

ACTIVAR TERMS AND CONDITIONS OF PURCHASE

1. ACCEPTANCE: The Purchase Order (“Order”) consists of an offer by ACTIVAR, INC. (also referred to as “ACTIVAR”) to SELLER upon the terms and conditions stated herein and in the body of the Order and shall become a binding contract upon acceptance either by acknowledgment or performance. ACTIVAR, INC. hereby objects to any terms proposed in SELLER’s acceptance of this offer which add to, vary from, or conflict with the terms herein. Any such proposed terms shall be void. The Order and the terms and conditions contained herein constitute the complete and entire agreement of the parties. No additional terms or modifications to the Order shall be accepted unless the additions or modifications are in writing, approved by both parties hereto and attached to or endorsed on the Order. SELLER may not assign its rights or obligations under the Order with ACTIVAR’s prior written approval.

2. QUALITY: The goods and services supplied shall conform to the written specifications of ACTIVAR, INC. as supplied to SELLER. If goods do not conform to the specifications, ACTIVAR reserves the right to reject any goods without thereby incurring any liability to ACTIVAR. All rejected goods shall: (i) remain the property of SELLER, with the risk of loss solely SELLER’s, (ii) be collected by SELLER without delay, on receipt of notice of rejection, at SELLER’s risk, and (iii) at ACTIVAR’s option be credited or replaced within a reasonable time free of extra charge.

3. DELIVERY: The time and rate of deliveries specified in the Order shall be deemed of the essence. ACTIVAR reserves the right to cancel the Order and reject goods or services upon default by SELLER in time, rate or manner of delivery. The acceptance of any nonconforming delivery, with or without objection or reservation, shall not constitute a waiver by ACTIVAR of the right to claim damages for such breaches or a waiver of any obligations remaining under the Order. ACTIVAR also reserves the right to refuse shipments made at times not conforming to the schedule of deliveries appearing on the face of the Order.

4. PACKING AND PACKING SLIPS: Goods must be securely packed and protected during shipment and delivery. Items must be clearly indicated on the inner and outer packaging with part number, revision, description, lot number, and quantity. SELLER shall separately number all cases and/or packages showing the corresponding numbers on SELLER’s invoices and packing slips. SELLER shall not impose extra charges for packaging or packing materials unless authority to do so is expressly provided in the Order.

5. INVOICING: SELLER shall supply invoices which contain, at a minimum, the material supplier’s name and address, ACTIVAR’s part number and revision level, ACTIVAR’s purchase order number, and SELLER’s lot number, serial number, test number, etc.

6. SHIPPING INSTRUCTIONS: SELLER agrees to comply with any special instructions as to choice of carrier, routings, shipping and destinations as designated by ACTIVAR.

7. PRICE: ACTIVAR shall not be required to pay for any goods or services at prices higher than those specified on the Order. If no price is specified on the Order, the goods or services shall be billed at the prices last quoted to ACTIVAR or at the prevailing market prices, whichever is lower.

8. CHANGES: SELLER agrees not to change material, configuration and/or manufacturing location without prior notification and written authorization of ACTIVAR. ACTIVAR shall have the right, by written notice of change to the Order, to require that SELLER suspend work at any time before completion of performance by SELLER under the Order or to make changes in quantities, drawings, specifications, delivery schedules and methods of shipment and packaging. If any such changes directed by ACTIVAR cause an increase or decrease in SELLER’s cost of or the time required for the performance of the Order, an equitable adjustment shall be made and the Order shall be modified in writing accordingly. Any claim

for adjustment must be asserted by SELLER in writing within (30) days from SELLER's receipt of such written notice of change to the Order. Changes shall not be binding upon ACTIVAR, nor shall any claim for adjustment be recognized, unless a written notice of change to the Order authorizing such changes has been issued and signed by ACTIVAR.

9. NOTICE OF LABOR DISPUTE: Whenever an actual or potential labor dispute impairs or delays or threatens to impair or delay SELLER's performance, SELLER shall immediately give written notice thereof to ACTIVAR, including all relevant information with respect thereto requested by ACTIVAR.

10. GOVERNING LAW: The Order shall take effect and shall be construed in accordance with the internal laws of Minnesota, without regard to its conflicts of law provisions.

11. VENUE: In the event of a dispute which ACTIVAR and SELLER are unable to resolve through negotiations, the parties hereby agree to the exclusive venue of the District Court for Hennepin County, Minnesota, or, if jurisdictionally available, federal courts located in Minneapolis, Minnesota.

12. SURVIVAL: These terms and conditions shall survive the termination and performance of the Order.

13. COMPLIANCE WITH LAW: SELLER warrants that the goods and/or services to be furnished hereunder shall be manufactured and sold in compliance with all relevant laws, regulations and procedures whether imposed by ACTIVAR or any governmental or administrative entity.

