

# JBC TERMS AND CONDITIONS OF SALE

**SALE OF GOODS:** These terms and conditions represent the basis for all sales agreements of JBC Technologies, Inc ("JBC"), whose headquarters is located at 7887 Bliss Parkway, North Ridgeville, Ohio 44039, with purchasers of goods from JBC ("Buyer"). JBC'S AGREEMENT TO SELL GOODS TO BUYER IS EXPRESSLY CONDITIONED ON BUYER'S ASSENT TO THE TERMS AND CONDITIONS CONTAINED IN THIS DOCUMENT. THIS AGREEMENT MAY NOT BE SUPERSEDED BY A BUYER'S REQUEST FOR QUOTATION OR PURCHASE ORDER CONTAINING TERMS AND CONDITIONS DIFFERENT FROM OR ADDITIONAL TO THOSE SET FORTH HEREIN. JBC EXPRESSLY REJECTS ANY ADDITIONAL TERMS OR CONDITIONS PROVIDE IN THESE OR ANY OTHER SUCH DOCUMENTS PROVIDED BY THE BUYER.

**PRICES:** Prices quoted are FOB JBC's plant, unless otherwise stated. Prices do not include any federal, state or local taxes. Wherever applicable, such taxes will be added to the invoice to be paid by the Buyer. Where packaging other than standard packaging is necessary, the expense will be charged to the Buyer. JBC reserves a security interest in any goods to the extent of the invoiced amount to secure payment of the Buyer's obligation. If the Buyer defaults, it agrees to make the goods available so that JBC may peaceably repossess. A copy of the invoice may be filed with the appropriate office at any time as a financing statement. At JBC request, Buyer will execute any instrument JBC requires to perfect its security interest. Prices on any undelivered goods covered by this contract are subject to further increase (a) due to increase in cost to JBC of materials used in the manufacture, (b) as a result of restrictions or regulations imposed under any agreements, codes, or licenses made or issued pursuant to federal or state law, decrees or orders, or (c) as a result of increase in labor costs, providing that this clause shall not be operated to fix a price in violation of any price regulations of the United States Government. JBC shall notify Buyer of any price increase arising for any of the above reasons. Prices quoted for goods to be shipped outside the continental United States are based on international currency exchange rates in effect at the time of quotation. JBC reserves the right to change its prices at any time prior to shipment if exchange rates vary. Any quantity discount applicable to the sale covered by this Quote shall apply only to sales of goods made by JBC, and such discount shall be computed solely on the basis of goods sold to Buyer by JBC. Any early payment discount on the face of this document shall be on the purchase price only.

**TERMS OF PAYMENT:** Unless otherwise provided, payment shall be net thirty (30) days from the date of invoice. Goods exported from the USA may be subject to a down payment, with the balance payable through an Irrevocable Letter of Credit established through and confirmed by a bank acceptable to JBC. The obligation to make payment shall continue without regard to any warranty obligation, made hereunder by JBC and without regard to whether Buyer has made any inspection of the goods. JBC shall have the right, in its sole discretion, to require payment before shipment or payment via letter of credit in the event that it determines that Buyer is delinquent in payment or will exceed credit limit. The Buyer's credit limit is set at the sole discretion of JBC. A finance charge of one and one half percent (1-1/2 %) per month (or the highest rate allowed by law) will be applied to any outstanding balance. Buyer shall pay to JBC any reasonable expenses incurred by JBC for collection from Buyer of money due and unpaid, including reasonable attorney's fees and related costs. Buyer agrees to authorize its creditors to disclose to JBC information concerning Buyer's credit worthiness, upon JBC's request. JBC shall retain title to goods sold until Buyer has paid for the goods in full. By submitting any purchase order or other document, either prior to or subsequent to the date of JBC's Quote, Buyer represents that it is solvent for the purposes of U.C.C. Section 2-702 and that it is not insolvent as defined by U.C.C. Section 1-201. In the absence of written notification of insolvency, the transmission of any writing by Buyer to JBC during the course of performance of the contract will be understood to constitute a written representation of continued solvency for the purposes of U.C.C. Section 2-702.

