a Delaware corporation.
- 1.13. "Sales Convention" has the meaning set forth in Section 25.5.
- 1.14. "Seller" shall mean the person or entity listed on the face of this Order, and any subsidiary or affiliate of such person or entity providing Product under this Contract.
- 1.15. "Trade Agreement" has the meaning set forth in Section 21.2.

§ 2 Applicability

- 2.1 This Order is an offer by Purchaser for the purchase of the Products from the Seller in accordance with and subject the Contract. The Contract, together with any

documents incorporated by reference, constitutes the sole and entire agreement of the parties with respect to the Order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Order. The Order expressly limits Seller's acceptance to the terms of the Contract. The Contract prevails over any terms or conditions contained in any other documentation and expressly exclude any of Seller's general terms and conditions of sale or any other document issued by Seller in connection with this Order.

- 2.2 The Contract applies to any repaired or replacement Products provided by Seller hereunder.

- 2.3 Purchaser is not obligated to any minimum purchase or future purchase obligations under this Order.

§ 3 Orders

- 3.1 This Order is only valid if placed by Purchaser to Seller in writing, by telefax or by e-mail. This Order is not binding on Purchaser until Seller accepts the Order in writing or starts to perform in accordance with the Order. If Seller does not accept the Order in writing or provide written notice that it has commenced performance within fourteen (14) days of Seller's receipt of the Order, this Order will lapse. Purchaser may withdraw the Order at any time before it is accepted by Seller.

- 3.2 All quotations submitted by the Seller as well as all associated activities shall be free of charge for Purchaser.

- 3.3 Purchaser may at any time direct changes, or cause Seller to make changes, to the Product or to otherwise change the scope of this Contract including such matters as inspection, testing or quality control, and Seller agrees to make such changes promptly. Any difference in price or time for performance resulting from such changes shall be equitably adjusted by Purchaser after receipt of documentation in such form and detail as Purchaser may direct. Any changes to this Contract shall be made in accordance with this Section.

THE CONTRACT, WHICH CONSISTS EXCLUSIVELY OF THIS ORDER (INCLUDING ITS TERMS AND CONDITIONS OF PURCHASE), TOGETHER WITH ANY WRITTEN SUPPLY AGREEMENT SIGNED BY BOTH PARTIES RELATED TO THE PURCHASE OF PRODUCT FROM SELLER AND ANY DOCUMENT PREVIOUSLY SUBMITTED BY PURCHASER TO SELLER, FORMS THE ENTIRE AGREEMENT BETWEEN THE PARTIES AND EXCLUSIVELY GOVERNS ALL SALES AND PURCHASES OF PRODUCT HEREUNDER, NOTWITHSTANDING ANY TERMS AND CONDITIONS APPEARING IN ANY QUOTATION, ACKNOWLEDGMENT, CONFIRMATION, INVOICE, OR OTHER DOCUMENT OF SELLER. ANY ADDITIONS, MODIFICATIONS OR CONTRADICTIONS TO THE TERMS OF THE CONTRACT APPEARING IN A QUOTATION, ACKNOWLEDGMENT, CONFIRMATION, INVOICE, OR OTHER DOCUMENT OF SELLER ARE HEREBY EXPRESSLY REJECTED WITHOUT FURTHER NOTICE TO SELLER. ANY CONDUCT BY SELLER RECOGNIZING THE EXISTENCE OF AN AGREEMENT SHALL BE DEEMED AN ACCEPTANCE OF THE TERMS OF THE CONTRACT.



§ 4 Delivery Date

Seller shall deliver the Products in the quantities and on the date(s) specified in this Order or as otherwise agreed in writing by the parties (the "Delivery Date"). If no delivery date is specified, Seller shall deliver the Products within 10 days of Seller's receipt of the Order. **TIMELY DELIVERY OF THE PRODUCTS IS OF THE ESSENCE.** If Seller fails to deliver the Products in full on the Delivery Date, Purchaser may terminate the Order immediately by providing written notice to Seller and Seller shall indemnify Purchaser against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller's failure to deliver the Products on the Delivery Date. Purchaser has the right to return any Products delivered prior to the Delivery Date at Seller's expense and Seller shall redeliver such Products on the Delivery Date.

