



## Purchasing General Terms and Conditions of Egelhof Controls Corp.

### **1. Agreement**

Seller agrees to sell and deliver the goods or services specified in Egelhof's order in ACCORDANCE WITH THE TERMS AND CONDITIONS CONTAINED IN THE ORDER, THE TERMS OF THIS FORM AND ANY SIGNED DOCUMENTS REFERENCED IN THE ORDER, all of which constitute the entire and final agreement of the parties and cancels and supersedes any prior or contemporaneous negotiation or agreements. EGELHOF'S ORDER EXPRESSLY LIMITS ACCEPTANCE TO THE TERMS OF THE ORDER AND ANY ADDITIONAL OR DIFFERENT TERMS, WHETHER CONTAINED IN SELLER'S FORMS OR OTHERWISE PRESENTED BY SELLER, ARE REJECTED UNLESS EXPRESSLY AGREED TO. SELLER SPECIFICALLY WAIVES ITS SIGNED ACCEPTANCE OF THIS ORDER BY EGELHOF. "Order" means a purchase order transmitted to Seller via Egelhof's Electronic Data Interchange System or delivered to Seller in a paper format.

### **2. Acceptance**

This order constitutes Egelhof's offer to Seller and is not binding on Egelhof until accepted by Seller and Seller specifically waives its signed acceptance of this order or by a delivery of the goods, rendering services, or the commencement of work on goods to be specifically manufactured for Egelhof pursuant to this order.

### **3. Delivery**

Time is of the essence. Delivery must be effected within the time specified on the face of this order. If Seller fails to make deliveries or perform services at the agreed time, all damages suffered by Egelhof and any premium transportation or other costs required to meet the specified delivery schedule will be at the expense of Seller.

### **4. Packing, Marking and Shipment**

Seller will pack and mark goods in accordance with Egelhof's instructions, secure the lowest transportation rates, meet carrier requirements and assure delivery free of damage and deterioration. Seller is responsible for the goods until delivery at the designated FOB point. Prices specified include all charges and expenses for containers, packing and crating, and transportation to the FOB point. All containers, packing and crating materials will become the property of Egelhof on delivery. Egelhof may specify the carrier and/or method of transportation and Seller will process shipping documents and route shipment of the goods from the FOB point accordingly. A packing slip must accompany each such shipment. If a shipment is to a consignee or agent of Egelhof, a copy of the packing slip shall be forwarded concurrently to Egelhof. If no such packing slip is sent, the count or weight by Egelhof or its agent or consignee is agreed to be final and binding on Seller with respect to such shipment.

## **5. Release Authorization**

When deliveries are specified to be in accordance with Egelhof's written releases, the releases constitute a binding obligation on the Seller, and Seller will not fabricate or assemble any goods, nor procure required materials, nor ship any supplies except to the extent authorized by such written releases or provisions of this order specifying minimum fabrication or delivery quantities.

## **6. Inspections and Rejections**

Egelhof may inspect and evaluate all goods (including all tooling and material used in their manufacture), and all services at times and places designated by Egelhof. Seller will perform its inspections as designated by Egelhof and Seller will make inspections systems, procedures and records available to Egelhof upon request. Notwithstanding payment or any prior inspection, Egelhof may reject, require correction, or return the goods to the Seller (at Seller's expense and risk of loss) any goods delivered or services rendered that do not conform to applicable requirements. Without limiting its remedies, after notice to Seller, Egelhof may either (i) replace or correct any nonconforming goods or services and charge Seller the cost of such replacement or correction, or (ii) cancel the order for default under Section 23 hereof.

## **7. Competitiveness**

Seller shall be competitive in price, quality, capacity and delivery. Egelhof may audit Seller to verify Seller's competitiveness. In the event that Egelhof determines in good faith that Seller fails to be competitive, Egelhof may terminate this Order according to Section 23.

## **8. Excusable Events**

(a) Neither Egelhof nor the Seller will be liable for a delay or failure to perform directly due to an Excusable Event. An Excusable Event is a cause or event beyond reasonable control of a party that is not attributable to its fault or negligence. Excusable Events include fire, flood, earthquake, and other extreme natural events, acts of God, riots, civil disorders, and war or acts of terrorism whether or not declared as such by a Government. In every case, the failure to perform must be beyond the reasonable control, and not attributable to the fault or negligence, of the party claiming the Excusable Event. Excusable Events also include delays or nonperformance of a subcontractor, agent or supplier of a party only if and only to the extent that the cause or event would be an Excusable Event as defined in this Section 8. Excusable Events do not include the failure to comply with applicable law or to take actions reasonably necessary to schedule performance in anticipation of any customs, export-import, or other Government Requirement of which public notice has been given.

