

**PURCHASE ORDER****CONTRACT TERMS AND CONDITIONS**

1. **Acceptance of Contract.** This order may be accepted only on the terms and conditions set forth herein and will be deemed so accepted when Seller acknowledges this order or otherwise indicates acceptance or commences performance. No change in, modification of, or revision of this order or the terms and conditions hereof, shall be valid unless expressly agreed to in writing by Aexcel Corporation, hereinafter called the "Buyer." Buyer objects to any terms that conflict with, contradict or add to the terms set forth herein and any failure of Buyer to actively reject orally or in writing any conflicting, contradictory or additional terms contained in any document or communication sent by Seller to Buyer shall not be deemed to be an assent by Buyer to such terms. There are no understandings or agreements other than as set forth or referred to herein and on the face hereof.
2. **Prices.** Prices are F.O.B. Buyer's facility. Prices shall be as set forth on this order, unless Buyer expressly agrees in writing to a different price or the provisions of the last sentence of this section 2 result in a lower price being applicable. In the event a price is not stated on this order, the price shall be the lowest of (a) any price most recently quoted to Buyer by Seller or any of its representatives, (b) the current price established by Seller at the time this order is issued and (c) the price applicable pursuant to the last sentence of this section 2. Payment of the price shall be the full extent of Buyer's liability to Seller for the goods and/or services covered by this order. Seller warrants that the prices for the goods and/or services covered by this order stated herein or quoted by Seller are not higher than those currently extended by Seller to any other customer of Seller for the same or like goods and/or services in equal or lesser quantities. In the event Seller establishes or offers a lower price for the sale of such goods and/or services in such quantities, either generally or for any one sale to any other customer, from the date of acceptance of this order to the date the goods are invoiced to Buyer, Seller agrees to reduce the prices applicable to this order correspondingly.
3. **Extra Charges.** No additional charges of any kind, including charges for insurance, boxing, packing or cartage, taxes, import or export duties, excises, or other extras, will be allowed unless specifically agreed to in writing in advance by Buyer.
4. **Taxes.** Seller's prices shall exclude any applicable federal, state or local sales, use or excise taxes imposed upon the transaction provided for in this order. Seller shall not pay or assess any such tax for which Buyer provides reasonably sufficient evidence of exemption. All such taxes that are lawfully applicable shall be listed separately on Seller's invoice. If such applicable taxes are not listed separately, Buyer shall have no responsibility to pay or reimburse Seller for the same, and Seller assumes responsibility for the payment thereof and shall indemnify and hold Buyer harmless from any and all liability in respect of such taxes.
5. **Delivery.** Time is of the essence with respect to the obligation of Seller to make delivery and otherwise render performance on this order. Deliveries are to be made both in the quantities and at times specified herein. Buyer reserves the right at any time to cancel and void this order or any part thereof without liability if delivery is not made within the time specified on the order or any other time that has been mutually agreed upon by Seller and Buyer. If time of delivery is not specified, delivery will be made within a reasonable time.
6. **Transportation and Packaging.** All correspondence must include the P.O. number and vendor identification number. Packaging slips indicating contents, part number, P.O. number and vendor number are to be enclosed with each shipment. Any transportation charges paid by Seller with respect to which Seller is entitled to reimbursement shall be added to Seller's invoice as a separate item and the receipt freight bill shall be attached thereto. Buyer shall have no obligation for all returnable containers that are returned to Seller within a reasonable time in the same condition as when received by Buyer, reasonable wear and tear excepted; the cost of returning such containers shall be borne by Seller. Seller covenants and warrants that the packaging of the goods ordered herein shall be adequate for the transit of the goods in an undamaged condition. If the goods are not packaged, marked, shipped and routed in accordance with Buyer's direction and the instructions set out in this order, Seller shall pay to Buyer any excess cost occasioned it thereby.
7. **Acceptance of the Goods and Inspection.** Acceptance of the goods shall take place at the time when such goods have been delivered to Buyer and have passed Buyer's inspection and tests. Inspection and test of the articles by Buyer may at Buyer's option be made at Seller's plant and/or the point of destination. Acceptance of all or any part of the goods by Buyer shall not relieve Seller from any of its obligations and warranties hereunder, nor will acceptance of any part of the order bind the Buyer to accept future shipments or deprive Buyer of any right which it may have to return goods already accepted. Acceptance of all or any part of the order shall not be deemed a waiver of the Buyer's right either to cancel or to return all or any portion of the goods because of failure to conform to the order or by reason of defect, latent or patent, or other breach of warranty, or to make any claim for damages suffered by the Buyer as a result of any default of the Seller or the Seller's goods or performance. In no event shall payment be deemed to constitute acceptance.  
  
