

Digilube Systems Inc

Standard Purchase Order Terms and Conditions

1. ACCEPTANCE AND TERMS AND CONDITIONS: Seller accepts this Order and any amendments by commencing work on any products or services ordered or shipping any of the products or providing any of the services ordered. By acceptance of this Order, Seller agrees to be bound by, and to comply with all these Terms, which include any supplements to it, and all specifications and other documents referred to in this Order. These Terms apply to everything listed in this Order and constitute Purchaser's offer to Seller, which Purchaser may revoke at any time prior to Seller's acceptance. These Terms may be modified only by a written document signed by duly authorized representatives of Purchaser and Seller.

2. DEFAULT: Time is of the essence of this Order. Purchaser may by written notice of default to Seller (a) terminate all or any part of this Order if Seller fails to perform, or so fails to make progress as to endanger performance of this Order in accordance with its terms, and does not cure such failure within a period of ten (10) days (or such longer period as Purchaser may authorize in writing) after receipt of notice from Purchaser specifying such failure; and (b) procure, on such terms as it will deem appropriate, goods or services similar to those so terminated. Seller will continue performance of this Order to the extent not terminated and will be liable to Purchaser for any excess costs for such similar goods or services. As an alternate remedy, and in lieu of termination for default, Purchaser, at its sole discretion, may elect to extend the delivery schedule and/or waive other deficiencies in Seller's performance, in which case an equitable reduction in the Order price will be negotiated. If Seller for any reason anticipates difficulty in complying with the required delivery date, or in meeting any of the other requirements of this Order, Seller will promptly notify Purchaser in writing. If Seller does not comply with Purchaser's delivery schedule, Purchaser may require delivery by fastest way and charges resulting from the premium transportation must be fully prepaid and absorbed by Seller.

3. PRICE: This Order must not be filled at a price higher than shown on the face of the Order. If no price is set forth on the front of the Order, the goods or services will be billed at the price last quoted or at the prevailing market price, whichever is lower, and, in any event, goods and services ordered under this Order will not be billed at a higher price than last quoted or charged without Purchaser's specific written authorization. Purchaser will be entitled at all times to set off any amount owed at any time by Seller or any of its affiliates to Purchaser or any of its affiliates against any amount payable at any time by Purchaser in connection with this Order. No extra charges of any kind will be allowed unless specifically agreed to in writing by the Purchaser. All applicable taxes arising out of transactions contemplated by the Order will be borne by Seller except as otherwise specified by the parties in writing. If Seller reduces its prices for such goods and/or services during the term of this Order, Seller shall correspondingly reduce the prices of goods and/or services sold thereafter to Purchaser under this Order.

4. INVOICES, PAYMENT, AND TAXES:

(a) Invoices shall be rendered on completion of services or delivery of goods and shall contain the Purchase Order Number, item number, description of goods or services, quantities, unit prices, date(s) rendered and total purchase price. Each invoice must refer to one, and only one, purchase order.

(b) Invoices shall be mailed to Digilube Systems, Inc, 216 East Mill Street, Springboro OH 45066.

(c) Payment shall be made on the terms of net 30 days from the date of invoice, unless Seller and Purchaser have mutually agreed upon different terms.

(d) Seller recognizes that Purchaser will be treated as a tax exempt entity, and Purchaser will provide Seller with its exemption certificate on request. All invoices of Seller to Purchaser shall exclude taxes that are excludable under Purchaser's tax exempt status.

5. PACKAGING: All goods must be packaged in the manner specified by Purchaser and shipped in the manner and by the route and carrier designated by Purchaser. If Purchaser does not specify

the manner in which the goods must be packaged, Seller shall package the goods so as to avoid any damage in transit. If Purchaser does not specify the manner of shipment, route, or carrier, Seller shall ship the goods at the lowest possible transportation rates, consistent with Seller's obligation to meet the delivery schedule set forth in this Order.

