

SPX Corporation
Terms and Conditions of Purchase Order

1. ACCEPTANCE. These Terms and Conditions of Purchase shall be incorporated as part of and apply to the purchases of goods or services under this Purchase Order ("Order"). SUPPLIER's acceptance of this Order shall occur upon the earlier of: (a) SUPPLIER's signing and returning the acknowledgment copy of this Order, or (b) SUPPLIER's commencement of manufacturing or shipment of goods or performance of services under the Order. ACCEPTANCE OF THE ORDER SHALL CONSTITUTE SUPPLIER'S AGREEMENT TO COMPLY WITH AND BE BOUND BY THESE TERMS AND CONDITIONS. ANY ADDITIONAL OR INCONSISTENT TERMS OR CONDITIONS CONTAINED IN ANY QUOTATION, BID, ACKNOWLEDGEMENT, OR OTHER DOCUMENT OF SUPPLIER ARE OBJECTED TO BY SPX AND SHALL NOT BE EFFECTIVE OR BINDING AS TO SPX, UNLESS AGREED IN WRITING AND SIGNED BY AN OFFICER OF SPX. Upon acceptance, the Order constitutes the entire agreement of SPX and SUPPLIER. Trade usage and course of dealing or performance shall not be employed to vary, explain or supplement these terms and conditions. Any reference on the face of the Order to any bid, proposal, or offer of sale is deemed to be limited to the description of the goods and shall not effect or modify these terms and conditions.

2. DELIVERY SCHEDULE & FORCE MAJEURE. SPX requires 100 percent on-time deliveries, and, therefore, TIME IS OF THE ESSENCE OF THIS ORDER. Any premium shipping expenses and other related expenses necessary to meet SPX's delivery schedules shall be SUPPLIER's sole responsibility. SUPPLIER shall not anticipate delivery, however, by purchasing materials or manufacturing goods in excess of what is reasonably required to meet SPX's delivery schedule. Items received in advance of such schedule may, at SPX's option, be returned at SUPPLIER's risk of loss and expense or be accepted, with payment withheld until the scheduled delivery date. SPX shall have no liability to SUPPLIER for SPX's failure to perform any of its obligations under this Order, if such failure arises out of or relates to causes or events beyond SPX's control. Deliveries in excess of those authorized by SPX shall be at SUPPLIER's risk of loss and may be returned to SUPPLIER or disposed by SPX without any liability to SUPPLIER. SUPPLIER shall pay SPX for all packaging, handling, sorting, transportation, storage and other expenses in connection with SPX's return of such excess goods.

3. DOCUMENTATION. All invoices for goods must reference the Order number, quantity of pieces in the shipment, number of cartons or containers in the shipment, bill of lading number, and other information required by SPX. For international shipments, SUPPLIER shall include a customs valuation invoice with a master packing slip and shall furnish all other required export/import documents. Export and trade credits shall belong to SPX. SUPPLIER shall furnish (i) all documents required to obtain export credits and customs drawbacks; (ii) certificates of origin of the materials and goods supplied and the value added in each country; (iii) all NAFTA and other related documents; (iv) all required export licenses or authorizations; and (v) any other documents requested by SPX or any of its customers. SUPPLIER warrants that the contents of such documents shall be true and accurate. SUPPLIER shall indemnify SPX for any damages, including but not limited to duties, interest and penalties, arising from a false or inaccurate statement.

