



Purchase Order Terms & Conditions

1. Terms and Conditions. The terms and conditions set forth below together with those appearing on the face of this Order, any attachments hereto and any document or other writing which is incorporated herein by reference (collectively, the "Order") constitute the complete and exclusive agreement between Perlick Corporation (the "Buyer") and the supplier (the "Seller") pertaining to the goods and/or services identified in this Order (collectively, the "Products"). If there is a discrepancy or conflict between any exhibit or supplement to this Order and these terms and conditions, these terms and conditions shall control.

2. Acceptance. This Order can be accepted only upon these terms and conditions. Buyer shall neither accept nor agree to any additional or different terms or conditions, whether or not material, contained in any acknowledgement or confirmation of this Order. Seller may accept this Order by acknowledging, confirming or executing it; delivering the Products to Buyer; commencing performance; or any other means manifesting assent to be bound. No modification of this Order shall be binding on either party unless in writing and signed by an authorized representative of each party.

3. Termination for Convenience. Buyer reserves the right to terminate all or any part of this Order for its sole convenience. In the event of such termination, Seller immediately shall stop all shipment of Products and cease all other work hereunder. Seller shall be paid a reasonable termination charge reflecting the percentage of the work performed prior to notice of termination, plus actual direct costs resulting from termination. In no event shall Buyer be liable for loss of profit. Seller shall not be paid for any work performed after receipt of the termination notice, except to the extent necessary to effect termination, or for any costs incurred which reasonably could have been avoided. Any claims under this Section must be asserted in writing in detail within thirty (30) days of receipt of Buyer's termination notice.

4. Termination for Cause. Buyer may cancel this Order without penalty: (a) if Seller fails to comply with the specifications, terms or conditions of this Order; (b) if delivery is delayed beyond the requested delivery date; (c) if Seller files a voluntary petition under any federal or state bankruptcy or insolvency act, an involuntary bankruptcy petition is filed against Seller, or Seller is declared insolvent or has a receiver or trustee appointed for it or its assets, or if Seller makes an assignment for the benefit of creditors or commences proceedings under any state insolvency or similar law; or (d) if Buyer encounters any labor disputes, governmental orders or actions, unavailability of transportation, fires, floods, breakdowns of essential machinery, accidents or other causes beyond its control which affects its ability to receive and use the Products ordered.

5. Change to Specifications. Buyer may, effective upon notice to Seller, make changes to Buyer's designs, drawings or specifications at any time prior to shipment of corresponding Products covered by this Order. If any such change directly results in an increase or decrease in prices or delivery schedules of Products, then an equitable adjustment shall be made, provided that Seller makes and Buyer accepts a written claim for an adjustment prior to shipment of Products. If the parties are unable to agree upon the amount of the adjustment, Buyer may, without any liability to Seller, terminate this Order as to all Products affected. Seller shall not, without the prior written consent of Buyer, make any changes to: (a) the process, materials, procedures or equipment related to manufacture or supply of the Products; or (b) the designs, drawings or specifications affecting Products.

6. Delivery. Seller shall cause timely delivery of the proper quantity of Products specified in this Order. Time is of the essence with respect to Seller's obligations hereunder. If



delivery of Products is not completed by the specified delivery date, Buyer reserves the right, in addition to its other rights, to return Products or terminate all or part of this Order and charge Seller with all costs, expenses and damages associated with such return or termination. Seller shall strictly comply with delivery instructions contained on the front of this Order. If no delivery instructions are stated, Products shall be delivered F.O.B. destination designated by Buyer and all charges for storage, packing, and handling are included in the purchase price and shall be paid by Seller. Risk of loss shall be upon Seller until delivery to Buyer's facility or other designated location and acceptance after inspection by Buyer. In the absence of specific routing instructions, shipments are to be routed "Best Way". No charges for blocking, boxing, crating, dunnage, cartage, drayage or packaging will be allowed without the specific prior written approval of Buyer.

