

## **PURCHASE ORDER TERMS AND CONDITIONS INTEGRATED DRIVE SYSTEMS, LLC**

(All references in the following to the “Company” shall mean Integrated Drive Systems, LLC and all subsidiary and affiliated companies.)

- 1. ACCEPTANCE OF CONTRACT.** The Company expressly limits Seller’s acceptance of this Purchase Order to the terms and conditions stated herein. **NO CONFLICTING TERMS AND CONDITIONS WILL APPLY TO THIS TRANSACTION UNLESS THE COMPANY SPECIFICALLY AGREES TO SUCH TERMS AND CONDITIONS IN WRITING.**
  
- 2. SHIPPING.**
  - 2.1** No packaging or cartage charges will be allowed except where specifically agreed upon.
  
  - 2.2** Except as otherwise provided herein, Seller shall include one copy of packing list with shipment and, on same day of shipment, mail one copy to destination of material. Material delivered in error or over shipped in quantity will, at the Company’s option, be returned at Seller’s expense.
  
  - 2.3** Seller shall ship material in compliance with all federal statutes and regulations. Seller will attach to its invoice the original bill of lading. If transportation costs are charged as a separate feature on the invoice, the carrier’s original freight bill must also be attached.
  
- 3. SUBSTITUTION.** Substitutions of material or extra charges will not be permitted unless authorized in writing by the Company.
  
- 4. PRICING.** Prices shown on the face of this Purchase Order shall remain firm through delivery unless otherwise agreed and indicated on the face hereof.

Subject to any discount terms, all invoices shall be payable net within forty-five (45) days from date of invoice.
  
- 5. INSPECTION.** All material furnished on this Purchase Order shall be the best of their respective kinds and shall be subject to the Company’s inspection and approval at any reasonable time before, or during manufacture, or within thirty (30) days after delivery to destination. Material rejected for just cause will be held for Seller’s disposition. Prior payment to secure cash discount does not constitute acceptance by the Company of the material furnished on this Purchase Order.
  
- 6. WARRANTY.** Seller guarantees full, complete, and maximum warranties of title, fitness for purpose, and merchantability for the items furnished on this Purchase Order

and agrees to replace or repair without cost to the Company, any item on which defective workmanship or material is found, provided such claim is made within one year from date of installation of material or eighteen (18) months from date of shipment, whichever comes first. Any reasonable expense incurred by the Company to repair or remedy any deficiencies in the material supplied hereunder shall be promptly paid by Seller. Transportation and handling charges for replacement and/or return of defective material are for Seller's account.

7. **CANCELLATION.** The Company shall have the right to cancel all or any separable part of this Purchase Order by written notice. At the time of such cancellation, Seller shall discontinue all work pertaining thereto, place no additional orders, and cancel existing orders on the best possible terms. Pending the Company's instructions, Seller shall preserve and protect material on hand, work in progress, and completed work, both in its own and in its supplier's plants. Cancellation payment, if any, shall be mutually agreed to by the Company and Seller, based on that portion of the Purchase Order price as the work satisfactorily performed to the date of the cancellation bears to the entire work contracted for, less any sums of money paid to Seller. Seller shall not be entitled to any prospective profits or damages because of cancellation.
8. **DEFAULT.** If Seller breaches any provisions of this Purchase Order or so fails to make progress as to endanger timely performance and does not correct such failure within ten (10) days after receipt of written notice from the Company specifying such failure, the Company shall have the right, in addition to any other rights or remedies it may have under this Purchase Order or by law, to terminate this Purchase Order for default by giving Seller written notice. Upon default termination, Seller shall be liable to the Company for all costs in excess of the Purchase Order price incurred by the Company in effecting completion of performance.
9. **AUDITS.** All transactions shall be based strictly on service, quality, and competitive price of material. The Company may, at its sole expense, audit Seller's records including all books, papers, documents, agreements, and any other data that, in the Company's sole judgment, may have an affect on or be related to this Purchase Order. Seller shall cooperate fully in furnishing all requested records. All audits will be conducted in accordance with generally accepted auditing standards and during normal business hours.
10. **INDEMNIFICATION.**
  - 10.1 Whenever used in this Section 10, the terms "Seller", "Company", "party" and/or "parties" shall include the party's respective directors, officers, employees, affiliates, subsidiaries and/or agents.
  - 10.2 **SELLER SHALL INDEMNIFY AND HOLD COMPANY HARMLESS FROM AND AGAINST ANY LOSS OR LIABILITY ARISING OUT OF ANY CLAIM OR CAUSE OF ACTION INCLUDING, BUT NOT LIMITED TO, CLAIMS OR CAUSES OF ACTION BASED ON NEGLIGENCE, STRICT LIABILITY OR ABSOLUTE LIABILITY FOR DESTRUCTION OF OR DAMAGE TO PROPERTY, INCLUDING SELLER'S PROPERTY,**

