

**THIS PURCHASE ORDER IS SUBJECT TO SELLER'S ACCEPTANCE OF THE FOLLOWING STANDARD TERMS AND CONDITIONS:**

**DEFINITIONS** Except as this Purchase Order ("Order") provides to the contrary, the word "Buyer" means Peacock Engineering Co. LLC. The word "goods" as used herein shall mean the products, articles, materials and/or equipment described on the face hereof.

**ACCEPTANCE** The first to occur of Seller's acknowledgement of this Order or shipment of goods pursuant to this Order shall constitute Seller's agreement to the terms and conditions set forth on this Purchase Order. No other terms, whether or not contained in any bid, estimate, acknowledgment, confirmation or invoice given by Seller, shall in any way modify or supersede any of the terms of this Order or otherwise be binding on Buyer, and Buyer hereby explicitly rejects all such other terms unless it has accepted such other terms by a written instrument signed by its authorized representative.

**QUALITY** Seller warrants that all goods and services will (a) conform to specifications furnished by Seller and approved by Buyer or furnished by Buyer, and (b) be provided or manufactured in accordance and in compliance with Buyer's quality specifications, as may be amended from time to time. To the extent quality specifications have been provided to Seller by Buyers' customers, those are deemed to also have been provided by Buyer. Seller acknowledges the receipt of a copy of all such specifications furnished by Buyer. Seller warrants that all goods have been tested for their safety, will be of merchantable quality and of good material and workmanship, free from defect, suitable for their intended use. If applicable, Seller will assign to Buyer all warranties applicable to any portion of the goods obtained by Seller from third parties, or if not assignable, will assert such warranties on behalf of Buyer at Buyer's request. If applicable for their intended use, Seller warrants that no goods contained in any shipment will, at the time of shipment or delivery, be adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, as amended, the Federal Meat Inspection Act, as amended, or the Poultry Products Inspection Act, as amended, and regulations promulgated under the Acts (as hereafter defined), or within the meaning of any applicable state or municipal law which has substantially similar definitions of adulterations and misbranding, and shall generally conform to the requirements of the Acts, and, where applicable, such shipments shall be in compliance with the Federal Insecticide, Fungicide, and Rodenticide Act (all of such acts and laws being hereafter collectively referred to as "Acts"). In addition Seller warrants that the goods shall comply with all other applicable federal, state, and local laws, statutes, rules and regulations. In the event that Seller becomes aware or has reason to believe that a condition exists, within the manufacturing facility or the goods themselves, which does or may adversely impact any of the above warranties, Seller shall promptly notify Buyer of same.

**REJECTION** Payment for goods delivered hereunder shall not constitute acceptance thereof. Buyer reserves the right to inspect and test such goods and to reject, and return to Seller at Seller's expense, goods (a) delivered in excess of the quantity ordered, (b) which do not conform to specifications or are defective, or (c) which in any way violate any of the Acts or other applicable local law. Notwithstanding the foregoing, Buyer shall be entitled to rely on the certificates of analysis to be provided by Seller for the goods and, whether or not certificates of analysis have been provided, shall not be required to inspect such goods. Buyer's failure to inspect goods prior to use shall not constitute acceptance of such goods, regardless of the passage of a reasonable period of time. Buyer, at its option may require replacement of defective or rejected goods or a refund of the purchase price, as well as payment of

damages. Nothing contained in the Order shall relieve the Seller in any way from the obligation of testing, inspection, quality control, and, if applicable, of providing certificates of analysis to Buyer.

**PRICES** This Order must not be filled at prices higher than specified herein, or, if Order is unpriced, at prices higher than last charged or quoted. Seller agrees that any price decrease in effect at time of shipment will apply to this Order. Seller warrants that it will comply with all laws and regulations relating to non-discrimination in prices and services. In the event that Seller reduces its prices for such goods during the term of this Order, Seller agrees to reduce the prices hereof correspondingly. Any cash discount periods will be calculated from receipt of invoice or receipt of acceptable goods, whichever occurs later. On invoices returned for correction, the cash discount period will be calculated from receipt of the corrected invoice.