7. Inspection and Acceptance. All Products shall be received subject to Buyer's inspection and, if applicable, testing at all reasonable times and places, including, without limitation, the period of manufacture, and in any event, prior to acceptance. Buyer shall have a reasonable time to inspect the Products after arrival at their destination. If Buyer determines that any part of the Products are not in accordance with Buyer's specifications, Buyer has the right to reject such Products and may cancel any unshipped portion of this Order. Products rejected or those which are supplied in excess of quantities provided for herein may be returned to Seller at Seller's expense and risk of loss. Payment for the Products prior to inspection shall not constitute acceptance thereof, and shall be made without prejudice to any and all claims that Buyer may have against Seller. In the event the Products must be installed, tested, inspected or assembled prior to commercial use, they shall not be deemed finally accepted until such installation, testing, inspection or assembly, as the case may be, indicates that the Products are in accordance with specifications and are operating properly.

8. Prices and Payment. Seller shall sell to Buyer the Products shown on the face of this Order at the prices specified. Except as otherwise provided in this Order, such prices are inclusive of any and all other charges for the Products (including but not limited to any charges for freight, boxing, packing, crating, cartage or other added charges). Unless otherwise specified on the face of this Order, the prices herein include all applicable federal, state and local taxes, customs, duties and fees of every kind and nature, including, without limitation, sales and use taxes. Seller warrants that such prices are not in excess of the lowest prices charged by Seller to other similarly situated customers for similar quantities of Products of like kind and quality. Payment for Products by Buyer shall be due forty-five (45) days after Buyer's later receipt of: (i) an appropriate invoice from Seller or (ii) the corresponding Products. Buyer may deduct from Seller's invoices any monies owed to Buyer by Seller. Payment by Buyer will not constitute acceptance of Products nor impair Buyer's right to inspect Products.

9. Early Shipments and Overshipments. Buyer, at its option, may return Products shipped earlier than the date specified on the Order to Seller at Seller's expense and/or withhold payment until the otherwise applicable payment period. Buyer, at its option, may return overshipments to Seller at Seller's expense. If Buyer so returns Products in either case, Seller's account shall be debited for the total amount or portion of any invoices (including shipping and freight expenses and taxes, if applicable), paid thereon.

10. Proprietary Information: Confidentiality. All information furnished by Buyer or any other person acting on behalf of Buyer and all information learned or observed about Buyer or its operations through performing this Order is confidential and Seller shall not disclose any such information to any other person, or use such information for any purpose other than performing this Order without Buyer's express written consent. All information in tangible form, including drawings, samples, models, specifications, or other documents provided by Buyer or prepared by



Seller for Buyer shall be returned to Buyer promptly upon request. Seller shall not publicize the fact that Buyer has contracted to purchase Products from Seller, nor shall any information relating to this Order be disclosed without Buyer's written consent. Unless otherwise agreed in writing, no information disclosed by Seller to Buyer shall be deemed confidential and Seller shall have no rights against Buyer with respect to Buyer's use thereof.

11. Representations and Warranties. Seller represents and warrants that all Products covered by this Order shall: (a) conform strictly to the designs, specifications, tolerances, descriptions, drawings, samples and other requirements referred to in this Order or provided by Buyer; (b) be merchantable and free from defects in materials and workmanship; (c) be fit and safe for their intended purpose; (d) be free from liens, encumbrances and other claims against title; (e) be new and not contained any used or reconditioned parts or materials; (f) are supplied with all operation, testing, service and maintenance manuals, instructions, warnings, software (including source code) and documentation; and (g) not infringe any patent, trademark, copyright or other intellectual property right of a third party. Seller acknowledges that it knows of Buyer's intended use and represents and warrants that all Products furnished hereunder will be fit and sufficient for such use. Seller agrees to promptly replace or otherwise correct, without expense to Buyer, any of the Products which do not conform to the foregoing warranties. In the event that Seller fails to promptly make such replacement or correction, Buyer may cause such replacement or correction to be made and charge Seller for all expenses associated therewith. The foregoing warranties and remedies shall be in addition to any warranties or remedies provided by law and shall survive inspection, test, acceptance and payment. All of Seller's warranties hereunder shall run to Buyer, Buyer's successors, assigns and customers, such customers to include but not be limited to users of Buyer's products that contain, incorporate or embody the Products purchased hereunder.