**DELIVERY:** Shipping dates are approximate, and time shall not be of the essence in this contract, provided, that JBC accepts no liability for any losses or for general, special or consequential damages arising out of delays in delivery. If shipment is delayed for over one hundred and twenty (120) days, Buyer may reject the goods only if the Buyer will sustain substantial damage as a result of such delay. Unless otherwise provided, JBC shall have the right to make shipment in installments, and delay in shipment of any installment or failure to ship any installment shall not relieve Buyer of its obligation to accept remaining installments. Where special delivery is required, the expense involved will be charged to Buyer. Orders are subject to a ten percent (10%) over-run or under-run. Risk of loss of products transfers to Buyer when goods are loaded for shipment.

**FORCE MAJEURE:** JBC shall not be held responsible for any delay or failure to perform its obligations hereunder in whole or in part due, directly or indirectly, to matters outside of JBC's control, including without limitation, war, epidemics, flood, acts of God, accidents, shortage of transportation, terrorism, blockades, embargoes, federal, state, municipal, or any other governmental action or regulation, strikes or other labor troubles, fire, damage to, or destruction in whole or in part of merchandise or manufacturing plant, lack of, or inability to obtain, materials, labor, fuel or supplies, restraining orders or injunctions of any court or judge, or any other causes, contingencies or circumstances within or without the United States. Occurrence of any of the above shall, without liability to JBC, excuse JBC from further performance of this Agreement or, at its election, extend the time of performance. If any shipment is delayed six (6) or more months, either party shall have the right by written notice to the other to cancel that shipment and the balance of this contract and, in such event, neither party shall be liable to the other for any losses or damages arising out of such cancellation.

**BUYER DELAY:** If Buyer is unable or unwilling to accept delivery of goods at time of completion, JBC shall invoice Buyer for the full purchase price. If JBC is able to store the goods in its facilities, JBC shall have the right to impose on Buyer a reasonable charge for handling and storage. Goods held for Buyer under this provision shall be held at Buyer's sole risk. JBC shall not be responsible for any loss or damage to the goods during such storage or for any indirect, incidental, or consequential damages resulting from any damage or loss to the goods while stored on Buyer's behalf.

**TOOLS:** Unless otherwise expressly provided, JBC shall retain title to, and possession of, any models, drawings, patterns, dies, molds, jigs, fixtures and tools relating to this contract

**INTELLECTUAL PROPERTY AND TECHNOLOGY:** Any intellectual property, technology, technical information, know how, patents, etc developed by JBC while producing goods for the Buyer remain the sole property of JBC. Any existing intellectual property, technology, technical information, know how, patents, etc owned or controlled by JBC used in producing goods for the Buyer remains the sole property of JBC. Nothing in this agreement shall be construed as giving or granting the Buyer any rights to any intellectual property, technology, technical information, know how, patents, etc. now owned or developed in the future by JBC. Should JBC have any reasonable suspicion that the Buyer has violated any part of this paragraph, JBC, at its sole discretion, and in addition to any other remedies afforded under the law, has the right to stop shipping goods to Buyer and demand immediate payment for all outstanding amounts due from the Buyer.

**WARRANTY:** JBC warrants that at the time of shipment its goods shall be substantially free of material defects in workmanship and material under normal use and service and shall substantially conform to contract specifications and be within the limits and sizes published by JBC, subject to JBC's standard tolerances for variations. This warranty is inapplicable to the extent Seller has selected materials or designed the product. If JBC has provided a sample to Buyer that differs from contract specifications and Buyer has approved such sample, JBC's warranty will be satisfied if the goods either substantially (i) conform to the sample or (ii) conform to the contract specifications and fall within the limits and sizes published by JBC, subject to standard tolerances for variations. JBC shall have no liability to Buyer if Buyer's purchase order omits a specification and JBC fills the order using goods or a design that materially conforms to a standard or customary specification. In no event shall JBC be liable for any defective good if examination discloses that the good has been taxed beyond its normal capacity or the defective condition of such good was caused by misuse, abuse, improper installation or application, improper maintenance or repair, alteration, accident or negligence in use, storage, transportation or handling. ALL OTHER WARRANTIES, DIRECT OR IMPLIED, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY, WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY, AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY EXCLUDED.