4. INSPECTION AND REMEDIES. (a) SPX (or SPX's customer, including any governmental agency) shall have the right, but not the obligation, to inspect goods and services at times and places designated by SPX before, during or after delivery or performance. If an inspection takes place at the premises of SUPPLIER or its suppliers, SUPPLIER shall provide, at SUPPLIER's expense, all reasonable facilities and assistance to such inspectors. SUPPLIER shall maintain a test and inspection system acceptable to SPX. (b) If SPX determines that any goods provided or services performed under this Order are defective or fail to conform to the requirements of the Order (including SUPPLIER's warranties and covenants under these terms and conditions), SPX may reject or revoke acceptance of such goods or services and may: (i) terminate all or any part of the Order (as provided hereunder); (ii) repair or return such goods to SUPPLIER for repair or replacement (at SUPPLIER's risk of loss and expense of unpacking, examining, repacking, and reshipping); or (iii) retain such goods or services at an adjusted price. SUPPLIER shall be liable for any special, consequential and incidental damages of SPX. These remedies are in addition to any other remedies provided hereunder, at law, or in equity. SPX's inspection of goods, whether during manufacture, prior to delivery, or within a reasonable time after delivery, does not constitute acceptance of any work-in-process or finished goods. SPX's acceptance, inspection, or failure to inspect does not relieve SUPPLIER of any of its responsibilities or warranties.

5. WARRANTY. (a) In addition to any other express or implied warranties provided by law or otherwise, SUPPLIER warrants with respect to goods and services provided under this Order that: (i) SUPPLIER has clear title, free of all liens and encumbrances; (ii) there are no claims of third parties of any nature



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whatsoever arising out of or related to the goods or services; (iii) all goods (including, without limitation, hardware, software, firmware and systems consisting of goods working together) and services are new and in strict conformance with the specifications, drawings, samples, designs or other descriptions furnished to or by SPX, and shall be merchantable, of good quality and workmanship, free from defects in material, design, and workmanship, and fit for SPX's particular purpose; (iv) all services shall be performed in a competent manner in accordance with the requirements of the Order and fulfill the particular purpose intended; (v) prices charged herein are as low as any net price now given by SUPPLIER to any other customer for similar goods or services, and if at any time during the contract period lower prices are quoted anyone for similar goods or services, such lower net prices shall, from that time, be substituted for the prices contained herein; and (vi) the sale or use of the goods or services covered by the Order shall not infringe or contribute to the infringement of any patents, trademarks, copyrights, or other proprietary rights. (b) These warranties extend to SPX, its successors, assigns and to customers and users of SPX's products or services. (c) The warranty period shall be the longest term provided by applicable law and shall commence on the date of SPX's acceptance of the goods or services. A new warranty period shall commence from the date of acceptance of any replacements of goods or services that are defective or that fail to conform to the requirements of this Order. (d) Remedies for breach of these warranties are cumulative and shall include those provided under these terms and conditions and any available at law or in equity.

6. **TERMINATION** (a) SPX may terminate all or any part of its purchases under this Order, without liability to SUPPLIER, if SUPPLIER: (i) fails to deliver goods or perform services within the time and in the quantities and quality required by SPX or to give adequate assurances requested by SPX; (ii) breaches these terms and conditions (including SUPPLIER's warranties and covenants); (iii) fails to make progress so as to endanger timely and proper performance of the Order, and such failure is not cured within ten (10) days (or any shorter period which is commercially reasonable under the circumstances) after notice from SPX; or (iv) ceases to conduct its operations in the normal course of business, including inability to meet its obligations as they mature, or if any proceeding under the bankruptcy or insolvency laws is brought by or against SUPPLIER or a receiver for SUPPLIER is appointed or applied for, or an assignment for the benefit of creditors is made by SUPPLIER. In addition to obtaining a refund or credit and any other remedies provided herein or available at law or in equity, SPX may, upon such termination, repurchase substitute goods or services elsewhere, on such terms as SPX deems appropriate, and charge SUPPLIER with any excess costs and losses incurred by SPX, including consequential and incidental damages. (b) SPX may terminate all or any part of the Order for convenience, in which case: (i) SUPPLIER shall, as directed by SPX, cease work and deliver to SPX all satisfactorily completed goods or materials and work in process; and (ii) SPX shall pay to SUPPLIER reasonable termination charges solely limited to the costs of materials, goods and labor that are incurred prior to SUPPLIER's knowledge of such termination, provided that SUPPLIER takes reasonable steps to mitigate its damages. In the event that SPX is procuring goods hereunder for the purpose of reselling such goods to a third party purchaser, SPX shall not be liable for such payment until SPX receives such payment from such third party purchaser. (c) To the extent not terminated by SPX, SUPPLIER shall continue performance under the Order. (d) Any termination under Section 6(a) adjudged to be wrongful shall be deemed to then be a termination for convenience under Section 6(b), but with SPX having the right to avail itself of all of its remedies under these Terms & Conditions of Purchase, at law or in equity.