**SHIPPING** Unless indicated to the contrary on the face of this Order, all shipments shall be made F.O.B. destination, freight prepaid. If shipments are F.O.B. destination, Seller shall deliver all goods to a carrier for shipment by carrier to Buyer and shall own, and shall bear the risk of loss for, such goods until the goods are received by Buyer. Claims for loss and/or damage to goods shall be filed by Seller. Seller shall be responsible for paying all carriers' freight charges. In the event the goods originate outside the United States, Seller shall be the importer of record, with responsibility for obtaining clearance of the goods through U.S. Customs and for payment of any duties and/or import fees. All shipping documents must carry the correct lot number, product identification, purchase order number and the designated receiving dock. Each unit must be tagged with the shipper's name, description of the goods, purchase order number, lot number, receiving dock and product department (if applicable). Delivery shall not be deemed complete until the goods have been actually received by Buyer. All deliveries must be on weekdays during normal business hours to the address indicated on the face hereof, unless otherwise agreed to by Buyer.

**DELIVERY** Time is of the essence of this Order, and if delivery of goods is not completed by the time promised, and Buyer incurs lost production or lost materials as a result, Buyer reserves the right, without liability and in addition to other rights and remedies, to terminate this Order by notice effective when received by Seller as to goods not yet shipped and charge Seller with any loss incurred.

**TERMINATION** If seller has not yet started production of goods or services, Buyer may terminate this Order or any part thereof without cause. Upon receipt of notice of such termination, Seller shall immediately cause any of its suppliers or subcontractors to cease such Production. Seller shall not be paid for any goods processed after receipt of the notice of termination, nor for any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided. Buyer may also terminate this Order or any part hereof for cause in the event of any default by the Seller, or if Seller fails to comply with any of the terms and conditions of this Order. Late deliveries, deliveries of products which are defective or which do not conform to this Order, and failure to provide Buyer with adequate assurances of future performance shall all be causes allowing Buyer to terminate this Order for cause. In the event of Buyer's termination for cause, Buyer shall not be liable to Seller for any damages sustained by reason of the termination, and Buyer shall have all rights and remedies provided at law and in equity.

**CHANGES** Seller shall reasonably accommodate Buyer's request to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation.

If any changes cause an increase or decrease in the cost or the time required for performance of this Order, an equitable adjustment shall be made and this Order shall be modified in writing accordingly. Seller agrees to accept any such changes subject to this paragraph.

**CONFIDENTIALITY** Seller shall consider all information furnished by Buyer, including the existence of this Order, to be confidential and shall not disclose any such information to any other person, or use such information itself for any purpose other than performing this Order, unless Seller obtains written permission from Buyer. Upon the expiration or earlier termination of this Agreement, or upon Buyer's request, Seller agrees promptly to return to Buyer all documents or other tangible materials containing and/or embodying any of the Information (including, without limitation, all copies, reproductions, summaries and notes of the contents thereof), and to certify that all such Information has been returned to Buyer or disposed of in a manner approved by Buyer.

**FORCE MAJEURE** Neither party shall be liable to the other for its failure to perform as a result of any cause beyond its reasonable control, providing, however, if Seller at any time becomes unable duly and timely to perform this Order for a period of 10 days or more, Buyer shall be entitled to terminate this Order for cause, in whole or part, as provided above.

**INFRINGEMENT** Seller warrants that the goods and/or their use, sale and/or consumption, pursuant to this Order do not and will not infringe any patent, trademark, copyright or other intellectual property right and there is no unauthorized use of proprietary rights of another party. Seller agrees, upon receipt of notification, to promptly assume all responsibility for defense of any suit or proceeding which may be brought against Buyer or its agents, customers or vendors for alleged intellectual property infringement and/or any alleged unfair competition resulting from similarity in design, trademark or appearance of goods furnished hereunder, and Seller further agrees to indemnify Buyer, its agents, vendors and customers against any and all expenses, losses, royalties, profits and damages, including court and/or settlement costs and attorneys' fees resulting from any such suit or proceeding.