§ 5 Quantity

Purchaser is only obligated to take delivery of the quantities or piece numbers ordered by Purchaser for a specific delivery. Purchaser reserves the right to accept or reject, in whole or in part, partial or excess deliveries of Products. Any such rejected Products shall be returned to Seller at Seller's risk and expense. If Purchaser does not reject the Products and instead accepts the delivery of Products at the increased or reduced quantity, the Price for the Products shall be adjusted on a pro-rata basis.

§ 6 Delivery Location

All Products shall be delivered to the address specified in this Order (the "Delivery Location") during Purchaser's normal business hours or as otherwise instructed by Purchaser.

§ 7 Shipping Terms

Delivery shall be made in accordance with the terms on the face of this Order. If no delivery terms are specified on the face of this Order, delivery shall be made Delivered Duty Paid (DDP) Delivery Location, Incoterms® 2010. Seller shall give written notice of shipment to Purchaser when the Products are delivered to a carrier for transportation. Seller shall provide Purchaser all shipping documents, including the commercial invoice, packing list, air waybill, bill of lading, and any other documents necessary to release the

Products to Purchaser after Seller delivers the Products to the transportation carrier. The Order number must appear on all shipping documents, shipping labels, bills of lading, air waybills, invoices, correspondence, and any other documents pertaining to the Order. Purchaser shall only process invoices if the Order number and other applicable information is included on such invoice. Seller shall be accountable for all consequences related to the failure to include the Order number and other applicable information pursuant to this Section.

§ 8 Title and Risk of Loss

Title passes to Purchaser upon delivery of the Products to the Delivery Location. Seller bears all risk of loss or damage to the Products until delivery of the Products to the Delivery Location.

§ 9 Packaging

All goods shall be packed for shipment according to Purchaser's instructions or, if there are no instructions, in a manner sufficient to ensure that the Products are delivered in undamaged condition. Packaging materials shall only be used to the extent that same are necessary to achieve this purpose. Seller must provide Purchaser prior written notice if it requires Purchaser to return any packaging material. Any return of such packaging material shall be made at Seller's expense. Seller shall only use environmentally sustainable packaging and filling materials which do not impair recycling. Where Purchaser is separately charged for packaging by way of exception, Purchaser shall be entitled to return said packaging carriage paid against reimbursement.

§ 10 Amendment and Modification

No change to this Order is binding upon Purchaser unless it is in writing, specifically states that it amends this Order and is signed by an authorized representative of Purchaser.

§ 11 Inspection and Rejection of Nonconforming Products

The Purchaser has the right, but shall be under no duty, to inspect the Products on or after the Delivery Date.

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Purchaser, at its sole option, may inspect all or a sample of the Products, and may reject all or any portion of the Products if it determines the Products are nonconforming or defective. Complaints or notice of defects in the Products shall be deemed timely if made within a reasonable period of time after discovery by Purchaser of such nonconformance or defects. Payment for any Products shall not be deemed an acceptance of such Products. If Purchaser rejects any portion of the Products, Purchaser has the right, effective upon written notice to Seller, to: (a) rescind the Order in its entirety; (b) accept the Products at a reasonably reduced price; or (c) reject the Products and require replacement of the rejected Products. If Purchaser requires replacement of the Products, Seller shall, at its expense, promptly replace the nonconforming Products and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Products. If Seller fails to timely deliver replacement Products, Purchaser may replace them with goods from a third party and charge Seller the cost thereof and terminate this Order for cause pursuant to Section 23. Any inspection or other action by Purchaser under this Section shall not reduce or otherwise affect Seller's obligations under the Order, and Purchaser shall have the right to conduct further inspections after Seller has carried out its remedial actions. Any failure of the Products to conform to any of the warranties of this Contract shall, if Purchaser has accepted any of the Products, constitute a nonconformity that substantially impairs such Product's value to Purchaser for which Purchaser may revoke acceptance, such acceptance being deemed to have been induced either: (a) on the reasonable assumption that such nonconformity would be cured and it has not been reasonably cured or (b) if Purchaser did not discover such nonconformity prior to acceptance, by the difficulty of discovery before acceptance or by Seller's assurances.