If inspection discloses that any goods do not meet Buyer's specifications and/or fail to conform to any of the warranties provided for in section 9 hereof, Seller, upon notice thereof from Buyer, shall promptly correct or replace the same at Seller's expense. If Seller shall fail to do so, Buyer may cancel this order as to all such goods and in addition, may cancel the then remaining balance of this order, in all cases without liability to Seller other than for conforming goods and/or services that have been accepted by Buyer, subject to any claims of Buyer against Seller for damages. After notice to Seller, all nonconforming goods will be held at Seller's risk. Buyer may, and at Seller's direction shall return such goods to Seller at Seller's risk, with all transportation and handling charges, both to and from the original destination paid by Seller. Any payment for such goods shall be refunded by Seller unless Seller promptly corrects or replaces the same at its expense. Return of any non-conforming goods by Buyer and/or cancellation of this order in whole or in part on such account shall not be deemed a waiver of any other rights or remedies available to Buyer. Title and risk of loss pass to Buyer upon delivery of the goods to Buyer at the delivery address specified in the Purchase Order.
8. **Payment.** All payments shall be made in United States dollars. Payment shall not prejudice claims on account of omissions or shortages in shipment. Payment shall be made according to the terms set forth on the face of this order. Unless otherwise agreed, cash discount periods will begin, and invoices shall be paid within 60 (sixty) days after, the later of receipt of the invoice or of the goods and/or services by Buyer. C.O.D. shipments will not be accepted.
9. **Warranties.** Seller expressly warrants to Buyer, its successors, customers and users of the goods that all goods and work covered by this order will conform to the specifications, drawings, samples or other description furnished or specified by the Buyer, and be free from defects in

material, design and workmanship. Seller further warrants that all goods sold hereunder will be (a) merchantable and fit and sufficient for Buyer's intended purpose, and (b) free and clear of all liens, security interests or other encumbrances. In case of ambiguity in specifications, drawings or other requirements of this order, Seller, before proceeding must consult Buyer, whose written interpretation shall be final. **Seller further warrants that neither the purchase, use, sale or other disposition of any goods sold or otherwise provided to Buyer, whether by itself or in combination with any other good or process, will infringe any patent, trademark, copyright, trade secret or similar right of any person or entity.** The warranties provided for in this section shall be in addition to those implied by or available at law and shall exist notwithstanding the acceptance by Buyer of all or a part of the goods and/or work.

10. **Indemnification.** Seller shall defend, indemnify and hold Buyer and its affiliates and their respective directors, officers, employees and agents (collectively "Indemnitees") harmless against any and all claims, expenses, losses, liabilities, injury, death, fine, penalty, cost or expense, judgments and actions, including, without limitation, reasonable attorneys' fees and expenses (collectively, "Losses"), arising out or based in whole or in part the goods or services purchased from Seller or Seller's negligence, willful misconduct or breach of these terms and conditions. Seller shall not enter into any settlement without Buyer's prior written consent. Further, Seller agrees to defend, indemnify and hold harmless the Indemnitees against any and all Losses incurred by Buyer in connection with or related to any recall, inspection, tests, replacement or correction of the goods or any and all parts or equipment in which the goods are incorporated, when such recall, inspection, tests, replacement or correction result from or are related to, in whole or in part, a defect or alleged defect in the goods and/or nonconformity of the goods to any of the warranties provided for hereunder.
11. **Limitation of Liability.** BUYER, ITS AFFILIATES AND THEIR REPRESENTATIVES SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES RESULTING FROM ANY PERFORMANCE OR ABSENCE OF SUCH PERFORMANCE BY BUYER HEREUNDER, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT SELLER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED OR (D) WHETHER SUCH DAMAGES WERE INCURRED BY SELLER OR ANY THIRD PARTY TO WHOM SELLER IS LIABLE.
12. **Excess Goods.** Except for customary quantity variations recognized by trade practice, goods in excess of those specified need not be accepted by Buyer and any such goods not accepted will be held at Seller's risk. Buyer may, and at Seller's direction shall, return such goods at Seller's risk and all transportation charges, both to and from the original destination, shall be paid by Seller.
13. **Fabrication and Material Commitments.** Unless otherwise authorized in writing by Buyer, Seller shall not make commitments for materials or fabricate unreasonably in advance of time necessary to permit shipment on delivery dates.
14. **Changes.** Buyer shall have the right, by written notice to Seller, to cancel, suspend or change from time to time the quantity, type, delivery schedule, specifications and other aspects of the goods and/or services covered by this order. Upon the receipt of such notice, Seller shall immediately comply with the notice and adjust operations in connection with this order accordingly. All costs and expenses relating to this order and incurred by Seller subsequent to the receipt of such notice, which would not have been incurred if Seller had complied with such notice, shall be the sole responsibility of Seller.

