

THE FOLLOWING PROVISIONS SHALL APPLY TO, AND ARE INCORPORATED BY REFERENCE INTO, THE PURCHASE ORDER TO WHICH THESE TERMS AND CONDITIONS ARE ATTACHED.

1. **ACCEPTANCE AND PRICE.** The execution of the acknowledgement copy of this Order and the mailing or transmission thereof to Everbrite, LLC, ("Purchaser") or, Vendor's performance of this Order shall constitute acceptance by Vendor of all the terms and conditions of this Order. This Order may be modified or cancelled at the discretion of Purchaser at any time prior to written acceptance by Vendor. Purchaser assumes no responsibility for any materials or goods shipped to Purchaser without a signed copy of a purchase order having been issued therefore by Purchaser. The Price stated herein shall be in United States currency. Vendor's price shall not be higher than that last quoted or charged to Purchaser unless Purchaser otherwise agrees in writing. Purchaser shall be given the benefit of any downward revision of price which may become effective before the date of actual delivery or which may become effective before the date of delivery specified by this Order, if the date of actual delivery is prior to the date of delivery specified in this Order. If lower prices are available due to standard packages or quantity discounts or if any article included in this Order is subject to a minimum charge advise Purchaser prior to shipment. No charge shall be made for packing, crating, storage, shipping or delivery expense unless authorized by Purchaser in this Order.

2. **COMPLETE AGREEMENT.** The terms and conditions of this Order set forth the entire agreement between the parties hereto and supersede all previous communications, representations or agreements, whether oral or written, between the parties hereto with respect to the subject matter hereof; and no agreement or understanding varying or extending the terms and conditions of this order will be binding upon the Purchaser unless in writing signed by an executive officer of the Purchaser. No terms or conditions stated by the Vendor in its acknowledgement of this Order will be binding upon the Purchaser if in conflict with, inconsistent with, or in addition to the terms and conditions contained herein unless expressly accepted in writing by the Purchaser. All supplemental sheets, schedules, exhibits or riders which may be annexed hereto or referenced herein are made part of this Order to which Vendor agrees by acceptance of this Order.

3. **BILLING.** Invoices must show the order number, point of shipment, manner of shipment, and cash discount and shall be mailed in duplicate to Purchaser. The cash discount period will start from the date title of the goods is transferred from the Vendor to the Purchaser. All shipments and papers pertaining to this Order shall show the Order number. Vendor shall separately state on all invoices any transportation charges.

4. **SHIPPING.** Shipments shall be made F.O.B., the location designated in Purchaser's order, via the cheapest route unless otherwise instructed on this Order. Vendor shall furnish for each shipment a receipted bill of lading or other receipts from the carrier.

5. **DELAYS.** If Vendor fails to proceed with the performance of this Order or to make deliveries within the time specified in this Order, or if Purchaser shall have reasonable doubt as to Vendor's ability to perform its obligations, Purchaser may terminate this Order, or such part or parts hereof as to which there has been delay or any doubt, without liability to Purchaser. The Vendor will not, however, be liable for any damages occasioned by a delay in performance or delivery due to causes beyond the control and without the fault or negligence of the Vendor provided the Vendor promptly notifies the Purchaser when such delay is apparent.

6. **NON WAIVER.** Failure of Purchaser to insist upon strict performance of any terms and conditions herein shall not be deemed a waiver of any such rights or remedies that Purchaser shall have and shall not be deemed a waiver of any subsequent default of terms and conditions hereof. Shipping or receiving of any article under this Order shall not constitute a waiver of any right of the Purchaser hereunder or of any obligation of the Vendor to comply with any of the provisions of this Order. All rights and remedies reserved under the terms and conditions hereof shall be cumulative and in addition to any further rights and remedies provided in law or equity.

7. **ASSIGNMENT OR SUBCONTRACTING.** This Order or monies due or to become due hereunder shall not be assigned without the prior written consent of the Purchaser, and the Vendor agrees that it will not enter into a subcontract for the procurement of the goods covered by this Order in completed or substantially completed form and that it will not delegate any duties, or assign any rights or claims hereunder or for any breach hereof without first obtaining the written approval of the Purchaser. The provisions shall not prohibit Vendor, however, from assigning the monies due under the terms of this Order to a bank, trust company, or other financing institution, but Vendor shall require that no assignee divulge any information concerning the Order of contained therein except to those persons necessarily concerned with the transaction. Two executed copies of such an assignment shall be filed with Purchaser before the assignment shall have any force or effect. Payments to an assignee of any claim arising under this Order shall be subject to reduction or setoff for any present or future claim or claims which Purchaser may have against the Vendor.