**SAFETY & HEALTH INFORMATION:** Upon request by Buyer, JBC will provide applicable information (including but not limited to Material Safety Data Sheets) and warnings concerning the safety and health aspects of its goods. Buyer agrees to communicate such information and warning to Buyer's employees, agents, contractors and customers, and to require such persons to further communicate such information and warnings to all persons that they may reasonably foresee will be exposed to or handle such goods.

**BUYER'S REMEDIES:** Buyer agrees to inspect the goods prior to acceptance and to give written notice within 15 days to JBC of the precise nature of any claim that the goods breach a warranty provided herein. JBC will be afforded a prompt opportunity to inspect the goods. If Buyer shall fail to give such notice or provide such opportunity to inspect, the goods shall be deemed accepted and to conform with the terms of the contract and Buyer shall be bound to accept and pay for the goods in accordance with the terms of the contract. Buyer expressly waives any rights Buyer may have to revoke or refuse acceptance after such 15 day period. If Buyer provides JBC with notice of a possible warranty breach and reasonable opportunity to inspect: (a) if the claim is for a shortage in excess of ten percent (10%) of the entire order, Buyer may require JBC to make up the shortage within a reasonable time of JBC's receipt of the notice; and (b) if the claim is for a breach of warranty, JBC may, at its option, either repair or replace said nonconforming goods or repay the price thereof. If JBC requests the return of the nonconforming goods, no obligation for breach of warranty shall arise unless the goods have been returned to JBC within thirty (30) days after such request is made. Buyer's failure to provide timely notice shall constitute a waiver of its claims. The aforesaid obligations of JBC to correct deficiencies in quantities in excess of ten percent (10%) and to repair or replace defective or nonconforming goods or repay the purchase price thereof is expressly agreed by the parties to be the limit of JBC's liability and Buyer's sole and exclusive remedy. IN NO EVENT SHALL JBC BE LIABLE FOR LOSS OF USE OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO CONSEQUENTIAL DAMAGES FOR PERSONAL INJURIES.

**INDEMNIFICATION:** Buyer, if a reseller, shall include in its terms and conditions of sale an effective disclaimer of warranties and limitations of liability at least as restrictive as those contained herein. In any event, BUYER ASSUMES ALL RISKS AND AGREES TO INDEMNIFY AND HOLD JBC HARMLESS AGAINST ALL CLAIMS AND LIABILITY (INCLUDING LIABILITY BASED ON A CLAIM THAT JBC IS NEGLIGENT OR STRICTLY LIABLE) ARISING: (1) OUT OF ANY PROPERTY MADE IN WHOLE OR IN PART FROM THE GOODS SUPPLIED UNDER THE TERMS OF THIS CONTRACT AND (2) AS A RESULT OF USE OR POSSESSION OF THE GOODS SUPPLIED UNDER THE TERMS OF THIS CONTRACT. Any advice furnished by JBC, as to any use of the goods by Buyer, is offered "as is" without warranty of any kind, is gratuitous and shall not affect the limitations on JBC's warranties or Buyer's agreement to indemnify. Buyer acknowledges that this Agreement is for the purchase of goods, not services, and that JBC shall therefore have no liability to Buyer for any harm or loss caused by advice received by Buyer from any of JBC's agents or employees. With respect to goods manufactured solely to JBC's designs or specifications, JBC shall defend any action brought against Buyer claiming that such goods are an infringement of any patent, trademark or copyright and JBC will pay any costs and damages finally awarded against Buyer in any such action, under the following conditions: (a) JBC is notified promptly in writing by Buyer of any notice of such claim, (b) JBC has sole control of the defense in any action on such claim and all negotiations for its settlement and compromise, and (c) should JBC's products become, or in JBC's opinion are likely to become, the subject of a claim of infringement of a patent, trademark or copyright, JBC will have the option of replacing or modifying the same so that it does not infringe or to accept its return and grant to Buyer a credit for such products. This states the entire liability of JBC with respect to infringement of patents by JBC's goods or any parts thereof. Buyer shall indemnify, defend and hold JBC harmless against any damages, costs or losses resulting from any suit or proceeding brought for infringement of patents, copyrights or trademarks or for unfair competition (1) relating to the use or sale of any of JBC's goods in any combination, method, or process and/or (2) arising out of compliance by JBC with Buyer's designs, specifications or instructions, including claims for patent or copyright infringement. If a claim is brought against JBC by an agent or employee of Buyer, Buyer agrees to defend, indemnify and hold JBC harmless from and against any and all liability, loss, damages, and expense relating to the claim.

