FIELD CONTROLS
TERMS AND CONDITIONS OF PURCHASE

GENERAL PROVISIONS

a. The definition of terms used, interpretation of this Purchase Order, and the rights of the parties shall be construed under and governed by the Uniform Commercial Code of the State of North Carolina “Buyer” means Field Controls [and/or any of its divisions, subsidiaries, and/or affiliates]. “Buyer” means the party to which this Purchase Order is addressed and also includes Seller’s principal if Seller is acting as broker or agent. “Purchase Order” means the attached or enclosed purchase order, which includes these Terms and Conditions of Purchase, all performance requirements and specifications issued hereunder, and all drawings, models, and samples furnished hereunder. “Goods” means those articles, materials, supplies, drawings, data, or other property or services described in the Purchase Order.

b. If the Purchase Order is deemed to constitute an offer, it may be accepted only on terms set forth in the Purchase Order, including, without limitation, these Terms and Conditions. If the Purchase Order is deemed to constitute an acceptance of an offer, such acceptance is expressly conditioned on Seller's assent to the terms of the Purchase Order, including, without limitation, these Terms and Conditions of Purchase, and shipment of any part of the Goods or other commencement of performance shall be deemed to constitute such assent. Any additional and/or different terms and conditions proposed by Seller and/or any attempt by Seller to vary any of these terms and conditions shall be deemed a material alteration and is hereby objected to and rejected.

c. Buyer may at any time, by written notice to Seller, make changes in the drawings, specifications, quantities, and delivery schedules and shipping instructions under the Purchase Order. If any such change increases or decreases the cost of performing the Purchase Order or the time required for its performance, an equitable adjustment in prices and/or delivery schedules shall be agreed between the parties as soon as practicable, but in any event no later than 10 days prior to delivery of the Goods.

d. Buyer’s part number & Purchase Order number must appear on all shipping papers, invoices, parcels, or containers.

e. In the event of Seller’s delay or failure to perform due to a cause beyond Seller’s reasonable control, including acts of God, government action, floods, epidemics, war, or riot, but excluding strikes or other labor disturbances or disputes involving Seller, the date for Seller’s performance shall be extended for a period equal to the time lost by reason of such occurrence; provided, however, that Seller shall take reasonable measures to mitigate and minimize the effect of such event and to continue with performance of its obligations, and Buyer may, at its option, cancel the Purchase Order with no resulting cost or liability to Buyer.

f. [North Carolina] law shall apply to this Purchase Order and any proceeding relating hereto, notwithstanding its provisions regarding conflicts of law. If any provision or part of a provision of the Purchase Order is found to be illegal, invalid or unenforceable under any applicable law, such provision or part of a provision shall, to the extent as it is severable from the remaining terms, be deemed omitted from Purchase Order and shall in no way affect the legality, validity or enforceability of the remaining terms.

g. The Purchase Order constitutes the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous proposals, both oral and written, negotiations, representations, commitments, writings and all other communications between the Parties. Seller may not assign any of the amounts due or to become due and may not assign or subcontract any of the work to be performed under the Purchase Order without the prior written consent of Buyer.

h. All disputes arising under or in connection with the Purchase Order shall be resolved by (a) good-faith negotiations by knowledgeable, responsible representatives of each party who are fully authorized to settle any such dispute, or (b) in the event such negotiations do not resolve such dispute, binding arbitration held in Chicago, Illinois, by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Each party shall bear its own costs of these procedures; the parties shall equally split the fees of the arbitration and the arbitrator. Notwithstanding the above, either party shall have the right to seek a temporary restraining Purchase Order or an injunction related to the purposes of the Purchase Order, to compel compliance with confidentiality obligations, or to file suit to compel compliance with this dispute resolution process.