7. **FINANCIAL AND OPERATIONAL CONDITION OF SUPPLIER.** SUPPLIER will permit SPX and its representatives to review SUPPLIER's books and records concerning compliance with this Order and SUPPLIER's overall financial condition. SUPPLIER agrees that if SUPPLIER experiences any delivery or operational problems, SPX may, but is not required to, designate a representative to be present in SUPPLIER's applicable facility to observe SUPPLIER's operations. SUPPLIER agrees that if SPX provides to SUPPLIER any accommodations (financial or other) that are necessary for SUPPLIER to fulfill its obligations under this Order, SUPPLIER will reimburse SPX for all costs, including attorneys' and other professionals' fees, incurred by SPX in connection with such accommodation and will grant access to SPX to use SUPPLIER's premises, machinery, equipment and other property necessary for the production of goods covered by this Order under an access agreement.

8. **LIMITATION OF LIABILITY.** SPX SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS ORDER, INCLUDING ANY TERMINATION, REJECTION, OR REVOCATION OF ACCEPTANCE OF ALL OR ANY PART OF THE ORDER. IN NO EVENT SHALL SPX'S LIABILITY HEREUNDER EXCEED THE PURCHASE PRICE OF THIS ORDER.



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9. **INDEMNITY AND INSURANCE.** SUPPLIER shall defend, indemnify and hold SPX and its directors, officers, employees, customers, affiliates, agents, contractors, successors and assigns harmless from and against any and all claims, liabilities losses, damages (including special, consequential and incidental damages), actions and expenses (including attorney's fees) in connection with: (a) any breach by SUPPLIER of its warranties, covenants or obligations hereunder; (b) any injury (including death), property damage, or economic loss arising out of or related to (i) defective or nonconforming goods or services supplied by SUPPLIER under this Order, or (ii) acts or omissions of SUPPLIER or its employees or subcontractors in providing goods to or performing work, including work at SPX's or a customer's premises or using SPX's property, unless resulting from the sole negligence of SPX; (c) any failure to comply with laws under section 9; and (d) any infringement or contributory infringement of a patent, trademark, copyright, or other proprietary interest by reason of the manufacture, delivery, license, use, or sale of the goods supplied or services performed under the Order ("infringement"), regardless whether (a) through (d) arise in tort (including negligence), contract, warranty, strict liability, or otherwise. SUPPLIER shall provide worker's compensation, commercial general liability, automobile, public liability, and property damage insurance in amounts and coverages sufficient to satisfy all claims hereunder. Such policies shall name SPX as an additional insured, shall be endorsed to be primary to any coverage provided by SPX, and shall contain a waiver of any subrogation rights against SPX.

10. **INTELLECTUAL PROPERTY INFRINGEMENT.** For any Infringement (as defined above), SUPPLIER shall, at SUPPLIER's expense, obtain for SPX a perpetual, royalty-free license with respect to such item, or shall replace or modify the item in a manner satisfactory to SPX, so as to avoid the infringement without any degradation in performance. SUPPLIER's obligations shall apply even though SPX furnishes any portion of the design or specifies materials or manufacturing processes used by SUPPLIER.