**SETOFF:** JBC shall have the right to setoff all amounts due to JBC against payments owed by JBC to Buyer required vendors, whether arising out of this or any other contract between such vendors and JBC or its affiliates.

**ASSIGNMENT AND DELEGATIONS:** Buyer will not assign any rights or delegate any duties under the Agreement without the written consent of JBC.

**CRITICAL VENDOR:** When JBC provides parts/goods that are unique to the Buyer and the Buyer buys these unique parts/goods solely from JBC, the Buyer will consider JBC a critical vendor and give JBC preferential payment treatment in any bankruptcy and/or liquidation process.

**STATUTE OF LIMITATIONS:** Buyer agrees that any action of any kind by the Buyer against JBC must be brought within one ( 1 ) year of the date of delivery.

**ARBITRATION:** All controversies and claims arising out of or relating to this contract may, at JBC's sole option, be settled by arbitration in the State of Ohio in accordance with the then applicable Commercial Rules of the American Arbitration Association, and judgment upon any award thereon may be entered in any court having jurisdiction.

**MODIFICATION AND TERMINATION:** This contract shall not be modified or terminated unless expressly agreed to by both parties in writing. No waiver or any default hereunder shall be deemed a waiver of the obligation of future compliance and any provision waived shall remain in full force and effect. In addition to its other remedies, JBC may cancel any unfulfilled part of the contract without any liability and without notice if Buyer fails to pay amounts due or Buyer shall become bankrupt, insolvent, makes an assignment for the benefit of creditors or a receiver is appointed for Buyer, or Buyer is acquired or sold in whole or in part.

**SOLE AGREEMENT:** Unless otherwise agreed to in writing, these Terms and Conditions constitutes the entire agreement between JBC and Buyer, and supersedes any previous agreement, representation or warranty, whether express or implied, regarding the goods. Buyer acknowledges that no representations, understandings, conditions, or agreements have been made or relied upon other than those specifically stated in this Agreement.

**VENUE:** The contract shall be governed by and interpreted under the laws of the State of Ohio, U.S.A., excluding from such law the rules regarding choice of law.

**SEVERABILITY:** These terms and conditions of sale shall not be construed against the party preparing them, but shall be construed as if all parties jointly prepared these terms and conditions of sale and any uncertainty or ambiguity shall not be interpreted against any one party. If any provision hereof is held to be illegal, invalid or unenforceable under any present or future laws, such provision shall be fully severable and the terms and conditions herein shall be construed and enforced as if such illegal, invalid or unenforceable provision had never been made a part hereof. The remaining provisions herein shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provisions or by their severance herefrom.

# JBC TERMS AND CONDITIONS OF PURCHASE

**GENERAL TERMS AND CONDITIONS.** No terms and conditions other than the terms and conditions set forth in this document, including any terms and conditions in any document attached to or incorporated by reference, shall be binding upon Buyer unless accepted by it in writing signed by the Buyer's Purchasing Agent or General Manager. All terms and conditions contained in any prior proposal or acknowledgment, which are different from or in addition to the terms and conditions of this document are hereby rejected and shall not be binding on Buyer. An Order is defined as a written purchase order submitted to the Seller by a valid Buyer's Purchasing Agent. Every Order accepted by the Seller will be deemed to have assented to all terms and conditions contained herein if any part of the goods and/or service covered by this document is shipped or an invoice is presented in connection with the said goods and/or services.

**COMPLIANCE WITH LAWS.** Seller warrants that all goods provided hereunder have been produced and all services performed are in compliance with applicable federal, state and local laws, ordinances, codes, rules, regulations or standards, including but not limited to, the Fair Labor Standards Act, Occupational Health and Safety Act, and Title VII of the Civil Right Act, Equal Employment Opportunities Commission. Where legally required, Seller shall include these clauses in its purchase orders supporting the Order, and shall at the Buyer's request, certify to all of the foregoing.

**STATE LAW.** This document shall be governed in all respects by the laws of the State of Ohio and all actions commenced pursuant hereto shall be brought in a court of competent jurisdiction residing in the State of Ohio.