12. Indemnification. Seller shall defend, indemnify and hold Buyer harmless against all damages, claims, costs and expenses (including attorneys' fees) arising out of or resulting from any act or omission of Seller, its agents, employees or subcontractors or which otherwise arises as a result of Seller's performance of this Order including, without limitation, (a) all liabilities to Buyer's employees, agents and subcontractors, (b) injury or death of any person or damage to any property, (c) a breach of any warranty or other provision of this Order, or (d) a violation or alleged violation of any federal, state or local laws or regulations resulting from the existence of any pollutant, contamination, chemicals, toxic or hazardous substance or waste in the materials.

13. Intellectual Property Indemnification. Seller shall defend, indemnify and hold harmless Buyer and its successors, assigns and customers from any claim or cause of action alleging that the design, use or construction of the Products infringes a patent or any proprietary rights of others except infringement occurring as a result of incorporating a design or modification conceived by Buyer and specifically excluded from this covenant by Seller in writing not later than acceptance of this Order. Buyer shall have the right to employ, at Seller's expense, counsel on its own behalf, and shall have the right to participate in the defense of such suit.

14. Material Furnished. If Buyer furnishes any material for fabrication hereunder, Seller agrees: (a) not to substitute any other material in such fabrication without Buyer's written consent, (b) that title to such material shall not be affected by incorporation in or attachment to any other property, and (c) to state and warrant on its shipper and invoice for final parts "All material furnished by Buyer on this contract (except that which became normal industrial waste or was replaced at Seller's expense) has been returned in the form of parts and unused material." Proceeds of scrap salvage shall accrue to Seller and are reflected in the prices stated herein. Any such material disposed of because of defective workmanship of Seller shall be replaced or paid for by Seller.



15. No Assignment. Seller shall not delegate or assign its rights or obligations hereunder, in whole or in part, without Buyer's prior written consent. Any attempted delegation or assignment by Seller without such consent shall be void.

16. Waiver. Any waiver of strict compliance with the provisions of this Order must be in writing. No such waiver shall be construed as a waiver of any other term or condition except as provided in writing, nor as a waiver of any subsequent breach of the same term or condition.

17. Import Drawback Rights. This Order includes all related customs duty and import drawback rights, including rights developed by substitution and rights which may be acquired from Seller's suppliers which Seller can transfer to Buyer. Seller agrees to inform Buyer of the existence of any such rights and upon Buyer's request provide Buyer with such documents as may be required by the customs authorities of the country of receipt to prove importation and to transfer duty drawback rights to Buyer.

18. Governmental Compliance.

(a) Seller will at all times comply with all federal, state, local and foreign laws, rules and regulations applicable to its obligations under this Order and, if applicable, its manufacture of Products. Seller shall furnish to Buyer any information required to enable Buyer to comply with such laws, rules, and regulations in its use of the Products or reasonably requested by Buyer to confirm compliance with such laws, rules and regulations or with the provisions of this Order.

(b) Unless this Order is exempted by Rules and Regulations of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246, there is incorporated herein by reference Paragraphs (1) through (7) of the contract clause set forth in Section 202 of Executive Order 11243.

(c) Unless this Order is exempted by Rules and Regulations of the Secretary of Labor issued pursuant to Title 41, Chapter 60, Part 60-250 of the Code of Federal Regulations, the Affirmative Action clause contained in 60-250.4, relating to Affirmative Action for Veterans, is incorporated herein by reference.

(d) Unless this Order is exempted by Rules and Regulations of the Secretary of Labor issued pursuant to Title 41, Chapter 60, Part 60-741 of the Code of Federal Regulations, the Affirmative Action clause contained in 60-741.4, relating to Affirmative Action for Individuals with Disabilities, is incorporated herein by reference.

