

STANDARD TERMS AND CONDITIONS FOR PURCHASE

1. **DEFINITIONS:** “Order”, “purchase order” or “contract” means any agreement between Falcon Plastics, Inc. or its affiliates and subsidiaries, including Poly-Cast, Inc. (collectively, “FALCON”) and the Seller for the supply of goods and/or services; the “goods” means the subject matter of the orders and includes services; “Seller” or “Supplier” means the contracting party with whom the order is placed.
2. **SCOPE OF WORK/ACCEPTANCE.**
 - 2.1. **Scope of Work.** The Supplier is required to perform only the requirements listed in the body of the purchase order and covered by these terms and conditions. The Supplier will not be required to perform any processes not specifically mentioned. If a Supplier is not able to meet the contractual obligations of this purchase order, it has **3 days** to notify FALCON from its issuance; otherwise FALCON will consider the purchase order accepted by the Supplier per Paragraph 2.2 below.
 - 2.2. **Acceptance of FALCON's Offer.** Any purchase order issued by FALCON to any Supplier is an offer by FALCON, which becomes binding on the terms contained therein and herein when it is accepted by Supplier. Supplier will be deemed to have accepted such offer on FALCON's terms if Supplier commences working on the goods or providing the services, or ships the goods, which are the subject of the purchase order, if Supplier issues a written order acknowledgement or if the Supplier has not notified FALCON within time specified of any conflicts. Any acceptance by Supplier of a purchase order is limited to acceptance of the express terms of the purchase order, specified FALCON Purchase Order Requirements or other documents incorporated in the purchase order by reference, and these Terms and Conditions.
 - 2.3. **Attempts to Alter Terms Rejected.** Any attempt by Supplier to alter the terms offered by FALCON, or to propose additional terms, will be considered invalid and rejected by FALCON unless FALCON specifically accepts in writing such alterations. The altered or additional terms proposed by Supplier and deemed rejected by FALCON hereby will be considered a material alteration of FALCON's offer, and FALCON's offer will be deemed rejected by Supplier without such altered or additional terms.
 - 2.4. **Prior Offer by Supplier.** If any purchase order issued by FALCON to Supplier is deemed to be an acceptance of a prior offer by Supplier, FALCON's acceptance of such prior offer will be deemed limited to the Terms and Conditions contained herein and in the purchase orders issued by FALCON. In such cases, any other terms deemed to be part of Supplier's offer will be deemed material and rejected by FALCON; but such rejection by FALCON will not be deemed to operate as a rejection of Supplier's offer unless the rejected terms are those of price or quantity.
3. **PACKING, MARKING AND SHIPPING.** The Supplier shall follow all applicable transportation regulations and good commercial practice for protection to preserve, package and contain shipments in order to prevent deterioration and damage during shipping. For hazardous materials, the Supplier shall follow applicable federal, state and local laws and regulations for the packaging, labeling, transportation and shipping of such items. FALCON is not liable for extra charges for packing, cartage, or anything else unless stated in this order. Supplier shall mark the number of this order on each container and enclose a packing slip with the order number in each container. Damage resulting from improper packing or shipping will be charged to the Supplier.
4. **INVOICING, PAYMENT TERMS.**
 - 4.1. **Invoicing.** All invoices are to be sent to FALCON via email at ap@falconplastics.com or, for Poly-Cast, to apct@falconplastics.com. In order to be considered for payment, each invoice must show the relevant FALCON purchase order number, contain line item number from the FALCON purchase order, description, unit price, quantity and extended price, if any; and contain the name of the person requesting the material or service, if requested by FALCON.
 - 4.2. **Delays for Non Compliance.** Failure to comply with invoice requirements outlined herein may result in a delay in payment by FALCON and a postponement of the due date until such a time that Supplier has remedied such non-compliance.
 - 4.3. **Offset, Withholdings.** FALCON may offset against any amounts due under Supplier's invoices: (a) any damages resulting from Supplier's default under or breach of any contract (including any purchase order and these Terms and Conditions); (b) any amount owing from Supplier to FALCON; or (c) any adjustment for shortage or rejection and any costs occasioned thereby. In the event that FALCON becomes aware of potential violation of any governmental law, regulation or order or contractual obligation by Supplier in relation to its performance hereunder, FALCON may withhold, without liability or interest, any payment due hereunder associated with matters relating to such potential violation, pending investigation and resolution of such potential violation.
 - 4.4. **Payment Terms.** Payment terms shall be as agreed to by the Supplier and FALCON in writing. The term of any payment provided for in the purchase order, and all discounts related thereto, shall be calculated from (i) the date the items are received, (ii) the date the items are scheduled to be received, or (iii) the date an acceptable invoice is received, whichever is latest.
 - 4.5. **Payment Date, Discounts.** If, in its discretion, FALCON accepts any shipment ahead of schedule, FALCON may make payments therefor on the basis of the scheduled delivery date. The date for the calculation of FALCON's entitlement to take a discount under any Supplier invoice will be the date materials acceptable to FALCON are delivered, or the date an acceptable invoice is received, whichever is the later.
 - 4.6. **Taxes.** All prices indicated in purchase orders include all applicable taxes, impositions including but not limited to import and export duties and other similar charges, unless specifically indicated otherwise in such purchase order. South Dakota sales and use tax law requires that equipment/tools made for and sold to FALCON which FALCON will use to produce a final product requires that the selling price of the equipment/tools be subject to South Dakota sales tax. Set-up charges and tooling modifications are also subject to South Dakota sales tax.
5. **DELIVERY.** Delivery shall be DPU Incoterms® at FALCON's loading dock.

