

General Term and Conditions

1. Definitions.

- (a) "Buyer" shall mean Enwin Utilities Ltd., Windsor Utilities Commission, EnWin Energy or District Energy Windsor whichever is the issuer of the Purchase Order to which these Standard Terms and Conditions are attached.
- (b) "Buyer's Location" means the address noted on the Purchase Order to which these Standard Terms and Conditions are attached.
- (c) "Interest" means interest on the principal amount owed accruing from demand through the date of repayment at the prime rate of the Royal Bank of Canada, as adjusted from time to time, plus one percent (1%) per annum.
- (d) "Party" means any natural person, corporation, partnership, governmental authority or other legal entity.
- (e) "Products" shall refer to the goods and/or labor or services covered by a Purchase Order and includes both goods and services unless the context clearly requires otherwise, and as to goods, includes all parts, portions, items, attachments, repairs, replacements and substitutions thereof..
- (f) "Purchase Order", "herein" and "hereto" refer to the document to which these Standard Terms and Conditions are attached and any other document specifically made part of a Purchase Order by Buyer whether in printed or electronic form.
- (g) "Seller" shall mean the party with which a Purchase Order is placed.
- (h) "Seller Documents" means any bill of lading, quotation, acknowledgment, invoice or other document, whether in electronic or printed form, issued by Seller.
- (i) "Third Party" means any Party, including Buyer's customer other than Buyer or Seller.

2. Offer: Acceptance: No Modification: A Purchase Order is an offer by the Buyer to Seller to have the Seller complete the Products described therein. The Seller shall be deemed to have unconditionally accepted the terms of the Purchase Order upon commencement of work on the Products under the terms of the said Purchase Order notwithstanding the Purchase Order may or may not have been executed. Any Seller Document to the extent containing terms in addition to or inconsistent with the terms of the Purchase Order, or a rejection of any term of the Purchase Order, shall be deemed to be a counter offer to Buyer and shall not be binding upon Buyer unless specifically accepted in writing by Buyer. This clause shall constitute a continuing objection to any such terms or rejections not specifically so accepted by Buyer. However, commencement of performance by Seller, in the absence of written acceptance of such counter offer by Buyer, shall be deemed to be performance in accordance with the terms of the Purchase Order and an acceptance hereof, notwithstanding prior dealings or usage of trade.

3. Packing, Marking and Delivery. Unless otherwise provided herein, Seller, for the price stated in the Purchase Order, shall (i) pack and mark all Products to be shipped so as to secure the lowest transportation rates, meet carrier requirements and assure arrival at "ship to" point free of damage and deterioration, (ii) be responsible for all Products until delivered at the designated (F.O.B.) delivery point, regardless of point of inspection, (iii) properly mark each package with Buyer's Purchase Order number, location, plant and consecutively number each package where multiple packages comprise a single shipment, (iv) show the Purchase Order Number and package numbers on packing slips, bills of lading and invoices, (v) assure that packing slips accompany each shipment and, unless otherwise provided herein (vi) the price stated in the Purchase Order shall include all charges and expenses with respect to containers, packing and crating, and for transportation to F.O.B. point and no charges shall be made by Seller for drayage or storage and (vii) all containers, packing and crating material shall become the property of Buyer. Seller shall process shipping documents and route shipment from F.O.B. point as directed by Buyer. **Title to and risk of loss of all Products subject to this Purchase Order shall remain with Seller until delivery and acceptance of the Products at Buyer's Location.**

4. Product Manufacture: Shipping Schedules. Seller shall not manufacture any of the Products or procure any of the materials required in their manufacture, and Buyer shall have no obligation as to the same, except to the extent expressly authorized in the Purchase Order or in written instructions forwarded to the Seller by Buyer. Deliveries are to be made in quantities and at the times specified in the Purchase Order or in written instructions forwarded to the Seller by Buyer, but Buyer may from time to time change such

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quantities and times, or direct temporary suspension of the scheduled deliveries, without any liability whatsoever.

