

TERMS AND CONDITIONS OF PURCHASE

1. CONTROLLING PROVISIONS AND ACCEPTANCE:

Controlling Provisions. The terms and conditions of this document, including the provisions on the face hereof (the "Contract") govern the parties' duties, obligations and relationship with respect to the sale by the vendor described herein ("Seller") and the purchase, acceptance and use by Ellsworth Corporation or its affiliate named herein, I & J Fisnar, Inc. ("Buyer") of the goods and/or services described herein (the "Products"). This Contract constitutes an offer by Buyer to buy the Products from Seller in accordance with the terms in this Contract. If this document is deemed an acceptance of a prior offer by Seller, such acceptance is limited to the express terms and conditions contained in this Contract. Seller's acceptance of this offer is limited to the terms, covenants and conditions in this Contract. Buyer objects to and rejects any additional, different or varying terms proposed by Seller, except additional warranties by Seller, regardless of whether such terms would materially alter these terms and conditions. Seller's proposal of additional or different terms shall not operate as a rejection of Buyer's terms unless such variances are in the description, quantity, price, or place or date of delivery of Products, and Buyer's terms shall be deemed accepted without the additional or different terms. **THIS CONTRACT CONSTITUTES THE FINAL WRITTEN EXPRESSION OF THE TERMS BETWEEN BUYER AND SELLER REGARDING THE PRODUCTS AND IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THOSE TERMS. ANY TERMS, CONDITIONS, NEGOTIATIONS OR UNDERSTANDINGS BETWEEN THE PARTIES WHICH ARE NOT CONTAINED IN THIS CONTRACT SHALL HAVE NO FORCE OR EFFECT UNLESS IN WRITING AND SIGNED BY THE BUYER, EXPRESSLY STATING BUYER'S INTENT TO MODIFY THESE TERMS AND CONDITIONS.**

Acceptance. Seller shall be deemed to have made an unqualified acceptance of this Contract on the earliest of the following to occur: (a) Buyer's receipt of a copy of this Contract, signed by Seller; (b) Seller's acknowledgment of these terms and conditions or any purchase order submitted by Buyer from time to time; (c) Seller's commencement of manufacture or delivery of the Products; (d) Seller's acceptance of any payment from Buyer; (e) Seller's failure to object to these terms and conditions within ten days of receipt; or (f) any other event constituting acceptance under applicable law.

2. **PATENT INDEMNIFICATION:** Seller shall defend, protect and save harmless Buyer, its successors, assigns, customers and users of the Products, against all suits at law or in equity, and from all damages, claims and demands for actual or alleged infringement of any United States or foreign patent by reason of the use or sale of the Products. In the event that either the sale or use of such Products is enjoined, Seller shall at its own expense, either procure for Buyer the right to continue using such Products, or replace same with equivalent non-infringing products or modify such Products so they become non-infringing, or remove same and refund the purchase price, including transportation, installation, removal and other charges incidental thereto, at Buyer's option. In making this purchase Buyer does not recognize the validity of any patent.

3. **DELIVERY:** Unless otherwise specified herein, Seller shall deliver the Products F.O.B. Buyer's plant or DDP Buyer's plant pursuant to INCOTERMS 2010 of the International Chamber of Commerce, as amended from time to time. Seller shall pack, mark and ship Products in accordance with applicable law and Buyer's specifications from time to time. Seller shall include with each shipment such documents as Buyer may require including, without limitation, a packing slip showing Buyer's purchase order number, item numbers, and sufficient other particulars to identify the Products, and a Bill of Lading showing quantities delivered by lot number (collectively, the "Delivery Documents"). Buyer's count shall be accepted as final on all shipments not accompanied by packing lists. Buyer shall have the right at any time to specify the carrier and/or the method of transportation to be employed in conveying the Products, upon proper adjustment being made to cover any difference in transportation cost agreed upon herein. Buyer may from time to time change delivery schedules. Any forecasts provided by Buyer are estimates only and are nonbinding. Seller agrees to supply Buyer's requirements for Products. Nothing herein shall be deemed to restrict Buyer from procuring Products from alternate sources. Time is of the essence for

all deliveries. If Seller's deliveries are not in the quantities ordered and/or delivered at the time specified, Buyer, without limiting its other rights and remedies, may expedite routing and debit Seller's account for any expediting charges or may cancel all or any portion of any order. No charge will be allowed for packing, crating, drayage, storage or other charges without Buyer's written permission. Products delivered in excess of the specified quantities may be refused and returned at Seller's expense.