§ 12 Price

The price of the Products is the price stated in the Order (the "Price"). If no price is included in the Order, the Price shall be the price set out in Seller's published price list in force as of the date of the Order. The Price is a fixed price and excludes additional claims of whatever nature. Unless otherwise specified in the Order, the Price includes all packaging, transportation costs to the Delivery Location, insurance, customs duties, import duties, and fees and applicable taxes, including, but not limited to, all sales, use

or excise taxes. No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Purchaser.

§ 13 Favored Pricing

Seller represents and warrants that the Price for the Products is the lowest price charged by Seller to any of its external buyers for similar volumes of similar Products. If Seller charges any other buyer a lower price, Seller must apply that price to all Products under this Order. If Seller fails to meet the lower price, Purchaser, at its option, may terminate this Order without liability pursuant to Section 23.

§ 14 Payment Terms

Seller shall issue an invoice to Purchaser on or any time after the completion of delivery and only in accordance with the Contract. Seller shall issue invoices either (a) in paperless form with the appropriate documents in PDF format after completion of delivery to the following e-mail address: invoice@ziehl-abegg.us with a copy to info@ziehl-abegg.us or (b) by mail in single copy on white paper. All invoices must be made out without exception to the following invoice address: 719 N. Regional Road, Greensboro, North Carolina 27409. Any invoices sent by fax will not be processed. Purchaser shall pay all properly invoiced amounts due to Seller in accordance with the terms on the face of this Order after Purchaser's receipt of such invoice, except for any amounts disputed by Purchaser in good faith. If no payment terms are specified on the face of this Order, Purchaser shall pay all properly invoiced amounts due to Seller within sixty (60) days net, or within fourteen (14) days with a three (3%) discount, after Purchaser's receipt of such invoice, except for any amounts disputed by Purchaser in good faith. All payments hereunder must be in US dollars. In the event of a payment dispute, Purchaser shall deliver a written statement to Seller prior to the date payment is due on the disputed invoice listing all disputed items and providing a reasonably detailed description of each disputed item. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under the Order notwithstanding any such dispute.

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§ 15 Setoff

Without prejudice to any other right or remedy it may have, Purchaser reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Purchaser to Seller.

§ 16 Warranties

Seller expressly and unconditionally warrants to Purchaser for the maximum period allowed by law that all Products will: (a) be new and of first-class quality; (b) be free from any defects in workmanship, material, manufacture and design, whether latent or otherwise; (c) conform strictly to applicable specifications, drawings, designs, samples and other requirements specified by Purchaser; (d) be fit for their intended purpose and operate as intended; (e) be merchantable; (f) be free and clear of all liens, security interests or other encumbrances; (g) meet the highest standards of the industry; (h) be adequately contained, packaged and labeled; and (i) not infringe or misappropriate any third party's patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment of or for the Products by Purchaser. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Purchaser's discovery of the noncompliance of the Products with the foregoing warranties. If Purchaser gives Seller notice of noncompliance with this Section, Seller shall, at its own cost and expense, promptly replace or repair the defective or nonconforming Products and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods to Seller and the delivery of repaired or replacement Products to Purchaser.

§ 17 General Indemnification

Seller shall, at its expense, defend, indemnify and hold harmless Purchaser and Purchaser's parent company, their respective subsidiaries, affiliates, successors or assigns and their respective directors, officers, shareholders, employees and agents and Purchaser's customers (collectively, "Indemnitees") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including indirect, incidental, consequential and punitive damages and including reasonable attorney and professional fees

and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "Losses") arising out of or occurring in connection with the Products purchased from Seller or Seller's negligence, willful misconduct or breach of the Contract. Seller shall not enter into any settlement without Purchaser's or Indemnitee's prior written consent.

§ 18 Intellectual Property Indemnification

Seller shall, at its expense, defend, indemnify and hold harmless Purchaser and any Indemnitee against any and all Losses arising out of or in connection with any claim that Purchaser's or Indemnitee's use or possession of the Products infringes or misappropriates any patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Seller enter into any settlement without Purchaser's or Indemnitee's prior written consent.