**CONTAMINATION OF OR ADVERSE EFFECTS ON THE ENVIRONMENT, ANY VIOLATION OF ANY GOVERNMENTAL LAWS, REGULATIONS OR ORDERS, OR INJURIES TO OR DEATH OF PERSONS, INCLUDING SELLER'S EMPLOYEES, VENDORS, SUBCONTRACTORS, AGENTS OR ASSIGNS, TO THE EXTENT CAUSED BY, RESULTING FROM, GROWING OUT OF, OR INCIDENTAL TO THE WORK PERFORMED UNDER THIS PURCHASE ORDER, IRRESPECTIVE OF WHETHER SUCH CLAIMS OR CAUSES OF ACTION ALLEGE OR ARE BASED IN PART UPON THE NEGLIGENCE OR FAULT OF COMPANY, AND SHALL, AT THE OPTION OF THE COMPANY, DEFEND COMPANY AT SELLER'S SOLE EXPENSE IN ANY LITIGATION INVOLVING THE SAME, REGARDLESS OF WHETHER SUCH WORK IS PERFORMED BY SELLER, ITS EMPLOYEES, OR BY ITS VENDORS SUBCONTRACTORS, AGENTS OR ASSIGNS, THEIR EMPLOYEES, OR ALL OR EITHER OF THEM; PROVIDED, HOWEVER, THAT SUCH INDEMNIFICATION AND HOLD HARMLESS SHALL NOT APPLY TO CLAIMS FOR LOSS, DAMAGE, INJURY, OR DEATH (OTHER THAN LOSS OF, DAMAGE TO, OR LOSS OF USE OF SELLER'S PROPERTY) WHEN IT IS PROVEN BY SELLER TO HAVE BEEN CAUSED BY THE SOLE NEGLIGENCE OF THE COMPANY.**

11. **FORCE MAJEURE.** Either party to this Purchase Order shall be free from liability for failing to perform hereunder if such failure is caused by acts of God, fires, strikes, equipment breakdown, or other causes beyond the reasonable control of the affected party. In the event either party is unable to perform for reasons beyond its control, the other party shall have the right to either accept the delay in ability to perform or terminate the Purchase Order.
12. **PAYMENT LIABILITY AND LIENS.** Seller shall promptly pay all costs incurred by Seller in supplying the material and shall take all action reasonably necessary to (a) avoid the attachment of a lien on Company's property, or (b) remove any lien on Company's property arising from this Purchase Order. Seller and its vendors shall promptly and satisfactorily settle any such claims. Company shall have the right, after so notifying Seller in writing, to settle such claims for the account of Seller and deduct the amount thereof from amounts payable to Seller. Payments due may be withheld in whole or in part if Company deems such withholding necessary to protect it from claim or loss. **Seller shall indemnify, defend, and hold Company and affiliated companies, and their respective officers and employees harmless from any causes of action, claims, liabilities, costs (including attorney's fees), damages, losses, liens, or judgments arising out of any claims or causes of action for failure of Seller to pay for services, labor, material, supplies or equipment furnished directly or indirectly by Seller or any of its subcontractors or Vendors under this Agreement.**
13. **PATENTS.** Seller agrees to defend and hold Company harmless from all damages or costs (including legal costs) arising out of alleged patent infringement resulting from acceptance of this Purchase Order.