**TRANSPORTATION.** Unless otherwise stipulated on the face of the Order or as modified by routing letter from Buyer's Purchasing Agent, goods covered by the Order shall be shipped "FOB destination". Risk of loss and title to said goods to pass to Buyer only upon delivery to Buyer's specified end destination. Delivery in advance of the specified Buyer's shipping date, however, will not cause passage of title, transfer of risk of loss and/or establish FOB point. Transportation charges on goods delivered FOB destination must be prepaid. No charges for unauthorized transportation will be allowed. Any unauthorized shipment, which will result in excess transportation charges, must be fully prepaid by the Seller. Unauthorized transportation charges not prepaid will be offset by the Buyer.

**DEFAULT.** Neither Seller or Buyer shall be considered in default in the performance of its obligations herein to the extent that performance of such is delayed or prevented due to causes beyond the control of said party, including, but not limited to, acts of God, war, revolution, civil commotion, blockade or embargo, any law, order, regulation, ordinance, of any government, fires, floods, unavoidable casualties, strikes, labor disputes, and other causes beyond the reasonable control of either party. Notwithstanding the aforementioned, in the sole event that the Buyer incurs damages because of the Seller's delay in delivering goods subject to the Order, Seller shall be liable for such damages notwithstanding that such are due to causes beyond Seller's control or result without fault or negligence of Seller. Buyer may by written notice of default to Seller (a) terminate the whole or any part of the Order in any one of the following circumstances: (i) if Seller fails to perform within the time specified herein or any extension thereof; or (ii) if Seller fails to perform any of the other provisions of the Order, or so fails to make progress as to endanger performance of the Order in accordance with its terms; or (iii) if the Seller shall become insolvent or make a general assignment for the benefit of creditors or if a petition under any bankruptcy act or similar statute is filed by or against the Seller, and in any of these circumstances does not cure such failure within a period of ten (10) days or such longer period as Buyer may authorize in writing; and (b) upon such termination Buyer may procure, upon such terms as it shall deem appropriate, supplies or services similar to those so terminated, in which case Seller shall continue performance of the Order to the extent not terminated and shall be liable to Buyer for any excess costs for such similar supplies or services. As an alternate remedy, and in lieu of termination for default, Buyer, at its sole discretion, may elect (a) to extend the delivery schedule and/or (b) to waive other deficiencies in Seller's performance, in which case an equitable reduction in the Order price shall be granted. Buyer shall have the right at any time to require assurance from Seller. In the event Seller for any reason anticipates difficulty in complying with the required delivery date or performance schedule, or in meeting any of the other requirements of the Order, Seller shall promptly notify Buyer in writing. If Seller does not comply with Buyer's delivery schedule or performance schedule, Buyer may require delivery by fastest means and charges resulting from the premium transportation must be fully prepaid and absorbed by the Seller. The rights and remedies of the Buyer provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Order.

**REJECTIONS.** If any of the goods and/or services furnished hereunder are found at any time to be defective in material or workmanship or otherwise not in conformity with the requirements of the Order, Buyer, in addition to any other rights which it may have under all applicable warranties or otherwise, may at its option correct or have corrected the nonconformity at Seller's expense, or reject and return such goods and/or discontinue such services at Seller's expense. Such goods and/or services shall not be replaced or continued without written authorization from Buyer. Buyer may accept, without prejudice, a portion of any shipment, and, at its option, have Seller repair or replace any non-conforming portion of the shipment, at Seller's expense. Items rejected shall be removed promptly by the Seller at its expense and at its risk. Final acceptance shall not be conclusive with respect to latent defects, fraud or such gross mistakes as amount to fraud or with respect to the Buyer's rights under the "Warranty" clause.

**SET-OFF.** Buyer shall be entitled at all times to set-off any amount owing at any time from Seller to Buyer or any of its affiliates against any amount payable at any time by Buyer in connection with the Order.

**PAYMENT TERMS.** JBC normal payment terms are Net 45 unless an advantageous discount is offered by the Supplier. These payment terms cannot be changed without the Buyer's written consent. If cash discounts for early payment are offered by Seller, the period of time agreed upon as constituting "early payment" shall begin with the later of the invoice date or receipt of merchandise. Unless freight or other charges are itemized, the discount will be taken on the full amount of the invoice.