PRICE; CREDIT; WAIVER OF LIENS

The Purchase Order shall not be filled at a higher price than specified herein. If the price is omitted in the Purchase Order, the Goods shall be billed at the price last paid or quoted, or at the prevailing market price, whichever is lower. Buyer shall only be liable for such federal, state, and local taxes levied on Buyer which Seller is required by law to collect from Buyer. Seller shall not assess, and Buyer shall not be responsible for, surcharges of any kind (including, but not limited to, surcharges for raw materials, fuel, freight or otherwise), unless specifically agreed to in a writing signed by Buyer which states the applicable surcharge and the precise method or formula by which such surcharge is determined. In the event importation of the Goods results in the assessment of an import or export duty, the surcharge, if any, shall be borne by Buyer. Any such surcharge is included on the face of the Purchase Order, payment shall be due after delivery of the Goods to Buyer, within 60 days of Buyer’s receipt of Seller’s invoice.

Invoices will be submitted by Seller to the location indicated on the Purchase Order and shall include the Purchase Order number, part number/product description, unit price, and name of person or party issuing the Purchase Order. Unless specified in the Purchase Order or agreed otherwise in writing, all invoicing and payments shall be made in U.S. dollars.

Buyer shall have the right (but no duty) to withhold payment for any amounts in dispute. Buyer shall have the right (but no duty) to withhold any payment and apply it to the payment of any obligations of Seller to Buyer arising out of the Purchase Order or any other Purchase Order or agreement between Seller and Buyer.

Seller expressly waives and releases any and all claims to any lien upon any Goods owned or purchased by Buyer. The foregoing waiver and release of liens shall not apply to any consensual security interest created under a separate Security Agreement executed by Buyer pursuant to Article 9 of the Uniform Commercial Code.

DELIVERY; RISK OF LOSS; EXCESS SHIPMENTS AND DELAYS

a. Time is of the essence in the performance of the Purchase Order. In the event of Seller’s delay or failure to perform (except when due to a cause beyond Seller’s reasonable control as outlined above), Seller shall pay to Buyer, upon demand, as liquidated damages and not as a penalty, an amount equal to 1.0% of the contract price of the Goods for every week of delay beyond the delivery date specified on the Purchase Order.

b. The Goods shall be suitably packed and prepared for shipment to secure lowest transportation rates (unless a premium method is specified on the face hereof) and to comply with carrier and packing regulations, including the International Standard for Phytosanitary Measures, the International Standard for Phytosanitary Measures, and regulations of the United States of America, and the precise measure or formula of wood in packaging. Unless expressly agreed to by an authorized representative of Buyer, no charges shall be allowed for packing, crating, freight express, or cartage. Buyer may select the mode of transportation, the routing of, and the carrier for the Goods. Exceptions to stated routes and terms must be secured from an authorized representative of Buyer, and Seller shall be liable for excess transportation costs resulting from any deviation from Buyer’s instructions.

c. Goods shall be delivered by Seller to Buyer’s place of business from which the Goods were ordered, unless otherwise specified on the face hereof. Unless Buyer instructs otherwise, shipments with the same ship to address must be combined for the lowest freight rates. Seller shall not send partial shipments unless authorized.

d. Unless otherwise agreed in writing, all shipments shall be F.O.B. Buyer’s destination, and risk of loss as to such Goods shall remain with Seller until after the Goods are delivered and all nonconformities are cured or accepted. The party bearing the risk of loss shall be responsible for providing adequate insurance on shipments.

e. Buyer’s count shall be conclusive, and Buyer shall have no liability for payment for Goods delivered in excess of the quantity specified herein unless Buyer elects to keep such excess, and then Buyer shall be liable only for the price thereof and not any incremental freight expenses. Such excess Goods shall, at Buyer’s option, be subject to rejection by Buyer and redelivery to Seller at Seller’s expense.

