

Terms and Conditions of Purchase

PRG0003-02rB (US)

- 1 **Acceptance of Contract:** The Gooch & Housego entity ("Buyer") that issues this purchase order ("Order") hereby makes an offer to purchase the goods or services ("Goods" or "Services") set forth herein subject solely to these Standard Terms and Conditions of Purchase (these "Terms"). The seller of the Goods ("Seller") shall be bound by the Terms of this Order when it signs and returns an acknowledgement copy of this Order, indicates its acceptance of this Order in writing, or delivers to Buyer any of the ordered Goods or renders any of the ordered Services. This Order is subject solely to these Terms; any additional or different terms proposed by the Seller are rejected unless expressly accepted in writing by an authorized representative of Buyer.
- 2 **Prices; Invoices:** Goods and/or Services shall be provided at the prices set forth in this Order. Seller's acceptance of this Order constitutes a warranty that the prices charged for Goods or Services ordered herein are not in excess of prices charged to other customers for similar quantities and delivery requirements. To the extent that Seller issues an invoice to Buyer, it shall submit invoices in duplicate and such invoices shall contain all of the following information: Order number, item number, description of items, sizes, quantities, unit prices, and extended totals in addition to any other information specified elsewhere herein, and Bill of Lading of express receipt shall accompany each invoice. Buyer's payment of an invoice shall not constitute acceptance of Goods. Buyer may at any time setoff any amount owed by Seller or any of its affiliated companies to Buyer. Unless otherwise specified, the prices set forth in this Order include all applicable federal, state, and local taxes, customs or duties. All such taxes shall be stated separately on Seller's invoice.
- 3 **What Constitutes Contract; Amendments:** The parties agree that this Order, together with all specifications, drawings, data, and other documents attached hereto or incorporated therein by reference constitutes the entire agreement between Buyer and Seller (the "Contract"). No modification of this Contract shall be binding upon Buyer unless in writing and signed by Buyer's authorized representatives.
- 4 **Changes:** Buyer reserves the right at any time to change any of the following provided that any change must be submitted in writing: (a) specifications, drawings, and data for items manufactured to specifications provided by Buyer or which are otherwise specially designed for Buyer; (b) methods of shipment or packing; (c) place, time or manner of delivery; and (d) quantities. If any such change causes an increase or decrease in the cost of, or the time required for performance of this Contract, an equitable adjustment shall be made in the Contract price, delivery schedule, or both. Any claim by Seller for adjustment under this clause must be submitted no later than ten (10) days after the change is made and approved by the Buyer in writing before the Seller proceeds with such change. Buyer shall not be liable for any price increases for work performed prior to a written modification indicating the price change signed by Buyer.
- 5 **Delivery:** Time is of the essence in this Contract. Unless otherwise specifically provided on the face of this Order, all Goods shall be delivered on an F.O.B. destination basis to the Buyer's designated plant or plants. Seller shall bear all risk of loss, damage, or destruction to the Goods until final acceptance by Buyer at destination. If ordered Goods and Services are not provided in the quantities and at the time specified, Seller shall have a five (5) day period to correct any deficiency. If not corrected, Buyer reserves the right, without liability, and in addition to other rights and remedies provided under this Contract or applicable law, to take the following actions or any combination thereof: (a) direct expedited shipping of Goods (the difference in cost between the expedited shipping and standard shipping costs to be paid by Seller), or (b) terminate this Contract by notice effective when received by Seller as to all or any specified Goods not yet shipped or Services not yet rendered with Seller to refund payments Buyer has made, if any, for such Goods or Services, or (c) to purchase substitute goods or services elsewhere and charge Seller for the difference between the cost of substitute goods and the sales price. Seller shall be liable for excess

transportation charges, delays or claims resulting from Seller's deviation from Buyer's shipping instructions. Buyer will have no liability to pay for Goods delivered to Buyer which exceed quantities specified in this Contract and delivery schedules. Buyer may at its option retain such Goods and pay for them at the unit price or reject and return such Goods at Seller's expense, including transportation charges both ways. Buyer will not be liable for any material or production cost incurred in excess of the amount or in advance of the time necessary to meet Buyer's delivery schedules.