**PAYMENT.** Upon submission of proper invoices, Buyer shall pay the Order price for material and supplies delivered and accepted or services rendered and accepted; however, payment may be withheld or portions thereof deducted or set-offs made against Seller if Seller is not performing work in accordance with the provisions of the Order. There will be no minimum charges honored unless specifically agreed to prior to shipment.

**HAZCOM REPORTING.** If any of the items ordered herein constitute or contain "hazardous or toxic chemicals" as defined by any applicable Federal, State or local law, rule or regulation, Seller shall provide at the time of delivery all required notices and information, including without limitation all Material Safety Data Sheets ("MSDS") in approved form. Seller agrees to maintain such information current and shall provide Buyer with any amended, altered or revised information on a timely basis. When the Order or the specifications referred to herein, requires documentation or certification, this requirement is a material requirement of the Order; Seller's failure to provide such information prior to or at the time of delivery may result in withholding of payment until such is provided.

**DELIVERY SCHEDULE.** Time is of the essence in the fulfillment of the Order. The Order is subject to cancellation if not shipped at the specified time. The Buyer reserves the right to refuse deliveries made in advance of the delivery schedule. Merchandise shipped after the time specified may be returned at the Seller's expense for full credit. Retention of all or any part of such merchandise shall not be considered acceptance of same. Acceptance of such merchandise shall not be deemed a waiver of the Buyer's right to hold the Seller liable for any loss or damage resulting therefrom, nor shall it act as a modification of the Seller's obligation to make future deliveries in accordance with the delivery schedule. Buyer shall be reimbursed in full for all merchandise returned. In addition thereto, Buyer shall have the privilege, if shipment is not made on time, to purchase similar merchandise in the open market in such quantities as they may find necessary not exceeding the amount called for in the Order and hold Seller responsible for the difference, if any, between the price so paid and the Order price.

**SHIPMENT.** All material shall be properly packed for shipment. The Seller shall comply with the Buyer's standard routing and shipping instructions issued by the Buyer. If such instructions are not attached hereto or have not been previously received, instructions must be requested from the Buyer immediately. No additional charge will be allowed for packing, crating, freight, express or cartage unless specified on the face of the Order. Any loss or damage, whenever occurring, which results from Seller's improper packaging or crating shall be borne by Seller. If applicable, all items shall be properly identified with Buyer's Order number releasing shipments against the Order and the Order item number or other identification number shown.

**PATENT AND COPYRIGHT INDEMNITY.** Seller represents and warrants that neither the merchandise nor the sale thereof covered by the Order will infringe upon or violate any trademarks, patents, copyright or other legal rights of third parties. Seller agrees to indemnify and hold Buyer harmless from and against any and all claims, liability, loss, costs, attorneys' fees, expenses and damages due to or arising from any such alleged infringement or violation.

**DRAWINGS AND OTHER ITEMS.** Unless otherwise expressly provided, all drawings, blueprints, dies, patterns, tools, and other items used in connection with the manufacture of the goods which are prepared or constructed by the Seller in fulfilling the requirements of an order for goods, shall be the property of the Buyer, and upon completion of deliveries of the goods, or upon termination of the Order, shall be delivered to the Buyer upon the Buyer's request.

**ASSIGNMENT.** Any assignment of an Order without the prior written consent of the Buyer shall be void.

**INDEMNIFICATION.** To the fullest extent permitted by law, Seller agrees to indemnify, save harmless, and defend Buyer and its affiliated companies, their customers, directors, officers, employees and agents, from and against any loss, liability, cost, expenses, suits, actions, claims and all other obligations and proceedings whatsoever, including without limitation, all judgments rendered against, and all fines and penalties imposed upon Buyer and any reasonable attorney's fees and any other cost of litigation (hereinafter collectively referred to as "liabilities") arising out of injuries to persons, including death, or damage to property, caused by Seller, its employees, agents, subcontractors, or in any way attributable to the performance and prosecution of the work herein contracted for, including without limitation breach of warranty or product liability except that Seller's obligation herein to indemnify Buyer shall not apply to any liabilities arising from Buyer's sole negligence. Seller agrees to expressly waive its immunity, if any, under the applicable workers' compensation law if such immunity may affect this indemnification obligation.