f. If, prior to the time for delivery, Seller has reason to believe that it will be unable to meet its delivery schedule, it shall immediately notify Buyer in writing indicating the cause of delay and the suppliers involved and shall use its best efforts to cure the anticipated delay. Upon receipt of such notice, or upon occurrence of an actual delay, Buyer may, in its sole discretion, (i) direct expedited routing of the Goods, with Seller being responsible for all excess costs, or (ii) cancel the Order by written notice to Seller and purchase substitute Goods elsewhere, with Seller being responsible for all resulting excess costs including any increase in the price paid for the Goods and any expenses to expedite routing of the substitute Goods. Acceptance by Buyer of part of the Goods shall not bind Buyer to accept the remainder. Acceptance of all or a part of the Goods shall not deprive Buyer of the right to revoke acceptance and return any part of the Goods to the right to make a claim for damages because of the failure of the Goods to conform to the Purchase Order by reason of defects or other breach of warranty or by reason of damage caused by improper packing. Buyer shall not be liable to Seller for failure to accept the Goods for causes beyond Buyer’s reasonable control.

WARRANTIES

a. In addition to Seller’s standard warranty on the Goods, Seller warrants, for the longer of either 12 months after Buyer’s final acceptance of Goods or Seller’s standard warranty period, that all Goods shall (i) strictly conform to the terms, conditions, specifications, descriptions, drawings, and data specified herein or furnished herewith; (ii) be of good design, quality, material, and workmanship; (iii) be free from defects in materials and shall be merchantable and fit for their particular purpose; (iv) meet applicable industrial or governmental safety standards; (v) be manufactured and produced in accordance with all applicable laws; and (vi) be free from liens, security interests or encumbrances.


b. Seller further warrants that all Goods are free of asbestos and all other hazardous substances and that no claim, demand, or notice has been filed or any proceeding commenced alleging liability of Seller in connection with the use of asbestos and/or any other hazardous substances relating in any way to the manufacture or sale of the Goods. Seller shall provide a material safety data sheet for each substance containing a toxic substance that is purchased by Buyer from Seller, and Seller shall affix on each container containing toxic substances the chemical name and the appropriate hazard warning for the use and safe handling of the toxic substance. Seller shall provide other material safety data sheets relating to the Goods upon request.

c. Seller further warrants that Seller will have title to the Goods and the right to sell such Goods to Buyer. In the event of any of the Goods being or becoming a subject of any action or proceeding brought against Buyer for such infringement. Furthermore, in the event that Buyer should be enjoined in such suit or proceeding or from using any of the Goods, Seller, at its option, shall promptly either (a) secure termination of the injunction and obtain for Buyer the right to use such Goods without any obligation or liability; (b) replace such Goods with non-infringing goods substantially equivalent to those for which Buyer was intended to be returned to Buyer's satisfaction; or (c) remove such Goods and refund to Buyer the amount paid. The provisions of this paragraph shall not apply to claims, demands, suits, or injunctions directly attributable to Goods manufactured by Seller in accordance with Buyer's specific instructions, specifications, design, or drawings.

INDEMNIFICATION

Seller shall defend, indemnify and save harmless Buyer from and against any loss, cost, damage, or expense arising from infringement or alleged infringement of any patent of the United States or foreign letters patent by any of the Goods, and Seller shall defend or settle at its own expense any suit, action, or proceeding brought against Buyer for such infringement. Furthermore, in the event that Buyer should be enjoined in such suit or proceeding or from using any of the Goods, Seller, at its option, shall promptly either (a) secure termination of the injunction and obtain for Buyer the right to use such Goods without any obligation or liability; (b) replace such Goods with non-infringing goods substantially equivalent to those for which Buyer was intended to be returned to Buyer's satisfaction; or (c) remove such Goods and refund to Buyer the amount paid. The provisions of this paragraph shall not apply to claims, demands, suits, or injunctions directly attributable to Goods manufactured by Seller in accordance with Buyer's specific instructions, specifications, design, or drawings.