5. Delay in Delivery. If Seller for any reason, including force majeure, does not comply with Buyer's delivery schedule, as to which time is of the essence, Buyer at its option may (a) approve a revised delivery schedule, (b) require shipment of any of the Products by a more expeditious method of transportation at the Seller's expense, or (c) terminate this Purchase Order without liability to Buyer on account thereof.
6. Payment Not Acceptance. Payment for Products shall not constitute acceptance, and all Products shall be subject to Buyer's inspection and rejection at Buyer's Location. Neither payment nor acceptance shall constitute acknowledgment of the absence of breach of warranty or limit any of Buyer's rights hereunder. Buyer at its option may reject and, upon reasonable notice, return at Seller's risk and expense, or retain and correct Products that fail to conform to the requirement of the Purchase Order even if the nonconformity does not become readily apparent. If buyer elects to correct the Products, it will consult with Seller on the method of correction. Seller will reimburse Buyer for all reasonable expenses resulting from rejection or correction.
7. Payment Terms. The Seller in accepting the Purchase Order, agreed to allow the Buyer to make payment of invoices rendered by Seller, for the products covered by such Purchase Order net thirty (30) days. The payment period shall be calculated from the date acceptable invoices are received or the date the conforming Products are received, whichever last occurs. All payments shall be made in Canadian currency unless otherwise indicated.
8. Price Warranty. Seller warrants that the price for the articles sold to Buyer hereunder are no less favorable than Sellers currently extends to any other customer for the same or similar goods or services in similar quantities. If Seller reduces its prices to others during the term of the Purchase Order for such goods or services, Seller will reduce the price to Buyer for such goods or services correspondingly. Seller warrants that prices shown on the Purchase Order are complete, and that no additional charges of any type will be added without Buyers express written consent.
9. Set Off. Buyer shall be entitled at any time to set off any sums owing by Seller to Buyer or to any of Buyer's affiliated companies, against sums payable by Buyer in connection with any of Seller's accounts regardless of the purchase orders or contracts from which such debits or credits arise.
10. Taxes/Duties. Except as may be otherwise provided in the Purchase Order, the Seller shall pay, out of the purchase price, all federal, state, provincial and local taxes and any duties applicable to provision of the Products. Any reduction in Seller's costs resulting from a reduction in freight rates, custom duties, import taxes, excise taxes, goods and services taxes and/or sales taxes from those in force on the date hereof, shall be paid to Buyer by Seller in reduction of the price of the Products.
11. No Infringement of Intellectual Property Rights.
 - (a) Seller warrants that the Products and the sale and/or use thereof do not and will not infringe any patents or other intellectual property rights under the laws of Canada or any other jurisdiction
 - (b) Seller will furnish to Buyer, without restrictions on use or disclosure, all information and data Seller acquires or develops in the course of Seller's activities under a Purchase Order.
 - (c) Seller grants to Buyer and to any affiliated company of Buyer a nonexclusive license under reasonable terms and conditions to make, have made, use, have used and sell under any other patents now or hereafter owned or controlled by Seller which cover any application of the technology embodied in the information or data Seller acquires or develops in the course of Seller's activities under a Purchase Order. At Buyer's request, Seller will furnish to Buyer all other information and data of Seller which Buyer deems necessary to understand the operation and to maintain the goods and Products delivered under a Purchase Order, and to understand and apply

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the information and data of this Paragraph 11(c) hereof, with no restrictions on use other than Seller's patent rights.

- (d) Seller warrants that it is aware of the uses to which the Products are to be put, and grants to Buyer, and each party or entity to which the Products are provided, a free, unrestricted, irrevocable and perpetual license, with a right to sublicense to others, to use, repair and reconstruct the Products in any manner, and warrants that Seller has full right to grant said license.

