

1. MATERIALS AND SCOPE OF WORK. Seller (as defined on the reverse side of this Agreement) shall sell to Buyer (as defined on the reverse side of this Agreement) the materials, equipment, goods and any other articles purchased in connection with this Agreement (herein referred to as the "Materials"), described on the reverse side of this Agreement. Buyer shall pay Seller any undisputed amounts for purchase of the Materials as specifically described in this Agreement at the amount and according to the schedule set forth on the reverse side of this Agreement. Buyer shall not be responsible for any charge for packing, boxing, storage, or cartage. Seller will provide all supervision, professional services, labor, materials, tools, equipment, transportation, subcontracted items, taxes, insurance and all other things reasonably necessary for the sale and purchase of the Materials, unless otherwise specified herein or agreed to between the parties. Seller shall sell the Materials to Buyer as an independent contractor and none of Seller's employees, subcontractors, agents, or representatives shall be considered in any manner to be an employee of Buyer. Neither Seller nor any employee, subcontractor or other agent of Seller shall be, represent itself as, act as, purport to act as, or be deemed to be, the agent, representative, employee or servant of Buyer, and no such party shall have any right or authority to make any representations, or to assume or create any obligations of any kind, express or implied, on behalf of Buyer or to bind Buyer in any respect whatsoever. The qualifications and suitability of all of Seller's employees, agents, representatives, and permitted assigns having access to any Buyer facility shall be subject to the review by Buyer, and Buyer shall have the right, in its sole, subjective discretion to deny access to any of Seller's employees, agents, representatives, and permitted assigns. Materials purchased under this Agreement must not contain a substance designated as Class I by the Environmental Protection Agency ("Class I Ozone Depleting Substance"), or be manufactured with a process that uses a Class I Ozone Depleting Substance.

2. SELLER'S RESPONSIBILITIES AND WARRANTIES. Seller represents, warrants and covenants that: (a) it and its employees are free of any commitments or obligations that would limit or prevent full performance of this Agreement; (b) it and its personnel are experienced, are qualified, and possess the skills to perform in accordance with the terms and conditions of this Agreement; (c) the Materials will be manufactured, produced, prepared, distributed, and transported in accordance with the highest professional standards; (d) it has obtained and maintains USEPA accreditation for its laboratories, where applicable; (e) it has independent knowledge of and understands the harmful nature and characteristics (whether actual or alleged, present or potential, or toxic, flammable, corrosive, reactive, explosive or otherwise), and the currently known hazards which are presented to persons, property, and the environment from each of the Materials, if any, described in this Agreement which may arise out of the performance of this Agreement; (f) it will warn and advise all employees, subcontractors, and other agents of such harmful nature and characteristics of each of the Materials subject to this Agreement and of any other hazards associated with performance of this Agreement; (g) all Materials sold hereunder and every part of them and their packaging shall conform exactly with the description by which they are ordered herein and shall be in all respects suitable for the particular purpose or use for which they are purchased by Buyer, and all Materials furnished and/or installed by it hereunder are new and not used or reconditioned (unless otherwise expressly specified in this Agreement) and free from all defects in materials and workmanship; (h) Seller shall repair or replace, without any cost whatsoever to Buyer, any defective Materials and upon failure to do so within a reasonable time, after three days' prior written notice, Buyer may do so at Seller's sole expense (i) it complies with the requirements of all federal and equivalent state laws, regulations, ordinances, orders, and rules, including, without limitation, the Civil Rights Act as of 1964, Title VII, as amended; the National Labor Relations Act, as amended; the Occupational Safety and Health Act, as amended; the Americans with Disabilities Act, as amended; the Equal Pay Act, as amended; the Age Discrimination in Employment Act, as amended; the Family and Medical Leave Act, as amended; the Fair Labor Standards Act of 1938, as amended and including the requirements as to records. When applicable, this contractor and subcontractor shall comply with the EO Clause in Section 202 of Executive order 11246, as amended, which is incorporated herein by specific reference and Executive Order 13496. **When applicable, this contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans. When applicable, this contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.** All of the above referenced laws are incorporated herein, unless the transaction is exempt, and Seller agrees to submit reports, certificates and other documents required of subcontractors or others by such Executive Order or Acts, and the rules, regulations and relevant orders issued under the authority of any of the foregoing; (j) Seller's transportation subcontractor, if any, possesses all necessary permits and licenses to transport all Materials to and/or from Buyer's premises in full compliance with all governmental laws, rules, regulations, orders, and manifests; (k) Seller has all necessary local, state and federal permits and licenses to perform this Agreement; (l) Seller shall ensure that the handling, storage, transportation or other disposition of any waste generated by Seller will be performed in compliance with all local, state and federal laws and regulations; (m) Seller shall promptly furnish to Buyer copies of additional

