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1) **ACCEPTANCE OF TERMS AND CONDITIONS.** THE FIRST TO OCCUR OF ANY OF THE FOLLOWING EVENTS WILL CONSTITUTE A BINDING CONTRACT BETWEEN THE BUYER AND SELLER AND INDICATES CONCLUSIVE ACCEPTANCE OF THE PURCHASE ORDER AND THESE TERMS AND CONDITIONS:

- (a) Seller’s written acceptance;
- (b) Seller’s commencement of any work or services toward performance of the Purchase Order, or
- (c) Seller’s shipment or provision, in whole or in part, of any Products or Services ordered.

Any additional or inconsistent terms or conditions of Seller’s acknowledgement of the Purchase Order are not binding on Buyer unless agreed in writing by Buyer.

2) **DEFINITIONS.** The terms herein shall have the following meanings:

- a) “Lucas Industries” or “Buyer” means Lucas Industries of North Springfield Vermont.
- b) “Products” and “Services” means any products or services ordered from Seller as indicated on the face of the Purchase Order.
- c) “Purchase Order” means an order from Lucas Industries for Products or Services from the Seller, all of which are issued under these terms and conditions and any additional terms and conditions included or attached by Lucas Industries to the Purchase Order. A Purchase Order may be on paper or in electronic form.
- d) “Attachments” means additional documentation needed to define the requirements of the Purchase Order. These attachments may be on paper or in electronic form. The Purchase Order references any attachments and these attachments become part of the Purchase Order.
- e) ”Term and Conditions” means the terms and conditions in this document.
- f) “Seller” or “Vendor” means the party with whom Lucas Industries has placed the Purchase Order.
- g) “Written Notice” A notice pertaining to the administration of the Purchase Order which may be on paper or in electronic form.

3) **PRICE.** Seller agrees to furnish the Products and/or Services called for by the Purchase Order at the price(s) stated in the Purchase Order. If Vendor decreases prices for any items to be furnished hereunder, the price of all unshipped items shall be adjusted to the lower prices. If the Purchase Order is placed on an open order basis, and in the absence of a subsequent agreement, then the price to Buyer shall not be higher than Seller’s lowest prevailing price in effect on the date of the Purchase Order for the same or substantially similar Products or Services of comparable quality.

4) **TAXES.** The Buyer shall not be liable for any Federal, State, or Local taxes unless separately stated by the Buyer on the face of the Purchase Order and billed as a separate item. No sales/use tax shall be added when an exemption has been provided to Vendor or is indicated on the face of the Purchase Order.

5) **INVOICING, DISCOUNTS & PAYMENTS.** Seller will issue individual invoices for each shipment made under the Purchase Order. An acceptable invoice shall include, without

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limitation, the Purchase Order number, and a description of the items, quantities and unit prices for all Products and/or Services delivered and being invoiced. Any applicable discount basis shall be computed from the latest of:

- (i) The scheduled delivery date,
- (ii) The actual delivery date, or
- (iii) The date an acceptable invoice is received.

Payment terms are generally thirty (30) days following receipt of an acceptable invoice, unless stated differently on the Purchase Order. However, Seller will not assess any interest charges on payments due, whether or not payment is made before of after the anticipated payments schedule.

6) CHANGES/CANCELLATION.

- a) Lucas Industries may at any time make changes in the delivery schedule, designs, quantities, specifications or place of delivery for Products and/or Services ordered hereunder. Lucas Industries may cancel the Purchase Order in whole or in part at any time and for any reason upon written notice to Seller and Seller shall stop work immediately upon receipt of said notice.
- b) There shall be no charges for canceling orders for standard items.
- c) Any claim for cancellation charges for nonstandard items must be submitted to the Buyer in writing within thirty (30) days after receipt of the Buyer's termination notice. In no event, shall any such claim for nonstandard items exceed the total price quoted for items canceled. The Buyer reserves the right to inspect the Seller's work in process and to audit all relevant documents prior to paying any portion of Seller's claim. Upon payment of the Seller's claim, the Buyer shall be entitled to all work and materials paid for.
- d) Changes to the Sellers product or process from those developed for the performance of the Purchase Order require approval by Lucas Industries before work associated with the Purchase Order can proceed.

7) DELIVERY AND RISK OF LOSS. TIME IS OF THE ESSENCE. Delivery shall be in accordance with the schedule set forth in the Purchase Order and any anticipated or actual delays in shipment shall be reported immediately by Seller to Buyer. In the case of delayed delivery, the Buyer may refuse to accept such goods or services and cancel this contract or Buyer may cause the goods to be shipped by the most expeditious means of transportation. Any additional transportation charges in excess of those which would apply for the usual means of transport shall be the responsibility of the Seller.

Delivery in advance of the schedule set forth in the Purchase Order need not be accepted by the Buyer, but if accepted, the Buyer reserves the right to defer inspection and/or payment according to the original schedule.

The risk of loss or damage in transit shall be upon the Seller.