12. Warranties; Remedies

- (a) In addition to any other express and implied warranties provided by law or otherwise, Seller warrants that each Product (whether goods or services) shall: (i) be new and conform to the Purchase Order in all respects; (ii) conform to all specifications, drawings, samples and other descriptions furnished by Buyer and in the case of a specifically approved Product not be substituted with another Product without the prior express written consent of the Buyer which consent may be unreasonably withheld; (iii) be merchantable and fit for the purpose to which intended; and (iv) be free from all defects in design, workmanship and materials and be of highest quality and workmanship. Seller also expressly warrants that title to all of the Products shall be vested in Buyer free and clear of any and all liens and encumbrances of whatsoever nature and kind. All warranties of Seller, express and implied, and remedies of Buyer, in this Section or elsewhere, shall survive indefinitely any delivery, inspection, tests, acceptance and payment and shall apply notwithstanding any inspection of the Products, or any part thereof, on, before or after delivery to Buyer. Seller acknowledges that Buyer has advised it as to the purpose for which the Products are required, that Buyer is relying on Seller's skill and judgment and the Products are of a type which it is Seller's business to supply.
- (b) Upon any breach of warranty, in addition to all other remedies hereunder or under applicable law or in equity, Buyer may (i) cancel all or any portion of the Purchase Order, (ii) require the Seller to repair or replace any or all Products, at Buyer's option and at Seller's sole expense, either at Buyer's Plant or at any other location designated by Buyer, (iii) require Seller to pay all transportation and other charges arising from delivery, storage and return of Products and/or (iv) purchase replacement Products from a Third party and charge the same to the Seller

- 13. Default. Seller shall be in default hereunder if (a) Seller does not comply with the Purchase Order in all respects, (b) Seller is insolvent or makes an assignment for the benefit of creditors or proceedings in bankruptcy or insolvency are instituted by or against Seller, (c) Seller should fail to supply adequate assurances of due performance of this Purchase Order within (10) days after written request by Buyer for such assurances or (d) at any time in the Buyer's sole judgment Seller's financial or other condition or progress on this Purchase Order shall be such as to endanger timely performance. Upon any default hereunder, in addition to all other remedies hereunder at law or in equity, Buyer may (1) cancel all or any part of this Purchase Order as well as any part of any other agreements between Seller and Buyer without liability except to pay the contract price for Products delivered prior to notice of cancellation; (2) purchase from a Third party replacement Products ordered hereunder, recover from Seller on demand any and all increased costs or other damages relating thereto, plus interest and attorneys fees, costs of suite and other damages; and (3) recover all damages sustained by it, indirectly or consequentially, as a result of any such default or breach (including, but not limited to, any cost arising out of or relating or incidental to the use or sale by Buyer of any Products furnished by Seller which are not in conformity with the warranties of Seller pursuant to the Purchase Order, such as for example cost of wasted labour or materials expended by Buyer, costs of consumer warranty claims or costs pursuant to Government orders or regulations).

- 14. Indemnification. Seller agrees to indemnify, defend and hold harmless the Buyer, its affiliates, customers and each other party to which Products are provided, and each of their shareholders, directors, officers, employers and agents, on demand, from and against any and all claims, demands, actions, causes of actions, suits, costs, fees, penalties, damages (consequential and otherwise) attorneys' fees and all other

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liabilities and obligations whatsoever (“Losses”) arising out of or related in any way to Seller’s performance or obligations under this Purchase Order including, without limitation:

- (a) personal injuries, illness or death of any natural person (including, without limitation, Seller’s agents and employees) or damage to any property (including without limitation, the Seller’s property) or any spill, discharge or emission of hazardous wastes or substances which relates to in whole or in part (i) any manufacturing design or other defect, failure to warn, improper handling, improper operating installation instructions or other act or omission of seller with respect to any of the Products, or (ii) the performance by Seller of any services, either on property of Buyer, Seller or any Third Party;
- (b) any claims alleging violation of the *Employment Standards Act*, *Labour Relations Act*, any workers’ compensation legislation or any other statute governing the relationship between the Seller and its employees;
- (c) any claims arising from the failure of the Seller to withhold from its employees pay any amounts for Income Taxes, Unemployment Insurance, Canada Pension Plan, or any other statutorily required remittances;
- (d) any claims arising from, or alleging a violation of, the *Construction Lien Act*, R.S.O. 1990 c. C. 30 that directly or indirectly relates to the Products or the Purchase Order.
- (e) any breach of warranty made by or on behalf of Seller with respect to the Products or otherwise and any claim of a Third Party relating to any Products or their quality;
- (f) any breach of the Purchase Order or any other agreement between Buyer and Seller;
- (g) any recall campaign in which Buyer or any customer participates in connection with inclusion of Products in goods sold by Buyer; and/or
- (h) claims alleging violation of infringement of any patent, copyright, or other intellectual property or proprietary right relating to Products provided by Seller even if they are made to Buyers specifications.