§ 19 Insurance

During the term of the Order and for a period of three (3) years thereafter, Seller shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than \$5,000,000.00 with financially sound and reputable insurers. Upon Purchaser's request, Seller shall provide Purchaser with a certificate of insurance from Seller's insurer evidencing the insurance coverage specified in this Order. The certificate of insurance shall name Purchaser as an additional insured. Seller shall provide Purchaser with thirty (30) days' advance written notice in the event of a cancellation or material change in Seller's insurance policy. Except where prohibited by law, Seller shall require its insurer to waive all rights of subrogation against Purchaser's insurers and Purchaser or the Indemnitees.

§ 20 Compliance with Law

20.1 Seller is in compliance with and shall comply with all applicable laws, regulations and ordinances. Seller has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Order. Seller shall comply with all export and import laws of all countries involved in the sale of Products under this Order. Seller shall arrange for all

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inspections and approvals by governmental officials including customs clearance or other import or export obligations, if necessary. Seller assumes all responsibility for shipments of Products requiring any government import clearance. Purchaser may terminate this Order if any government authority imposes antidumping duties, countervailing duties or any retaliatory duties on the Products.

20.2 Seller shall not offer or provide to Purchaser's purchasing agents any gratuities, gifts, payments, or anything of value, nor shall Seller offer or provide to any employees, agents or other representatives of Purchaser any gratuities, gifts, payments, or anything of value in an attempt to influence directly such person's administration of the provisions of this Contract. Purchaser desires to conduct its business in accordance with the highest legal and ethical standards.

20.3 Seller shall comply with the respective regulations passed by the Securities and Exchange Commission (SEC) regarding conflict minerals. The Seller shall stay current with all regulations regarding conflict minerals including any regulations defined in the Conflict Minerals Final Rule on the SEC website under <http://www.sec.gov/rules/final.shtml> or <http://www.sec.gov/news/press/2012/2012-163.htm>. The Seller shall implement any resulting reporting obligations and measures with respect to Purchaser in a timely manner. In case of Seller's failure to comply with this Section or in case of any incorrect information, the Seller shall indemnify Purchaser from claims by third parties.

§ 21 International Transactions

21.1. Where Products are transported beyond international borders, the Seller shall provide the customs invoice and any other document necessary for custom clearance. The invoice shall be issued in English or the language of the destination country and must include the following data: name and telephone numbers of the Purchaser's and the Seller's contact persons who are familiar with the transaction; Purchaser's Order number, Purchaser's invoice items of the Order, release code number (with skeleton agreements), individual component numbers and detailed description of Products; purchase price per item stated in the currency applicable to the transaction; quantity; INCOTERM and designated location, in addition to the country of origin and customs tariff number of the Products. Moreover, all goods and services provided by the Purchaser to the Seller for production of the Products which are not

included in the purchase price, must be identified separately on the invoice (e.g. consigned materials, tools, etc.). Every invoice must also include the relevant Order number or other references to consigned goods and list all discounts or reductions offered on the basic price which were taken into consideration when determining the invoice value.

21.2. Where agreements exist between the destination country to which the Products are to be delivered and the country in which the Seller is based in respect of preferential treatment in terms of commerce or customs duties ("Trade Agreement"), the Seller shall cooperate with the Purchaser in examining the eligibility of the Products for special programs of benefit to the Purchaser and to supply the Purchaser with the necessary documentation (such as the EUR1 Certificate, preferential certificate of origin, FAD, NAFTA Certificate of Origin or other certificates of origin) in accordance with the relevant preferential customs treatment program (e.g. EEA, Lomé Convention, EU / Mediterranean Partnerships, GSP, EU-Mexico Free Trade Agreement, NAFTA, etc.) to allow the Products to enter the destination country duty-free or subject to preferential treatment. Likewise, where there exists a Trade Agreement or preferential customs treatment program which is applicable to the scope of the Order and is deemed by the Purchaser to be of benefit to Purchaser at any time during its execution, the Seller shall support the Purchaser in its efforts to realize such benefits, including the value of any countertrades ensuing from the Order or set-off, and the Seller shall acknowledge that such benefits and preferential treatment shall solely accrue to the Purchaser. The Seller shall indemnify the Purchaser for any costs, fines, contractual penalties or charges resulting from the Seller's inaccurate documentation or failure on the part of the Seller to cooperate in a timely manner. The Seller shall be obliged to immediately notify the Purchaser of any errors known to exist in the documentation.