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- 5.1. Supplier will deliver acceptable goods and services in strict conformity with any delivery schedule set forth in any purchase order, subject to any delays as a result of any force majeure. Supplier will bear the cost of any normal (except to the extent explicitly specified otherwise under the relevant purchase order) or extraordinary (in any case) shipping charges necessary to meet the delivery schedule specified in any purchase order.
- 5.2. The purchase order delivery schedule and quantities are to be strictly adhered to. Supplier will not deliver any goods or render any services in advance of the schedule specified in the relevant purchase order, and will not order materials or services necessary for delivery of goods or rendering of services to FALCON in advance of Supplier's normal and reasonable order requirements. Any goods delivered to FALCON in advance of schedule may be returned by FALCON to Supplier at Supplier's cost, and will be stored by Supplier at Supplier's cost. Any deviation from the delivery schedule and/or delivery quantities may result in the complete or partial return of the delivered product. Further, any delivery containing less than the scheduled delivery quantity may have payment withheld until the balance of the parts are delivered.
- 5.3. At FALCON's option and sole discretion, should Supplier fail to deliver any goods ordered under an Order by FALCON within the delivery date for reasons other than those set forth in section of these Terms and Conditions titled "Force Majeure", in consideration of the difficulties in calculating the damages which any such delay would cause to FALCON, Supplier shall pay to FALCON, as liquidated damages, a sum equal to one-half percent of the price of the delayed goods for each complete day of delay or, if greater, any amount of liquidated damages FALCON owes to its customer as a result of Supplier's failure to timely deliver. The total amount to be paid by the Supplier to FALCON as liquidated damages shall not exceed twenty percent of the price of the delayed good(s).
- 5.4. Risk of Loss. Risk of loss with respect to the goods hereunder shall not pass to FALCON until delivery of the goods to FALCON's facility.
- 5.5. Title. Unless otherwise agreed to in writing by FALCON, title with respect to the goods hereunder shall not pass to FALCON until delivery of the goods to FALCON's facility.
- 5.6. Right to Possession. FALCON has the right to possession of all goods at all times from the time the goods are identified to a Purchase Order whether or not Supplier is in default subject to FALCON's obligation to pay for the goods upon obtaining possession.