permits and licenses as are required or when existing permits and licenses are renewed; and (n) Seller shall act in its discretion to prevent threatened damage, injury or loss, in an emergency situation affecting the safety of persons or property. Seller shall notify Buyer immediately upon the revocation, termination or expiration of any said permits or licenses. Buyer shall have the right at any reasonable time to inspect and obtain copies of all licenses, permits, and approvals, issued by any governmental agency to Seller or its subcontractors or agents which are applicable to performance of this Agreement and to inspect and test, at its own expense, the transportation vehicles or vessels, and containers provided or designed by Seller, its subcontractors and agents, in the performance of this Agreement. TIME IS OF THE ESSENCE in the performance of this Agreement. Seller shall perform within the time limits required by Buyer, and as specified on the reverse side of this Agreement. Seller shall be responsible for the payment of all taxes covering the Materials, including the payment of all applicable taxes covering its employees. If Seller has been issued a Buyer's Supplier Quality Assurance Manual, Seller agrees to conform to all provisions in such Manual, including but not limited to the quality system requirements detailed in the manual.

3. CHANGES IN THE MATERIALS. Buyer and Seller, without invalidating this Agreement, may request changes in the Materials within the general scope of this Agreement. All such changes are subject to Buyer's prior written approval, which shall constitute an amendment to this Agreement. In the event that the United States, the appropriate state, county, or other governmental agency, department, or body having jurisdiction over Seller shall hereafter enact any statute, ordinance, rule or regulation pertaining to the Materials, and in the event that compliance with such statute, ordinance, rule or regulation shall cause an increase in the cost to Seller of performing its obligations hereunder, then Seller shall supply Buyer with proof of the cause of increased costs, and Buyer reserves the right to review the method of calculating the increase of cost in order to determine that the increase in fees is fairly apportioned to Buyer. Seller shall not proceed with the purchase, manufacture, production, preparation, distribution or transportation of any Materials for which there will be an additional charge, until so authorized in writing by Buyer.

4. EXCUSABLE DELAYS. If Seller should be unable due to an excusable delay, to meet all of its delivery commitments for the Materials ordered hereunder as they become due, Seller shall not discriminate against Buyer or in favor of any other customer in making deliveries of such Materials; provided, however, Seller shall give Buyer a first priority and first call on all Materials when the Materials become available to Seller. Excusable delay includes: (1) acts of God or of the public enemy, (2) acts of the government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. It does not include defaults of subcontractors at any tier. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Seller. Seller shall use its best efforts to anticipate the effects of such cause and to mitigate the effects of such cause and to make deliveries as expeditiously as possible. However, if Buyer believes that the delay or anticipated delay in Seller's deliveries may impair its ability to meet its production schedules or may otherwise interfere with its operations, Buyer may, at its option and without liability therefor, cancel outstanding deliveries hereunder wholly or in part. Notwithstanding any provision of this Agreement or any other document, Seller agrees it will not claim impracticability to excuse its performance, whether by reason of Section 2-615 of the Uniform Commercial Code, usage of trade or otherwise.