21.3. The Seller shall inform the Purchaser of any approval obligations for (re-)exports of the Products in accordance with all applicable export and customers regulations as well as the export and customs regulations of the country of origin of the Products in Seller's business documents. In order to do this, the Seller shall provide the following information at least in Seller's quotes, order confirmations and invoices for the Products: (a) the Export Control Classification Number (ECCN) in accordance with US Export Administration Regulations (EAR); (b) the trade-political origin of the Products and the components of the

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Products, including technology and software; (c) whether the Products were transported through the US, manufactured or stored in the US or manufactured with the aid of US-American technology; (d) the product classification code(s) for the Products, including the harmonized system (HS) and Schedule B numbers; and (e) contact information for a representative of the Seller that has knowledge of the transactions in the event Purchaser has any questions or inquiries. The Seller shall notify Purchaser in writing of all other foreign trade data of the Products and components of the Products and inform Purchaser immediately in writing (before delivery of Products affected) about all changes to the above data. Further, in case of the existence of any export license, Seller shall provide a copy of such export license to Purchaser, showing all relevant information relating to the delivery, including any provisos Purchaser has to comply with, including but not limited to cases of re-exports. Any information or provisos which are compliance obligations of Purchaser may be redacted in that copy.

21.4. If Seller provides any incorrect statement or certificate of origin, the Seller shall be fully responsible for any charges by a customs authority against Purchaser or its customers or any other financial disadvantages suffered by Purchaser or its customer as a result of such incorrect statement or certificate of origin.

21.5. Seller shall be responsible for obtaining in time, at Seller's own cost, all necessary governmental export licenses, authorizations, approvals and clearances, required for the delivery to make sure that all Products to be delivered can be used by Purchaser in accordance with the Order and that all deliveries can be made by the Delivery Date.

§ 22 Remedies

Except as expressly provided in the Contract, Purchaser and Seller shall have only those rights and remedies provided by applicable law; provided, however, that if the Products or any part thereof is not supplied in accordance with the Contract or by the Delivery Date or Seller otherwise fails to observe strictly or to comply strictly with any of the terms of the Contract, Purchaser may avail itself of one or more of the following remedies at its discretion, regardless of whether Purchaser has accepted the Products in whole or in part: (a) to cancel this Contract, in whole or in part; (b) to reject the Products, in whole or in part, and return it to Seller at Seller's risk and cost for a full refund to be paid promptly by Seller; (c) to refuse to accept any

further deliveries of any Products, without any liability to Seller; or (d) to claim any damages available to Purchaser as may have been sustained, including any consequential loss or damage (including any claim for damages or indemnity in respect to any sum paid or payable to any third party), any difference in value of nonconforming Products that Purchaser has accepted, or any loss of revenue, loss of profits, or loss of any contract, arising out of the supply of the Products or its use or resale by Purchaser. Notwithstanding any contrary provision in the Contract or any other statement, whether written or oral, Purchaser, through its agents or otherwise, does not assume any responsibility or liability to indemnify, defend, save, or hold harmless any other person, firm or party from or against any loss, damage, or injury, including any indirect, incidental, consequential, special, or punitive damages, losses, or injuries whatsoever, regardless of any language by which such assumption purports to be expressed or implied. Notwithstanding anything to the contrary in the Contract, any claim by Purchaser may be made within the limitation period provided by the applicable statute of limitations in the State of North Carolina.

§ 23 Termination

Purchaser may terminate this Order, in whole or in part, at any time with or without cause for undelivered Products on thirty (30) days' prior written notice to Seller. In addition to any remedies that may be provided under the Contract, Purchaser may terminate this Order with immediate effect upon written notice to the Seller, either before or after the acceptance of the Products, if Seller has not performed or complied with any terms of the Contract, in whole or in part. If the Seller becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, then the Purchaser may terminate this Order upon written notice to Seller. If Purchaser terminates the Order for any reason, Seller's sole and exclusive remedy is payment for the Products received and accepted by Purchaser prior to the termination.