8) BUYER'S PROPERTY. All equipment or material furnished to Seller by Buyer, and all drawings, blueprints, jigs, fixtures, printing plates, dies, tools, or patterns, molds, etc. charged by Seller to Buyer, shall be the property of Buyer and shall be delivered to Buyer at its written request.

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9) **PACKING, SHIPMENT, SERVICES.** All Products shall be suitably prepared and packed for shipment according to the Buyer’s instructions and in a manner which follows good commercial practice, is acceptable to common carriers for shipment at the lowest rate, and is adequate to insure safe arrival. The Seller shall mark all containers with necessary lifting, handling and shipping information, Buyer’s Purchase Order number, date of shipment and the names of the Buyer and the Seller. A packing list shall accompany each package or shipment. All material certifications chemical and physical test or inspections and Material Safety Data Sheets shall also accompany each package. In the absence of a packing list, the Buyer’s count of the number of units in the shipment shall be conclusive. All Services shall be performed to high industry standards by knowledgeable personnel skilled in the field.

10) **ACCEPTANCE.** Payment for items and Services ordered hereunder shall not constitute acceptance. All items and Services are subject to Buyer’s inspection and test before final acceptance at the Buyer’s premises. If any inspection or test is made on Seller’s premises, The Seller shall provide the Buyer’s inspectors with reasonable facilities and assistance at no additional charge. In the event of rejection of Products or Services, the Buyer will have the right, at its sole option, to

- (i) Return the Products for prompt refund of previous payments, if any,
- (ii) Return the Products for prompt replacement with conforming Products,
- (iii) Hold the Products for prompt correction by Seller at the Buyer’s plant,
- (iv) Accept the Products subject to an equitable adjustment in price, or
- (v) Notify Seller of nonconforming Products or Services and receive a full refund.


No nonconforming product, wherever it occurs, is accepted by the Buyer without the Buyer’s written acceptance of the nonconformance.

Rejected Products returned to Seller will be returned at Seller’s risk and expense. All corrective work will be performed at Seller’s expense. If the Seller fails to promptly refund prior payments or to promptly replace or correct rejected Products or Services in accordance with the Buyer’s instructions, The Buyer will have the right to cancel the Purchase Order for breach, and, in addition to any other remedies available at law, obtain replacement Products or Services (cover) from another seller at the Seller’s expense.

11) **WARRANTIES.** Seller warrants that all supplies materials, parts, services and work covered by the Purchase Order will conform to the specifications, drawings, samples or other description furnished or adopted by the Buyer. Products provided hereunder shall be merchantable, free from defects in workmanship and materials. Vendor further warrants that all Services performed under the Purchase Order shall comply with all warranties and shall be performed in accordance with the highest prevailing performance standards. At the Buyer’s option, the Seller shall promptly repair, correct, replace or refund the purchase price and cost of shipment to the Buyer of all defective or otherwise unacceptable Products and/or Services. The Buyer shall have no liability for any returned Products and the Seller shall bear all liability, responsibility and expenses for them.

The Seller shall provide all material certifications, chemical and physical test reports and inspection records (as applicable) as part of the warrant relating to the Purchase Order.

The Buyer, Buyer’s customer and other regulatory agencies are allowed “right of entry” to the Sellers facility to determine and verify the quality of work, records and the Seller’s ability to perform the requirements and conform to the specifications of the Purchase Order.


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- 12) INDEMNITY AND INSURANCE.** Vendor shall defend, indemnify and hold harmless the Seller and the Seller's customers against any and all costs, expenses, losses, damages or liabilities (including attorneys' fees) arising in connection with any actual or alleged
- (a) Personal injury or property damage caused by or arising out of the Services or use of the Products or Services,
 - (b) Manufacturing defect in the Products,
 - (c) Failure of the Products or Services to comply with the Buyer's specifications, and/or
 - (d) infringement of any patent, copyright, trade secret, trademark or other intellectual property right arising out of the use or sale by Seller or use by Seller's customers of any Products or Services furnished hereunder. The Buyer shall notify The Seller of any such claim or demand and the Seller shall defend any suits based thereon. If an injunction issues as a result of any such claim, Seller agrees, at its expense, to either at the Buyer's option:
 - (i) Procure for the Buyer the right to continue using Products or Services ordered there under;
 - (ii) Replace such Products with non-infringing items;
 - (iii) Modify the Products so they become non-infringing;
 - (iv) Re-perform the Services, or
 - (v) At Buyer's option, refund to the Buyer the amount paid for the Products or Services. Vendor shall have no liability to the extent that the claim or liability arises by reason of any equipment or materials furnished by the Buyer to Seller or to the extent that the claim or liability is a direct result of the Products having been manufactured pursuant to the Buyer's design or specifications.

Seller agrees to carry Liability insurance; minimum shall be no less than \$500,000 and a type acceptable to Buyer. Seller also agrees to carry Workmen's Compensation, Occupational Disease, and Employer's Liability Insurance in accordance with applicable state and federal laws. Seller shall furnish two copies of each certificate evidencing the existence of the aforementioned insurance when Seller is working on Buyer's premises. The insurance certificates for general liability shall name Buyer as an additional insured. Each certificate shall be endorsed to provide that Buyer will receive 10 days advance notice prior to cancellation or any material change. The obligation of Seller to carry such insurance shall not limit in any way Seller's liability and its obligation to indemnify Buyer as above provided for.

