The buyer ("Buyer") of goods, materials and/or services ("Products") from Minimuthe, USA, Inc. or one of its affiliates (collectively, "Seller") acknowledges, understands and agrees that by accepting the Products it shall be bound by the Terms and Conditions set forth herein and that such Terms and Conditions shall be enforceable against Buyer by Seller. These Terms and Conditions, together with any future amendments thereto, shall constitute the entire agreement between Buyer and Seller and shall incorporate all prior agreements and understandings with respect to the sale of the Products. The acceptance of any order for the Products by Buyer is hereby made express and conditional upon Buyer’s acceptance of the terms and conditions herein contained.  

1. APPLICABILITY

Buyer may place orders(s) with Seller for Seller products or services and all such orders shall be governed solely by the terms and conditions contained in this Agreement, except when a previously written, mutually agreed upon agreement exist between the parties. Seller shall not be deemed to have waived the terms and conditions contained herein if it fails to object to provisions appearing on, incorporated by reference in, or attached to any Buyer order form, and those provisions are hereby expressly rejected. No contrary or additional terms or conditions contained in any Buyer order form shall apply unless agreed in writing by an authorized representative of Seller. Additionally, Seller reserves the right not to accept any order submitted to it by Buyer. Seller reserves the right, at any time, without notice, to make changes to these general terms of sale. 

2. DELIVERY

Unless otherwise expressly specified, all risk for loss or damage transfers to the Buyer when the order is supplied to the transit carrier at Seller’s warehouse. Delivery shall be made within the time specified on Buyer’s order or in accordance with Seller’s quoted lead time and monthly delivery rate, whichever is later. Transportation charges shall be prepaid and Buyer shall reimburse Seller upon receipt of an invoice for such charges. Seller shall have the right to make early, accelerated and/or partial shipments in advance of the contractual delivery schedule, in its sole and absolute discretion. 

3. INSPECTION

Buyer shall inspect and accept, or reject products delivered immediately upon receiving. In the event the products do not comply with the applicable Seller descriptions and/or specifications, the Buyer shall notify the Seller in writing within a reasonable time, but in no event later than fifteen (15) days after the Buyer receives such products. If Buyer does not notify Seller of the nonconformance within fifteen (15) days after the Buyer receives such products, Seller shall be deemed to have accepted the Products delivered hereunder. If Buyer notifies Seller of a nonconformance under this Section 3 and Seller’s liability for damages hereunder is limited to the price allocable to the Product or part thereof, or any other acts of any Government, fires, floods, severe weather conditions, or any other acts of God, quarantines, labor strikes or lockouts, riots, strife, insurrection, civil disobedience, war, material shortages or delays in delivery to Seller by third parties. If the excusable delay circumstances extend for six months, either party may, at its option, terminate this order without penalty or liability and without being deemed in default or in breach thereof. 

4. CANCELLATION

Buyer reserves the right to cancel any portion of this order affected by a default of Seller or any insolvency or suspension of Seller’s operations or any petition filed or proceeding commenced by or against Seller under any state or federal law relating to bankruptcy, arrangement, reorganization, receivership or assignment for the benefit of creditors. 

5. APPLICABLE LAW

Buyer reserves the right to cancel any portion of this order affected by a default of Seller or any insolvency or suspension of Seller’s operations or any petition filed or proceeding commenced by or against Seller under any state or federal law relating to bankruptcy, arrangement, reorganization, receivership or assignment for the benefit of creditors.

6. NONDISCLOSURE AND NONUSE OF SELLER INFORMATION

Buyer agrees that it will not use Seller’s data for the manufacture or procurement of Products which are the subject of this order or any similar products, or cause said products to be manufactured by or procured from other persons for any purpose other than to replace the products sold to Buyer in the event any claim that a product furnished hereunder infringes any United States patent, Seller may at its option and expense (a) procure for Buyer the right to continue using the product, or (b) replace or modify the product so that it becomes non-infringing, or (c) grant a credit for such product, less a reasonable depreciation for use, damage, and obsolescence upon its return to Seller. No responsibility is assumed for actual or alleged infringement of any foreign patent. 

Buyer agrees to pay all costs and expenses incurred by Seller in its defense and the amount of any judgment against Seller, in any suit or proceeding against Buyer based upon a claim of infringement, resulting solely from any claim of infringement arising with any Product manufactured or furnished by Seller or from the sale or use of any such combination by Buyer. In the event any Product is returned to Seller under this order to be made in accordance with drawings, samples or manufacturing specifications designated by Buyer and is not the design of Seller, Buyer agrees to defend, indemnify and hold Seller harmless to the same extent and subject to the same requirements as set forth in Seller’s obligation to Buyer as above. The above is in lieu of any other indemnity or warranty, expressed or implied by Seller. 