6. INSPECTIONS

- 6.1. Right to Inspect. All goods and services ordered by FALCON pursuant to any purchase order are subject to inspection before or after receipt by FALCON, notwithstanding the earlier passing of title to FALCON, any prior payment by FALCON, or any prior inspection of any type. FALCON's inspection may, in its sole discretion, include physical, visual and/or mechanical review, as well as any documentation necessary to substantiate the meeting of quality requirements or specific requirements set forth in the purchase order.
- 6.2. Correction, Rejection. If any goods and services are in FALCON's reasonable business judgment defective in material or workmanship or not in conformity with the drawings, specifications, samples or other requirements of the relevant purchase order, FALCON shall notify Supplier. If Supplier fails to correct the defect or non-conformity within a timeframe appropriate to support FALCON manufacturing needs after such notice or is unable to timely correct the defect or non-conformity (as solely determined by FALCON), FALCON may, in addition to any other rights under the purchase order, these Terms and Conditions or otherwise, correct or have corrected the defect or nonconformity at Supplier's expense. Rejected goods may be returned by FALCON to Supplier at Supplier's risk and expense, including without limitation all costs (including FALCON's personnel costs) of unpacking, examining, repacking and reshipping, and transportation of, such goods.
- 6.3. Right of Recovery. In addition to any other rights it may have under the relevant purchase order, these Terms and Conditions, or otherwise, FALCON may recover any and all costs, expenses and damages paid, incurred or suffered as a result of or relating to holding, returning, replacing, correcting or rejecting defective or nonconforming goods or services to the extent that such costs, expenses or damages resulted from Supplier's action or inaction. FALCON may, at its discretion, invoice or debit the Supplier's account in the amount of all such costs incurred.
- 6.4. On-site Inspection. Work performed under any FALCON purchase order is subject to inspection at Supplier's plant by authorized representatives of FALCON, during normal business hours upon reasonable prior notice to conduct inspections and tests of any finished or unfinished products subject to any FALCON purchase order. Supplier will make available its facilities to accommodate the safety and reasonable convenience of such representatives. When reasonably requested upon reasonable prior notice, representatives of Supplier will accompany FALCON, to FALCON's customer's facilities for such inspection and testing, at no additional cost to FALCON or FALCON's customer.
- 6.5. No Waiver. The acceptance by FALCON of any goods or services under any purchase order will not be deemed to limit or affect any warranty or right of indemnity granted by Supplier under such purchase order, these Terms and Conditions or otherwise.

7. CHANGES

- 7.1. Changes and Adjustments. FALCON may at any time, by written order (and without notice to sureties), make changes within the general scope of any purchase order in any one or more of the following: (i) drawings, designs, specifications or other technical documents; (ii) quantity, (iii) time and place of delivery; and (iv) delivery schedules. Without limiting the foregoing, FALCON may at any time and from time to time modify its shipping, packing, and marking instructions or the invoicing instructions by delivery of a written confirmation thereof to Supplier. Supplier will implement any such changes; provided, that if any such change causes an increase or decrease in the cost of or time required for performance of any work under a purchase order, an appropriate adjustment in the price and/or delivery schedule will be agreed to by FALCON and Supplier. Notwithstanding the foregoing, no adjustment to the benefit of Supplier will be made: (a) for any change to delivery schedule when delivery is rescheduled within three (3) months of the originally scheduled delivery date; or (b) for any change made necessary by reason of defects or nonconformities for which Supplier would be liable under the terms of the order and these Terms and Conditions or otherwise; or (c) for any change to delivery schedule if the amended delivery schedule is commensurate with any delivery schedule changes received by FALCON from its customer. Any claim by Supplier for adjustment will be made in writing within twenty (20) days from the date the change was ordered by FALCON, and will set forth the amount claimed and the reasons therefore. Upon prior written request and subject to FALCON maintaining the confidentiality thereof, Supplier will make available its books and records for FALCON's examination to allow FALCON, its authorized representatives and its customers to verify any claim

for adjustment by Supplier. If FALCON and Supplier are unable to agree upon an adjustment in the event of any change directed by FALCON, the matter will be resolved in accordance with the dispute resolution procedures set forth in the section of these Terms and Conditions titled "Dispute Resolution." Pending resolution of any such adjustment, Supplier will diligently pursue the performance of the order as changed. Notwithstanding the above, if FALCON enters into an agreement with FALCON's end customer, which provides for no cost increase as a result of changes to delivery or work schedule, this same provision will apply to any purchase order(s) issued hereunder to the Supplier.