In the event of cancellation of this order by Buyer, Buyer shall be responsible and liable only for the price of the goods accepted prior to such notice plus the actual and reasonable costs incurred by Seller prior to notice of cancellation with respect to the goods canceled.

In the event of suspension of this order by Buyer, Buyer shall be responsible and liable only for the price of the goods eventually accepted. Any increase in the price of such goods will be subject to the prior approval of Buyer.

In the event of a modification of this order by Buyer (including, but not limited to a change in the number of design of the goods), Buyer shall be responsible and liable only for the price of the goods accepted plus the actual and reasonable costs incurred by Seller to accomplish such modification. Any increase in the price of the goods resulting from modification of this order is subject to the prior approval of Buyer.

15. **Default-Cancellation.** Any one or more of the following events or circumstances shall constitute an "Event of Default" hereunder: (a) Seller becomes insolvent, ceases operations, fails to pay its debts generally as such debts become due, becomes a debtor in any voluntary or involuntary case or proceeding under title 11, United States Code (Bankruptcy) as from time to time in effect or any other law or procedure for the relief of debtors, is or has any material part of its assets subject to the appointment of a trustee, receiver or similar official, and/or makes an assignment for the benefit of creditors; (b) fails to perform its obligations hereunder and/or (c) Buyer has reasonable grounds for insecurity regarding Seller's performance of any or all of its obligations hereunder and Seller fails to provide Buyer adequate assurance of such performance within five (5) days of notice of insecurity from Buyer. Upon and following the occurrence of any one or more Events of Default, Buyer shall have the following rights, which may be exercised with or without notice and shall in all events be in addition to and not in lieu of any and all other rights and/or remedies available to Buyer at law, in equity, or pursuant to the terms hereof: (i) cancel this order in whole or in part, in which case Seller shall be liable to Buyer for all damages, losses and liability incurred by Buyer directly or indirectly resulting from Seller's breach and/or (ii) obtain some or all of the goods and/or services ordered herein from another source with any resulting additional cost to Buyer to be reimbursed in full to Buyer by Seller. Seller shall be liable for Buyer's damages in connection with such breach or failure to perform including consequential damages reasonably foreseeable by Seller or of which Seller was apprised by Buyer. Any amounts that may be owed by Buyer for goods and/or services accepted shall be subject to setoff for damages sustained by Buyer. The remedies herein provided shall be cumulative and in addition to any other remedies provided at law or in equity.
16. **Intellectual Property Indemnification.** Seller shall indemnify and hold Indemnitees and Buyer's customers and users harmless from any Losses arising out of or existing because of the infringement or alleged infringement of any patent, trademark or service mark, trade secret, trade secret or any similar right of any person or entity for or on account of the purchase, manufacture, sale or use of any goods furnished hereunder. Buyer shall notify Seller in writing of any suit filed against it or its customers, on account of any such infringement or alleged infringement, and at Seller's request shall give Seller control of the defense of such suit, insofar as Buyer has the authority to do so and information and assistance for the same, all at Seller's expense. Buyer and the party against whom suit is brought may be represented by their own separate counsel. Furthermore, in the event that Buyer should be enjoined in such suit or proceeding from using any part of the goods delivered hereunder, Seller at its option shall promptly either (a) secure termination of the injunction or liability, or (b) replace said goods with non-infringing goods or modify them to become non-infringing, all at Seller's expense.
17. **Consignment/Buyer's Property.** Unless otherwise agreed in writing, all machinery, equipment, patterns, drawings, specifications, art work, samples, plates or dies of every description furnished to Seller by Buyer or unconditionally appropriated to the contract, or any replacement thereof, or any materials affixed or attached thereto, shall be and remain the personal property of Buyer, and upon completion of this order

shall be returned to Buyer as set forth below or otherwise satisfactorily accounted for. Such property, and whenever practical each individual item thereof shall be plainly marked or otherwise adequately identified by Seller as "Property of Aexcel Corporation" and shall be safely stored separate and apart from Seller's property. Seller shall not substitute any property for Buyer's property and shall not use such property except in filling Buyer's orders. Such property while in Seller's custody or control shall be held at Seller's risk, shall be kept insured by Seller at Seller's expense in an amount equal to the replacement cost with loss payable to Buyer and shall be subject to removal at Buyer's written request in which event Seller shall prepare such property for shipment and shall re-deliver it to Buyer in the same condition as originally received by Seller, reasonable wear and tear excepted.