(b) The party claiming an Excusable Event will provide the other party with written notice of its occurrence and its termination as soon as practicable.

(c) In the event of an Excusable Event, Egelhof, at its option, may acquire possession of all finished goods, work-in-process, and raw materials produced or acquired for the work under the Order.

(d) Egelhof reserves the right to acquire the goods elsewhere for the duration of the Excusable Event and for a reasonable time afterwards to minimize production disruptions until the Seller's facilities are producing the goods in the quantities required by the Order or releases and to reduce accordingly any quantity of goods ordered under an outstanding release.

(e) Egelhof may terminate an Order, in whole or in part, upon written notice to the Seller if an Excusable Event has occurred resulting in a failure or delay to perform that has lasted for more than three (3) consecutive months after the date of the written notice from the party claiming an Excusable Event is effective (as described in Section 27). In the event of a termination by Egelhof, Section 22 applies.

### **9. Labor Disputes**

Seller will notify Egelhof immediately of any actual or potential labor dispute delaying or threatening to delay timely performance of this order, and will include all relevant information to Egelhof. Seller will notify Egelhof in writing six (6) months in advance of the expiration of any current labor contract(s). If requested by Egelhof, Seller will deliver a supply of finished goods at least thirty (30) days prior to the expiration of any such labor contract, in quantities and for storage at any place or places designated by Egelhof.

### **10. General Warranty**

Seller warrants that the goods or services will (i) comply with all specifications, drawings, descriptions or samples furnished and/or specified by Egelhof, (ii) be merchantable, and (iii) be free from defects in material and workmanship. Seller further warrants that all goods not designed by Egelhof will be fit and sufficient for the purpose intended. Seller further warrants that on delivery Egelhof will receive good title to the goods and services, free and clear of all liens and encumbrances and that all goods and services will be free from any actual or claimed patent, copyright or trademark infringement. These warranties are in addition to any warranties implied by law or otherwise made by Seller and will survive acceptance and payment by Egelhof.

### **11. Recall or Repair Campaign**

In the event it is determined that a good or service of Seller purchased hereunder creates or contributes to a vehicle repair campaign or safety recall due to a vehicle defect, or non-compliance with applicable law, Seller shall pay the cost of repair or recall and correction, including labor and administrative costs, based upon Seller's proportionate responsibility for the defect or non-compliance. This section shall not limit Seller's responsibility under other provision hereof.

### **12. Price Warranty**

Seller warrants that the prices for the goods or services sold to Egelhof hereunder are no less favorable than Seller currently extends to any other customer for the same or similar goods or services in similar quantities. If Seller reduces its prices to others for such goods or services during the term of this order, Seller will reduce the price to Egelhof for such goods or services correspondingly. Seller warrants that prices shown on this order are complete, and that no additional charges of any type will be added without Egelhof's express written consent.

### **13. Property and Special Tooling**

(a) Egelhof or its customer becomes the sole owner of all tools, equipment, material, drawings, manufacturing aids and replacement of the foregoing as soon as it is fabricated or acquired by Seller for use in the performance of this Order ("Special Tooling"). Egelhof or its customer takes title to the Special Tooling even if Seller has not yet been completely paid for

the Special Tooling. Ownership of Egelhof or its customer will not relieve Egelhof or its customer of its obligation to pay for the Special Tooling nor affect any claim of Seller for payment under a production tool order.

(b) Unless otherwise provided in this Order, property of every description, including, but not limited to, all tools, equipment, material, drawings, manufacturing aids and replacements of the foregoing furnished by Egelhof, either directly or indirectly, or Special Tooling, will be (i) the property of Egelhof or its customer, (ii) plainly marked or otherwise adequately identified by Seller as such, and (iii) safely stored separate and apart from Seller's property.