- 7.2. Pricing Considerations. Intended price increases shall be preceded with a written notification, sixty days in advance of the increase. Included with the notification shall be the justification for same.
- 7.3. Authority to Order Changes. Changes may be ordered by FALCON only in writing issued by an authorized representative of FALCON's Purchasing Department, which expressly states that it constitutes a change to a specified purchase order.
8. **SUSPENSION OF WORK**. FALCON may, at any time, by written stop-work order to Supplier, require Supplier to stop all, or any part, of the work called for by a purchase order for a period of 90 days after the order is delivered to Supplier, or longer in the event of a design change or if FALCON receives a stop-work order from its customer, and for any further period to which the parties may agree. Upon receipt of the order, Supplier will immediately take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within the indicated 90- day or other longer period, FALCON will: (i) cancel the stopwork order, (ii) let such stop-work order expire, or (iii) terminate the work covered by the stop-work order. Upon cancellation or expiration of a stop work order, the Supplier shall immediately resume work under the affected purchase order. If a stop work order is cancelled or allowed to expire, and the suspension effected thereby has a material effect on Supplier's costs or ability to meet the purchase order's delivery schedule, FALCON will make an adjustment in the delivery schedule or purchase price (but with no increase in profit allowed), or both, and the purchase order will be modified accordingly, but only if requested by Supplier in writing within thirty (30) days after the suspension ends.
9. **WARRANTIES**. Supplier warrants to FALCON that all goods and services furnished to FALCON will conform to applicable specifications, instructions, drawings, blueprints, data, samples and any other written descriptions, will be of good material and workmanship and free from defects, including defects in design where design is Supplier's responsibility, and will be free from all liens and encumbrances, and will be new, merchantable and fit for the purpose intended. All warranties will survive inspection, test and acceptance of and payment for the relevant goods and services. This warranty shall be for a period of twenty four (24) months, unless a different term is stated in prevailing contract documents.
- 9.1. This warranty shall run to FALCON and its successors, assigns and customers. This warranty shall begin after FALCON's final acceptance. FALCON may, at its option, either (i) return for credit or refund, or (ii) require prompt correction or replacement of the defective or non-conforming goods. Supplier will bear all costs associated with return to Supplier of defective or non-conforming goods and redelivery to FALCON and its customers of corrected or replaced goods, all of which shall be at Supplier's expense. Supplier shall be liable for all costs of inspecting, assessing, gaining physical access to, and removal and reinstallation of any installed non-conforming goods or services or adjoining goods at FALCON or FALCON's customer. FALCON may, at its discretion, invoice or debit the Seller's account in the amount of the warranty costs incurred.
- 9.2. Deliveries of corrected or replaced goods or services shall be accomplished promptly and shall be accompanied by written notice specifying that such goods or services are corrected, repaired or replaced. FALCON's remedies with respect to this warranty shall not be limited, restricted or disclaimed in whole or part by any other terms or conditions.
- 9.3. Goods required to be corrected or replaced shall be subject to further inspection in the same manner and to the same extent as goods originally delivered under this contract, but only as to the corrected or replaced part or parts thereof. Even if the parties disagree about the existence of a breach of this warranty, Supplier shall promptly comply with FALCON's direction to (i) repair, rework or replace the goods or (ii) furnish any materials or parts and installation instructions required to successfully correct the defect or nonconformance.
10. **PROPRIETARY INFORMATION**. Supplier will maintain the confidentiality of all information furnished by FALCON as confidential and will not disclose any such information to any other person, or use such information for any purpose other than performing under the purchase order to which it relates. The preceding sentence applies, without limitation, to designs, inventions, materials, models, processes, drawings, specifications, data, reports and other technical or business information and the features of all parts, equipment, tools, gauges, patterns and processes disclosed to Supplier by FALCON; and, to information supplied in electronic form, including CAD/CAM and computer aided engineering data. Supplier will not sell any such information, and will not deface or otherwise render unsuitable for use any such information of which Supplier disposes. Upon fulfillment or termination of any purchase order, and as otherwise directed by FALCON, Supplier will at its own expense, subject to the specific instructions of FALCON, either dispose of all information supplied by FALCON or return such information to FALCON. The foregoing obligations are in addition to and not as a replacement for any obligations under any nondisclosure agreements in place between the parties.
11. **INTELLECTUAL PROPERTY RIGHTS**
- 11.1. All intellectual property rights (including without limitation patents, copyrights, trade dress, and trademarks) in any and all specifications, designs, drawings, notes, data, documentation, information and other intellectual property that: (i) are supplied by or on behalf of FALCON to the Supplier; and/or (ii) arise from the performance of work in pursuance of a purchase order; and/or (iii) are included in the goods or services supplied by Supplier under any purchase order, shall (in the case of (i) above) remain the property of FALCON and (in the case of (ii) and (iii) above) be considered as a work for hire and be deemed to be the property of FALCON, and the Supplier shall promptly take all necessary steps and do all necessary acts (at Supplier's sole expense) to vest such intellectual property rights in FALCON. Supplier assigns all rights, title and interest to any such intellectual property to FALCON including all rights to registration, publication, rights to create derivative works and all other rights that are incident to ownership. In the event that any court holds such creative works not to be works for hire, Supplier agrees to assign such intellectual property rights to FALCON at FALCON's request in consideration of the price paid for goods or services hereunder.