§ 24 Limitation of Liability

Nothing in this Order shall exclude or limit (a) Seller's liability under Sections 16, 17, 18, 20, 21, 22, or 24 hereof, or (b) Seller's liability for fraud, personal injury or death caused by its negligence or willful misconduct.

THE CONTRACT, WHICH CONSISTS EXCLUSIVELY OF THIS ORDER (INCLUDING ITS TERMS AND CONDITIONS OF PURCHASE), TOGETHER WITH ANY WRITTEN SUPPLY AGREEMENT SIGNED BY BOTH PARTIES RELATED TO THE PURCHASE OF PRODUCT FROM SELLER AND ANY DOCUMENT PREVIOUSLY SUBMITTED BY PURCHASER TO SELLER, FORMS THE ENTIRE AGREEMENT BETWEEN THE PARTIES AND EXCLUSIVELY GOVERNS ALL SALES AND PURCHASES OF PRODUCT HEREUNDER, NOTWITHSTANDING ANY TERMS AND CONDITIONS APPEARING IN ANY QUOTATION, ACKNOWLEDGMENT, CONFIRMATION, INVOICE, OR OTHER DOCUMENT OF SELLER. ANY ADDITIONS, MODIFICATIONS OR CONTRADICTIONS TO THE TERMS OF THE CONTRACT APPEARING IN A QUOTATION, ACKNOWLEDGMENT, CONFIRMATION, INVOICE, OR OTHER DOCUMENT OF SELLER ARE HEREBY EXPRESSLY REJECTED WITHOUT FURTHER NOTICE TO SELLER. ANY CONDUCT BY SELLER RECOGNIZING THE EXISTENCE OF AN AGREEMENT SHALL BE DEEMED AN ACCEPTANCE OF THE TERMS OF THE CONTRACT.



§ 25 Confidential Information

All non-public, confidential or proprietary information of the Purchaser, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Purchaser to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as “confidential,” in connection with the Order is confidential, solely for the use of performing the Order and may not be disclosed or copied unless authorized by Purchaser in writing. Upon Purchaser’s request, Seller shall promptly return all documents and other materials received from Purchaser. Purchaser shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) known to the Seller at the time of disclosure; or (c) rightfully obtained by the Seller on a non-confidential basis from a third party.

§ 26 Force Majeure

Neither party shall be liable to the other for any delay or failure in performing its obligations under the Order to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party’s fault or negligence, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable (“Force Majeure Event”). Force Majeure Events include, but are not limited to, acts of God or the public enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, war, invasion, hostilities, terrorist acts, riots, strike, embargoes or industrial disturbances. Seller’s economic hardship or changes in market conditions are not considered Force Majeure Events. Seller shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized and resume performance under the Order. If a Force Majeure Event prevents Seller from carrying out its obligations under the Order for a continuous period of more than ten (10) business days, Purchaser may terminate this Order immediately by giving written notice to Seller.

§ 27 Intellectual Property

Neither party transfers to the other party any patent, know-how, trade secret, trademark, copyright, or any other intel-

lectual property right in the information, documents or property that such party makes available to the other under this Contract, other than (a) Seller has the right to use Purchaser’s intellectual property rights solely to produce and supply Products to Purchaser under this Contract, (b) if the Products are experimental, custom or developed for Purchaser (including any original works of authorship or art qualifying for copyright protection), all rights, title and interest in and to any intellectual property conceived, developed, or first reduced to practice in order to produce or supply the Products is hereby irrevocably assigned to the Purchaser and Seller agrees to have all necessary documents executed to document such assignment and assist the Purchaser in perfecting any such interest (Purchaser agrees to pay Seller’s reasonable costs in assisting the Purchaser to perfect any such interest), and, (c) if this Contract is terminated and Purchaser cannot reasonably obtain substitute Products from a third party without Seller’s intellectual property, Purchaser shall have a non-exclusive royalty free right and license to use Seller’s intellectual property to obtain, use and sell substitute Products. Seller may not use Purchaser’s name, logo or trademark without Purchaser’s written consent.