8. **CONFIDENTIAL INFORMATION.** As used in this Order, "Confidential Information" means any and all information (regardless of how such information is recorded or stored) which is owned, created, developed, or otherwise generated by or on behalf of Purchaser and is either not generally known to or ascertainable by the public or that is otherwise identified by Purchaser as confidential, including, without limitation, all trade secrets, private or secret processes of Purchaser as they exist from time to time; Purchaser's past, current and proposed or potential research, discoveries, patent applications, ideas, formulas, manufacturing data, engineering data, test data, materials, costs, tolerances, specifications, operations, strategies and related technology, developments, inventions, improvements, innovations, processes, methods, designs, blueprints, drawings (CAD and otherwise), marketing and business plans, customers, suppliers, procurement and sales activities and procedures, promotions, pricing, credit and financial information, and all hardware, software and related documentation and any technical information relating to its business. Vendor may use, disclose and/or copy Confidential Information only to the extent reasonably necessary for Vendor to perform its obligations and duties under this Order. Vendor shall protect the confidentiality of Purchaser's Confidential Information in the same manner that it protects the confidentiality of its own similar proprietary and confidential information, but in no event less than reasonable care. Vendor may disclose Purchaser's Confidential Information only to such of its employees, agents or representatives who need to know such Confidential Information to enable Vendor to perform its duties and obligations under this Order, provided such employees, agents or representatives are informed of this Section and agree in writing prior to disclosure to be bound by the terms, conditions and limitations of this Order as if it were Vendor. In any event, Vendor shall be fully liable for any breach of this Section by its employees, agents or representatives.

9. **INDEMNIFICATION.** Vendor shall defend, indemnify and hold harmless Purchaser, its subsidiaries and affiliates and all of their respective officers, directors, employees, customers, agents, successors and assigns from any claim, action, proceeding, liability, loss, damage, cost or expense whatsoever (including actual attorneys' fees and court costs) arising from or in connection with: (a) any actual or alleged defect in the goods; (b) any failure of Vendor to comply the specifications for goods, the express or implied warranties of Vendor, or any other term or condition of this Order; (c) any violation by the goods, or in their manufacture, sale or use, of any federal, state, local, foreign or international law, rule, regulation, standard or code; (d) any allegation that the sale or use of the goods infringes any U.S. or foreign patent, copyright, trademark or any other intellectual property right, or constitutes unfair competition or misappropriates any trade secrets; or (e) any act or omission of Vendor or its agents, employees, contractors or subcontractors arising out of the performance of the Order. In the event of any claim, demand, action or proceeding being commenced against Purchaser by reason of any of the above matters, Purchaser shall give Vendor notice thereof and Vendor shall defend such action with counsel reasonably acceptable to Purchaser. Purchaser and any other parties to such actions shall have the right to employ, at their own expense, counsel on their own behalf and shall have the right to participate in the defense thereof. Notwithstanding anything herein to the contrary, Vendor may not, without the prior written consent of Purchaser, enter into any compromise or settlement of any such claims or litigation the

terms of which (a) are not confidential; (b) in any way admit liability by or on behalf of Purchaser; or (c) require Purchaser to take or refrain from taking any action or make any payment; and Purchaser shall not be bound by any such compromise or settlement absent its prior written consent. If Vendor fails to assume in a timely manner the defense of any claim or litigation as to which it has an indemnification obligation hereunder, Purchaser shall have the right to conduct its own defense, and Vendor shall be required to reimburse Purchaser for all expenses (including but not limited to actual attorneys' fees) incurred in such defense, in addition to Vendor's other obligations hereunder.

10. **COMPLIANCE.** No part of this Order will be performed nor will any of the goods manufactured or furnished under this Order be manufactured or fabricated in any plants, factories, buildings or surroundings, or under working conditions, which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of this Order. Vendor warrants that the goods furnished under this Order will be and have been produced in compliance with the Fair Labor Standards Act, as amended, and Vendor agrees to comply with all applicable federal, state and local statutes, ordinances, rules and regulations affecting this Order in any manner and to execute further stipulations which may be necessary to effect such compliance.

11. **WARRANTY.** Vendor expressly warrants that all goods covered by this Purchase Order shall: (a) conform to any and all specifications, drawings, plans, instructions, samples or other description, whether expressed or implied, furnished by Purchaser or by Vendor; (b) be fit and sufficient for the purpose(s) for which they were manufactured and sold, and if Vendor knows or has reason to know of any other particular purpose for which Purchaser intends to use such goods, the goods will be fit for such particular purpose; (c) be new and merchantable; (d) be of good material and workmanship and free from defects, whether latent or patent; and (e) be free from all liens and encumbrances. The foregoing warranty shall survive Purchaser's inspection, acceptance, and use of the goods. Vendor agrees to promptly correct all defects in any goods not conforming to the foregoing warranties, or replace such goods, without expense to Purchaser. In the event of Vendor's failure to correct or replace such defective or non-conforming Products, Purchaser may, after reasonable notice to seller, make such correction or replacement at Vendor's expense. Purchaser's inspection and/or acceptance of and/or payment for goods shall not constitute a waiver by it of any warranties. Purchaser's approval of any sample or acceptance of any goods shall not relieve Vendor from responsibility to deliver goods conforming in all respects to the sample.

