

Seller is hereafter referred to as "Supplier" and Lödige USA Inc. is hereinafter referred to as "Buyer".

1. Acceptance of order by supplier

Acceptance of this order by Supplier is expressly limited to the terms and conditions contained in this Purchase Order (this "Order"). Any typewritten or handwritten portions of this order made by Buyer shall supersede and cancel any contrary or inconsistent printed portions of this order. ANY ADDITIONAL OR DIFFERENT TERMS IN SUPPLIER'S INVOICES, BILLING STATEMENTS, ACKNOWLEDGMENT FORMS OR OTHER DOCUMENTS ARE DEEMED TO BE MATERIAL. ARE OBJECTED TO WITHOUT FURTHER NOTIFICATION BY BUYER, and shall be of no force or effect unless specifically agreed to in writing by Buyer. Any of the following acts by Supplier shall constitute acceptance of this Order and all of its terms and conditions: signing and returning a copy of this Order; delivery of any of the goods, works and/or services ordered (collectively the "Goods"); and informing Buyer in any manner of commencement of performance; or returning Supplier's own form of acknowledgment. Except as otherwise agreed in writing, all tangible or intangible property created or generated in the course of Supplier's performance under this Order, including without limitation printed materials, artwork, designs, concepts, plates, audiovisual materials, software, negatives, drawings, mechanicals and photographs, are the property of Buyer and should be so marked. All results of work performed or items created or supplied hereunder by or at the direction of Supplier constitute "works made for hire" specially commissioned by Buyer within the meaning of the U.S. Copyright Act. Supplier acknowledges that Buyer is to be considered the author of such works, and hereby irrevocably grants to Buyer, its successors and assigns, all rights, title and interest in such works worldwide.

2. Price and delivery

(A) Supplier shall furnish the Goods in accordance with the prices and delivery schedule specified on the face of this order. If prices and/or delivery dates are not so stated, Supplier shall offer its lowest prices or best delivery dates and upon written acceptance by Buyer, such prices and delivery dates shall deemed to have the same force and effect as if initially specified on this Order. Where applicable, prices shall include all applicable taxes, with sales and use taxes separately itemized. Seller warrants that the price for the Goods is no less favorable than Seller currently extends to any other customer for the same or similar quantities. If seller reduces its prices to others for the same or similar goods during the term of this order, Seller will reduce the prices to Buyer correspondingly. (B) Time is of the essence to Buyer and Supplier both as to time and quantity. Supplier must strictly observe the delivery schedule specified in this Order. Buyer is not obligated to accept partial deliveries or excess deliveries. In addition to its right to terminate pursuant to Paragraph 15(B) (Termination), Buyer may require Supplier, at Supplier's sole cost and expense, to ship any of the Goods if Supplier fails to meet the specified delivery schedule. Acceptance by Buyer of all or part of the Goods shall not constitute a waiver by Buyer of its claims arising from delays in delivery.

3. Progress and completion

The Supplier shall commence works on the date specified in the Order. If no such date is specified the Supplier shall commence works on the date instructed by the Buyer. The Supplier shall not have uninterrupted access or exclusive possession to any part of the site and shall recognize and make due allowance for sharing work areas with and for the freedom of other contractors and consultants employed on the site and shall not unreasonably impede such other contractors and consultants. The Supplier does not guarantee continuity of working. The Supplier makes no guarantee of continuity of work on the site and reserves the right to phase, omit, suspend or stop the works, or amend the programme. The right to phase, omit, suspend, or stop the works may be exercised by the Buyer with two (2) Working Days' notice to the Supplier. The Buyer shall be entitled to require the Supplier to resume work within two (2) Working Days of being given notice to do so. The Buyer shall not be liable to the Supplier for any loss or damage suffered as a result of any phasing, omission, suspension or stopping of the works. The Supplier shall complete the works within the duration set out in the order or in accordance with the completion date(s) set out in any notice issued by the Buyer. If in the opinion of the Buyer the Supplier is failing to carry out the works diligently the Buyer may, upon giving notice to the Supplier and without prejudice to any of the Buyer's other rights and remedies perform the works or any section or the relevant part, whether by itself or by others, and/or issue instructions to the Supplier removing the relevant parts of the works or section or part from the supply and may employ others to carry out those parts; and in such event the price for the works shall be reduced by the value of the removed parts, and any additional costs and/or expenditure incurred or loss and damage suffered by the Buyer in so doing shall be recoverable from the Supplier as a debt or may be deducted from any monies due to or become due to the Supplier under this agreement.