14. GRATUITIES: SELLER warrants that it has not offered or given and will not offer or give to any employee, agent, or representative of ACTIVAR, any gratuity. Any breach of this warranty shall be a material breach of each and every contract or order between ACTIVAR and SELLER, whether now in existence or hereafter arising and may result in termination of any or all such contracts or orders.

15. FUEL SURCHARGES: ACTIVAR retains the right and authority to reject any and all fuel surcharges not previously agreed upon in writing.

16. WARRANTIES CONCERNING GOODS AND SERVICES: SELLER expressly warrants that all goods and services covered by the Order shall conform to the specifications, drawings, samples or other descriptions upon which the Order is based, shall be fit and sufficient for the purpose intended, merchantable, and free from defects in material, workmanship or design.

17. INSPECTION: All articles, material, and workmanship are subject to inspection and testing at the place of manufacture or at destination or at both places by a ACTIVAR representative or agent.

18. INSURANCE: SELLER shall carry commercially reasonable levels of insurance which shall include coverage for products and completed operations liability and contractual liability as well as comprehensive general liability insurance.

19. REJECTIONS: ACTIVAR reserves the right to reject and receive full credit for any good or service which is defective as to material, workmanship, fabrication or quality or which is not in conformity with the specifications, drawings, or any sample approved by ACTIVAR. ACTIVAR may return, at the risk and expense of SELLER, for full credit, any such goods. Without extra cost to ACTIVAR, at the option of and upon receipt of written instructions from ACTIVAR, SELLER will immediately (i) replace to the complete satisfaction of ACTIVAR, all previously rejected material or services; or (ii) cure all such defects or non-conformities. Rejected articles shall not be resubmitted for acceptance without concurrent notice of their prior rejection. ACTIVAR, after acceptance of articles or services which appear to conform to SELLER's warranties, may discover these items to be nonconforming and may revoke its acceptance. ACTIVAR

retains the same rights with respect to such articles and services as if it had rejected them. ACTIVAR may opt to keep and rework any defective or nonconforming items. Cost of rework, transportation, insurance, repackaging and/or extra inspection by ACTIVAR shall be at SELLER's sole expense.

20. CANCELLATION OR DEFAULT: ACTIVAR may at any time terminate the Order in whole or in part for its convenience upon written notice to SELLER prior to shipment. If SELLER breaches or fails to perform obligations of this agreement, ACTIVAR may, by written notice of default to SELLER, cancel the whole or any part of the supplies and services ordered without liability.

21. FORCE MAJEURE: Acts of government, strikes, civil commotion, riots, war, revolution, freight embargoes, fire, flood, storm, acts of God or other conditions beyond the reasonable control of ACTIVAR which shall affect ACTIVAR's ability to receive and use the material ordered shall, upon written notification to SELLER, constitute valid grounds for suspension of shipment upon the Order, without penalty to ACTIVAR. In the event that such condition continues for a period of thirty (30) days, ACTIVAR may elect, upon written notice to SELLER, to cancel the Order.

22. VALIDITY: If any provision of the Order or these terms and conditions is declared invalid, in whole or in part, by a court of competent jurisdiction, the remaining provisions shall not be affected thereby.

23. INDEMNIFICATION: SELLER agrees to indemnify and hold ACTIVAR, its affiliated entities, and their respective directors, officers, employees, customers, and those for whom ACTIVAR or its affiliated entities may act as agent (collectively, the "Indemnified Parties") harmless from any claims, losses, liabilities, expenses, costs, attorneys' fees, legal expenses or damages, including any indirect, incidental and consequential damages that such Indemnified Party may suffer or be in any way subjected to on account of any death of or injury to any person resulting or claimed to result from any defect or non-conformance to specifications or in connection with the breach of any terms of the Order or any other of SELLER'S warranties

24. RECORD MANAGEMENT: All records maintained by SELLER pursuant to this Order shall be maintained in accordance with local and applicable laws and regulations.

25. ELECTRONIC ACCEPTANCE: ACTIVAR and SELLER may agree from time to time on a process for electronic acceptance, revisions and updates to the Order.

26. INTELLECTUAL PROPERTY: Any intellectual property created by either party hereto in connection with the goods or services provided by SELLER to ACTIVAR hereunder shall be the property of ACTIVAR.

27. CONFIDENTIALITY: SELLER understands that ACTIVAR may have provided to SELLER information necessary for SELLER to submit a quotation, if applicable, and enter into the Order, which ACTIVAR considers to be proprietary or confidential, the public disclosure of which would place ACTIVAR at a competitive disadvantage. To the event that ACTIVAR has marked any such written information "CONFIDENTIAL," SELLER will maintain the confidentiality of such information in the same manner as SELLER maintains its own confidential information.