- 6 Inspection and Acceptance:** Receipt or payment for any Goods under this Contract shall not constitute acceptance thereof. All Goods or Services purchased hereunder are subject to inspection by Buyer either before or after payment. Buyer's count of Goods shall be conclusive. Buyer reserves the right to reject Goods or Services which do not comply with the Order including instructions, specifications, drawings, and data or Seller's warranties (expressed or implied). Rejected Goods will be returned to Seller for full credit or replacement at Buyer's sole option and at Seller's risk and expense, including transportation charges both ways. No replacement of rejected Goods shall be made unless agreed to by Buyer in writing. Acceptance of any part of the Goods shall not bind Buyer to accept future shipments, nor deprive it of the right to return nonconforming Goods already accepted. Acceptance of all or any part of the Goods shall not waive Buyer's right to cancel or return all or any portion of the Goods because of failure to conform to this Contract, or by reason of defects, latent or patent, or other breach of warranty, or to make any claim for damages, including manufacturing costs, damage to Goods caused by improper boxing, crating or packing and loss of profits or other damages incurred by the Buyer. Such rights shall be in addition to any other remedies provided by law.
- 7 Force Majeure:** Neither party shall be liable for delays or defaults due to causes solely beyond its control and without its fault or negligence, including but not limited to fires, floods, pandemics, and Acts of God, provided however, that as soon as Seller has reason to believe that Goods or Services will not be delivered when scheduled, written notice setting forth the cause of the anticipated delay must be given immediately to Buyer. If Seller's delay or default is caused by the delay or default of a subcontractor (if subcontracting is permitted), such delay or default shall be excusable only if it arose out of causes solely beyond the control of both Seller and the subcontractor and without the fault or negligence of either of them and the Goods to be furnished or Services to be rendered were not obtainable from other sources in sufficient time to permit Seller to meet the required delivery or performance schedule.
- 8 Packing, Drayage and Containers:** No charges for packing, drayage or containers will be allowed unless specified on the face of this Order, or specifically listed as an additional and separate charge on Seller's quotation and acceptance of this Order which is agreed to in advance in writing by Buyer. Seller shall be liable for damage to Goods caused by improper boxing, crating or packaging. Packaging requiring a deposit may be returned for full credit at Buyer's option.
- 9 Seller's Warranties:** Seller hereby warrants that: (a) all Goods and Services furnished hereunder shall be of merchantable quality and fit for Buyer's purposes, (b) all Goods and Services provided shall conform with this Order and all descriptions and specifications, (c) all Goods and Services furnished hereunder shall conform to all representations, affirmations, promises, samples or models forming the basis of this Contract, (d) all Services performed for or on behalf of the Buyer will be performed in a competent, workmanlike manner and shall be free from faults and defects, (e) all Goods shall be free of defects in design, materials or workmanship, (f) Seller has conveyed good title to the Goods to Buyer, free and clear of any and all liens, encumbrances or other charges of any kind; and (g) the country of origin is correctly stated. Seller agrees that these warranties shall survive acceptance of the Goods and Services and that they are in addition to any warranties of additional scope given by Seller to Buyer and all warranties provided by law. In the event of any breach of warranty, Buyer may invoke any of the following rights and remedies or a combination thereof, as well as any other remedies provided by law: (a) require Seller to repair or replace the

Goods (at Buyer's option) so that they conform to Seller's warranties, (b) repair the Goods or have them repaired by a third party so that they conform to the warranties at Seller's expense; (c) return the Goods to Seller for a full refund of the purchase price and any transportation or other incidental charges.

