

# JOHN MEZZALINGUA ASSOCIATES, LLC (“JMA”)

## TERMS & CONDITIONS OF PURCHASE

1. **ACKNOWLEDGEMENT:** This purchase order made by JMA (“Order”) includes and is expressly limited to these terms and conditions and all specifications, drawings, data and additional special terms and conditions contained herein, attached hereto or incorporated herein by reference. This Order constitutes an offer to the Seller subject to the terms and conditions set forth herein and is not an expression of acceptance or a confirmation document. Seller’s acceptance of this Order becomes a binding contract when it is accepted by Seller. The Seller’s acceptance is limited to the exact terms of the offer and it is specifically understood that acceptance shall occur either by an acknowledgment by the Seller or any commencement of work, placement of procurement orders for materials or shipment by Seller. Acceptance may only be on the exact terms and conditions set forth herein. No condition stated by Seller in accepting this or any Order shall be binding on JMA if different from or in addition to the conditions set forth herein unless agreed to in writing by JMA. Any acknowledgment which contains terms in addition to or inconsistent with the terms of this Order shall be deemed to be a counter offer to JMA and shall not be binding upon JMA unless accepted by written instrument signed by an authorized representative of JMA and delivered to Seller and the performance by Seller in the absence of such written acceptance of such counter offer, shall be deemed to be performance in accordance with the terms of this Order.

2. **ADDENDA:** All supplemental or acknowledged sheets, schedules, exhibits, specifications, drawings, data or riders which may be annexed hereto or referenced in this Order are made part of the Order. Seller acknowledges that it has available to it all specifications, drawings and data noticed in the Order and that they are adequate to enable Seller to perform the work called for therein in accordance with the delivery schedule set forth therein.

3. **CONFIDENTIAL RELATIONSHIP:** Unless the written consent of JMA is first obtained, Seller shall not in any manner advertise or publish or release for publication any statement mentioning JMA or the fact that Seller has furnished or contracted to furnish to JMA items and/or services required by this Order. Seller shall not disclose any information relating to any Order except to the extent necessary for performance.

4. **LAWS GOVERNING:** The rights and duties of the parties shall be construed in accordance with the laws of the State of New York without giving effect to the principles of conflict of laws. All disputes between JMA and Seller relating to the subject matter of an Order shall be resolved exclusively in the federal and state courts located in Onondaga County, New York and each party irrevocably consents to the personal and subject matter jurisdiction of such courts with respect thereto. JMA and Seller specifically agree that the validity, interpretation and performance of the terms of this Order shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods.

5. **COMPLIANCE WITH LAWS:** Seller represents that the goods covered by this Order will not be manufactured and are not being sold, priced, or shipped in violation of any federal, state, or local law. Seller represents that all goods or services being sold to JMA under this Order will be in compliance with the Fair Labor Standard Act, the Equal Employment Opportunity Clause in Section 202, Paragraphs 1 through 7 of Executive Order 11246, as amended, relative to equal employment opportunity and the implementing rules and regulations of the Office of Federal Contract Compliance and shall comply with the standards set forth in Title 29, Labor, Chapter XVII, Part 1910 of the Code of Federal Regulations and all OSHA and all state, federal and environmental laws and regulations as indicated by current laws.

6. **INDUSTRIAL LAWS AND BENEFITS:** Seller’s relationship to JMA in the performance of the Order is that of an independent contractor. Neither the Seller nor any of the persons furnishing materials or performing work or services which are required by this Order are employees of JMA within the meaning of or the application of any Federal or State Unemployment Insurance Law or other Social Security Law or any Workmen’s Compensation Industrial Accident Law or other Industrial or Labor Law. The Seller shall, at its own expense, comply with such laws and assume all liabilities or obligations imposed by any one or more of such laws and regulations thereunder with respect to this Order.

7. **LIMITATIONS OF LIABILITY:** Notwithstanding any other provision of the Order, JMA shall not by any reason of termination, cancellation or breach of this Order be liable to Seller for any compensation, reimbursement, or damages, including, in particular, any special, incidental, or consequential damages. JMA’s maximum liability to Seller shall not exceed the purchase price of this Order. Any action against JMA under the Purchase Order or related to its subject matter must be brought within one year after the cause of action accrues.

8. **PRICE:** Except as may be otherwise provided on the face of this Order, the price includes all applicable federal, state, and local taxes in effect on the date hereof. Prices, charges or extra costs shall not be in excess of those listed on the face side of this Order. If price listed is incorrect, or not listed, Seller must notify JMA within five (5) days of receipt of this Order of the correct price, which said price may not be higher than last quoted or charged. Any increase in price shall be subject to prior authorization in writing by JMA as will any determination of price where not listed. Unless otherwise agreed to by JMA, prices will remain firm through completion of this Order.