4. TITLE TO AND RISK OF LOSS OF PRODUCTS: Title to and risk of loss of Products shall remain with Seller until delivery to Buyer's plant. Seller warrants title to all Products sold and services supplied.

5. PRICING; PAYMENT: If a price is not stated on the face of this order, the Products shall be billed at the price last quoted, or the prevailing market price, whichever is lower. This order must not be filled at a higher price than last quoted or charged without Buyer's prior written authorization. Prices shall not increase without Buyer's prior written consent. Pricing is inclusive of applicable taxes, freight, packaging, insurance, handling and all other charges, whether similar or dissimilar, unless otherwise indicated on the face of the purchase order. Buyer's account with Seller shall be paid within 60 days after receipt of invoice or shipment, whichever is received later, except where cash discounts apply or other terms are specified and specifically agreed to in writing by Buyer. Buyer's obligation to pay within such 60 day period is subject to Buyer's receipt of the Delivery Documents. Buyer reserves the right of setoff of any amounts due Seller on this Contract against any amount due Buyer from Seller on any transaction. Buyer's acceptance of or payment for the Products or any other action or inaction shall neither (a) relieve Seller from any of its obligations and warranties hereunder nor (b) constitute a waiver of Buyer's rights and claims hereunder.

6. INSPECTION: At Buyer's option, all Products ordered will be subject to final inspection and approval by Buyer after delivery. Buyer has no obligation to inspect Products. Items that are palletized or in boxes are receipted and counted as exterior packages only for Proof of Delivery verification. Buyer maintains the right to validate actual delivery quantities after acceptance of delivery. Short shipment credits will be requested in a timely manner. Buyer may reject any Products which contain defective material or workmanship or fail to conform to specifications or samples, even if Buyer has already paid for the Products. Rejected Products will be held at Seller's risk, subject to Seller's disposal, or may be returned at Seller's risk and expense at the full invoice price plus incoming transportation charges and disposal cost, if any. No rejected Products shall be replaced by Seller unless Buyer expressly so requests in writing and then only at the price stated in the order or prevailing at the time of such written request, whichever is lower.

7. FORCE MAJEURE: Buyer shall not be liable for delays or defaults due to acts of God, acts of governmental authority, acts of public enemy, war, fires, floods, epidemics, strikes, labor troubles, freight embargoes, terrorism, operation of statutes, laws, rulings or of any court or government, or other causes or contingencies reasonably beyond its control. In case of such excusable delay or default, Buyer shall have the right to cancel any order on 15 days written notice without incurring liability to Seller.

8. NOTIFICATIONS: (a) Delay Notification: Whenever Seller has knowledge of any actual or potential delay in the timely performance of any order; Seller shall immediately give Buyer written notice including all relevant information. Seller agrees to insert the substance of this clause, including this sentence, in any subcontracts. Notwithstanding the foregoing, seller shall not assign or subcontract its rights or obligations hereunder without Buyer's consent, which Buyer may withhold in its sole discretion. (b) Price Changes: Seller must provide Buyer written notification sixty (60) days prior to any price increases. (c) Supplier change: Seller must notify Buyer with written notification of any changes to company name, address, manufacturing site changes, which may include change(s) to processes, tooling, or raw materials. (d) Material Safety Data Sheets (MSDS): Any changes or updates to the MSDS must be submitted in writing to the Buyer.

9. CANCELLATION: Buyer reserves the right by written notice to cancel any order, without incurring liability to Seller, upon any of the following: Seller's insolvency; Seller's filing of a voluntary petition in bankruptcy; filing of involuntary petition to have Seller declared bankrupt; appointment of a

receiver or trustee for Seller; execution by Seller of an assignment for the benefit of creditors; or Seller's failure to correct any breach of this Contract within ten days after Buyer notifies Seller in writing of such breach. In the event of such termination, Buyer may complete the performance of this Contract by such means as Buyer selects, and Seller shall be responsible for any additional costs incurred by Buyer in so doing. Any amounts due Seller for Products delivered by Seller in compliance with this Contract prior to such termination shall be subject to setoff by Buyer for Buyer's additional costs of completing the Contract and other damages incurred by Buyer as the result of Seller's default.