5. DELIVERY. If any shipment or delivery is made which is not in all respects in accord with this Agreement (including specifications, time of shipment or delivery), Buyer reserves the right to reject such delivery and, if Buyer so elects, Buyer may treat this Agreement as repudiated by Seller and cancel any outstanding deliveries hereunder, without prejudice to Buyer's rights to claim damages or to enforce any other remedy provided by law. All expenses of transportation and storage, if any, resulting therefrom shall be for Seller's account. Shipments sent C.O.D. without Buyer's prior written consent will not be accepted and will be at Seller's sole risk and expense.

6. INSPECTION. Buyer shall have the right to inspect the Materials purchased hereunder at Seller's plant and/or following receipt at Buyer's facility, at Buyer's election. Buyer shall have the right to reject those Materials which do not conform exactly to Buyer's instructions, specifications, drawings and/or Seller's warranty (whether express or implied) or, if not so specified, which do not conform to standard or generally accepted specifications for such Materials. Items not accepted will be returned to Seller at Seller's expense, plus all transportation costs. Payment for any Materials hereunder shall not be deemed an acceptance thereof by Buyer.

7. TITLE AND RISK OF LOSS. Title to and risk of loss of Materials remain with Seller until such Materials are delivered at the F.O.B. point, or such other point specified in this Agreement. If no such point is given herein, then, until the Materials are delivered to a public carrier consigned to Buyer or delivered to Buyer, whichever delivery shall occur first, title and risk of loss remain with Seller. In the case of deliveries by barge or ship, title and risk of loss pass when the Materials are unloaded into Buyer's tanks, bins, or other storage facilities.

8. INFRINGEMENT. It is anticipated that the Materials to which this Agreement relates will be processed, used and/or sold by the Buyer and/or its customers. If by reason of any of these acts a suit is brought or threatened for infringement of any patent on the Materials, their manufacture or use, or for infringement of any trademark, trade name or copyright, Seller, shall at its own expense defend such suit and indemnify Buyer and

its customers against all loss and expense in connection with such suit or threatened suit, including awards of damages, costs and attorney's fees.

9. DESIGNS, TOOLS, DIES, ETC. Unless otherwise agreed herein, Seller, at its sole cost, shall supply all material, equipment, tools and facilities required to perform this Agreement. Any materials, designs, drawings, blueprints, tools, dies, patterns, printing plates or other equipment or property furnished by Buyer or specifically paid for by Buyer shall be Buyer's property, shall be used only in filling Agreements from Buyer and may on Buyer's demand be removed by Buyer without charge. Seller shall use all such property at its own risk and shall be responsible for all loss of or damage to the same or to any person or other party while such property is in Seller's custody. Seller shall, at its sole cost, store and maintain all such property in good condition and repair. Buyer makes no warranties of any nature with respect to any such property, which Seller agrees is furnished "AS IS". Graphic arts and packaging material: All film negatives, positives, engravings, electrodes and dies made by Seller for the production of the Materials related to this Agreement will become the property of the Buyer and are to be surrendered upon Buyer's request. Notwithstanding anything herein to the contrary, the provisions of this paragraph do not apply to property owned by the United States Government. Disposition and use of Government property shall be governed by applicable Government Regulations.

10. INDEMNIFICATION. Seller agrees to indemnify and hold harmless, Buyer and its officers, directors, agents, employees, representatives and assigns from and against any and all claims, loss, damages, injuries, liabilities, penalties, forfeitures, suits, and the costs and expenses incident thereto (including cost of defense, settlement and reasonable attorneys', consultant or other professional fees) which Buyer may hereafter incur as a result of death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effect on the environment, or any violation of governmental laws, rules, regulations or orders caused by (a) Seller's breach of any term or provision of this Agreement or (b) any negligent or willful act or omission of Buyer, its employees, agents, representatives or subcontractors in the performance of this Agreement. Buyer agrees to indemnify and hold harmless Seller and its officers, directors, agents, employees, representatives and assigns from and against any and all claims, loss, damages, injuries, liabilities, penalties, forfeitures, suits and the costs and expenses incident thereto (including costs of defense, settlement and reasonable attorneys', consultant or other professional fees) which Seller may hereafter incur as a result of death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effect on the environment, or any violation of governmental laws, rules, regulations or orders caused by (a) Buyer's breach of any term or provision of this Agreement or (b) any negligent or willful act or omission of Buyer, its employees or subcontractors in the performance of this Agreement. In the event that both parties, either through breach of any term or provision of this Agreement or through any negligent or willful act or omission, cause or contribute to cause claims, loss, damages, injuries, liabilities, penalties, forfeitures, suits and the costs and expenses incident thereto, the fault of each party shall be determined, and the liabilities therefor shall be apportioned, on the basis of the relative fault of each party.