9. **FABRICATION:** Unless otherwise authorized or agreed to in writing by JMA, Seller agrees not to fabricate any of the goods ordered by this Order or procure any materials required in their fabrication in excess of thirty (30) days in advance of agreed to shipping schedule(s) and quantity (ies) indicated. Any fabrication in advance of these instructions will be at Seller’s risk. In the event of specification or schedule changes, JMA will not be liable or responsible beyond such period unless otherwise authorized or agreed to in writing by JMA or in such cases where compliance to quantity (ies) or shipping schedule (s) otherwise mandates or warrants and advance notice is supplied to and agreed to by JMA. In the event of cancellation or termination, other than due to failure of Seller to comply upon terms and conditions contained herein, JMA shall only be responsible for that thirty (30) day portion of the Order and/or those items received and accepted prior to cancellation or termination.

10. **PACKAGING AND SHIPPING:** JMA will have no obligation to accept or pay for overshipments except where written permission for the same has been given before shipment. No charge will be permitted for boxing, crating or packaging. Shipments will be made pursuant to the shipping and/or routing instructions on the face of this Order. Seller assumes responsibility for any damages or loss in shipment, for articles covered by this Order, notwithstanding such shipping instructions. Unless otherwise provided for in this Order, Seller shall have title and bear risk of loss or damage to any goods purchased pursuant to this Order until they are received by JMA at the destination specified in this Order, or, if no destination is specified, at JMA’s principal place of business. Upon such receipt, title shall pass from Seller and Seller’s responsibility for loss or damage shall cease except for loss or damage resulting from Seller’s negligence. Passing of title shall not constitute acceptance by JMA. Shipments will not be made prior to specified dates unless otherwise notified. Any such shipments shall be considered dated according to delivery specified. Failure to comply or ship on the date(s) and the quantity (ies) specified or otherwise agreed to will, at JMA’s option, relieve JMA of any obligation to accept or pay for goods or undelivered goods, completed or in any state of fabrication, and JMA may at its option, cancel, or terminate this Order without cost or charge or any further obligation to Seller.

11. **WARRANTY:** In addition to and without prejudice to all other warranties, express or implied by law, Seller warrants that all goods delivered or specified in this Order: (a) will conform to all specifications made a part of this Order, (b) will be of good material and workmanship and will be free from defects, (c) will be fit for the purposes for which they are intended, (d) that the sales or use of the goods covered by this Order will not infringe on any United States or foreign patents, trademarks, copyrights or other

intellectual property rights of any third party and (e) will meet RoHS 2 standards for acceptable levels of hazardous substances or comply with an exemption under Directive 2011/65/EU. All warranties, express or implied, shall survive inspection, acceptance and payment. JMA’s approval of Seller’s samples shall not be construed as a waiver by JMA of any requirement of the drawings, specifications and/or other descriptions applicable to this Order or an expressed or implied warranty of the Seller unless specifically so waived by JMA in writing. All warranties shall run to JMA and its customers. In the event of Seller’s breach of any warranty contained herein, in addition to any other rights and remedies available to JMA, at law or in equity, JMA may, at any time within fifteen (15) months after delivery to JMA, return any non-conforming goods to Seller at Seller’s expense for either correction, replacement or credit as JMA may direct. If required by JMA, Seller shall with all possible speed correct, or replace the defective or non-conforming material, supplies, and/or services until fifteen (15) months after the date of redelivery to JMA. Seller further covenants to defend every suit which may be brought against JMA or any party selling or using any of JMA’s products for any alleged infringement thereof by reason of the sale or use of said goods and to pay and indemnify JMA against all expenses and fees to counsel which may be incurred in or about defending said suits and all costs, damages and profits recoverable every such suit.

12. **FALSE CLAIMS AND INDEMNITY:** The Seller shall indemnify the JMA for any cost incurred and any payments made by JMA resulting from false claims submitted by the Seller under this Order or as a result of a Seller’s misrepresentation of fact or fraud relating to any claim or dispute arising under or related to this Order.

13. **INDEMNIFICATION AND INSURANCE:** If, in the course of the performance of this Order, Seller, its agents, employees or subcontractors enter upon premises occupied by or under control of JMA or any of its customers or suppliers, Seller shall take all necessary precautions to prevent occurrences of any injury, including death, to any person or any damage to any property arising out of any act or omissions of Seller, its agents, employees, or subcontractors. Seller shall indemnify JMA for, and hold JMA harmless from, any liability, losses, damages, claims and expenses arising out of or connected with any act or omission of the Seller, its agents, employees, or subcontractors except for injury or damage due solely to JMA’s negligence or other fault. Seller shall maintain such public liability, property damage, Workers’ Compensation, automobile liability insurance as will protect JMA from any such risks. Upon JMA’s request, Seller shall provide a certificate of insurance.