6. QUALITY INSPECTION: All goods and services will be subject to inspection and test by Purchaser at all times and places, including the period of manufacture and in any event prior to final acceptance. Final acceptance or rejection of the goods or services will be made as promptly as practical after delivery except as otherwise provided in this Order, but failure to inspect and accept or reject goods or services or failure to detect defects by inspection, will neither relieve Seller from responsibility for such goods or services as are not in accordance with this Order nor impose liabilities on Purchaser for them. Purchaser's payment for the goods shall not constitute its acceptance of the goods. Goods rejected and goods supplied in excess of quantities ordered may be returned to the Seller at Seller's expense. Payment, if any, made for any goods rejected hereunder shall be promptly refunded by Seller. Seller will provide and maintain an inspection and process control system acceptable to Purchaser covering the goods and services ordered. Records of all inspection work by Seller will be kept complete and available to Purchaser during the performance of this Order and for seven (7) years after Seller's completion of this Order. If any of the goods or services are found at any time to be defective in material or workmanship, or otherwise not in conformity with the requirements of this Order, including any applicable drawings and specifications, then Purchaser, in addition to such other rights and remedies it may have by contract or by law or equity, at its sole discretion may reject and return such goods at Seller's expense, require Seller to inspect the goods and remove nonconforming goods and/or require Seller to replace nonconforming goods or services with conforming goods or services. If Seller fails to make the necessary inspection, removal, and replacement in a time and manner satisfactory to Purchaser, Purchaser may at its option inspect and sort the goods; Seller will pay any related costs.

7. WARRANTIES: Seller represents and warrants that Seller has special skills and that Buyer is relying on the skill and judgement of Seller to select and furnish suitable products or services. All written or oral statements of the Seller as to functions, quality, suitability, and use of the products or services are warranties of Seller. Seller represents and warrants that all products (including packaging) and services (including construction work) provided under this Purchase Order shall fully and strictly conform to specifications, be free of defects, be of good material and workmanship, and are merchantable and fit for the general and particular purposes for which they are required. If any products or services are non-conforming Seller shall, if Buyer requests, promptly and without charge repair or replace the products or provide replacement services, or breach of any other warranties or provisions of the Purchase Order.

8. INDEMNIFICATION: Seller shall indemnify and hold Purchaser and its affiliates harmless and, on Purchaser's request, shall defend each of them from and against any or all third party claims, demands, litigation, or proceedings of whatever kind, whether based upon negligence, breach of express or implied warranty, strict liability, infringement of intellectual property rights, or any other theory, and from and against all direct, indirect, special, exemplary, incidental or consequential damages of every kind whatsoever, arising out of, by reason of, or in any way connected with the goods and/or services, the design, manner of preparation, manufacture, construction, completion, or delivery or non-delivery of any goods and/or services by Seller, any breach by Seller of any of its obligations hereunder, or any other act, omission or negligence of Seller or any of Seller's employees, workers, servants, agents, subcontractors, or suppliers.

Seller agrees to indemnify and save buyer harmless from all loss, liability, damages, costs, and expenses, resulting from any claim or action for personal injury property damage, or for patent, trademark,

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or copyright infringement, or to impose or enforce a security interest or lien on buyer's property, or to compel compliance or penalize noncompliance with governmental regulation, and arising from the performance of work or the furnishing or use of the materials covered by this contract. This indemnity shall survive delivery of the goods or performance of the services under this contract.

9. PURCHASER'S PROPERTY: Tangible or intangible property of any nature furnished to Seller by Purchaser or specifically paid for in whole or in part by Purchaser, and any replacements or attachments, are the property of Purchaser and, unless otherwise agreed in writing by Purchaser, will be used by Seller solely to render services or provide goods to Purchaser. While in Seller's custody or control such property will be held at Seller's risk, will be kept insured by Seller at its expense for its replacement cost with loss payable to Purchaser, and will be subject to removal at Purchaser's written request, in which event Seller will prepare such property for shipment and redelivery to Purchaser in the same condition as originally received by Seller, reasonable wear and tear excepted, all at Seller's expense.