11. BUYER'S LIMITATION OF LIABILITY. IN NO EVENT SHALL BUYER BE LIABLE FOR ANY REASON OR ARISING FROM ANY CAUSE WHATSOEVER, FOR PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES.

12. CONFIDENTIALITY. Seller (including its employees, officers, agents, and directors) shall treat as confidential and proprietary and not disclose to others any information received from Buyer, including but not limited to information constituting or relating to Buyer's plans, drawings, processes, programs, business, facilities, products, costs, equipment, operations, or property or the condition thereof, which may come within Seller's knowledge in the performance of this Agreement, except as available in the public domain through no fault or cause of the Seller, without in each instance securing the prior written consent of Buyer. Seller shall also treat as confidential and proprietary and shall not disclose to others, any information relating to the chemical composition or quantity of materials received by it from Buyer, and the fact that Buyer was the source of such materials. If Seller is required by subpoena or judicial or administrative order (hereinafter referred to as "Order") to disclose any information required by this Agreement to be treated as confidential and proprietary, Seller shall promptly notify Buyer of the receipt of such Order and permit Buyer to challenge the Order prior to Seller's disclosure of the information. Seller's obligations of confidentiality as set forth herein shall be in effect during the life of this Agreement and for a period of ten (10) years thereafter.

13. TERMINATION. Buyer shall have the right to terminate this Agreement at any time, for Buyer's convenience and without cause. After receiving notice of termination, Seller will (a) stop the purchase, manufacture, production, preparation, distribution or transportation of the Materials on the date and to the extent specified in the notice and (b) deliver to Buyer in their then current state of condition, all drawings, reports and other documents relating to the Materials and remaining samples. No cost incurred after the effective date of termination will be reimbursed unless incurred with the express written consent of Buyer. If this Agreement is terminated before completion of the Materials, Buyer may, but is not obligated, to complete the Materials itself or cause others to complete the Materials.

14. INSURANCE. Seller shall not insure the Materials for Buyer's account unless the terms on the reverse side of this Agreement expressly provide otherwise. Seller shall secure insurance coverage, issued by companies acceptable to Buyer and at Seller's sole expense, as follows: (i) Worker's Compensation Insurance, including occupational diseases, providing for the payment of statutory benefits required by law covering

Seller's performance under this Agreement; (ii) Employer's Liability Insurance with a minimum limit per occurrence of \$500,000; (iii) Longshoremen's and Harbor Worker's Compensation Act in compliance with applicable statutes; (iv) Comprehensive General Liability, including Pollution Insurance coverage, on a personal injury basis with limits as follows: (a) Bodily Injury and Property Damage Liability with a minimum of \$1,000,000 combined single limit per occurrence, such coverage to include contractual liability and products liability (including completed services); and (b) Public and Contractual Liability Insurance which shall include Seller's contractual liability (including without limitation, for claim arising pursuant to the indemnification obligations contained in this Agreement), including completed services, under this Agreement with a minimum limit of \$1,000,000 per occurrence; (v) Comprehensive automobile liability insurance with at least \$1,000,000 single limit per occurrence; (vi) All other coverage required by applicable laws and regulations, including in addition to insurance, any other form of financial protection required by applicable laws and regulations. Seller shall have Buyer designated as an additional insured party under Seller's Public and Contractual Liability Insurance contract. Seller agrees to have insurance certificates forwarded to Buyer within thirty (30) days following the date of execution of this Agreement by the parties, or, if earlier, prior to commencement of this Agreement. Such certificates shall provide that the coverage shall not be decreased, otherwise materially altered, or terminated without thirty (30) days prior written notice thereof being given to Buyer by the insurance carrier. Buyer reserves the right to require Seller to increase such limits or to carry other types of coverage with deductibles and limits acceptable to Buyer, provided that Buyer shall reimburse Seller for any additional premiums attributable to such increased coverage. The insurance described herein sets forth minimum amounts and types of coverage, and is not to be construed in any way as a limitation of Seller's liability under this Agreement.