**INDEMNIFICATION & INSURANCE** Seller shall defend, indemnify and hold Buyer harmless against all damages, claims, liabilities and/or expenses (including attorneys' fees) arising out of or resulting in any way from any defect in the goods purchased hereunder, from any act or omission of Seller, its employees, agents or subcontractors, or from Seller's breach of any warranty as provided herein or otherwise provided by law. Seller shall maintain comprehensive liability insurance, including products liability coverage, contractual liability and broad form vendor's endorsements covering Seller's obligations under this Order, such insurance to have aggregate limits of at least one million dollars (\$1,000,000), and to be with an insurance carrier reasonably satisfactory to Buyer. Seller shall furnish certificates of insurance evidencing such coverage to Buyer at Buyer's request.

**INSPECTION RIGHTS** Upon reasonable notice to Seller, Buyer or Buyer's independent inspection service may inspect Seller's plants where goods are manufactured up to a maximum of two (2) times per year. If any such inspection reveals that the processes, procedures, or practices used by Seller fail to conform to the specifications set forth herein, or in the Manual(s), Seller shall upon demand by Buyer immediately take all reasonable corrective measures, and Buyer may return to Seller's plant as many times as is reasonably necessary to determine that the non-conforming activities have been corrected and are not recurring. Buyer's inspection shall not affect or release Seller from any of the obligations of Seller with respect to the goods.

**PUBLIC DISCLOSURE** Neither party shall make any public statement, announcement or disclosure to third parties concerning the existence of this Agreement or its terms, the business relationship between the parties or the transactions contemplated hereby, without the prior written approval of the other party.

**DISPUTE RESOLUTION** Any dispute between the parties relating to this Agreement or the breach thereof shall be resolved by binding arbitration in Chicago, IL, pursuant to the Commercial Arbitration Rules then obtaining of the American Arbitration Association. The arbitrator(s) shall have no power to add to or modify the terms of this Agreement. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitrator(s) shall apply the substantive law of Illinois except that the interpretation and enforcement of this arbitration provision shall be governed by the Federal Arbitration Act. The arbitrator(s) shall not award either party punitive damages, and the parties shall be deemed to have waived any right to such damages. The proceedings shall be confidential and the arbitrator shall issue appropriate protective orders to safeguard both parties' confidential information. The fees of the arbitrator and the American Arbitration Association shall be split equally between the parties.

**MINORITY VENDORS** Seller shall use best efforts to employ minority vendors and/or subcontractors qualified by the National Minority Supplier Development Council where appropriate and feasible in providing the goods or services to Buyer pursuant to this Order. The parties hereto agree that, to the extent any goods or services provided under this Order are procured by Seller from qualified minority subcontractors, (i) Seller shall advise Buyer in writing that such vendors are being so used at Buyer's expense, (ii) Buyer may, at its option, and with notice to Seller, include such payments in the amounts it reports as having been paid by Buyer to qualified minority contractors and, in such event, Seller will not include any such payments to qualified minority contractors hereunder in any amounts which Seller reports as having been paid by Seller to qualified minority contractors.

**ASSIGNMENT** No part of this Order may be assigned or contracted by Seller without the prior written approval of Buyer. With the consent of Seller, which shall not be unreasonably withheld, Buyer may, at its option, either terminate or assign a portion or all of this Order in the event of a sale, transfer, or other disposition of any operating unit or business of Buyer participating in this Order, provided that such termination or assignment shall relate only to the requirements of such operating unit or business. In the event of assignment, Seller agrees that Buyer shall have no further obligations with respect to the assigned portion of the Order after the date of such assignment.

**SETOFFS** All claims for money due or to become due from Buyer shall be subject to deduction or setoff by the Buyer by reason of any counterclaim arising out of this or any other transaction with Seller.

**WAIVER** Buyer's failure to insist on performance of any terms or conditions herein or to exercise any right or privilege or Buyer's waiver of any breach hereunder shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type.

**GOVERNING LAW** This Order shall be governed and construed by the substantive federal and state law of the state of Illinois as it applies to contracts made and to be performed wholly within such state.

**ENTIRE AGREEMENT** This Order, and any documents referred to on the face hereof, constitute the entire agreement of the parties.