§ 28 Miscellaneous

28.1 Waiver. No waiver by any party of any of the provisions of the Order shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in the Order, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Order shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

28.2 Assignment. Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under the Order without the prior written consent of Purchaser. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Seller of any of its obligations hereunder. Purchaser may at any time assign, transfer or subcontract any or all of its rights or obligations under the Order without Seller’s prior written consent.

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28.3 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in the Order shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. No relationship of exclusivity shall be construed from this Order.

28.4 No Third-Party Beneficiaries. This Order is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Contract.

28.5 Governing Law. For domestic sales, the laws of the State of North Carolina, without regard to its conflict of laws principles, shall govern this Contract and the rights and obligations of the parties hereunder. For international sales, the United Nations Convention on Contracts for the International Sale of Goods (the "Sales Convention") shall, to the extent applicable and as limited herein, govern this Contract and the rights and obligations of the parties hereunder. Notwithstanding the foregoing, in the event of any inconsistency or conflict between provisions of this Contract, including these Terms and Conditions, on the one hand, and the Sales Convention, on the other hand, the provisions of this Contract shall govern and prevail. To the extent of any such inconsistency or conflict, the provisions of this Contract shall be deemed to derogate from the provisions of the Sales Convention within the meaning of Article 6 thereof. Questions that are not expressly settled in this Contract or by application of the Sales Convention are to be settled in conformity with the internal laws of the Jurisdiction, without regard to its conflict of laws principles. For international sales not governed by the Sales Convention, the internal laws of the State of North Carolina, without regard to its conflict of laws principles, shall govern this Contract and the rights and obligations of the parties hereunder.

28.6 Arbitration. Any dispute between the parties regarding the meaning of the terms of the Contract or the parties' performance under the Contract will be submitted to binding arbitration before the American Arbitration Association or some other arbitration provider mutually agreed upon by the parties. Any arbitration between the parties will be

conducted pursuant to expedited procedures for the resolution of commercial disputes utilized by the American Arbitration Association or by the mutually agreed upon arbitration provider, unless the amount in controversy in the arbitration is in excess of \$250,000.00, in which case the normal commercial dispute resolution procedures of the American Arbitration Association or the mutually agreed upon arbitration provider will be used. Either party may request arbitration by giving written notice by certified mail or overnight mail to the other party, with this written notice setting forth the nature of the dispute and the amount in controversy. The parties will then have five (5) business days from the receipt of this notice to agree upon an arbitration provider other than the American Arbitration Association. If no agreement regarding another arbitration provider is reached within this period, the party requesting arbitration will then submit a demand for arbitration to the other party and the American Arbitration Association. This arbitration provision does not prevent either party from seeking injunctive relief as appropriate in a court of competent jurisdiction with regard to the other party's breach of the Contract. Once injunctive relief is granted or denied by a court of competent jurisdiction, the underlying dispute between the parties will be submitted to arbitration consistent with the procedures of this Section. The parties agree that the award of the arbitrator(s) shall be the sole and exclusive remedy between them regarding any claims, counterclaims, issues or accountings presented or pled to the arbitrator(s); that it shall be made and shall promptly be payable in US dollars free of any tax, deduction or offset; and that any costs, fees or taxes incident to enforcing the award shall, to the maximum extent permitted by law, be charged against the party resisting such enforcement. The award shall include interest from the date of any damages incurred for breach or other violation of the Contract, and from the date of the award until paid in full, accrued at a rate one and one-half percent (1.5%) per month. Each party shall bear its own arbitration costs and expenses. Nothing herein contained shall be deemed to give the arbitrator(s) any authority, power or right to alter, change, amend, modify, add to or subtract from any of the provisions of the Contract or of these Terms and Conditions of Sale.

28.7 Cumulative Remedies. The rights and remedies under this Order are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

28.8 Notices. All notices, request, consents, claims, demands, waivers and other communications hereunder

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(each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of this Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Order, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

28.9 Severability. If any term or provision of this Order is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

28.10 Survival. Provisions of this Order which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Order including, but not limited to, the following provisions: Setoff, Warranties, General Indemnification, Intellectual Property Indemnification, Insurance, Compliance with Laws, Confidentiality, Governing Law, Arbitration, and Survival.

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The Royal League