Changes proposed by Supplier, including material, process, or software changes, which may affect form, fit, function, reliability, serviceability, performance, approved part quality plans, functional interchangeability, regulatory compliance, safety, options or spare parts interchangeability, or interface capability, must be submitted along with a written change notice, for Purchaser approval. This may include, but is not limited to, changes of sources of materials and parts, changes in manufacturing processes, test procedures, manufacturing locations, relocation or replacement of equipment, and any similar changes that are anticipated by sub suppliers. Items affected by such changes may not be delivered to Everbrite until the supplier has received written approval for the changes from Purchaser. At minimum, the change notice must include the affected Purchaser part number or software revision, date of implementation, serial number effectivity of the assembly that is changed, reason for the change, specific details of the change, and if available supporting data that demonstrates that part reliability has not been negatively impacted. Purchaser reserves the right to request samples for evaluation prior to approval by Everbrite of such changes.

12. **INSPECTION.** All materials and workmanship shall be subject to inspection and test by Purchaser at destination. Rejected goods shall be removed at the expense of Vendor, including handling and transportation both ways, in the agreed amount of time by Purchaser after notification or rejection and Vendor shall bear all risk of rejected goods. If Vendor fails to replace rejected goods in the agreed amount of time by Purchaser with goods that are not defective, Purchaser may cancel this Order as to all goods undelivered. Purchaser may charge back against the Vendor the amount paid for rejected goods not replaced in the agreed amount of time by Purchaser. Purchaser may elect to retain defective goods and remedy any defects. Cost of effecting such remedy shall be borne by Vendor and may be deducted from the amount due Vendor hereunder or otherwise collected from Vendor. Any payment for goods specified herein prior to the inspection and test thereof shall not be deemed to be an acceptance of such goods.

13. **LAW GOVERNING; VENUE.** This Order and any acceptance or transaction pursuant to this Order shall be governed by, construed and interpreted laws of the State of Wisconsin, without application of its conflict of law rules. The Parties hereby exclude the United Nations Convention on Contracts for the International Sale of Goods and the United Nations Convention on the Limitation Period in the International Sale of Goods, as amended. All actions or counterclaims regarding the validity, enforcement or interpretation of this Order shall be initiated and prosecuted exclusively in the state and federal court located in Milwaukee County, Wisconsin and those courts hearing appeals therefrom. Vendor and Purchaser consent to the jurisdiction and venue of such courts and expressly waive all objections based on the doctrines of personal jurisdiction or forum non conveniens. **EACH PARTY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW THE RIGHT TO A TRIAL BY JURY.**

14. **TAXES.** Vendor shall separately state on all invoices any taxes applicable to furnishing the goods hereunder which are imposed on the Purchaser by federal, state or local governments. Except as may be otherwise provided in this Order, the contract price includes all applicable federal, state and local taxes in effect on the date hereof.

15. **TOOLING.** Except as may be otherwise provided on the face of this Order, all tools, dies, jigs, fixtures and other equipment (herein referred to as "tools") specifically manufactured or procured by Vendor or on behalf of Vendor for the performance of this Order, whether to the design of Vendor, Purchaser, or a third party, and the cost of which is included in the total contract price appearing or provided for on the face of this Order, shall become, upon acquisition by Vendor, the property of the Purchaser, shall be kept separate from other tools of the Vendor, shall be clearly identified as the property of the Purchaser and, upon completion of this Order, and at the request of the Purchaser, shall be delivered to Purchaser. Vendor agrees to affix permanent labels to all Everbrite tooling which identifies it as "Exclusive Property of Everbrite LLC." Vendor agrees to furnish Everbrite with a detailed specification of the tool including a description of the material composition of the tool, a photograph, and such other evidence of completion as Everbrite may reasonable request. Vendor agrees to disclose the permanent location where Everbrite parts are manufactured and agrees to locate Everbrite tooling permanently at the same location where Everbrite parts are manufactured. Vendor agrees that they shall not move Everbrite tooling to a different location without Everbrite's prior written consent. During Vendor's possession of Everbrite tooling, Vendor agrees to maintain the tooling in a secure manner and shall not, without Everbrite's prior written consent, permit any third parties to view, inspect or photograph tooling. Vendor, at its sole expense, shall maintain the tooling in good, useable condition and repair, except for normal wear and tear. Vendor shall notify Purchaser if it becomes necessary to replace any Purchaser tooling, and Vendor shall not incur any expense chargeable to Purchaser for new or replacement tooling without obtaining Purchaser's prior written consent. Purchaser is entitled to a full refund of any tooling costs paid to Vendor if Vendor is unable to produce a part to specification. Vendor shall not, without Purchaser's written consent, use such tools in the manufacture of any goods for any party other than Purchaser.