- 10 Property of Buyer:** Unless otherwise provided in this Order or agreed to in writing, Buyer's property furnished to or made available to Seller, including but not limited to all tooling, tools, equipment and material and any replacement thereof, shall be and remain the sole property of Buyer. Such property, other than materials, shall not be modified without the written consent of the Buyer. Buyer's property shall be plainly marked or otherwise adequately identified by Seller as "Property of Gooch & Housego" and shall be safely stored separately and apart from Seller's property. Seller shall not use such property except for performance of work hereunder or as authorized in writing by Buyer. Such property while in Seller's possession or control shall be kept in good condition, shall be held at Seller's risk, and shall be kept insured against damage or loss by Seller, at its expense, in an amount equal to the replacement cost, with loss payable to Buyer. To the extent such property is not material consumed in the performance of this Order, it shall be subject to inspection and removal by Buyer at any time and Buyer shall have a right of entry for such purposes without liability to Seller. When directed by Buyer, Seller shall disclose the location of such property and/or prepare it for shipment and ship it to Buyer in as good condition as originally received by Seller; reasonable wear and tear is accepted.
- 11 Special Tooling:** The term "special tooling" as used in this Section 10 shall be deemed to include all jigs, dies, fixtures, molds, patterns, special cutting tools, special gauges, special test equipment, other special equipment and manufacturing aids and drawings and any replacements of the foregoing, acquired or manufactured or used in the performance of this Order, which are of such a specialized nature that without substantial modification or alteration, their use is limited to the production of the Goods or parts thereof or performance of the Services of the type required by this Order. The term does not include (a) items of tooling or equipment heretofore acquired by Seller, or replacements thereof, whether or not altered or adopted for use in the performance of this Order, (b) consumable small tools (c) general or special machine tools or similar capital items, or (d) tooling, title to which is held by Buyer. Seller agrees that special tooling shall be retained and not used or reworked except for performance of work hereunder or as authorized in writing by Buyer. While in Seller's possession or control, Seller warrants that it will keep the special tooling in good condition fully covered by insurance and will replace it when lost, destroyed, or necessary for performance of work hereunder. Upon completion or termination of the work under this Order for which the special tooling is required, Seller shall furnish Buyer a list of each item or special tooling, the products, parts, or services for the manufacture or performance of which such special tooling was used or designed and the location and unamortized cost of each item. Upon payment by Buyer to Seller of the unamortized costs thereof plus costs of shipment or disposal, Seller shall transfer title to and possession of any item of special tooling to Buyer or dispose thereof as Buyer may direct. In addition, Buyer shall have the right to take possession of, including the right of entry for such purpose, any special tooling, title to which Buyer acquires hereunder, without any additional liability whatsoever to Seller.
- 12 Proprietary Rights:** All technical information in the nature of designs, blueprints, specifications, engineering data for production or product know-how, which is supplied to the Seller by the Buyer to facilitate or assist in the performance of this Contract, shall remain the sole and exclusive property of Buyer and, unless otherwise agreed in writing by Buyer, shall be considered and kept confidential by the Seller. Seller will use and cause its employees and agents to use extreme caution not to disclose any such information, either directly or by incorporation of such information in, or its use in, manufacturing products for others. Upon completion of the Order or at any other time upon request, all documents or other materials disclosing any such information shall be returned to Buyer. Additionally, Seller hereby grants to Buyer a perpetual, worldwide, royalty-free,

irrevocable, non-exclusive license to any invention, improvement or discovery (whether or not patentable), conceived or reduced to practice in the performance of this Contract by any employee of the Seller or other person working under Seller's direction. Upon completion of performance of this Contract, Seller shall deliver to Buyer a complete copy of the documentation relating to any such invention, improvement or discovery.

- 13 Intellectual Property Indemnity Clause:** Seller agrees upon receipt of Buyer's notification, to indemnify, and save Buyer or any of its subsidiaries, constituent companies, customers, employees, directors, officers, agents or vendors (hereinafter for purposes of this and the following Section collectively referred to as the "Buyer Indemnitees") harmless from any and all losses, liabilities, damages, claims, demands, suits, actions, proceedings, and expenses, including court costs and reasonable attorney's fees, arising from a third party claim that the Goods delivered under this Contract infringe upon the intellectual property rights or proprietary rights of a third party, except for Goods manufactured entirely to Buyer's specifications. If, as a result of such suit or proceeding, the use of the Goods or any part of the Goods is enjoined, Seller shall, at its expense, either procure for the Buyer Indemnitees the right to continue to use the Goods, replace the same with non-infringing Goods, or modify the Goods so that they become non-infringing; provided, however, that any such replacement or modification shall not diminish the required operational parameters for the Goods or otherwise materially affect Buyer, or the other Buyer Indemnitees. The Buyer Indemnitees may be represented through their own counsel in any such suit or proceedings, at their own expense. The Seller's obligations hereunder shall survive acceptance of the Goods and payment therefor by the Buyer.
- 14 Indemnification:** Seller further agrees to indemnify and save Buyer, its directors, officers, and employees harmless from any and all losses, liabilities, damages, claims, demands, suits, actions, proceedings, and expenses, including court costs and reasonable attorney's fees, related in any way to this Contract, or the Services performed or Goods delivered under this Contract, except for Goods manufactured entirely to Buyer's specifications or claims resulting from Buyer's sole negligence, which are claimed or made by any person, firm, association, or corporation, including employees, workmen, servants or agents of the Seller and its subcontractors arising from any cause or for any reason whatsoever. Seller further agrees, upon receipt of notification, to promptly assume full responsibility at Seller's expense for the defense of any and all such suits, actions, or proceedings which may be brought against Buyer. If Buyer's machinery or equipment is used by Seller to perform any work under this contract, such machinery or equipment shall be considered as being under the sole custody and control of Seller during the period of such use by Seller.
- 15 Insurance:** Seller shall maintain the following insurance coverage with policy limits at least equal to those specified herein: (a) Statutory Worker's Compensation Insurance for all employees of Seller covering claims filed under the Worker's Compensation Law of the State in which the work is to be performed, and under any law of any State under which liability for any compensation claims may arise, (b) Employer's Liability Insurance with policy limits of \$1,000,000 including claims for traumatic injuries as well as occupational disease including death, (c) Commercial General Liability Insurance on an occurrence basis including coverage for bodily injury (including death), property damage, advertising injury, and products-completed operations coverage with policy limits of at least \$2,000,000 per occurrence and \$2,000,000 annual aggregate, (d) comprehensive automobile liability insurance covering all owned, leased, rented, and non-owned vehicles covering bodily injury and property damage with policy limits of at least \$1,000,000 per accident, (e) excess liability (umbrella) insurance providing additional coverage over and above all coverages (except worker's compensation) with policy limits of at least \$5,000,000 per occurrence and \$5,000,000 annual aggregate. Further, if Seller's services are of a professional nature, Seller shall maintain professional liability insurance with policy limits of not less than \$2,000,000 per claim and \$2,000,000 annual aggregate. Buyer, its parent, subsidiary and affiliated companies, and any of their directors, officers, employees or representatives, shall be named as additional insureds on all