4. Packaging, marking and risk or loss

All Goods shall be appropriately packaged and otherwise prepared in a manner to obtain the lowest shipping rates unless contrary instructions are received in writing from Buyer. Buyer's count will be accepted as final on all shipments not accompanied by a packing slip. Supplier shall bear all risks of loss or damage to Goods covered by this Order until delivery of the Goods to the carrier, if transportation is F.O.B. Supplier, or until acceptance by Buyer if transportation is F.O.B. Buyer. Supplier will mark all Goods in such manner as Buyer may specify. Any Goods which, for any reason, are not accepted by Buyer, and which are marked with any trademark (including, without limitation, any logo), both registered and common law, of Buyer or Lödige Industries Group of Companies, will be destroyed by Supplier. In no event will Supplier deliver or sell any such Goods so marked to any third party.

5. Confidentiality

Supplier will hold in strict confidence during and after the terms of this order the following information: Materials and data that have been disclosed by Buyer to supplier that are not publicly available at the time they are disclosed to Supplier or are not later disclosed by Buyer or an authorized third party; any and all technical and commercial information, market plans, strategy, customer lists, marketing surveys and pricing data relating in any way to the Goods or services to be furnished by Supplier. Supplier will not use any such confidential information for any purpose, nor disclose it to anyone other than Supplier personnel, without prior written approval from Buyer, except as is necessary to fulfill its obligations or perform services as provided in this Order. In addition to the foregoing, Supplier shall take such further steps as Buyer may direct to ensure the protection of confidential information.

6. Invoicing, Payment and audit

Invoices, together with copies of packing slips, must be mailed promptly in accordance with the instructions on the face of this Order. A bill of lading or express receipt shall accompany invoices when appropriate. Payment of an invoice shall not constitute acceptance of any Goods and shall be subject to appropriate adjustment for any failure of Supplier to meet the requirements of this order. Buyer may set off any amount owed by Supplier or any of its affiliated companies to Buyer against any amounts payable by Buyer or any of its affiliated companies to Supplier under this order. Upon written notice from Buyer, Supplier shall permit Buyer to conduct an audit and accounting of all books, records and documents, relating to or arising out of this Order.

7. Inspection

Regardless of where delivery occurs, Supplier warrants that the Goods will be free of defects in manufacturing, shipping, handling, packaging or processing prior to arrival at Buyer's plant. If Buyer reasonably determines that any Goods delivered are defective or otherwise not in conformity with the requirements of this Order, Buyer, by written notice to Supplier, may (a) rescind this Order as to such Goods or in its entirety, (b) accept such Goods at an agreed reduction in price, (c) retain and correct the defects or non-conforming aspects of such goods. Rejected Goods will be returned to Supplier at Supplier's request and risk of loss, and Supplier shall pay Buyer for all packing, handling, sorting and transportation expenses incurred in connection with the rejected Goods. Delivery of replacements shall be accompanied by a written notice identifying the Goods as replacements. If Supplier fails to deliver required replacements in accordance with the delivery date specified by Buyer, Buyer may replace or correct such Goods and charge Supplier with the expense incurred thereby or terminate this Order. No inspection, test, approval or acceptance of Goods ordered shall relieve Supplier from liability for (i) defects or other failure to meet the requirements of this Order, (ii) latent defects, (iii) fraud, (iv) such gross mistakes as may amount to fraud, (v) failure by Supplier to meet its warranty obligations hereunder. The rights granted to Buyer under this Paragraph 7 are in addition to any other rights or remedies provided elsewhere in this Order or by law.

8. Supplier employees

Where applicable the Supplier shall supply labour, plant and equipment of sufficient quality to carry out and complete the works in accordance with this agreement. The Supplier shall at the Buyers request cease to employ on the works any one or more of its employees to whom the Supplier may object and shall replace such employee or employees immediately with others to whom there is no objection. The Supplier will be responsible for the payment of Taxes, Social Security and any other statutory deductions for all of its employees employed on the works. The Buyer shall have no responsibility for the non-payment of any such sums.

9. Loss & damage to plant and materials of others, and wastage

The Supplier shall be responsible for loss or damage to any plant, tools, equipment or materials supplied to it for the works or for loss or damage to the plant, tools, equipment or materials of others that is caused by the Supplier or the Supplier Persons' act, omission negligence, breach or default. The Supplier shall be entitled to deduct from monies due to the Supplier under this agreement.