To the maximum extent permitted by applicable law, Seller’s obligation to defend and indemnify will apply even as to Losses caused in whole or in part by an indemnities’ negligence, but Seller’s indemnification shall not apply to the extent that Losses are clearly shown to have resulted solely and directly from the gross negligence or willful misconduct of such indemnitee. Seller’s obligation to defend and indemnify under this Section will also apply regardless of whether the claim arises in tort, negligence, contract, warranty, strict liability or otherwise. The indemnification obligation under this Paragraph shall not be limited in any way by the limitation on the amount or type of damages, compensation or benefits payable by of for the Benefit of Seller under Workers’ Compensation Acts, occupational disease acts, disability benefits acts or other employee benefits acts.

In furtherance and not in limitation of the foregoing, Seller agrees that it will pay Interest to Buyer, on demand, on all indemnification amounts owed, and Buyer may at its option participate in the defense of any Third Party claim with its own counsel, at Seller’s expense.

15. Change or Cancellation by Buyer, Buyer reserves the right, for any reason, to cancel any undelivered portion of this Purchase Order or make changes in the specification, amount, type, etc., of the Products. Buyer will have such right to cancellation notwithstanding the existence of an excusable delay under Section 17. Upon receipt of notice of cancellation, Seller, unless otherwise directed the Buyer, will (i) terminate promptly all work under this Purchase Order; (ii) transfer title and deliver to Buyer the finished work, in process, and the parts and materials which Seller produced or acquired in accordance with a Purchase Order and which Seller cannot use in producing goods for itself or for other; (iii) verify/settle all



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claims by subcontractors to actual costs that are rendered unrecoverable by such termination and provided the recovery of materials in Seller's possession is ensured; and (iv) take actions reasonably necessary to protect property in Seller's possession in which Buyer has an interest until disposal instruction from Buyer has been received. Subject to the other provisions hereof, Buyer shall pay to Seller in complete and final satisfaction of any liabilities relating to this Purchase Order, the purchase price for all Products received by Buyer prior to cancellation or change and accepted in accordance with this Purchase Order. In no event shall Buyer's obligation exceed the Purchase Order price for the Products completed.

Buyer may at any time, by order, make changes in (i) the drawings, designs or specifications applicable to the Products; (ii) the method of packing or shipment and/or (iii) the place of delivery. If any such change causes an increase or decrease in the cost of or the time required for the performance of any part the work under the Purchase Order, whether changed or not changed by any such order, an equitable adjustment shall be made in the order price, or the delivery schedule, or both. Any claim by Seller for adjustment under this paragraph must be asserted within thirty days (30) from the date of receipt by Seller of the notification of change. Buyer will have the right to check all claims hereunder at any reasonable time or times by inspecting and auditing the records, facilities, work or materials of the Seller relating thereto. Where the cost of property made obsolete or excess by a change is, either incorrect in Seller's claim for adjustment, or setoff against a claim for adjustment by Buyer, Buyer shall have the right to prescribe the manner of disposition of such property, and the proceeds therefrom shall be paid to Buyer. Nothing in this paragraph shall excuse Seller from proceeding with the order as changed.