such policies (except for worker's compensation, and, if applicable, professional liability) with a corresponding waiver of rights of subrogation against any additional insureds. All such policies shall be issued by insurance companies licensed in the state in which services are to be performed and that maintain an AM Best rating of A -VIII or better. Seller shall be fully responsible for the payment of any deductible or self-insured retention, which shall not exceed \$25,000 in any policy without Buyer's written permission. Seller shall furnish Buyer with certificates of insurance demonstrating that the above required (or better) policies are in place and, where applicable, confirming additional insured status and waivers of subrogation. Seller shall furnish Buyer with copies of the policies upon Buyer's written request. Compliance by Seller with insurance requirements does not in any way affect Seller's indemnification obligations. Seller is solely responsible for assessing the adequacy of its insurance, and Buyer in no way represents that the limits specified above are adequate to protect Seller's interests. In the event that Seller utilizes subcontractors, Seller shall require each subcontractor to maintain its separate insurance complying with the terms hereof.

- 16 Country of Origin; Related Requirements.** Seller hereby warrants that each of the Goods specified by this Order are of U.S. origin, within the meaning of the customs laws of the United States, as presently interpreted by the U.S. Customs Service, unless before the time it supplies any Goods Seller notifies Buyer in writing of a different country of origin, in which case, it shall give full details regarding such country of origin. Upon Seller's notification of a different country of origin, Buyer may either reject or accept the Goods by written instruction and if no written instruction is given, the Goods shall be deemed rejected. If Seller supplies Goods of foreign origin pursuant to this Order and fails to notify Buyer in writing, or notifies Buyer incorrectly of the country of origin, whether through negligence or without negligence, Seller shall indemnify Buyer for all its expenses, duties, penalties, damages, including compromise or mitigated settlements, and attorney's fees incurred by Buyer by such failure to notify or by any incorrect notification.
- 17 Termination for Seller's Default:** Subject to a five (5) day cure period, Buyer shall have the right to terminate for default if Seller breaches any of the following obligations under this Agreement and fails to cure the breach in such period: (a) Seller does not make deliveries when and as specified in the delivery schedule; (b) Seller breaches any of the warranties of Seller; (b) Seller becomes insolvent or if voluntary or involuntary bankruptcy proceedings are initiated by or against Seller. In the event of termination for default, and in addition to any other remedies provided by law, Seller shall refund to Buyer any portion of the sales price paid by Buyer for the undelivered portion of the Contract, and, if Buyer procures replacement goods, Seller shall pay to Buyer a sum equal to the difference between the cost of replacement Goods and the sales price. If it is determined, however, that Seller's failure to perform this Contract is due to unforeseeable causes beyond the control and without the fault or negligence of Seller (other than insolvency or bankruptcy proceedings), such cancellation shall be deemed to have been made pursuant to Section 17 hereof entitled "Termination for Convenience." The rights provided in this Section are in addition to and not in lieu of any other remedies which Buyer may have hereunder and in law or equity.
- 18 Termination for Convenience:** The Buyer may terminate performance of work under this Order in whole in part or from time to time by written notice of termination, whereupon the Seller will promptly stop work on that date and, to the extent specified in the notice, will terminate all subcontracts (if any) to the extent they relate to the terminated work. Seller will promptly advise the Buyer of the quantities of applicable work and material on hand or purchased prior to termination and the most favorable disposition that the Seller can make thereof. Seller will comply with the Buyer's instructions regarding transfer and disposition of title to such work and material. Within 60 days after receipt of such notice of termination, the Seller will submit all its claims resulting from the termination. Buyer will have the right to inspect all finished Goods and to audit the cost of all work in process and raw material applicable to the terminated work. Buyer will not be responsible for any items used or sold by the Seller, or the cost of any defective, damaged or destroyed work or material. Buyer will make no payments for finished work, work in process or raw materials