10. Health and safety

The Supplier shall (and ensure that the Supplier's Persons shall) observe and comply with all safety, health and environmental legislation.

11. Changes

Buyer shall have the right at any time to change any Order as to take specifications (including but not limited to drawings and designs), delivery, packaging, or means of shipment. If any such change is expected to result in either additional or reduced cost to Supplier, Supplier shall immediately inform Buyer of such fact and Buyer and Supplier will agree upon an adjustment in the price or other terms of the order to reflect the change.

12. Maintenance and warranties

Where applicable the Supplier shall maintain and protect the works at its own expense and shall make good at its own expense any defects, shrinkages and/or other faults in, or damage to the works to the Buyers satisfaction. The Supplier shall make good such defects shrinkages and/or other faults and/or damage within such time period as required by the Buyer. Failure by the Supplier to commence and complete the rectification of defects, shrinkages and/or other faults and/or damage to the works within the time periods required by the Buyer shall entitle the Buyer to carry out the rectification themselves or nominate others to do so and deduct the total costs incurred plus overheads from monies due to the Supplier or recover the total cost from the Supplier or debt. In addition to any other express or implied warranties, Supplier warrants that the Goods furnished pursuant to this Order will be: (a) free from defects in workmanship and materials, including, without limitation, such defects as could create a hazard to life or property, (b) free from defects in design, except to the extent that such Goods comply with any detailed design provided by Buyer, (c) fit and sufficient for the purpose intended or stated on the face of this order, (d) in conformity with all the other specifications, descriptions and/or requirements set forth or incorporated herein, and (e) suitable for use under, be manufactured in accordance with and, where required, be registered under, all applicable federal, state and local laws and all orders and regulations promulgated thereunder including, without limitation, environmental and hazardous materials regulations. In the event that any Goods do not conform to all of the warranties contained in this Order or implied by law, Buyer shall have the same remedies, and Supplier will have the same obligations with respect to Buyer's costs and expenses, as provided in Paragraphs 7 (Inspection) and 14 (Indemnification). Any replacement Goods shall, from the date of delivery thereof, be subject to the provisions of this order to the same extent as Goods initially furnished pursuant to this Order. The warranties and remedies under this Order shall exist notwithstanding the acceptance by Buyer of all or part of the Goods with respect to such warranties and remedies are applicable.

13. Patents and trademarks

Supplier warrants that the Goods and the sale or use thereof will not infringe upon or contribute to the infringement of any patent, trademark, copyright, or trade secret owned by any third party. Without Buyer's prior written consent, Supplier shall

not advertise or publish in any manner that Supplier has contracted with or is or has been furnishing Goods to Buyer. Supplier shall not use any Lödige trade or service mark without the prior written consent of Buyer.

14. Indemnification

Supplier will defend, indemnify and hold harmless buyer and Buyer's agents, employees and customers from and against any and all claims, damages, or resulting from (a) any injury to person or property caused by any actual or alleged defect in the Goods covered by this Order or any actual or alleged defect in the Goods covered by this Order or any act or omission of Supplier or Supplier's agents or employees with respect to such Goods or (b) the alleged existence by any third party of any state of facts concerning the Goods covered by this Order which, if true, would constitute a breach by Supplier of any representation, warranty or other obligation of Supplier hereunder. In the event that any legal proceeding shall be instituted or that any claim or demand shall be asserted in respect of which indemnification may be sought, Buyer shall promptly notify Supplier, and upon Buyer's request, Supplier shall undertake the defense thereof at its own expense. Supplier agrees that any controversy between itself and Buyer concerning its obligations hereunder may be litigated in the same form and concurrently with any lawsuit against Buyer by any third party to which such controversy may relate and Supplier agrees to voluntarily appear in such forum and submit to the jurisdiction thereof.