14. **PROPRIETARY INFORMATION.** Any drawings furnished to Company with or as a result of this Purchase Order will be treated as proprietary information. Drawings, data, designs, inventories, and other technical information supplied by Company shall be held in confidence by Seller. Such information shall not be reproduced, used, or disclosed to others by Seller without Company's prior written consent, and shall be returned to Company upon completion of Seller's obligations under this Purchase Order or upon demand.
15. **ATTACHMENTS.** Any specifications and drawings which are attached hereto or are referred to herein are hereby incorporated into and made a part of this Purchase Order.
16. **ADVERTISING.** Seller shall not release any photograph, drawing, data, or any article relative to the manufacture, sale, or installation of material furnished hereunder wherein Company or Company's location is named or shown, without first receiving written consent of Company.
17. **APPLICABLE LAW. ALL TRANSACTIONS UNDER THIS PURCHASE ORDER SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS, EXCLUDING CONFLICTS OF LAWS PROVISIONS WHICH WOULD APPLY THE LAWS OF ANOTHER JURISDICTION.**
18. **ASSIGNMENT.** This Purchase Order shall not be assigned without the written consent of Company.
19. **RESPONSIBLE CARE.** A Material Safety Data Sheet on all chemicals must be provided to Company's operating plant as well as a copy forwarded to the address below. Please indicate TSCA chemical substance inventory status of this material. If this material is being imported into the United States, the shipment must be accompanied by a TSCA Certification.

Integrated Drive Systems, LLC  
Attn: Keith Hoover – General Manager  
6754 Willowbrook Park Drive  
Houston, TX 77066
20. **WAIVER OF BREACH.** No waiver by Seller or Company of any breach of any of the terms and conditions contained in this Agreement shall be construed as a waiver of any subsequent breach of the same or any other term or condition.
21. **NOTICES.** All notices required or contemplated under this Agreement shall be given by prepaid first class mail or facsimile, and addressed as follows:

Company

Seller

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Attn: \_\_\_\_\_

Fax #: \_\_\_\_\_

Fax #: \_\_\_\_\_

**22. SEVERABILITY.** If any provision of this Agreement, or the application thereof to any person or circumstances shall be invalid or unenforceable, for any reason and to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but rather shall be enforceable to the fullest extent permitted by law.

**23. ALTERNATIVE DISPUTE RESOLUTION.**

**23.1** The parties will use their best efforts to resolve any dispute, controversy, or claim (herein “dispute”) arising from or in connection with this Purchase Order, in a fair and equitable manner. Prior to initiating arbitration hereunder, the parties will seek resolution of disputes through discussions between senior executives of the respective parties when necessary. In addition, the parties may engage in mediation of the dispute by mutual agreement.

**23.2** Any dispute that cannot be settled amicably within ninety (90) days of a written notice by one party to the other of the existence of such dispute specifying the object thereof, shall be settled, to the exclusion of a court of law or equity proceeding, by an arbitrator jointly selected by the parties, using the Commercial Arbitration Rules of the American Arbitration Association. Failing agreement by the parties, the arbitrator shall be appointed by the American Arbitration Association. The arbitration shall be held in Houston, Texas, within one hundred and eighty (180) days of written notice unless the parties mutually agree to an extension of time. Counterclaims may be filed in the same arbitral proceeding. Judgment upon the arbitral award may be entered in and enforced by a court of competent jurisdiction.

**23.3** Reasonable attorney’s fees may be awarded to the prevailing party.

**24. INSURANCE.** Seller shall provide at its expense the following insurance coverage:

**24.1** Insurance which shall comply with all applicable Workers’ Compensation and Occupational Disease laws.

**24.2** Employer’s Liability Insurance shall be provided with a limit of not less than \$1,000,000 per occurrence.

**24.3** General Liability Insurance with a combined single limit for personal injury and property damage of not less than \$1,000,000 per occurrence. Such insurance shall

include coverage for all liability assumed by Seller under the terms of this Purchase Order with limits not less than those set out above.