13) CONFIDENTIALITY/USE OF NAME.

- a) In connection with the performance of the Purchase Order, the Seller may have access to, either orally, in writing or by observation, certain valuable information of a confidential nature relating to Lucas Industries or its business including, without limitation, information relating to the Buyer's products, technology, services, research and development, and engineering processes, computer software, inventions, intellectual property, business plans, finances, customers (and their information) and employees (the "Confidential Information"). The Seller agrees:
 - (i) That the Buyer retains all right, title and interest in the Confidential Information,
 - (ii) To maintain the Confidential Information in confidence,
 - (iii) Not use the Confidential Information except in accordance with the provisions of the Purchase Order, and

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(iv) Not to disclose any Confidential Information to any third party without the Buyer's prior written consent.

The Seller agrees to treat the Confidential Information in the same manner as the Seller treats its own confidential information of a similar nature, but in no event exercising less than reasonable care. The Confidential Information shall remain the sole property of the Buyer or its licensors. The Seller will, on the Buyer's request or upon completion of the Purchase Order, promptly return or certify the destruction of all Confidential Information provided to the Seller.

b) The Seller may not use The Buyer's name in disclosures to the public or advertisements of any kind, nor shall the Seller disclose the existence or content of the Purchase Order, without the Buyer's prior written consent.

14) DISCLAIMER OF CONSEQUENTIAL DAMAGES. Lucas Industries shall not be liable to Seller or any third party for any lost profits, consequential, indirect, special, incidental or punitive damages of any kind, including but not limited to loss of use, revenue or profit, interruption of business or claims against either party or its customers by any third party, whether such claim is based in contract, tort (including negligence), strict liability or any other theory of liability, even if Lucas Industries is advised of the possibility of such damages.

15) LIMITATION OF LIABILITY. In on event will Lucas Industries total liability under this agreement for all claims by Seller or any third party of whatever nature exceed monies received by Seller from Lucas Industries pursuant to this agreement during the six month period preceding the event giving rise to liability. This limitation is cumulative for all claims howsoever arising, and this limitation shall apply even if the remedies provide in this agreement shall fail of their essential purpose.

16) FORCE MAJEURE. Neither party shall be responsible for its failure to perform due to causes beyond its reasonable control such as acts of God, fire, earthquakes, theft, war, riot, embargoes or acts of civil or military authorities. If delivery is to be delayed by such contingencies, Seller shall immediately notify the Buyer in writing and the Buyer may either: (i) extend Seller's time of performance; or (ii) terminate the uncompleted portion of the order at no cost to the Buyer.

17) ASSIGNMENT. Seller shall not delegate any duties nor assign any rights under the Purchase Order without the prior written consent of the Buyer, and any attempted delegation or assignment lacking such consent shall be void.

18) INDEPENDENT CONTRACT. In the event that any goods ordered hereunder require in connection with the performance of the Purchase Order, the services of a contractor engaged by Seller or a supervisor, engineer or other employee connected with or employed by Seller, and Seller agrees to furnish same, either with or without charge, such contractor, supervisor, engineer or other employee in performing such services shall not be deemed to be the agent or employee of Buyer.

19) PATENTS. Seller shall indemnify and hold Buyer harmless from all claims, liability, loss, damage, or expense, including attorney fees, for infringement or alleged infringement of any patents, or any litigation passed thereon, arising out of the sale or use of the goods furnished pursuant to this contract and Seller shall, if requested by Buyer, assume at its own expense the defense of all suits charging any such infringement.

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- 20) COMPLIANCE WITH LAWS.** Seller warrants that in its performance of this contract it will comply with all applicable Federal, State and local laws, regulations, rulings and orders.
- a) **FAIR LABOR STANDARDS ACT.** To be approved for payment all invoices must carry the following certification: We hereby certify that these goods were produced in compliance with the Fair Labor Standards Act of 1938, as amended, and regulations there under.
 - b) **EQUAL EMPLOYMENT OPPORTUNITY.** The Equal Employment Opportunity clause in Section 2102, Paragraphs 1 through 7 of the Executive Order 11246 as amended, relative to equal employment opportunity and the implementing Rules and Regulations of the Office of Federal Contracts Compliance are incorporated herein by Specific reference.
 - c) **OSHA.** Without limitations of the provision of Paragraph 14 above, Seller expressly represents and warrants that all equipment, supplies, materials, parts, services and work covered by this contract will comply in all respects with all applicable standards, rules and regulations issued under Federal Occupations Safety and Health Act.
- ***NOTICE...IN ACCORDANCE WITH OSHA PART 29, RULE 1910.1200, "HAZARD COMMUNICATION STANDARD." PLEASE SEND LUCAS INDUSTRIES UPDATED "MATERIAL SAFETY DATA SHEETS" (MSDS) ON THE PRODUCTS ORDERED.