10. **TERMINATION AND SUSPENSION:** Buyer may suspend or terminate this Contract, at any time, for its convenience and in whole or in part, by any reasonable manner. If Buyer terminates this Contract for its convenience, Seller's sole claim shall be for the costs it reasonably incurred in the performance of this Contract prior to such termination, with due allowance for the salvage value of all Products after Buyer has had full opportunity to recommend disposition and audit Seller's costs. Seller may be entitled to such termination compensation only if it provides Buyer written evidence of such costs within 60 days of termination. Upon termination, Buyer may take possession of materials and work in progress. If Buyer suspends this Contract, Seller shall promptly suspend further performance of the Contract to the extent specified and during the period of such suspension shall properly care for and protect all work in progress and materials Seller has on hand for performance of the Contract. Buyer may at any time withdraw the suspension of performance to Seller and Seller shall resume diligent performance of the work. If Seller believes that any such suspension or withdrawal of suspension justifies modification of the Contract price, Seller shall within 30 days of such suspension or withdrawal submit to Buyer a written claim for such modification. Seller's claim shall substantiate Seller's increased costs with invoices and other documents satisfactory to Buyer. Upon Buyer's verification and approval of such additional costs, Buyer and Seller shall agree upon an adjustment in the Contract price based upon such costs as full settlement to Seller for the suspension and withdrawal of suspension. **IN NO EVENT SHALL SELLER BE ENTITLED TO ANY PROSPECTIVE PROFITS OR ANY DAMAGES DUE TO TERMINATION, SUSPENSION OR WITHDRAWALS OF SUSPENSION.**

11. **MODIFICATION:** Notwithstanding section 1 above, Buyer may by written supplement to this Contract change the specifications for Products. If such change would affect the price or delivery date for such Products, Buyer and Seller shall agree in writing upon an equitable adjustment to reflect the effect of such change. Seller shall not suspend performance of this Contract while Buyer and Seller are in the process of making of such changes and related adjustments. No substitutions shall be made in this Contract without Buyer's prior written authorization. Any claim by Seller for an adjustment pursuant to this section shall be deemed to have been waived unless made in writing within 30 days from the date Buyer notifies Seller of the modification.

12. **ASSIGNMENT:** No assignment may be made of this Contract or any orders or any claims for monies due under any orders without the written consent of Buyer. Any payment to an assignee of any claim under any order shall be subject to set-off, recoupment or other reduction for any claim that Buyer may have against Seller.

13. **COMPLIANCE WITH LAWS:** Seller represents and warrants to Buyer that in the performance of this Contract and all orders hereunder, Seller shall comply and has complied with all applicable federal, state, and local laws, rules, regulations and ordinances, including but not limited to the applicable provisions (as amended) of: Paragraphs 1-7 of Section 202 of Executive Order 11246 of September 24, 1965 (Equal Employment Opportunity); the Fair Labor Standards Act of 1938 (codified at 29 U.S.C. § 201-219); the Walsh-Healey Public Contracts Act (codified at 41 U.S.C. § 35-45); the Contract Work Hours and Safety Standards Act (codified at 40 U.S.C. § 3701-08); the Vietnam Era Veterans Readjustment Assistance Act of 1974 (codified at 38 U.S.C. § 4211-12); Section 503 of the Rehabilitation Act of 1973 (codified at 29 U.S.C. § 793); the Occupational Safety and Health Act (codified at 29 U.S.C. § 651-678); and the Federal Acquisition Regulations (C.F.R. Title 48). In addition, Seller agrees to comply with (to the extent applicable) the U.S. Foreign Corrupt Practices Act and all other anti-bribery laws, all U.S. anti-boycott laws, the U.S. Export Administration Act and all regulations thereunder and all laws relating to exports or re-exports of Products, and all laws relating to imports of Products into the United States. If Seller or its authorities, agents or representatives engages a freight forwarder or

similar service provider, Seller shall provide Buyer with copies of freight forwarder (or similar) records regarding Product exports promptly upon request. Seller shall promptly notify Buyer in writing if Seller receives notice or otherwise has reason to believe that a violation of U.S. import or export law has occurred or is likely to occur. Seller shall indemnify and hold Buyer harmless from any damage or liability resulting from the failure of such compliance.

14. **BUYER'S PROPERTY:** If material is furnished by Buyer in connection with any order on other than a charge basis, Seller shall be solely responsible for all such material and shall properly insure it against damage, destruction and loss.