- 24.4** Such other insurance as Seller considers necessary. The insurance requirements listed above are established by the Company as minimum limits. The Company's requirements are not to be considered as indicative of the ultimate amounts and types of insurance which Seller may need. Seller shall require each vendor used by it in the performance of this Purchase Order to carry and pay for Workers' Compensation and Occupational Disease Insurance which shall comply with all applicable laws, General Liability Insurance with a combined single limit for personal injury and property damage of not less than \$1,000,000 per occurrence, and such other insurance as Seller may deem necessary. Seller shall furnish Company at the address indicated under Paragraph 21 within 30 (thirty) days after the establishment of this Purchase Order, certificates of insurance on forms approved by Company listing all such policies. Such certificates shall provide not less than 10 days' prior written notice to Company in the event of cancellation or material change affecting Company's interests and shall include a waiver of subrogation and a Seller liability endorsement in favor of Company. Company shall be named as additional insured on all such policies. Neither failure to comply nor full compliance with this Paragraph 24 shall limit or relieve Seller from holding Company harmless pursuant to Paragraph 10.
- 25. STATUTORY EMPLOYER.** Acceptance of this Purchase Order by Seller constitutes its recognition and agreement that a statutory employer relationship as envisioned by La. R.S. 23:1061(A), as amended by Act 315 of 1997 or any other similar laws, exists between Seller and Company with respect to the material or services to be provided under this Purchase Order, as to Seller's direct employees and its statutory employees; and that the material and services to be performed under this Purchase Order is an integral part of, or essential to, the ability of Company to generate its own goods, products or services.
- 26. CONSEQUENTIAL AND DELAY DAMAGES.** Neither Seller nor Company shall be liable to the other for loss of profits, loss of use, business interruption or any other special, indirect, incidental or consequential damages. Seller shall receive no payment or compensation of any kind for delays, disruptions, hindrances, inefficiencies, overtime or loss of productivity from any cause in the manufacture, shipment, installation or servicing of the material or provision of services, whether such delays, disruptions, hindrances, inefficiencies, overtime or loss of productivity are avoidable or unavoidable, but shall be entitled to so much additional time in which to complete the whole or any portion of the material required under this Purchase Order as the Company representative approves in writing based on Seller's written change orders.
- 27. ETHICS AND CONFLICTS OF INTEREST.** Seller shall not pay any salaries, commissions or fees, or make any payments or rebates, to any employee or officer of Company, or any designee of any such employee or officer, or favor any such employee or officer, or any designee of any such employee or officer, with gifts or entertainment of significant cost or value or with services or goods sold at less than full market value.

**28. INFORMATION FURNISHED BY COMPANY AND INFORMATION DEVELOPED UNDER THE CONTRACT.**

**28.1** Seller agrees that information furnished by Company to Seller and information developed hereunder, including any specifications, drawings and designs, is the personal property of Company, and such information shall not be divulged by Seller to another or be used in any way by Seller or pursuant to a contract or undertaking with any person except Company, provided that the foregoing restrictions do not apply:

**28.1.1** Information which at the time of its disclosure or development hereunder is, or which thereafter becomes other than by act or omission of Seller, part of the public domain.

**28.1.2** Information which Seller can show was in Seller's possession in tangible form at the time of disclosure or development hereunder and was not acquired, directly or indirectly, from Company.

**28.1.3** Information which was received by Seller after the time of disclosure by Company or development hereunder from a third party who has a lawful right to disclose it to Seller and who did not require Seller to hold it in confidence.

**28.2** The originals of all drawings, calculations, etc., used or developed hereunder shall be provided to Company, provided that Seller may retain one copy for its files. The expense of Seller's copy is considered part of the cost of the work.

**29. INFORMATION FURNISHED BY THE SELLER NOT DEVELOPED UNDER THE CONTRACT.**

Seller will not disclose to Company any information of a confidential nature and all information disclosed to Company by Seller under the Agreement shall be deemed to be nonconfidential unless covered by a specific written confidentiality agreement, and further, Seller warrants that the possession, use and/or disclosure of such information by Company shall not violate the proprietary rights of any third party. **If, based on its possession, use and/or disclosure of such information, Company is charged with misuse of any such proprietary rights of any third party, Seller shall indemnify, defend, and hold Company harmless from any and all costs, expenses (including without limitation legal expenses), damages, losses, liabilities or judgments.**

**31. ENTIRE AGREEMENT.** This Purchase Order and its attachments set forth the entire agreement between Company and Seller and no terms, conditions, understanding, or agreement purporting to modify or vary the terms of this Purchase Order shall be binding unless hereafter made in writing and signed by Company and Seller. Should any requirement or provision of this Purchase Order or its attachments conflict with any other requirement or provision, it is the Seller's responsibility to give Company written notice of such conflict for resolution. If Seller proceeds without requesting resolution of such

conflict, Company's decision as to the governing requirement shall be final, and all costs incurred in correcting Seller's erroneous interpretation are for Seller's account.

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By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_