15. RECORDS. Seller shall: (a) maintain complete and accurate books and records in accordance with generally accepted accounting principles and practices and in sufficient detail to reflect the actual cost of Materials under this Agreement; (b) furnish Buyer with statements of Seller's actual cost at such times and in such form and detail as Buyer may request; (c) permit Buyer or its representatives to inspect and audit any and all of Seller's books, records and accounts relating to the Materials and this Agreement at all reasonable times during performance thereof and for a period of three (3) years after payment of the final invoice; and (d) if required by Buyer, Seller's invoices shall be certified by an authorized representative of Seller in a manner to be prescribed by Buyer.

16. GENERAL PROVISIONS.

A. **Waiver.** Any waiver by either party of any provision or condition of this Agreement must be in writing signed by the waiving party.

B. **Severability.** If any provision of this Agreement shall be adjudged illegal, invalid or unenforceable, the validity and enforceability of the remaining provisions hereof shall not be impaired.

C. **Notice.** Any notice, communication or statement required or permitted to be given hereunder shall be in writing and deemed to have been sufficiently given when delivered in person, sent via facsimile, with receipt of confirmation, or by certified mail, return receipt requested, to the address or facsimile number of the respective party on the reverse side of this Agreement. Either party may, by notice to the other, change the addresses, facsimile numbers, and names given above.

D. **Entire Agreement; Performance; Governing Law.** This Agreement and any attachments incorporated by Buyer represents the entire understanding and agreement between the parties concerning the Materials, and supersedes any and all prior agreements, whether written or oral, that may exist between the parties regarding the Materials. No terms, conditions, prior courses of dealing, courses of performance, usages of trade, understandings or agreements purporting to modify, vary, supplement or explain any provision of this Agreement shall be effective and none shall be binding unless in writing, signed by duly authorized representatives of both parties. Except as otherwise provided herein, this Agreement shall prevail in the event of any inconsistencies between it and the terms and conditions of any quotation, acknowledgment, order, invoice, agreement or other document or understanding of the Seller. Performance of any part of this Agreement constitutes acceptance of all terms and conditions of this Agreement regardless of whether or not Seller has acknowledged it. This Agreement and any question or controversy arising out of the Materials shall be governed by the law of the State of Buyer's facility where the materials are shipped without regard to its conflict of law provisions.

E. **Assignment and Subcontract.** Neither party shall assign or subcontract this Agreement, its performance, or any monies due or to become due hereunder, and any attempt to so assign shall be void unless with the prior written consent of the other party, except that this Agreement may be assigned without consent in connection with the acquisition or merger of Buyer, the acquisition or transfer of all or substantially all of the assets of the Buyer group or division operating the Buyer facility, or the sale or other transfer by Buyer of the Buyer facility.

F. **Survival.** The confidentiality, indemnification, insurance, and Year 2000 Performance obligations set forth herein shall survive the termination of this Agreement.

G. **Attorneys' Fees and Costs.** If any legal action or other proceeding is brought relating to this Agreement, or if any party shall become engaged in the defense of any counterclaim or cross claim arising out of or in connection with the transactions contemplated under and in accordance with the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which such party may be entitled.