11. **COMPLIANCE WITH LAWS.** (a) In providing goods or services under this Order, SUPPLIER shall comply with any and all applicable federal, state, local, and international laws, regulations, ordinances, executive orders, rules, orders, standards, conventions, directives, and treaties, including those relating to: (i) design, manufacture, transportation, sales, advertising, distribution, exportation, importation, labeling, packaging, certification, or approval of the goods or services; or (ii) employment discrimination, hours and conditions of employment, occupational health and safety, wages, environmental matters, product safety, motor vehicle safety, corrupt or deceptive practices, boycotts, antitrust, consumer products, or government subcontracting. (b) At SPX's request, SUPPLIER shall certify in writing SUPPLIER's compliance with the foregoing. SUPPLIER's invoices shall contain SUPPLIER's certification that the goods purchased hereunder have not been produced, and will not be produced, in violation of any of the provisions of the Fair Labor Standards Act of 1938.

12. **CHANGES.** SPX may, at any time, make changes in the Order, including changes in the quantity, delivery time or place, shipping or packing method, or any drawings, specifications or designs. If such a change causes a material increase or decrease in the cost of, or the time required for, performance of the Order, SUPPLIER shall notify SPX in writing immediately. Any claim by SUPPLIER for an adjustment in time for performance or price must be asserted in writing within ten (10) days from date of notification of a change. No change shall be binding on SPX unless agreed, in writing, by an officer of SPX.

13. **SPX'S PROPERTY & INFORMATION.** All tools, dies, molds, templates, equipment, specifications, data, drawings, designs, software or materials furnished by SPX to SUPPLIER or paid for by SPX, including replacements and materials attached thereto, shall remain and be marked as the personal property of SPX. Such items shall be separately stored and insured by SUPPLIER, and SUPPLIER assumes all risk of loss and liability arising out of or related to the items, until such items are returned to SPX. These items shall be used by SUPPLIER only for filling SPX's order and are subject to immediate removal, at SPX's written request, with each item to be delivered (at SUPPLIER's expense) in its original condition, reasonable wear and tear excepted. SUPPLIER shall provide to SPX, without restriction on use or disclosure, all information and documents that SUPPLIER has or shall develop or acquire related to the work SUPPLIER is performing under the Order. Such information and documents shall be deemed to be "works for hire" and be the property of SPX, with SPX having a right of use for any purpose, without liability to SUPPLIER. All information and documents SPX may have disclosed or shall disclose to SUPPLIER in connection with the goods to be delivered or services provided under the Order shall be deemed confidential and proprietary and shall not be disclosed or used by SUPPLIER without the written consent of an officer of SPX.

SUPPLIER will not use any of SPX's property or any confidential information provided by SPX to knowingly divert or attempt to divert any business or customer of SPX, and SUPPLIER will not solicit any customer of SPX identified to SUPPLIER for any business transaction which is competitive with transactions of a nature then engaged in by SPX.



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14. PRICES, INVOICES, AND SET-OFF. Unless the face of this Order contains a special notation by SPX to the contrary, all prices are: (a) firm and not subject to increase or additional charges during the period of the Order; (b) in U.S. dollars and F.O.B. SPX's facility (with risk of loss and title passing to SPX at that location); and (c) inclusive of all freight, duty, and taxes other than sales or use taxes SUPPLIER is required by law to collect from SPX. Such sales or use taxes shall not be included in SUPPLIER's invoice if the SPX indicates that the goods or services ordered are exempt from such taxes. Applicable taxes shall be separately stated on SUPPLIER's invoice. SUPPLIER shall deliver duplicate invoices to SPX immediately upon shipment of goods or completion of services. Invoices shall be paid based on the later of the date of SPX's receipt of conforming goods and services or SPX's specified delivery date, and not on the basis of SUPPLIER's invoice date. All purchases are on open account to be paid by SPX's check. SPX shall be entitled to set off any amount owing at any time from SUPPLIER to SPX or its affiliates against any amount payable at any time by SPX under this Order.