16. Insurance Waiver of Liens. Seller agrees to furnish to Buyer promptly upon request a certificate from its insurance brokers or agent showing that it carries adequate, workers' compensation, Comprehensive General Liability, automobile, public liability and property damage insurance coverage, including Contractual Liability insurance applicable to the Purchase Order. The certificate must show the amount of coverage, policy number, and date of expiration and must require the broker or agent to give Buyer thirty (30) days prior written notice of any lapse or cancellation of any policy. Such policies shall name Buyer as an Additional Insured thereunder and shall contain endorsements stating that the policies are primary and not excess over or contributory with any other valid, applicable and collectible insurance in force for Buyer. Buyer may require Seller to furnish evidence of the foregoing insurance but failure to comply with these insurance requirements will not relieve Seller of its liability and obligations hereunder. Buyer's action or inaction will not act as a waiver of any of Buyer's rights described herein. Seller hereby waives all mechanics liens and claims and agrees that none shall be filed or maintained against Buyer or the Product on account of any Product stored by or on behalf of Seller shall cause all its subcontractors, materialmen, warehousemen and suppliers (and subcontractors of such parties) to provide similar waivers and agreements in from satisfactory to Buyer.
17. Force Majeure. Seller shall not be liable for a reasonable delay of default in furnishing Products hereunder and Buyer shall not be liable for failure to perform any of its obligations hereunder, due to fire, flood, storm, national emergency of war, provided that either party has given the other prompt notice of such occurrence.
18. Subcontracts. In each subcontract of Seller's work performed pursuant to a Purchase Order, Seller will obtain for Buyer the rights and licenses granted in Paragraphs 11 and 27.
19. Remedies Cumulative; No Waiver. Buyer's remedies relating hereto shall be cumulative and in addition to any other remedies provided herein or by law or in equity. No delay by Buyer in the enforcement of any provision of this Purchase Order shall constitute a waiver thereof, and no waiver thereof shall constitute a waiver of any other provision.
20. Buyer's Liability. The Liability of the Buyer and its directors, officers, employees, shareholders, affiliates, successors, assigns and customers for any judicial or extra judicial action, loss, damage, cost, claim or expense of any kind of or in relation to the Seller or any other Party or Third Party arising out of the Purchase Order or any other matter or fact in relation thereto, including willful act or negligence will be limited to the amount of the direct damages and will not exceed the price paid by the Buyer to the Seller under the Purchase Order. In no event shall Buyer be liable for anticipated profits, or penalties or incidental, consequential, punitive, exemplary or other damages or liability in connection with this

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Purchase Order, whether for breach of contract, late payment, property damage, personal injury, illness, or death or otherwise, beyond the sum set forth in Section 15 hereof, or if not applicable, the price for Products accepted by Buyer. Further, the Buyer does not assume any responsibility for Products produced, processed, shipped and delivered in excess of the amount specified in the Purchase Order.

21. Limitation of Assignment. This Purchase Order is issued to the Seller, in reliance upon its personal performance of the duties imposed and by accepting same the Seller agrees not to assign this purchase Order or delegate the performance of its duties hereunder, except for the procurement of raw materials, without prior written consent of the Buyer. Failure to comply with the provisions in this paragraph shall effect, at the option of the Buyer, a cancellation of the Buyer's liability obligations hereunder.
22. Compliance with Laws Seller agrees to comply with all applicable federal, provincial and local laws, rules, regulations and ordinances in connections with the manufacture, sale, delivery and use of the Products, including without limitation labour laws in relation to Seller's employees, the *Construction Lien Act* (Ontario), obtaining or making all approvals and filings, complying with country of origin requirements under the North American Free Trade Agreement and any other duty preference programs, and upon request, Seller will submit to Buyer evidence of such compliance.
23. Jurisdiction/Governing Law. The contract created by Seller's acceptance of Buyer's offer as set out in Paragraph 3 hereof shall be deemed in all respects to be contract made under, and shall for all purposes be governed by and construed in accordance with laws of the Province of Ontario and the laws of Canada applicable therein and the Parties hereto attend to the non-exclusive jurisdiction of the courts of the Province of Ontario.
24. Arbitration. All matters in dispute under this agreement shall be referred to the arbitration of a single arbitrator, if the parties agree upon one, otherwise to a committee of arbitrators being comprised of one arbitrator appointed by each party, provided that if an even number of arbitrators results then a further arbitrator shall be appointed by the previously appointed arbitrators before the business of arbitration has been entered into, by the arbitrators named, and the award and determination of such arbitrator, or a majority of them as the case may be, shall be binding upon the parties hereto and their respective heirs, executors, administrators and assigns. Arbitration shall be in accordance with the Arbitrations Act, R.S.O. 1990, c.A.24 and amendments thereto and shall be conducted in the City of Windsor, Province of Ontario unless otherwise agreed by the Parties.
25. Entire Agreement. This is the entire agreement between the Parties respecting the Products and no modification of this Purchase Order shall be effective unless in writing and signed by Buyer's authorized representative. Any agreements, negotiations or understandings of the Parties prior to the date of this Purchase Order whether written or oral, are merged herein and superseded hereby. Reference in this Purchase Order to any Seller Document does not imply acceptance of any terms and conditions therein which, if in addition to or inconsistent with the terms and conditions contained herein, shall not be part of the agreement between the Parties.
26. Severability. If any provisions of the Purchase Order, or portion of any provision hereof, is declared or found to be unenforceable, the balance of the Purchase Order or such provision shall be interpreted and enforced to the greatest extent possible as if the unenforceable provision or portion had never been a part hereof. In particular, if any interest rate provided for herein is higher than the permitted by applicable law it shall automatically be amended to the highest legal rate.
27. Inventions. If this Purchase Order involves or results in: (i) any invention or any experimental, development or research activities including engineering related thereto; (ii) any reduction to practice of any subject matter, application or discovery which could be patented or copyright; or (iii) any improvement in the design of the Products or any alternative or improved method of accomplishing the objectives of this Purchase Order (collective, "Inventions"), such Inventions shall be owned by Buyer and be deemed confidential and proprietary property of Buyer, whether such Inventions or any portions thereof can be copyrighted or patented or not, and Seller shall cooperate (and cause its employees to cooperate) in executing any documents and taking any other actions necessary or convenient to patent, copyright, or otherwise perfect or protect such Inventions for the benefit of Buyer.