- 11.2. Such intellectual property and intellectual property rights shall not be used by Supplier except to the extent required for the purposes of the purchase order, nor copied or communicated by Supplier to any other party, without the prior express written consent of FALCON.
- 11.3. All such specifications, designs, drawings, notes, data, documentation, information and other intellectual property referred to above shall be returned/provided (together with all copies thereof) to FALCON immediately upon request or in any event on completion or termination of the purchase order.
- 11.4. The Supplier represents and warrants that the purchase, use, sale and/or other exercise of the goods or services by FALCON and/or its customers will not infringe any intellectual property right(s), including without limitation any patent, trade dress, copyright, or trademark, in each case whether registered or unregistered, in existence or pending anywhere in the world at the date of delivery of the goods or services supplied.
12. **INDEMNIFICATION.** Supplier will defend, indemnify and hold harmless FALCON and its affiliates, and their officers, agents, employees, successors and assigns, against any claims, loss, damage or expense, including, without limitation, payment of direct, special, incidental and consequential damages, and expenses of defending claims including attorneys' fees, arising out of or relating to Supplier's breach of obligations under any purchase order, these Terms and Conditions, or negligence or willful misconduct with respect to performance of the order. This duty to defend, indemnify and hold harmless extends to any suit, claims, judgment or demand which arises out of or in connection with Supplier's performance or nonperformance of any purchase order placed by FALCON, out of or in connection with Supplier's breach of warranty, out of any defect in the goods or services whenever discovered, out of any patent infringement or misappropriation of trade secrets by Supplier (other than pursuant to specifications or instructions provided by FALCON) or failure of Supplier to pay royalties, or any other breach of Supplier's obligations hereunder whether such claims or suit is based upon contract, warranty, strict liability in tort, negligence, or other legal theory, and also extends not only to third-party claims but also to any loss suffered by FALCON.
13. **INSURANCE.** Supplier will, at all times, maintain with reputable insurance companies, insurance in the minimum amount of \$2 million per claim, for property damage, cyber, bodily injury, product liability, product recall, contractual liability, and professional liability or errors and omissions if Supplier is providing advisory or consulting services. At FALCON's request, Supplier will name FALCON as an additional insured under such policies, and will provide to FALCON a certificate of such insurance providing for 30 days prior written notice to FALCON of cancellation or material change. Supplier will maintain workers' compensation insurance sufficient to cover all of its general and special employees engaged in work pursuant to any FALCON purchase order and insurance against liability for personal injury or death or destruction of or damage to property arising out of work in fulfillment of any FALCON purchase order, and will provide prompt evidence to FALCON of such coverage upon FALCON's request.
14. **DEFAULT**
- 14.1. **Default.** Time is of the essence in the purchase order. It is a default under any purchase order and these Terms and Conditions if Supplier: (i) refuses or fails to deliver any goods or perform any services within the time specified in such purchase order except as provided herein; (ii) fails to comply with any other provision of such purchase order or these Terms and Conditions; (iii) fails to make progress so as to endanger performance of such purchase order in accordance with its terms and these Terms and Conditions, or repudiates such purchase order; or (iv) suspends its business or become insolvent or subject to any law relating to bankruptcy, insolvency or relief from creditors, or takes any action in anticipation thereof.
- 14.2. **Termination for Default.** In the event of any default by Supplier under any purchase order or these Terms and Conditions, FALCON may terminate such purchase order (and all related purchase orders), with no liability owed to Supplier whatsoever. In the event of any such termination for default, Supplier will be liable to FALCON for any and all damages resulting from Supplier's default. If FALCON terminates any purchase order for default in whole or in part, it may acquire, under commercially reasonable terms supplies or services similar to those terminated, in which case Supplier will be liable for any excess costs for those goods or services. Upon a termination in part, Supplier will continue any work not terminated. If, after termination, it is determined that the Supplier was not in default, or that the default was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for FALCON's convenience under the section below titled "Termination for Convenience."
15. **TERMINATION FOR CONVENIENCE.** FALCON may terminate any purchase order in whole or in part for any reason with thirty (30) days advance written notice.
- 15.1. The Supplier shall use its best efforts to mitigate the costs arising from such termination. In no case shall the amount payable by FALCON for the terminated work exceed the price which would have been payable by FALCON had the work been completed.
- 15.2. FALCON may cancel any purchase order at any time without cost to FALCON in the event that FALCON's customer cancels a corresponding order to FALCON.
16. **LIMITATION OF LIABILITY.** FALCON shall not be liable to Supplier for manufacture or procurement of materials in advance of the leadtime in accordance with the latest purchase order delivery schedule. As a material term of this contract Supplier agrees that any manufacture or order of materials in advance of Supplier's lead-time shall be solely at Supplier's risk and FALCON assumes no liability for manufacture or procurement in advance of Supplier's lead-time.
- 16.1. **UNDER NO CIRCUMSTANCES SHALL FALCON BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR EXFALCONLARY DAMAGES OR DAMAGES FOR LOST PROFIT, REVENUE, OR OPPORTUNITY, BUSINESS INTERRUPTION, AND/OR SIMILAR DAMAGES.**
17. **COMPLIANCE.** Supplier represents and warrants that all of the goods and services provided by Supplier will comply, and will be manufactured and furnished by Supplier in compliance with, all applicable federal, state and local laws, regulations, orders and ordinances, including the Fair Labor Standards Act of 1938 (29 U.S. Code 201-219) and all other applicable laws relating to labor unions and human rights in the production of goods and its work place.