18. **Special Tools.** Unless otherwise stated, all special drawings, patterns, tools, dies, jigs, machinery and equipment needed by Seller for the performance of this order shall be obtained by Seller at its own expense and shall be the property of Seller.
19. **Confidential Relations.** Seller shall treat as confidential all specifications, drawings, blueprints, data and property furnished or paid for by Buyer and shall reveal the same only to its own employees.
20. **Proprietary Rights.** Seller agrees that all designs and inventions made in the course of filling this order shall promptly be disclosed to and become the sole property of Buyer. Seller shall execute or obtain the execution of such papers, including patent applications and assignments, and shall perform all necessary acts to perfect ownership of such designs and inventions of Buyer, at no cost or expense to Seller. Seller waives all claims against Buyer and its customers for any liability with respect to rights, patent or otherwise, which Seller may have or obtain, by reason of any use which may be made of the designs, machine and processes furnished or developed hereunder.
21. **Advertising.** Seller shall not, without obtaining the written consent of Buyer, in any manner advertise or publish the fact that Seller has furnished or contracted to furnish to Buyer the goods and/or services herein provided for.
22. **Invoices and Notices.** All correspondence and invoices covering this order must be addressed to Buyer's Purchasing Department, Aexcel Corporation, 7373 Production Drive, Mentor, OH 44060-4858.
23. **Government Contracts.** If it is indicated on the face hereof or otherwise informed that this order is placed directly or indirectly under a contract of the United States Government or any State or other governmental authority, then all terms and conditions required by law, regulation or by the government contract with respect to this order are incorporated herein by reference. To the extent that the terms and conditions of this order are inconsistent with any such required terms and conditions, then the required terms and conditions shall prevail and be binding on both Buyer and Seller. Seller agrees, upon request, and without any additional cost or expense to Buyer, to furnish Buyer with a certificate of compliance with all such terms and conditions as well as any applicable law or regulation. Upon request, Buyer will make available to Seller copies of all pertinent terms and conditions required by any such government contract.
24. **Compliance with Laws.** Seller shall, in the performance of work under this order, fully comply with all applicable Federal, State and Local laws and regulations, and shall indemnify and hold Indemnitees harmless from any Losses resulting from Seller's failure of compliance.
25. **Non-Assignment and Set Off.** Assignment of this order or any interest therein or any payment due or to become due thereunder, without the prior written consent of the Buyer, shall be void. Buyer shall be entitled at all time to set off any amount owing at any time from Seller or its affiliated companies to Buyer or any of its affiliated companies against any amount payable at any time by Buyer in connection with this order.
26. **Remedies.** The remedies provided Buyer herein shall be cumulative and in addition to any other remedies provided by law or equity. A waiver of breach of any provision hereunder shall not constitute a waiver of any other or future breach.
27. **Applicable Law and Forum.** The contract resulting from the acceptance of this order shall be governed by and construed according to the laws of the State of Ohio without reference to its choice of laws principles. All actions and suits arising from or relating to these terms and conditions or to the sale or provision of goods or services by Seller to Buyer shall be instituted and venued exclusively in the Court of Common Pleas for Lake County, Ohio or in the United States District Court for the Northern District of Ohio, and Buyer consents to the exercise of jurisdiction by and venue in those courts
28. **Fair Labor Standards Act.** In accepting this order, Seller shall be deemed to represent that the goods to be furnished hereunder were or will be produced in compliance with the requirements of the Fair Labor Standards Act of 1938 as amended. Unless otherwise agreed in writing, Seller shall insert a certificate on all invoices submitted in connection with this order stating that the goods covered by the invoice were produced in compliance with all applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act as amended, and of regulations and orders of the U.S. Department of Labor issued under Section 14 thereof.
29. **Work on Buyer's or Its Customer's Premises.** If Seller's work under the order involves operations by Seller or any supplier or subcontractor of Seller on the premises of Buyer or any of Buyer's customers, Seller shall take all necessary precautions to prevent the occurrence of death or injury to any persons or property during the progress of such work. Except to the extent that any incident is due solely and directly to Buyer's or its customer's negligence, as the case may be, Seller shall indemnify Indemnitees against all Losses which may result in any way from any act or omission of the Seller, its agents, employees, suppliers or subcontractors. Seller shall maintain such public liability, property damage, and employer's liability and compensation insurance as will protect Buyer from said risks and from any claims under any applicable Workers' Compensation and Occupational Disease Acts.
30. **Non-Waiver.** The failure of the Buyer to enforce at any time or for any period of time any of the provisions hereof shall not be construed to be a waiver of such provisions or of the right of Buyer thereafter to enforce each and every such provision.
31. **Non-Discrimination in Employment.** In accepting this order, Seller shall be deemed to represent that the goods to be furnished and/or work performed hereunder were or will be produced in compliance with Executive Order 11246, and regulations issued thereunder, which are incorporated by reference in this order.
32. **Limitation of Actions.** Any action for a breach of contract arising out of Seller's acceptance of Buyer's order, products supplied and/or work performed hereunder must be commenced within four (4) years after the cause of action has accrued.