fabricated or procured by the Seller in excess of any Order (or permission to proceed with part of an Order) or after receipt of notice of termination. Notwithstanding the above, payments made under this clause shall not exceed the sales price specified in this Order. Payment made under this clause will constitute the Buyer's only liability in the event this Order is terminated hereunder. Except as otherwise provided in this Order, the provisions of this clause will not apply to any cancellation by the Buyer for default by the Seller or for any other cause allowed by law or under this Order.

- 19 **Compliance With Applicable Laws:** Seller agrees with, and represents and warrants to Buyer that, in performance of this Contract, and with respect to all Goods and Services delivered hereunder, it will comply with all applicable laws, statutes, rules, regulations or orders (collectively and severally, "Laws") of the United States government, any state or political subdivision thereof, and, if applicable, any other country or governmental authority thereof, including, without limitation, Laws governing the following: (a) fair labor standards and employment; (b) Executive Order 11246, as amended by Executive Order 11375 (Equal Opportunity), Executive Order 11625 (Minority business Enterprises), Executive Order 11701 (Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era), and Executive Order 11758 (Employment of the Handicapped) and other nondiscrimination and/or affirmative action Laws; (c) occupational safety and health; (d) environmental; (e) bribery and corrupt practices; (f) labeling, information and transportation; (g) importation and or exportation; (h) licensing; (i) government procurement; and (j) data protection and privacy. Seller agrees to provide appropriate certificates of compliance to Buyer upon request with respect to any or all such matters. In the event that Buyer's customer requires that particular legal requirements be applied to suppliers, subcontractors or subsuppliers such as Seller, Seller agrees to comply with such requirements.
- 20 **Labor Disputes:** Whenever an actual or potential labor dispute is delaying or threatens to delay the timely performance of this Order, Seller will immediately notify the Buyer and any government representative designated by the Buyer of such dispute and furnish all relevant details. Seller will include a provision identical to the above in each subcontract hereunder and, immediately upon receipt of any such notice, pass it on to the Buyer.
- 21 **Government Contracts:** If this Order is issued for any purpose which is either directly or indirectly connected with the performance of a prime contract with the U.S. government or is a subcontract thereunder, each of the applicable procurement regulations in effect on the date of this Order is incorporated herein by reference in such manner as will enable Buyer to meet its obligations arising out of the government prime contract or subcontract.
- 22 **Quality Management:** Buyer is committed to managing its quality operations in accordance with the ISO9001:2000 standard. To this end, Buyer encourages all of its suppliers to develop and implement an effective quality management system and to cooperate with Buyer in resolving mutual quality issues.
- 23 **Material Safety Data Sheets:** Seller warrants that a copy of any change to a Material Safety Data Sheet (MSDS) for chemicals, compounds or hazardous materials is forwarded to the Buyer's Purchasing departments in advance of shipment or enclosed with the shipment of the supply to the Buyer's premises.
- 24 **Waiver:** The failure of Buyer to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this Contract or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such terms, covenants or conditions or the future exercise of such right, but the obligation of Seller with respect to such future performance shall continue in full force and effect.
- 25 **Assignment and Subcontracting:** None of the sums due or to become due, nor any of the work to be performed under this Contract shall be assigned by Seller without Buyer's prior written

consent. Buyer shall remain fully responsible for Goods or Services that are assigned or performed by any subcontractor.

- 26 Law Governing; Forum; Attorney's Fees:** This Contract shall be governed by, and interpreted in accordance with, the laws of the State of California. Any dispute which arises under this Contract which cannot be resolved amicably by the parties shall be settled by binding arbitration, in accordance with the Commercial Rules of the American Arbitration Association in San Francisco, California. Judgment upon the award rendered may be entered in any court having competent jurisdiction. Costs and expenses of the arbitration shall be borne equally by the parties unless otherwise provided by the arbitrator(s). Notwithstanding the foregoing, claims for non-payment, fraud, or infringement of intellectual property may be brought in any court of competent jurisdiction and shall not be subject to binding arbitration.