15. Termination

(A) At its option, Buyer may terminate all or a part of this Order upon prior written notice to supplier. Upon such termination buyer shall pay Supplier (a) the price stated on the face of this Order for items completed at the time of such termination and not yet delivered, (b) The out-of-pocket costs incurred by Supplier for items in progress which cannot reasonably be used by Supplier in producing goods for itself or for its other customers and (c) the costs of settling all claims arising out of Supplier's termination of orders and subcontracts relating to this Paragraph, provided, however, that the above payments shall not exceed the aggregate price specified on the face of this Order less payments made or to be made for Goods delivered to Buyer prior to such termination, (B) by written notice to Supplier, Buyer may terminate all or a part of this Order, subject to the provisions of Paragraph 16 (Excusable Delays), upon (a) the refusal or failure of Supplier to make deliveries of all or part of the Goods covered by this Order in accordance with the specified delivery schedule, unless Supplier shall cure any such default or failure in delivery within five (5) days after receipt of notice of termination, (b) any other default by Supplier in the performance of this Order, (c) the institution of any proceedings by or against Supplier under any bankruptcy act, insolvency law or any law for the relief of debtors, (d) the appointment or application for a receiver from Supplier, or (e) an assignment by Supplier for the benefit of its creditors. Upon termination pursuant to this Paragraph 15(B), Buyer shall pay Supplier the price stated on the face of this Order for (i) Goods previously delivered for which payment has not been made and (ii) items completed at the time of such termination and subsequently delivered in accordance with this Order. (C) Buyer may, in addition to any other remedies Buyer may have, procure, upon such terms as it shall deem appropriate, items or services similar to those terminated, in which case Supplier shall continue performance of the Order to the extent not terminated and shall be liable to Buyer for any excess costs for such Goods or services.

16. Excusable delays

Neither Buyer nor Supplier shall be liable for any secure to perform in accordance with the terms of this Order due to acts of war, sabotage, strikes, fires, freight embargoes, floods, explosions or epidemics. In the event Supplier is unable to perform due to any of the foregoing events, Buyer shall be entitled, in addition to its right to terminate pursuant to Paragraph 15(A) (Termination), to (a) obtain the Goods covered by this order from such other sources as Buyer may determine for the duration of Supplier's inability to perform and (b) reduce pro tanto, and without any obligation to Supplier, the quantity of the Goods specified by this order. Excusable delays do not include lock-out, shortage of labor, lack of or inability to obtain raw materials, fuels or supplies (unless solely by priorities, restrictions or allocations imposed by government authority), or any other industrial disturbance.

17. Drug free

Supplier agrees to prohibit the illegal use and work under the influence of controlled substances and alcohol at Buyer's premises by Supplier's employees and to monitor compliance with this obligation. Supplier's employment policies shall provide for Supplier's right to test and discipline (up to and including terminating) its employees for use of controlled substances and alcohol, and Supplier shall not assign any employee expected to perform Services on Buyer's premises for a period of 90 days or longer unless Supplier has furnished documentation to the Buyer's Safety Manager that such employee has, within 30 days prior to such assignment, successfully passed controlled substance and alcohol screening in accordance with Buyer's existing policies. Upon request by Buyer at any time, Supplier shall conduct controlled substance and alcohol testing on its employees performing Services and furnish the results thereof to the Buyer's Safety Manager.

During the performance of this Order, Supplier agrees to (a) not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, disability or veteran status. Supplier will ensure that employees and applicants for employment are treated without regard to their race, color, religion, sex, age, national origin, disability or veteran status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Supplier agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by an appropriate agency of the federal, state and local governments regarding non-discrimination in employment. (b) Supplier will, in all future solicitations or advertisements for employees to perform services hereunder for Buyer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, national origin, disability or veteran status. (c) Supplier will comply with all state and federal employment laws, rules, regulations and orders. (d) In the event of Supplier's noncompliance with Paragraph 18 or with any employment laws, rules, regulations or orders, Buyer may cancel, terminate or suspend this order in whole or in part.

19. Sub-suppliers

Supplier will not subcontract or delegate any of its responsibilities under this order to a third party (a "Sub-Supplier") without Buyer's knowledge and approval. Supplier will comply with Buyer's approval requirements, standards and guidelines in engaging Sub-Suppliers or purchasing third party products or services, as may be specified by Buyer from time to time. The terms of any subcontract or purchase order issued to a Sub-Supplier must be consistent with these terms and conditions. Supplier will remain responsible and liable to Buyer for any failure by a Sub-Supplier to perform in accordance with this Order; and the fact that Buyer may consent to Supplier subcontracting with a Sub-Supplier to perform all or part of Supplier's obligations under this Order shall not relieve Supplier of any obligation under this order. Supplier shall promptly pay each Sub-Supplier all amounts to which such Sub-Supplier is entitled no later than the due date for payment under the applicable subcontract or purchase order. Buyer reserves the right to withhold or offset payments otherwise due to Supplier if Supplier has failed to make payments to Sub-Supplier in accordance with this Section 15. Upon Buyer's request, Supplier shall submit documentation deemed sufficient by Buyer on behalf of Supplier or directly from Sub-Suppliers confirming that Supplier and/or the Sub-Supplier are being paid in accordance with the terms of their respective contracts. This documentation may include sworn statements and lien waivers. Buyer reserves the right to refuse to pay any amount otherwise due Supplier until the above documentation has been submitted in form satisfactory to Buyer.