16. **CANCELLATION AND INSOLVENCY.** In the event of the institution of any bankruptcy or insolvency proceedings by or against the Vendor, or proceedings by or against the Vendor for the appointment of a Receiver or Trustee or for an assignment for the benefit of creditors, or an assignment by the Vendor for benefit of creditors, the Purchaser shall be entitled to cancel this Order. Upon such cancellation, the Vendor shall, as directed by the Purchaser, return all property delivered by the Purchaser for the performance of this Order for which payment has not been made to the Purchaser at

the time of cancellation and all goods completed prior to the date of cancellation. The liability of the Purchaser for and as a result of such cancellation shall be limited to the settlement of the Vendor's claims arising out of delivery of said goods and property.

An accepted order, as hereinabove provided, cannot be cancelled or changed by the Vendor except with the written consent of an authorized official of Purchaser.

17. CHANGES. The Buyer shall have the right by written order to make changes from time to time in the work to be performed by the Seller hereunder. If such changes cause an increase or decrease in the amount due under the Order or in the time required for its performance, an equitable adjustment shall be made and the Order shall be modified in writing accordingly.

18. SETOFF OR COUNTERCLAIM. All claims for monies due or to become due from the Purchaser shall be subject to deduction by the Purchaser for any setoff or counterclaim arising out of this Order or any other transaction between Purchaser and Vendor, whether such setoff or counterclaim arose before or after any assignment by Vendor.

19. PROOF OF PAYMENT. If so requested by the Purchaser, Vendor shall furnish such affidavits and instruments as Purchaser may reasonably request certifying that payment has been made for all labor, materials and services furnished in the performance or filing of this Order, releases and indemnities are required at the time for payment, and written guarantees with respect to the labor, materials and services supplied by the Vendor.

20. TITLE. Title to the goods covered by this Order shall pass to Purchaser, or to such financing institution, as may have been designated to Vendor by Purchaser, upon delivery thereof to Purchaser at the place designated on the face of this Order.

21. INDEPENDENT CONTRACTOR. The status of the Vendor hereunder is that of an independent contractor. Neither Vendor nor any employee, agent or subcontractor of Vendor shall act or attempt to act, or represent itself, directly or by implication as an agent of Purchaser or in any manner assume or create or attempt to assume or create, any obligation on behalf of, or in the name of Purchaser.

22. WORK ON PURCHASER'S PREMISES. This section shall apply only in the event the performance of this Order requires the presence of any employee, agent or subcontractor of the Vendor on any premises or Purchaser or any subsidiary of Purchaser and shall be in addition to other sections herein. During the time when any employee, agent, or subcontractor of the Vendor is on the premises or Purchaser or any subsidiary of Purchaser, such persons shall be subject to all applicable rules and regulations relating to such premises, including without limiting the generality of the foregoing those relating to safety and fire prevention. Vendor shall take all necessary precautions to prevent the occurrence of any damage to persons or property during the performance of this Order and Vendor shall indemnify and save Purchaser and any subsidiary of Purchaser harmless from and against (a) all claims, losses and liability arising out of damages to property and injury to or death of persons (including the property, employees, agents and subcontractors of the Vendor and Purchaser) occasioned by, arising out of or occurring in connection with any acts or omissions of Vendor or any of its employees, agents, or subcontractors or properties, and (b) all costs, fees and expenses (including but not limited to attorneys' fees and expenses) in connection with the matters specified under subsection (a) above. During the time when the performance of this Order requires the presence of any employee, agent or subcontractor of Vendor on the premises of Purchaser or any subsidiary of Purchaser, Vendor shall maintain, and shall require any agent or subcontractor to maintain, at all times with a responsible insurance company or automobile liability insurance) under which Purchaser and any subsidiary of Purchaser shall be named an insured (if so requested by Purchaser in writing), property protecting and indemnifying Purchaser and such subsidiary in an amount not less than \$1,000,000 for injury (including death) to any one person, and not less than \$2,000,000 aggregate for bodily injury and property damage. Vendor shall furnish Purchaser, or shall cause Purchaser to be furnished, with a certificate or certificates of insurance evidencing such insurance and furnish copies of such insurance policies upon Purchaser's request.

23. ATTORNEY'S FEES. Purchaser shall be entitled to recover from Vendor all of Purchaser's actual attorneys' fees, expenses and costs incurred in connection with any action or claim brought by Purchaser to enforce any of its rights or interests as provided for in this Order.