15. **WARRANTY:** Seller warrants to Buyer, Buyer's customer and to the ultimate user that, in addition to all express and implied warranties provided under the Uniform Commercial Code, (a) the Products (including Products sold to Buyer but manufactured by others) will (i) be free from defects in materials and workmanship, (ii) conform to all representations, specifications and drawings provided by Seller or Buyer and to any other specifications agreed upon between the Parties, and (iii) meet or exceed the quality standards furnished or adopted by Buyer, (b) the use and/or sale, alone or in combination, of the Products will not infringe or violate any United States or foreign letters patent, or any right in or to any patented invention or idea, or a trademark or copyright, and (c) the Products and their production, storage, pricing, delivery and sale hereunder are in compliance with foreign, federal, state and local laws applicable thereto. Seller acknowledges that it has knowledge of Buyer's intended use and warrants that all Products that have been manufactured by Seller based on Buyer's use and will be fit and sufficient for the particular purposes intended by Buyer. Any Products not in accordance with the foregoing warranties or any special warranty shall be deemed to be defective and may be rejected by Buyer. Buyer's approval of Seller's specifications shall not relieve Seller of any of its warranty obligations. Seller will maintain a quality assurance system which is adequate in Buyer's judgment to detect and prevent shipment of nonconforming Products. In the event of any recall affecting the Products, Seller shall indemnify Buyer and the Buyer Parties in accordance with section 22. Buyer shall have the right to control the recall process and Seller shall fully cooperate with Buyer in connection with the recall. Seller shall obtain and retain, for a period of at least six years from the date of sale to Buyer, samples of all Products and make such samples available to Buyer on request.

16. **REMEDIES:** If Seller breaches any of its warranties, Seller shall be liable for and shall indemnify Buyer and the Buyer Parties from and against any and all Damages incurred by them, including, without limitation, the purchase price of the Products, delivery costs, replacement and cover costs, lost profits, and consequential and incidental damages. Seller acknowledges that, if Seller's breach causes Buyer to deliver products to its customers either late or below Buyer's standards, Buyer will incur lost profits and other damages for which Seller is liable. Without limiting the foregoing, upon Buyer's request, Seller shall promptly and at its sole cost replace any Products failing to conform with the warranties set forth in this Contract. Replacement Products shall be subject to the same warranty as provided above. The remedies provided Buyer herein shall be cumulative and in addition to any other remedies provided by law or equity. A waiver of any breach shall not constitute a waiver of any other breach. The laws of the state shown in Buyer's address printed on the masthead of Buyer's purchase order shall govern and control this Contract and the parties' relationship. This Contract and purchases hereunder shall not be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods. Any cause of action, claim, suit or demand allegedly arising from or related to the terms of this Contract or the relationship of the parties shall be brought in a court situated in the state of Wisconsin. Both parties hereby irrevocably admit themselves to and consent to the jurisdiction of said court. The invalidity in whole or in part of any of these terms and conditions shall not affect the validity of any other term or condition.

17. **ON SITE SERVICES:** If Seller is required to enter premises owned, leased, occupied by or under the control of Buyer during the performance of any order, Seller shall indemnify and hold harmless Buyer and its officers and employees, from any loss, expense or liability by reason of property damage or personal injury, including death, of whatsoever nature or kind arising out of or as a result of such performance, whether arising out of the actions of Seller or of its employees or subcontractors. Seller and its subcontractors shall maintain insurance in the following minimum amounts covering Seller's

obligations under any order: Workmen's Compensation Insurance covering all those engaged in the performance of the Order in Statutory Amounts; Employer's Liability Insurance of at least \$100,000/occurrence; Comprehensive General Liability Insurance including contractual obligations of at least \$1,000,000; and Automotive Liability Insurance of at least \$1,000,000. Seller shall provide Buyer with certificate(s) of insurance properly executed by its insurance carrier(s) showing all such insurance to be in force. Send to the address of appropriate Site Representative.

18. SAFETY MANUALS; INDEPENDENT CONTRACTOR: Seller shall adhere to Buyer's instructions or safety manuals, which will be made available to the Seller, but Seller shall remain an independent contractor and neither Seller nor any of its employees or agents shall be or be considered an employee of Buyer. Neither Seller nor any of its employees or agents is authorized to incur any obligations or make any promises or representations on Buyer's behalf.

19. AUDIT: (a) Supplier will maintain reasonably detailed records to adequately reflect Supplier's compliance with the terms of this Purchase Order. Supplier will permit Fisnar's auditors to have access at all reasonable times to Supplier's books, facilities, and other pertinent records. Supplier will require each of its sub tier suppliers to do likewise with respect to their books, facilities, and records. Supplier and each sub tier supplier will also furnish other information as may be needed by Fisnar's representatives in auditing compliance. (b) Fisnar may perform audits up to two years following completion of this Purchase Order. If, as a result of an audit, any invoice submitted by Supplier is found to be in error, an appropriate adjustment will be made to the invoice or the next succeeding invoice following the discovery of the error. Any monetary discrepancy resulting from such error will be paid promptly by Supplier or Fisnar, as the case may be. Supplier will promptly correct any other Supplier deficiencies discovered as a result of the audit.