19. Work Performed on Buyer's Premises. IF ANY WORK UNDER THIS ORDER IS TO BE PERFORMED ON THE BUYER'S PREMISES, THE SELLER AGREES TO INDEMNIFY THE BUYER AGAINST ALL DAMAGES, CLAIMS AND EXPENSES ARISING OUT OF SUCH WORK AND BASED UPON PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE AND OTHER MATTERS FOR WHICH THE SELLER, SELLER'S EMPLOYEES OR REPRESENTATIVES ARE TO ANY EXTENT LEGALLY LIABLE. PRIOR TO COMMENCEMENT OF SUCH WORK ON THE BUYER'S PREMISES, SELLER SHALL FURNISH TO THE BUYER SATISFACTORY EVIDENCE THAT SELLER AND SELLER'S REPRESENTATIVES HAVE ADEQUATE GENERAL COMMERCIAL LIABILITY, PROPERTY DAMAGE, EMPLOYER'S LIABILITY AND WORKERS' COMPENSATION INSURANCE. THE SELLER AGREES TO PERFORM THE WORK IN ACCORDANCE WITH THE SAFETY RULES OF THE BUYER AND APPLICABLE LAWS AND REGULATIONS.



20. Insurance. During the term of the Order and for a period of one year thereafter, Seller shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than \$2,000,000.00 per occurrence and \$5,000,000.00 in the aggregate, with respect to personal injury or death and property damage, with financially sound and reputable insurers. Upon Buyer's request, Seller shall provide Buyer with a certificate of insurance from Seller's insurer evidencing the insurance coverage specified in this Order. The certificate of insurance shall name Buyer as an additional insured. Seller shall provide Buyer with ninety (90) days' advance written notice in the event of a cancellation or material change in Seller's insurance policy. Except where prohibited by law, Seller shall require its insurer to waive all rights of subrogation against Buyer's insurers and Buyer or the Indemnitees.

21. Anticipated Delay. If at any time Seller has reason to believe that deliveries of Products will not be made as scheduled, Seller shall immediately give written notice to Buyer setting forth the cause of the anticipated delay. Such notice does not relieve Seller of any of its obligations under this Order, including the obligation to deliver Products on time.

22. Cumulative Remedies. The remedies set forth herein shall be cumulative and additional to any other or further remedies provided in law equity.

23. Import Requirements. Upon Buyer's request, Seller shall provide Buyer with an appropriate certification stating the country of origin for Products sufficient to satisfy the requirements of (i) the customs authorities of the country of receipt and (ii) any applicable export licensing regulations, including those of the United States. Seller shall ensure that all Products are marked (or the Products' container is marked if there is no room on the Products themselves or unless exempted from marking) with the country of origin. Seller shall ensure compliance in marking the Products with the requirements of the customs authorities of the country of receipt. Seller shall comply with all other government agency requirements (including Food and Drug Administration [FDA] and Federal Communications Commission [FCC] in the case of a U.S. import) of the country to which the Products are shipped. Failure to comply with import requirements will result in the transfer of financial and legal obligations to the Seller.

24. Shipping Instructions. All shipments shall be made freight collect unless otherwise specified on the Order. If a carrier or method of shipment is used that is not specified in the Order without Buyer's advance written consent, Seller shall be debited for any increase in the cost of shipment. Seller shall include a packing slip in a waterproof envelope secured to package on all shipments. The packing slip must include, but not be limited to, the following information: Order number; Order date; name and address of the Seller; name and address of shipper (if different from the Seller); a detailed description of the Products; Product model numbers; total number of boxes; unit price of each Product; value of any additions to the price paid or payable; and total invoice price.

25. Independent Contractor. Seller, its agents and other suppliers, shall at all times be independent contractors and no express or implied representations to the contrary shall be made. Seller shall at all times retain exclusive liability for wages and all employment-related obligations due its employees and shall indemnify Buyer for any liability arising therefrom.

26. Governing Law; Jurisdiction. This order is to be governed and construed according to the laws of the State of Wisconsin, without regard to conflict of laws principles. Seller hereby consents to the jurisdiction and venue of the courts located in Milwaukee County, Wisconsin.