18. **HAZARDOUS SUBSTANCES AND MSDS.** Supplier is required to provide a Material Safety Data Sheet (MSDS) if a product is hazardous as defined in OSHA 29 CFR 1910.1200. All MSDS will be provided to the appropriate FALCON site as stated in the Purchase Order. This provision applies to all orders for chemical products and raw stocks/substrates. Although this provision includes orders for hazardous materials and chemical substances, it is not restricted to such products and may include materials such as raw stocks, substrates, resins, and broad goods.

19. **SECURITY FOR FALCON INFORMATION STORED BY SUPPLIER**

19.1. If Supplier receives and holds FALCON Information on its information systems, Supplier shall maintain effective information security to ensure the secure storage and/or processing of FALCON Information (as defined below) at Supplier's facility and to facilitate the exchange of information between FALCON and Supplier. As used in this provision, "FALCON Information" means (i) Proprietary Information (as defined in section 10, above) owned by FALCON; (ii) information managed by FALCON; (iii) information that FALCON is obligated to manage and protect on behalf of others; and (iv) personally-identifiable information relating to an identified or identifiable employee of FALCON or others that is protected by various privacy laws (current or future) as applicable throughout the world.

19.2. Supplier agrees to install and implement security hardware, software, procedures and policies that will provide reasonable and effective information security. Supplier agrees to update such hardware, software, procedures and policies as may be needed from time to time to utilize improved technology and to respond to more sophisticated security threats in order to maintain a level of security protection appropriate for the information involved and the current state of security solutions.

19.3. Supplier shall use reasonable efforts, as measured by the available technology at the time, to prevent anyone other than its authorized employees from accessing the FALCON Information and assure that all FALCON Information and applicable software is appropriately backed up and recoverable in the event of a disaster.