20. Liens

If at any time there shall be evidence of the existence whether or not asserted of any lien or claim arising out of or in connection with the performance or default in performance of this Order or any subcontract and if Buyer, a Buyer facility or representatives of Buyer or any property of either or any property stored or installed on the premises might be or become liable for the discharge or satisfaction of a lien or claim, then the Buyer shall have the right to retain out of any monies due or thereafter due in addition to all other withholdings, an amount sufficient to discharge any lien or satisfy any claim and to reimburse Buyer and/or Buyer's representatives for all costs and expenses including reasonable attorneys' fees and costs. Buyer in its sole discretion shall have the right to apply to liens or claims any monies retained by Buyer if Supplier does not discharge liens or satisfy claims within ten (10) days after notice, or agree with Supplier to some other procedure to resolve the claims or discharge the liens. If the monies retained are insufficient to discharge liens or satisfy claims after payments have been made to Supplier, Supplier shall reimburse Buyer for all monies paid by Buyer to discharge liens and satisfy claims, including reasonable attorneys' fees and costs. In the event any mechanics materialsman's or other type of lien is filed or continued against any Buyer facility for services or labor performed or materials, machinery and equipment furnished in connection with this Order by Supplier or any Sub-Supplier, Supplier agrees to take any and all steps necessary and proper for the release and discharge or bonding of such lien in the manner required or permitted by the laws of the applicable jurisdiction on receipt of demand from Buyer and default of performing such obligation, agrees to reimburse Buyer, on demand, for all monies paid by Buyer in the releasing, satisfying and discharging of such liens, including reasonable attorneys' fees and court costs as disbursements.

21. Miscellaneous

(A) No course of dealing of Buyer nor any delay or omission of Buyer to exercise any right or remedy granted under this order shall operate as a waiver of any rights of Buyer, and every right and remedy of Buyer provided herein, and shall be in addition to every other right or remedy provided for herein or now or hereafter existing in law or in equity or by statute or otherwise. (B) If any provision of this order is found to be illegal or otherwise unenforceable by any court or other judicial or administrative body, such provision shall be limited to the extent necessary so that it will not render this order unlawful or otherwise unenforceable and the remaining provisions of this order shall remain in full force and effect. (C) This order shall be governed by the laws of the State of New York, without giving effect to the principles of conflicts of laws thereof. Any dispute arising out of, related to, or in connection with this Order shall be submitted to any federal or state court in the County of Manhattan, State of New York. (D) This order contains the entire agreement of the parties. No claimed change, modification, rescission or waiver shall be binding on Buyer unless in writing and signed by a duly authorized representative of Buyer. (E) At all times, the relationship between Buyer and Supplier shall be that of an independent contractor. This Order is not intended to create an employer/employee, principal/agent, partnership or joint venture relationship between Buyer and Supplier or between Buyer and any Sub-Supplier. (F) Upon Buyer's request at any time, Supplier shall immediately destroy or return to Buyer all confidential information and copies of materials provided by Buyer or related to Buyer's business, in the form provided by Buyer, that is in the possession, custody or control of Supplier or any Sub-Supplier. (G) WAIVER OF JURY TRIAL THE PARTIES HERETO ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL RIGHT, BUT THAT THIS RIGHT MAY BE WAIVED. THE PARTIES EACH HEREBY KNOWINGLY, VOLUNTARILY AND WITHOUT COERCION, WAIVE ALL RIGHTS TO A TRIAL BY JURY OF ALL DISPUTES ARISING OUT OF OR IN RELATION TO THIS AGREEMENT, ANY PURCHASE ORDER OR SUPPLY CONTRACT, OR ANY OTHER AGREEMENT BETWEEN THE PARTIES. NO PARTY SHALL BE DEEMED TO HAVE RELINQUISHED THE BENEFIT OF THIS WAIVER OF JURY TRIAL UNLESS SUCH RELINQUISHMENT IS IN A WRITTEN INSTRUMENT SIGNED BY THE PARTY TO WHOM SUCH RELINQUISHMENT WILL BE CHARGED. (H) Supplier shall comply with all applicable laws and regulations at all times in connection with its performance under this Order; and if Supplier comes on-site to Buyer's facility, Supplier shall comply with all applicable Buyer policies and procedures.