10. CHANGES: At all times Purchaser will have the right to make changes to this Order, including changes to drawings, designs, configurations, specifications, quantities, methods of shipment or packing and delivery schedules or location of delivery. If any such changes cause an increase or decrease in the cost of or the time required for the performance of any work under this Order, an equitable adjustment will be made in the contract price or delivery schedule, or both, and this Order will be modified in writing accordingly.

11. COMPLIANCE WITH LAWS: Seller represents and warrants that it is in compliance with and all goods and/or services supplied hereunder have been produced or provided in compliance with the applicable provisions of all federal, state, or local laws or ordinances and all related lawful orders, rules and regulations.

12. INTELLECTUAL PROPERTY INFRINGEMENT: Seller will not use or incorporate any copyrighted patented or proprietary materials of others in their Products without authorization and will defend Buyer against any such claims. If a Product is enjoined, Seller will at its expense procure the right for the Buyer to use the Product replace with a non-infringing equivalent, or, with Buyer's written approval, remove the Product and refund the purchase price and the transportation and installation costs.

13. INSURANCE: Seller will maintain Comprehensive General Liability, Automobile Liability and Employers' Liability insurance with limits as reasonably required by Purchaser, as well as appropriate Workers' Compensation insurance as will protect Seller from all claims under any applicable workers' compensation. At Purchaser's request, Seller will furnish to Purchaser a Certificate of Insurance completed by its insurance carrier(s) certifying that the required insurance coverage is in effect and containing a covenant that such coverage and will not be canceled or materially changed until ten (10) days after prior written notice has been delivered to the Purchaser.

14. TERMINATION: Purchaser may terminate all or any part of this Order for convenience at any time by written notice to Seller. Upon such termination, Purchaser's liability will be limited to reasonable termination charges mutually agreed by Seller and Purchaser, provided that Seller must specify any proposed charges in writing within fifteen (15) days after termination. This Order shall terminate automatically, without notice, if Seller becomes insolvent or the subject of any proceeding under the laws relating to bankruptcy or the relief of debtors.

15. MISCELLANEOUS:

(a) **NON-ASSIGNMENT:** Assignment of this Order or any interest in it or any payment due or to become due under it, without the written consent of the Purchaser, will be void. An assignment will be deemed to include not only a transfer of this Order or such interest or payment to another party but also a change in control of Seller, whether by transfer of stock or assets, merger, consolidation, or otherwise.

(b) **TRANSPORTATION:** All the prices are established as F.O.B.

Seller and/or Origin Dock, Freight Collect, unless otherwise specifically provided on the front of this Order. Parcel shipments shall be sent under Purchaser's UPS Account X45924. Seller shall contact Buyer to confirm Freight Company for orders that must be shipped LTL. Title and risk of loss shall not pass to Purchaser until delivery of the goods to the location designated on the face of this Order and acceptance by Purchaser. No charges for unauthorized transportation will be allowed. Any unauthorized shipment, which will result in excess transportation charges, must be fully prepaid by the Seller.

(c) **FORCE MAJEURE:** Purchaser may delay delivery and/or acceptance occasioned by causes beyond its control.

(d) **PUBLICITY:** Seller will not use Purchaser's name or logo in publicity, advertising, or similar activity, except with Purchaser's prior written consent. Seller will not disclose the existence of this Order or any of its respective terms to any third party without Purchaser's prior written consent.

(e) **NOTICES:** All notices, consents, waivers, and other communications required or permitted to be given pursuant to this Order, shall be in writing and shall be deemed to have been delivered either (i) on the delivery date, if personally delivered, or if delivered by confirmed facsimile or e-mail, (ii) one (1) business day after delivery to any national overnight courier directing delivery on the next business day, receipt requested, or (iii) three (3) business days after deposit in the United States mail, registered or certified mail, return receipt requested, with adequate postage affixed thereto. All notices to Purchaser shall be sent to the Digilube Systems Inc, 216 East Mill St, Springboro OH 45066, to the attention of Purchasing, and to Seller at its address as set forth in this Order, or at such other address as either party may designate in writing to the other party.

(f) **DAMAGES:** In the event of the breach of this contract by seller, buyer shall be entitled to recover incidental and consequential damages as defined in *Ohio Revised Code* Section 1302.89.