15. PACKING, MARKING AND SHIPMENT. SUPPLIER shall suitably pack, mark, and ship goods in accordance with the instructions of SPX and the requirements of the carrier transporting such goods and shall assure delivery free of damage and deterioration. SPX shall not be charged for packing, marking or shipping unless separately itemized on the face of this Order. SPX's Purchase Order Number must appear on the container, the packing list, invoice and correspondence relating to the Order. Two copies of the packing list (which provides the quantity and description of the goods contained therein) shall be placed within the container.

16. PROPER BUSINESS PRACTICES. SUPPLIER shall act in a manner consistent with all laws concerning improper or illegal payments and gifts or gratuities, including but not limited to the Foreign Corrupt Practices Act of 1977, as amended, and agrees not to pay, promise to pay or authorize the payment of any money or anything of value, directly or indirectly, to any person for the purpose of illegally or improperly inducing a decision or obtaining a retaining business in connection with this Order.

17. ASSIGNMENT AND SUBCONTRACTING. SUPPLIER may not assign (including by change of ownership or control) this Order or any interest herein including payment, without SPX's prior written consent. SUPPLIER shall not subcontract or delegate performance of all or any substantial part of the work called for under this Order without SPX's prior written consent. Should SPX grant consent to SUPPLIER assignment or subcontract, such assignee or subcontractor shall be bound by the terms and conditions of this Order.

18. WAIVER. No claim or right arising out of a breach of this Order can be discharged in whole or in part by a waiver or renunciation unless supported by consideration and made in writing signed by the aggrieved party. Either party's failure to enforce any provisions hereof shall not be construed a waiver of a party's right thereafter to enforce each and every such provision.

19. GOVERNING LAW/DISPUTES. Except as provided in Section 20 below, the Order and these Terms and Conditions constitute an agreement under the laws of the State of Illinois and shall be interpreted, construed and enforced in accordance with the laws of the State of Illinois, United States of America. Each of the parties hereto agrees that any legal or equitable action or proceeding with respect to this Agreement shall be brought only in any court of the State of Illinois, or in any court of the United States of America located in Illinois, and each of the parties hereto submits to and accepts generally and unconditionally the jurisdiction of those courts with respect to such party's person and property. Each party hereby irrevocably waives any objection to the laying of venue of any such action or proceeding in the above-described courts.

20. GOVERNMENT CONTRACTS. SPX Hydraulic Technologies is an equal opportunity employer and a federal contractor. This provision shall apply if the product or services to be delivered or performed under this Order are for the purpose of enabling SPX to perform a government contract or subcontract. (a) This Order incorporates by reference any clauses required to be included by such contract or subcontract or by any applicable law, ordinance, rule or regulation, including the equal employment opportunity clause in Section 202 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, Revised Order No. 4 of December 4, 1971, Section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974, as amended, Section 211 of Public Law 95-507, as amended, and Section 503 of the Rehabilitation Act of 1973, as amended, relative to affirmative action, non-discrimination, and equal employment opportunity and implementing rules and regulations thereof; (b) This shall be governed by and construed according to the Federal Law of Government Contract as enumerated and applied by Federal Judicial Bodies and Boards of Contract Appeals; (c) Any and all Governmental property furnished hereunder shall be administered and maintained in accordance with FAR Part 45; (d) All



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applicable provisions of the Federal Acquisition Regulations and Department of Defense FAR Supplement Regulations listed are incorporated herein by this reference, it being understood that, where used in those provisions, unless otherwise stated herein, where necessary or appropriate to derive proper meaning in all subcontract situation, the term "contract" shall mean this Order; the term "contractor" shall mean SUPPLIER; and the terms "Government" and "Contracting Officer" shall mean SPX whenever appearing in the clauses. All such provisions as set forth shall be those in effect as of the date of SPX's Prime Government contract or SPX's Customer's prime Government contract as amended from time to time.