(c) Seller will adhere to the Egelhof procedure in effect at the time for submitting requests for reimbursements for tooling costs. All requests for reimbursements for tooling costs are subject to review, approval and audit by Egelhof.

(d) Seller will retain and not use or rework tooling or property of Egelhof except for performance of work hereunder or as authorized in writing by Egelhof. Seller will keep such tooling or property in its possession and/or control in good condition, fully covered by insurance, free of liens and encumbrances and will replace such tooling or property when lost, damaged or destroyed.

(e) All Egelhof tooling or property will be transferred as Egelhof may direct at any time. If Seller makes any unauthorized transfer of Special Tooling, Seller will reimburse Egelhof for any costs incurred by Egelhof in returning the tooling to Egelhof or moving the tooling as directed by Egelhof.

#### **14. Insurance and Indemnification**

(a) Insurance. Seller will provide worker's compensation, comprehensive general liability, automobile, public liability, and property damage insurance in amounts and coverage sufficient to cover all claims hereunder. Such policies will name Egelhof 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 Egelhof. Egelhof 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 under this clause. Egelhof's action or inaction will not act as a waiver of any of Egelhof's rights described in this clause.

(b) Indemnification. Seller will defend, indemnify, and hold Egelhof harmless against all claims, liabilities, losses, damages, and settlement expenses, including Egelhof's attorney's fees, in connection with any breach by Seller of these general conditions or for injury or death of any person and damage or loss of any property allegedly or actually resulting from or arising out of any act, omission or negligent work of Seller or its employees, agents, or subcontractors in connection with performing this order, either on Egelhof's property or in the course of their employment.

#### **15. Changes**

Egelhof may, at any time, make changes in this order. Any claim by Seller for a change in price adjustment must be asserted in writing within thirty (30) days from date or receipt by Seller of Egelhof's notification of any change. Egelhof will have the right to verify all claims hereunder by auditing relevant records, facilities, work or materials of Seller. If, in the

opinion of Egelhof, a credit is due Egelhof, Egelhof may notify Seller in writing at any time, and the claim for credit will be adjusted to the mutual satisfaction of Seller and Egelhof before final payment is made. Seller agrees to proceed with the order as changed under this Section 15.

#### **16. Claims Adjustment**

Egelhof may at any time and without notice deduct or set-off Seller's claims for money due or to become due from Egelhof against any claims that Egelhof has or may have arising out of this or any other transaction between Egelhof and Seller.

#### **17. Duty Drawback Rights**

This order includes all related customs duty and import drawback rights, if any (including rights developed by substitution and rights which may be acquired from Seller's suppliers), which Seller can transfer to Egelhof. Seller will inform Egelhof promptly of any such rights and will supply documents as may be required to obtain such drawback.

#### **18. Use of Egelhof's Name**

Seller will not, without the prior written consent of Egelhof, in any manner publish the fact that Seller has furnished or contracted to furnish Egelhof goods and/or services, or use the name or trademarks of Egelhof, its products, or any of its associated companies in Seller's advertising or other publication. If Seller places on the goods a Egelhof trademark and/or identifying mark, as specified by Egelhof, or if goods specified in this order are peculiar to Egelhof'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 Egelhof.

#### **19. Information Disclosed**

The specifications, drawings, designs, manufacturing data and other information transmitted to Seller by Egelhof in connection with the performance of this order are the property of Egelhof and may be covered by one or more Egelhof patents, patent applications or copyrights. Seller will handle all of this information in such a manner to insure that it is not used for any purpose detrimental to the interests of Egelhof. Unless expressly provided in this order or otherwise agreed to in writing by Egelhof, Seller's disclosure rights regarding products or services related to this order, and information relating thereto shall be limited to any valid copyright thereon or patent Seller may hold covering the manufacture, use and sale of the products or services.

#### **20. Patents**

No rights are granted to Seller under any Egelhof patents except as may be necessary to fulfill Seller's obligations under this order. Seller agrees to defend all suits, actions, or proceedings which may be brought against Egelhof, any of its associated companies or its customers for alleged infringement of any proprietary interest resulting from the use or sale of the goods or services provided hereunder and to pay all expense and fees of counsel which may be incurred in defending, and all costs, damages, or other recoveries in every such suit.

## **21. Assignment**

This order will not be assigned or delegated, in whole or in part, without Egelhof's prior written consent.