**WAIVER.** The Buyer's failure to insist upon strict compliance shall not be deemed to be a waiver of any right granted Buyer herein. Buyer shall not be deemed to waive any such right unless such waiver is in writing signed by the Buyer's General Manager; such waiver shall not constitute a waiver of any other default under the Order.

**TAXES.** Unless prohibited by law, the Seller shall pay all federal, state or local tax, transportation tax, or other tax that is required to be imposed upon the items ordered hereunder, or by reason of their sale or delivery; the Order price shall be deemed to include such taxes.

**WARRANTY.** Seller warrants that it has clear title to all items furnished subject hereto and that they are being delivered free and clear of any encumbrances. The Seller further warrants that all such items shall conform to the Seller's specifications, the requirements of the Order and approved sample or samples, if any, and further, that such shall be merchantable and fit for the Buyer's or its customer's intended use and that such items shall be free from defects in design, material and workmanship (collectively, the "Seller's Warranty"). Seller's Warranty shall remain in effect for a one (1) year period after acceptance of the items by the Buyer's customers, or for such longer period of time as the item is normally warranted. Neither approval by the Buyer of the Seller's design nor acceptance of the goods shall release or discharge Seller from liability for damages resulting from a breach of Seller's Warranty.

If any defect, failure or other non-conformity appears, Buyer shall have the right to take the following actions: (1) retain such defective items and an equitable adjustment will be made in the Order price for such defective items; (2) require Seller to repair or replace such defective items, at the Seller's sole expense, including all shipping, transportation, and installation costs; or (3) correct or replace such defective items with similar items and recover the total cost thereof from the Seller. The aforesaid warranties shall survive acceptance and payment and shall run to Buyer, its customers and their successors in title and shall not be deemed to be exclusive, but shall be in addition to Buyer's other rights under the terms of the Order or at law or equity.

**TERMINATION BY BUYER.** Buyer shall have the right for and at its convenience to terminate the Order in whole or in part at any time, and from time to time, by written or telegraphic notice effective upon receipt by Seller, even though Seller is not in breach of any obligation hereunder. Upon receipt of notice of termination, Seller shall immediately discontinue performance and shall comply with Buyer's instructions concerning disposition of completed and partially completed items, work in progress and materials acquired pursuant to the Order. In the event of such termination, Seller shall be paid an amount in settlement to be mutually agreed upon by the parties which shall cover Seller's reasonable costs of performance incurred prior to termination in connection with the items for which the Order is terminated plus a reasonable profit based upon such costs. However, said payment shall not exceed the price specified herein for such items. In no event shall the Seller be entitled to recover incidental or consequential damages. Seller shall advise the Buyer, in writing, of Seller's claim, if any, for termination costs within ten (10) days after receipt of the notice of termination.

**INSURANCE.** Seller shall obtain and maintain commercial general liability insurance with a company rated "A- VII" or better by A. M. Best. Such policy shall have minimum coverage of \$2,000,000 per occurrence, which can be met through an umbrella or standard policy or any combination thereof. The insurance shall be evidenced by a Certificate of Insurance naming JBC Technologies, Inc. as an "Additional Insured".

**SEVERABILITY.** These terms and conditions shall not be construed against the party preparing them, but shall be construed as if all parties jointly prepared these terms and conditions and any uncertainty or ambiguity shall not be interpreted against any one party. If any provision hereof is held to be illegal, invalid or unenforceable under any present or future laws, such provision shall be fully severable and the terms and conditions herein shall be construed and enforced as if such illegal, invalid or unenforceable provision had never been made a part hereof. The remaining provisions herein shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provisions or by their severance here from.

**ENTIRE AGREEMENT.** This document and corresponding Orders constitute the entire agreement between the parties and contain all the agreements and conditions of sale. The terms and conditions contained in the Order may not be added to, modified, superseded or otherwise altered except by a written modification signed by the Buyer's Purchasing Agent or General Manager. Each delivery shall be deemed to be only upon the terms and conditions contained in the Order, which shall supersede all inconsistent provisions included in Seller's proposal and in any subsequent acknowledgment by Seller.