14. SOFTWARE LICENSE

In the event that any software or software documentation is provided to Buyer by Seller in any form whatsoever under an order and no software license agreement governing this sale has been signed between Buyer and Seller, Buyer agrees to accept the terms and conditions stated below effective the date of the first delivery hereunder: 

Subject to the terms and conditions herein, the Seller grants to Buyer a nonexclusive, nontransferable license to use the software or software documentation provided. The software license and rights granted by Seller to Buyer hereunder are personal to Buyer. The licensed software and documentation may not be sub-licensed, transferred, or loaned to any other party without the Seller’s prior approval.

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in writing of the transfer of the licensed software and documentation. Transfer of licensed software is contingent upon the third party's agreement to use and protect the confidentiality of the licensed software and documentation under the same or similar terms as those set forth in this software license.

Making copies of licensed software or documentation is prohibited.

Buyer agrees to utilize all licensed software and documentation only as authorized herein. Buyer may not either itself or with the assistance of others, make modifications to the licensed software and documentation, including, but not limited to, translating, decompiling, disassembling or reverse assembling, reverse engineering, creating derivative or merged works, or performing any other operation on licensed software and documentation to recover any portion of the program listing, object code or source code or any information contained therein.

Buyer agrees to accept and retain licensed software and documentation in confidence. Buyer agrees to take appropriate action by instruction, agreement or otherwise with Buyer's employees, or agents or other persons who are permitted access to licensed software and documentation as follows to inform said employees, agents or other persons who may come into contact with it of the confidential nature of licensed software and documentation; and to satisfy its obligations under this software license with respect to use, copying, and protection and security of licensed software and documentation.

Notwithstanding the warranties provided elsewhere herein, Buyer acknowledges that licensed software and documentation may require reasonable adjustment or refinement to suit Buyer's specific requirements. Buyer shall provide reasonable aid to Seller in accomplishing such adjustments and refinements. Such reasonable adjustments or refinements shall commence on the date of delivery and be provided by Seller to Buyer throughout product ownership.

This license and sale is subject to the laws and regulations, and other administrative acts, now or hereinafter in effect, of the United States and other governments and their departments and agencies relative to the exportation and/or re-exportation of licensed software and documentation. Buyer acknowledges that it will be responsible for compliance as necessary with such laws, regulations and administrative acts.

15. OWNERSHIP OF INTELLECTUAL PROPERTY; SPECIAL TOOLING AND DATA

Except as specifically provided otherwise, this Agreement shall not grant either party any intellectual property rights, licenses or right to exploit or use, express or implied, in or to any portion of the Confidential Information or information of the other party. Unless otherwise agreed in writing, all material, software, data processes, equipment, facilities and special tooling, which term includes but is not limited to jigs, dies, fixtures, molds, patterns, special taps, special gages, special test equipment, other special equipment and manufacturing aids and replacements thereof, used in the manufacture of products covered by an order shall be and remain the property of Seller. Seller retains all rights, title and interest in drawings, engineering instructions, specifications, and all other written data, if any, furnished with the products.

16. TAXES

The prices quoted for Products do not include sums necessary to cover any taxes or duties including but not limited to Federal, State, Municipal excise, sales or use taxes or import duties upon the production, sales, distribution, or delivery of goods or furnishing of services hereunder. When delivery of Product occurs within the state of Wisconsin, State taxes will be invoiced to Buyer unless Seller is provided with a government issued tax exemption document issued to Buyer. Any taxes or duties that are due and owing hereunder shall be paid by the Buyer. Accordingly, Seller reserves the right to revise its price after the execution of this order between the parties to include any and all taxes or duties that may become due hereunder and Seller may invoice Buyer for said additional amount. This clause shall survive the acceptance and complete performance of this order by the parties herein.

17. WAIVER

Failure by Seller to assert all or any of its rights upon any breach of this order shall not be deemed a waiver of such rights either with respect to such breach or any subsequent breach, nor shall any waiver be implied from the acceptance of any payment or service. No waiver of any right shall extend to or affect any other right Seller may possess, nor shall such waiver extend to any subsequent similar or dissimilar breach.

18. NO AGENCY OR PARTNERSHIP; THIRD PARTIES

Neither party is the agent or representative of the other. Nothing in this Agreement will be construed to create an agency, partnership or joint venture between the parties. Except as herein expressly provided to the contrary, the provisions of this order are for the benefit of the parties to the order and not for the benefit of any other person.