CANCELLATION; TERMINATION OF PURCHASE ORDER

a. Buyer reserves the right to cancel any item on the Purchase Order or terminate Seller's performance under the Purchase Order, in whole or in part, by written notice to Seller, whereupon Seller shall terminate its performance on such date of notice and shall terminate all Purchase Orders and subcontracts to the extent they relate to such performance. Seller shall promptly cease performing the Purchase Order, and Seller shall return to Buyer, at Buyer's expense and without cost to Buyer, all tools and dies purchased prior to termination and of the most favorable disposition that Seller can make thereof. Seller shall comply with Buyer's instructions relating to disposition of Goods and raw materials. Seller shall submit to Buyer in writing notice of its intention to submit claims based on such termination within 5 days from the date of notice of termination, and all such claims shall be submitted in detail and substantiated by bills, receipts, and similar documents within 30 days thereafter, or such claims shall be waived. Buyer shall pay Seller the Purchase Order price of finished Goods accepted by Buyer and the cost to Seller, excluding profits and losses, of work in process and raw materials relating to the Purchase Order, Good, or purchase order or any raw material on order or in Seller's possession at time of Buyer's delivery requirements under the Purchase Order. Notwithstanding the above, payments made under this paragraph shall not exceed the aggregate price specified in the Purchase Order, less any payments made or to be made. Payment provided under this paragraph shall constitute Buyer's only liability in the event the Purchase Order is terminated.

b. To the extent the Purchase Order covers Goods normally carried in the inventory of Seller, as distinguished from Goods specially made to Buyer's specifications, Buyer shall have no liability for any termination of the Purchase Order, in whole or in part, prior to actual shipment. For any termination for which the notice thereof is sent to Seller after receipt of Goods by Buyer, liability shall be limited to returning such Goods and reimbursing Seller the direct cost of handling and transportation.

BUYER'S PROPERTY; CONFIDENTIALITY; RIGHTS IN INVENTIONS

a. Buyer retains title to all information and materials (including, but not limited to, all drawings, designs, specifications, technical data, production or product “know-how”, and/or proprietary information of Buyer, in whatever form or format, furnished to Seller to facilitate performance under the Purchase Order, and the same shall be (i) treated as Buyer's confidential information and held in strict confidence, (ii) used exclusively by Seller to complete the Purchase Order, and (iii) returned to Buyer at its direction or within 5 days after completion, termination, or cancellation of the Purchase Order, along with all copies or reproductions thereof. Seller shall restrict disclosure of such information solely to those of its employees, representatives and subcontractors who have a need to know for purposes of completing the Purchase Order and shall ensure that each such recipient of such information is aware of and is made subject to the obligations to keep such information confidential.

b. All property of Buyer furnished or made available to Seller for performance of work under the Purchase Order, including, but not limited to, materials, tools, tooling, special tooling (as defined below), equipment, and replacements thereof, shall remain the property of Buyer, shall be segregated from Seller's property and be individually marked and identified as Buyer's property and shall be promptly returned to Buyer at its request, (or upon termination, cancellation, or completion of the Purchase Order). Seller shall maintain and keep up-to-date a list of all such property and shall furnish the list to Buyer upon request. Such property, including, without limitation, special tooling, shall be used exclusively for performance under the Purchase Order, and Seller agrees to: (i) maintain such property in good condition and assume all risks and liability for loss or damage thereto excepting normal wear; (ii) purchase insurance to cover the replacement cost thereof, with the proceeds payable to Buyer, and furnish Buyer evidence of such insurance upon request; (iii) permit inspection of such property by Buyer during normal business hours; and when requested by Buyer, furnish detailed statements of such inventory; and (v) fully cooperate and assist Buyer in any effort by it to obtain possession of such property through court proceedings or otherwise.

c. Seller agrees to assign to Buyer and not otherwise to make use of any invention, improvement, or discovery, whether or not patentable, which is conceived or reduced to practice in performance of the work under the Purchase Order by any employee of Seller or any person working under Seller's direction. Seller shall cooperate with Buyer to complete such assignment and shall execute all documentation reasonably requested by Buyer to effect the assignment.