20. CONFIDENTIALITY: Seller acknowledges and agrees that all Confidential Information (as defined below) shall at all times, both during and after expiration or termination of this Contract for any reason, remain the exclusive property of Buyer, and Seller shall not acquire any proprietary interest whatsoever therein. "Confidential Information" means all non-public knowledge and information that provides Buyer with a competitive advantage and that is disclosed by Buyer to Seller orally or in writing, or acquired by Seller through observation, regarding Buyer's products, technology, inventions, designs, specifications, trade secrets, formulas, know-how, services, forecasts, sales methods, customer usages or requirements, financial information, business plans, strategies and future business relationships. "Confidential Information" also includes the confidential information of Buyer's customers and channel partners. Seller shall maintain in confidence, not disclose to any third party and not use, except for the specific purpose of performing hereunder, all information furnished to Seller by Buyer or derived from Buyer in performance of any order. Seller shall inform those performing services under any order of these obligations and shall be responsible for all violations and indemnify Buyer against any damage, loss, cost or expense (including without limitation, attorneys' fees) arising in relation to any violation of these obligations. Upon Buyer's request, Seller shall return to Buyer all such confidential information without retaining any copies or embodiments thereof. Nothing in this Agreement shall be construed to limit or negate the common or statutory law of torts or trade secrets where it provides Buyer with broader protection than that provided herein.

21. INTELLECTUAL PROPERTY: Whenever requested by Buyer to do so, Seller will place on the Products, in the manner specified by Buyer, such trademarks or other identifying marks as Buyer may specify. Seller warrants and agrees that Buyer's identifying marks shall be used only on products supplied to Buyer and in the manner and subject to the restrictions imposed by Buyer. All of Buyer's Intellectual Property Rights are and shall remain Buyer's sole property and Seller agrees not to take or permit any action contradicting Buyer's rights thereto. "Intellectual Property Rights" include, without limitation, any copyright, patent, registered or unregistered design, logo, trademark, trade dress, trade name or other designation, translation of trade name into another language, and any similar rights or applications for rights in any of the foregoing in any part of the world owned or used by Buyer or any of its affiliates, and any goodwill relating thereto. Buyer's rights shall be enforceable by injunctive relief and/or a decree of specific performance. Seller does not acquire any rights, title or interest in any of the

trademarks or trade names of Buyer by virtue of this Contract, and Seller shall not use or in any way refer to Buyer's trademarks or trade names without Buyer's prior written permission. Nothing herein shall limit the statutory or common law of torts or trade secrets where it provides Buyer with broader rights.

22. INDEMNIFICATION: Seller hereby releases and agrees to promptly defend, indemnify and hold Buyer and its affiliated entities, employees, customers, successors and assigns (collectively "Buyer Parties") harmless from and against all liabilities, losses, claims, court costs, incidental and consequential damages, attorneys' fees and other expenses arising from any loss, damage or injury (including death) to any person or property ("Damages") in any way relating to the Products or (a) any alleged defects in the Products, (b) any inadequate disclosures, labels, packaging, warnings or instructions, (c) the alleged violation of any statute, ordinance or other law, order, rule or regulation, (d) any alleged unfair competition resulting from similarity of design, trademark, use or appearance of the Products, (e) bodily injuries, deaths or property damage caused by negligent or wrongful act or omission of Seller, or any employee or agent of Seller, (f) any breach of this Contract, including without limitation any warranty set forth herein or any special warranty, and (g) any recalls involving Products. The provisions of this section 21 shall be effective whether or not such loss, damage or injury was proximately caused by the sole or partial negligent acts or omissions of Buyer or any Buyer Parties. Buyer and the Buyer Parties, at their option, may be represented by and actively participate through their own counsel in any such suit or proceeding, and Seller shall pay the costs of such representation and participation. **IN NO EVENT SHALL BUYER BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT OR PUNITIVE DAMAGES ARISING IN RELATION TO THESE TERMS AND CONDITIONS OR THE PARTIES' RELATIONSHIP, AND SELLER AGREES TO INDEMNIFY AND HOLD BUYER HARMLESS THEREFROM.**

23. SURVIVAL: The provisions of sections 1, 2, 9, 10, 13, 15, 16, 19, 20, 21, 22, and 23, and any other provision, the performance or effectiveness of which naturally survives, shall survive expiration or termination of this Contract for any reason.