14. **INSPECTION:** Notwithstanding prior payment to obtain cash discount, all articles shipped under this Order shall be subject to sampling and/or inspection at any time after receipt of shipment. If inspection at any time shows that the articles, material or workmanship are not strictly as warranted, such articles may be rejected and returned (with cost of transportation both ways charged to Seller) or reworked (with cost of labor and materials at the prevailing rate to be paid by Seller). No rejected and returned articles shall be replaced without a replacement Order.

15. **TOOLS:** All specification, drawings, or other documents and data furnished by JMA and all tools, dies, molds, jigs, fixtures, patterns, machinery, special test equipment, special taps, and gauges, including plates, negatives, and/or film used for the purpose of reproduction, which have been furnished, paid for, or charged against JMA or which have had their cost amortized will be delivered in good condition (normal wear and tear excepted) to JMA FCA (Incoterms 2010) the Seller’s plant, immediately upon request and seller shall be liable for all damage, loss or casualty to such property until so returned to JMA. Seller warrants that said tools, dies, moulds, jigs, fixtures and documents or data furnished will not be used for any work or for the production of any material or parts other than for JMA without its written permission. Seller, at its own cost and expense, shall keep the same in working condition and fully insured for the benefit of JMA at all times while in Seller’s possession.

16. **CHANGES:** JMA reserves the right to cancel all or any portion of this Order without liability if not filled as specified. JMA may change the scheduled dates of shipment, and if the Order calls for partial shipment, JMA may suspend any shipment and such suspended amount then may be taken out on or before the last specified shipping date. JMA also reserves the right to make changes in or to cancel this Order (in whole or in part) or to suspend shipments, where such change, cancellation or suspension is, in its option, rendered advisable by reason of the termination of orders by JMA’s customers, strikes, labor difficulties, or other contingencies. In the event of such termination, JMA will notify Seller in writing. JMA shall be responsible to Seller for (1) all goods received and accepted prior to the termination date; (2) all goods in transit in accordance with the agreed to shipping schedule(s) and meeting specifications set forth herein; and (3) all goods fabricated or in process and scheduled for shipment within thirty (30) days of the termination date. JMA shall not be liable for cost or cancellation charges on any goods manufactured or considered work-in-process in excess of thirty (30) days beyond the termination date unless otherwise agreed to in writing by JMA prior to termination.

17. **NOTICE OF DELAY:** Whenever any event, including an actual or potential labor dispute, is delaying or threatens to delay the timely performance of the Purchase Order, Seller shall immediately give notice thereof, including all relevant information with respect thereto, to JMA.

18. **SELLER SUBMISSION:** JMA will be under no obligation to regard any submission by Seller relating to or under this Order as confidential or proprietary regardless of any marking or notice to the contrary.

19. **ASSIGNMENT:** No assignment or transfer in whole or in part of this Order or any monies due or to become due hereunder shall be binding upon JMA without prior written consent. Payments whether to Seller or any assignee, shall be subject to set off or recoupment for claims which JMA may have against the Seller, however arising.

20. **REMEDIES:** The remedies herein reserved shall be cumulative, and additional to any other or further remedies provided in law or equity. No waiver of a breach of any provision of this contract shall constitute a waiver of any other breach or of such provision.

21. **SEPARABILITY:** If any term or provision of this Order is determined to be invalid or unenforceable, such determination shall not affect the validity of the remaining terms and conditions. In such case, the Order shall be deemed to have been executed without the invalid or unenforceable term or provision.

22. **PRODUCTIVITY:** JMA and Seller agree to jointly establish goals to improve productivity of products and/or services provided herein as measured either by (a) a reduction in the price of such products and/or services, or (b) a reduction in the unit manufacturing cost of JMA goods. JMA and Seller agree that to the extent such productivity measures are implemented, the goal shall be for JMA to benefit by double-digit productivity gains year over year.

23. **COUNTRY OF ORIGIN:** United States law requires every article of foreign origin imported into the United States, or its immediate container, and the outer package in which such article is imported, to be marked, branded, or labeled, legibly in English words, in a conspicuous place, in such a manner as to indicate the country of origin (manufacture) of such article.

Shipments of materials of foreign manufacture into the United States must also indicate country of origin and labeling must comply with the above paragraph. Further work or material added to an article in a country must effect a substantial transformation in order to render such country the “Country of Origin”. United States Customs’ Law makes compliance to this regulation mandatory. Failure to comply may result in impoundment of your shipment. Any and all fines, penalties, storage costs, etc., by United States Customs are the responsibility of the exporter.