d. Before commencing work under the Purchase Order, Seller agrees to obtain Buyer's prior written approval for the purchase of any special tooling, specifying in detail each such request. Upon execution of the Purchase Order, and where such special tooling is required, Seller shall prepare a list of Goods for which special tooling has been used, together with a detailed listing in a form acceptable to Buyer of all special tooling, including each item's unamortized cost and fair market value, and shall submit such report to Buyer for approval as soon as practicable. Seller shall be responsible for such tooling at no cost to Buyer, and Buyer will be required to acquire a replacement tooling at Buyer's expense. In such event, Seller will be reimbursed for said expense. Buyer agrees to make such tooling, and such replacement tooling, available to Buyer for the life of the tooling.

e. As used herein, “special tooling” means all patterns, dies, fixtures, molds, jigs, models, gauges, inspection devices, special cutting tools, special test devices, drawings, and templates, and any replacements thereof, which, prior to the date of the Purchase Order, were not owned or used by Seller and which Seller has been or will be required to acquire and use solely for the purpose of furnishing Goods under the Purchase Order. Special tooling does not include tools, capital items, or property owned by or furnished by Buyer.
Applicable Law and Jurisdiction

The formation, existence, construction, performance, validity and all aspects of the agreement arising from this Purchase Order shall be governed by the laws of the People’s Republic of China without regard to its conflicts of laws principles. Buyer and Supplier agree that the United Nations Convention on contracts for the International Sale of Goods (1980) is excluded and shall not apply to the agreement arising from this Purchase Order or the transactions contemplated by such agreement.

Terms of Payment

Terms of payment will be net 55 days from receipt of an invoice unless otherwise agreed in writing. All invoices must itemize transportation charges, taxes, and packaging separately. Buyer reserves the right to withhold payment if an invoice does not reference a valid Purchase Order number, position number, proper quantity, and item description.

Compliance with Laws

Supplier will fully comply with all applicable PRC laws and regulations as well as other applicable foreign laws, ordinances, rules and codes, including, without limiting the generality of the foregoing, those relating to occupational health and evidence of compliance when requested by Buyer.

Title and Delivery of Goods

Terms of sale will be Delivered Duty Paid (DDP) (Incoterms 2010) to the designated destination on this Purchase Order, unless otherwise specified.

Duty Drawback Rights

This Purchase Order includes all related customs duty and import drawback rights, if any, which Supplier can transfer to Buyer (including rights developed by substitution and rights, which may be acquired from Supplier’s suppliers). Supplier agrees to inform Buyer of the existence of any such rights and to supply such documents as may be required to attain such drawback.

R&D Tax Credit/Grants

Buyer retains the right to all claims for government support for research and development, including any grants, tax credits, or tax refunds available under applicable PRC law and other applicable foreign tax incentive laws.

Security Initiatives

Supplier agrees to make best efforts to assist Buyer in participating in all governmental security/border initiatives to strengthen supply chain and border security, including but not limited to, Customs Trade Partners Against Terrorism (C-TPAT) and Partners in Protection.

Governing Language

These Terms and Conditions are in the English and Chinese language versions. In case of any discrepancy between the English and Chinese versions, the English language version shall prevail, and shall be controlling in all respects.

Dispute Resolution

All disputes arising under or in connection with the Purchase Order, except with respect to a dispute relating to intellectual property, which dispute shall be resolved by a court of competent jurisdiction, shall be resolved by (a) good-faith negotiations by knowledgeable, responsible representatives of each party who are fully authorized to settle any such dispute, or (b) in the event such negotiations do not resolve such dispute, binding arbitration held in Hong Kong, PRC, by a panel of three arbitrators (the parties each selecting one arbitrator, and the third arbitrator being selected by the arbitrators selected by the parties) pursuant to the Administered Arbitration Rules of the Hong Kong International Arbitration Centre. The Parties agree that any arbitration shall be conducted on a one-on-one basis between Company and Representative. Each party shall bear its own costs of these procedures; the parties shall equally split the fees of the arbitration and the arbitrator. Notwithstanding the above, either party shall have the right to seek a temporary restraining order or an injunction related to the purposes of the Purchase Order, to compel compliance with confidentiality obligations, or to file suit to compel compliance with this dispute resolution process. This process does not constitute a waiver of the dispute resolution provisions of this Section 25.