## **22. Termination without cause**

Egelhof may terminate this order at any time without cause in whole or in part by written notice, whereupon Seller will stop work on the date and to the extent specified in such notice and terminate all orders and subcontracts that relate to the terminated order. Within thirty (30) days after receipt of termination notice, Seller will submit all claims resulting from such termination. Egelhof will have the right to verify such claims by auditing the relevant records, facilities, work or materials of Seller and/or its subcontractors. Egelhof will pay Seller for finished work accepted by Egelhof and also for the documented cost to Seller of work in process and raw material allocable to the terminated work which is not in excess of any prior Egelhof authorization. Payment made under this Section 22 will constitute Egelhof's only liability for termination hereunder with title and right of possession to all delivered goods and services vesting in Egelhof immediately on Egelhof's tender of such payment. The provision of this Section 22 will not apply to any cancellation by Egelhof for default by Seller or for any other cause recognized by law or specified by this order.

## **23. Termination with cause**

If Seller (i) fails to deliver goods or perform services at the time specified herein, or (ii) fails to perform any other provisions hereof and does not cure such failure within a period of ten (10) days after receipt of written notice from Egelhof specifying such failure, or (iii) becomes insolvent, makes an assignment in favor of creditors, or enters bankruptcy or dissolution procedures, or (iv) is merged into another company and/or is expropriated or nationalized, Egelhof may cancel the whole or any part of this order without any liability, except for payment due to goods and services delivered and accepted. Upon such termination Egelhof will have the right, and on notice to Seller, to take title to and possession of all or any part of such work performed by Seller under this order.

## **24. Remedies**

The rights and remedies herein reserved to Egelhof are cumulative and in addition to any further rights and remedies available at law or in equity. No waiver of any breach of any provision of this order will constitute a waiver of any other breach or a waiver of such provision.

## **25. Required Compliance**

In providing goods or services hereunder, Seller will comply with any and all applicable Federal, State and Local Laws, and regulation there under. Seller will defend, indemnify and hold Egelhof harmless from and against any and all claims, losses, damages, costs and expenses resulting from or arising out of any failure of Seller or Seller's employees, agents and subcontractors to comply with any applicable governmental regulations and/or statutes. To follow ISO 14001 requirements suppliers/Contractors who provide or bring potentially hazardous materials on site shall provide Material safety data Sheets (MSDS) as applicable. All materials brought on site are to be labeled in accordance with Hazardous Communication Requirement. MSDS shall be directed to the Location Environmental Management Representative designee for review and record retention.

**26. Communication**

Egelhof will prescribe the methods of communication between Seller and Egelhof, and Seller agrees to follow Egelhof’s prescriptions.

**27. Notices**

All notices under this Order shall be in writing and shall be transmitted in any of the following ways: (a) mailing by certified mail, return receipt requested, with first-class postage prepaid; (b) mailing by recognized overnight service utilizing receipts, delivery charges prepaid; (c) fax where an electronic proof of transmission is generated at the time of sending; or (d) Egelhof’s electronic system for communication with its suppliers. Notice shall be effective (a) upon five (5) days after posting; (b) upon one (1) business day following deposit in the case of overnight delivery service; or (c) and (d) on the date of transmission.

**28. Governing Law**

This order and all transaction between Egelhof and Seller will be governed by and construed in accordance with the laws of Ohio as if entirely performed therein. The 1980 United Nations Convention on Contracts for the International Sales of Goods, to the extent it may be deemed to apply, shall not pursuant to Article 6 thereof apply to this Order or any transaction pursuant hereto. The jurisdiction and venue for any action brought by either party shall be solely in any state or federal court within the Northern district of Ohio.

**29. Egelhof**

“Egelhof”, as used in these Terms and Conditions, includes Egelhof Controls Corp.

The following section applies to government contracts:

**30. CONTRACT CLAUSE FOR PURCHASE ORDERS, LEASES AND CONTRACTS OF \$2,500 OR MORE.**

The equal opportunity clause set forth in 41 C.F.R. § 60-1.4, the Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era clause set forth in 41 C.F.R. § 60-250.4, and the Affirmative Action for Handicapped Workers clause set forth in 41 C.F.R. § 60-741.4 are hereby incorporated by reference as though fully set forth herein.

EGELHOF CONTROLS CORP.

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

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