20. **FORCE MAJEURE.** Deliveries or acceptance will be subject to extension of time made necessary by reason of delays or disabilities directly affecting Supplier or FALCON, respectively, occasioned by fires, floods or other catastrophes, wars, riots or embargo delays, pandemics, government allocations or priorities, unforeseeable government restrictions or controls, or unusually severe weather conditions, to the extent such delays and disabilities are beyond their reasonable control in spite of prudent precautions. Performance may be delayed only to the extent reasonably caused by such event, and upon prompt written notice of the event. If such delay continues for more than 90 days, FALCON may terminate in accordance with section 15, above.

21. **ASSIGNMENT AND SUBCONTRACTING.** Neither a purchase order nor any interest in a purchase order may be assigned, in whole or in part, by the Supplier without prior written approval by FALCON; a change of control of the Supplier shall be considered an assignment requiring prior written approval hereunder. Any such attempted assignment without consent shall be void and shall have no effect. Neither the entirety nor any part of any purchase order may be further subcontracted by the Supplier without the prior written approval by FALCON.

22. **WAIVER AND SEVERABILITY.** The failure or delay of either party to insist on performance of any provision of these Terms and Conditions or any purchase order, or to exercise any right or remedy available under these Terms and Conditions or any purchase order, will not be construed as a waiver of that provision, right, or remedy in any later instance. Further, if any provision of these Terms and Conditions or any purchase order is or becomes void or unenforceable by operation of law, the remaining provisions shall be valid and enforceable.

23. **DISPUTE RESOLUTION.** In the event of any controversy, claim or dispute arising out of or relating to a purchase order (a "Dispute"), FALCON and Supplier shall seek to resolve the matter amicably through mutual discussions to be initiated by written notice by the aggrieved party to the other party as promptly as possible after a Dispute arises and to be conducted diligently in good faith by both FALCON and Supplier. Such discussions may be conducted over the telephone, or at a meeting or meetings, held at the principal offices of FALCON, or at such other location as the parties may agree.

If the parties fail to resolve any such Dispute by amicable arrangement and compromise within the thirty (30) day period immediately following the date of the notice initiating such discussions referred to in the paragraph above, either party may submit the Dispute for resolution by mediation. The mediation shall be conducted at the principal offices of FALCON or at such other location as the parties may agree. The mediator shall be jointly selected by the parties. Mediation shall continue for at least thirty (30) days, unless the mediator chooses to withdraw sooner. Each party shall bear its own costs of the mediation effort, and the parties shall equally share the cost of the mediator.

If the Dispute cannot be resolved through mediation, either party may commence an action to resolve the Dispute in the courts of the State of South Dakota in Brookings County, and the federal courts of such jurisdiction, and each of the parties irrevocably submits to the exclusive jurisdiction of such courts, waives any objection it may now or hereafter have as to venue or as to convenience of forum, and agrees that all claims in respect such Dispute be heard and determined only in such courts.

24. **GOVERNING LAW.** All FALCON's purchase orders shall be governed by, interpreted, and enforced in accordance with the internal laws of the State of South Dakota, including the provisions of South Dakota's Uniform Commercial Code, but specifically excluding the provisions of the U.N. Convention on Contracts for the International Sale of Goods and without giving effect to its conflict of laws principles.

25. **INTEGRATION AND MERGER.** These terms and conditions together with any long term agreement referencing these Terms and Conditions, any nondisclosure agreement executed by the parties, and any purchase orders issued to Supplier, including attachments and documents incorporated herein or therein by reference, constitute the entire agreement between FALCON and Supplier, and supersede all prior representations, agreements, understandings, and communications between FALCON and Supplier. No amendment or modification of this contract or a purchase order will be binding upon either party unless it is set forth in a written instrument signed by authorized representatives of both FALCON and Supplier. The rights and remedies afforded to either party pursuant to any part or provision of these Terms and Conditions, any long term agreement or any FALCON purchase order are in addition to any other rights and remedies afforded by any other parts or provisions of these Terms and Conditions, any long

term agreement, purchase order, by law, or otherwise.

26. **RELATIONSHIP OF PARTIES.** Supplier and FALCON are independent contracting parties and nothing in a purchase order shall make either party the agent, joint venturer or legal representative of the other for any purpose whatsoever, or grant either party any authority to assume or to create any obligation on behalf of or in the name of the other. Although third parties may be referenced, there are no third party beneficiaries to a purchase order, except as specifically provided in writing by FALCON.