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28. Proprietary Information

- a. Any information or knowledge, which Buyer may have disclosed or may hereafter disclose to Seller in connection with this Purchase Order and any all services to be rendered and/or work to be performed pursuant to this Purchase Order is and shall be deemed confidential information and/or proprietary information of Buyer. Seller shall not, without authorization in writing from Buyer, use, communicate or disclose the confidential information or proprietary information of Buyer. Seller agrees to safeguard the confidential information and proprietary information of Buyer by using reasonable efforts, consistent with those used in the protection of its own confidential information and proprietary information of a similar nature, to prevent its disclosure to third parties. Seller agrees to cause its employees, contractors, officers, directors, agents and representatives to be bound by and comply with the foregoing restrictions regarding the use of disclosure of such confidential information and such proprietary information. Seller further agrees not to assert any claims (other than a claim for patent infringement) with respect to any technical information which Seller shall have disclosed or may hereafter disclose to Buyer in connection with the Products.
- b. All documents containing confidential information and/or proprietary information relating to the Products or acquired by Seller under a Purchase Order will belong to Buyer. All drawings, know-how and confidential information or proprietary information supplied to Seller by Buyer and all rights therein will remain the property of Buyer and will be kept confidential by Seller in accordance with Paragraph 28 (a) above.
- c. Seller shall, within five (5) business days of Buyer's request or the cancellation or termination of this Purchase Order, return all confidential information and all proprietary information (including all copies, notes and/or extracts thereof), to Buyer pursuant to this Purchase Order. In addition, that portion of the confidential information and the proprietary information which consists of analyses, compilations, studies or other documents prepared by Seller, or by its directors, officers, employees, or advisers, will be destroyed.
- d. Seller will ensure that any Third Party to whom Seller subcontracts for the work under the Purchase Order is bound by all of the terms and conditions relating to such work to which Seller is bound under a Purchase Order.

29. Audit Rights. Buyer retains the right at any reasonable time to send its auditors to examine all pertinent documents and materials in the possession or under the control of Seller relating to any of Seller's obligations under this Purchase Order or any payments requested by Seller pursuant to this Purchase Order. Seller shall maintain all pertinent books and records relating to this Purchase Order for a period of two years after completion of services or delivery of Products to this Purchase Order.

30. Independent Contractor. Seller shall be as an independent contractor for all purposes and nothing in the Purchase Order shall be construed so as to give Seller any right as a legal agent, joint venturer, or a partner in the business or as a principal or associate of the Buyer. Any intention to create the relationship of principal and agent between the Buyer and Seller is disclaimed and nothing in the Purchase Order shall constitute the Seller as a general agent of the Buyer.

31. Use of Buyers Name. Seller will not, without the prior written consent of Buyer, in any manner publish the fact that Seller has furnished or contracted to furnish Buyer goods and/or services, or use the name or trademarks of Buyer, its products, or any of its associated companies in Seller's advertising or other publications. If Seller places on the goods a Buyer trademark and/or identifying mark, as specified by Buyer, or if goods specified in the Purchase Order are peculiar to Buyer's design, they will not bear the trademark or other designation of the maker or Seller and similar goods will not be sold to anyone other than Buyer.

32. Time of Essence. Delivery of Products at the time or time specified herein is of the essence of the Purchase Order.