

## ITW Thermal Films – the Americas, Terms and Conditions for Purchase Orders

1. Acceptance - Agreement. Seller's commencement of work on the products subject to an Agreement or Agreement (hereinafter the "Agreement") or shipment of such products, whichever occurs first, shall be deemed acceptance of this Agreement. Any acceptance of this Agreement is limited to acceptance of the express terms contained on the face and back hereof. **Any quote or proposal for additional or different terms or any attempt by Seller to vary in any degree any of the terms of this offer in Seller's acceptance is hereby objected to and rejected, but such proposals shall not operate as a rejection of this offer unless such variances are in the terms of the description, quantity, price or delivery schedule of the products, but shall be deemed a material alteration thereof, and this offer shall be deemed accepted by Seller without said additional or different terms.** If this Agreement shall be deemed an acceptance of a prior quote or offer by Seller, such acceptance is limited to the express terms contained on the face and on the back hereof.

2. Termination for Convenience of Purchaser. Purchaser reserves the right to terminate this Agreement or any part hereof for its sole convenience. In the event of such termination, Seller shall immediately stop all work hereunder, and shall immediately cause any of its suppliers or subcontractors to cease such work. Seller shall be paid actual direct costs resulting from termination. Seller shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided.

3. Termination for Cause. Purchaser may also terminate this Agreement or any part hereof for cause in the event of any default by the Seller or if the Seller fails to comply with any of the terms and conditions of this offer. Late deliveries, deliveries of products which are defective or which do not conform to this order, and failure to provide Purchaser, upon request, of reasonable assurances of future performance shall all be causes allowing Purchaser to terminate this Agreement for cause. In the event of termination for cause, Purchaser shall not be liable to Seller for any amount, and Seller shall be liable to Purchaser for any and all damages sustained by reason of the default which gave rise to the termination.

4. Proprietary Information - Confidentiality - Advertising. Seller shall consider all information furnished by Purchaser to be confidential and shall not disclose any such information to any other person, or use such information itself for any purpose other than performing this Agreement, unless Seller obtains written permission from Purchaser to do so. This paragraph shall also apply to drawings, specifications, or other documents prepared by Seller or the like for Purchaser in connection with this

Agreement. Seller shall not advertise or publish the fact that Purchaser has contracted to purchase products from Seller, nor shall any information relating to the order be disclosed without Purchaser's written permission.

5. Ownership of Inventions. All drawings, know-how, designs, confidential information, and the like disclosed to Seller by Purchaser and all rights therein will remain the property of Purchaser and will be kept confidential by Seller in accordance with these terms and conditions. The Seller shall have no claim to, nor ownership interest in, any information provided or communicated by the Purchaser, and such information, in whatever form and any copies thereof, shall be promptly returned to the Purchaser upon written request from the Purchaser. Seller acknowledges that no license or rights of any sort are granted to Seller under this Agreement in respect of any rights in Purchaser's information, developments, devices, processes, or other Intellectual Property arising there from. Should the Seller perform development work in producing the material covered by this Agreement, the Purchaser shall receive a full and complete, worldwide, non-exclusive, royalty-free license to make, have made, use or sell any Intellectual Property developed through such development work.

6. Equipment. All tool, dies or any equipment furnished to Seller by Purchaser, or specifically paid for by Purchaser, shall be the Purchaser property and it is understood and agreed that these devices may be inspected and/or removed by Purchaser at any time Purchaser desires to do so without additional cost. These devices shall be used only for purposes of manufacture of products to be sold to Purchaser. Seller shall bear any taxes assessed against such tools and the full cost of preparing and crating for shipment as directed by Purchaser upon completion of such orders as Purchaser may give. The devices shall be kept free of liens and encumbrances at all times, without expense to Purchaser. The devices shall not be removed from Seller's plant without Purchaser's consent. Payment for invoices for such devices are subject to Purchaser written approval of samples from such devices. Production samples must have written approval before any production shipments are made unless a written exception to this rule is submitted by Purchaser authorized representative. Seller shall return all such tooling, dies and equipment immediately upon the written request of the Purchaser. If Seller fails to return any such items, or Seller damages such items while in its custody, Seller shall be liable to the Purchaser for any damages arising out of such action, including all attorneys' fees and costs that may be incurred.

7. Infringement and Indemnification. The Seller agrees to defend, indemnify and hold the Purchaser, its successors, assigns, agents and users of its products and processes harmless against any claims, costs, damages, liability and expenses resulting from actual or alleged patent, trademark, or copyright infringement, misappropriation of confidential information, or violation of any other Intellectual

Property right, domestic or foreign, in the manufacture, use or disposition of any article or material supplied hereunder.

8. Warranty. Seller expressly warrants that all products or services furnished under this Agreement shall conform to all contract specifications and appropriate standards, that the products will be new, and will be free from defects in material or workmanship. Seller warrants that all such products or services will conform to any statements made on the containers or labels or advertisements for such products or services, and that any products will be adequately contained, packaged, and marked and labeled in accordance with purchaser's requirements and all laws relating thereto. Seller warrants that all products or services furnished hereunder will be merchantable, and will be safe and appropriate for the purpose for which products or services of that kind are normally used. If Seller knows or has reason to know the particular purpose for which Purchaser intends to use the products or services, Seller warrants that such products or services will be fit for such particular purpose. Seller warrants that products or services furnished will conform in all respects to samples. Inspection, test, acceptance or use of the products or services furnished hereunder shall not affect the Seller's obligation under this warranty, and such warranties shall survive inspection, test, acceptance and use. Seller's warranty shall run to Purchaser, its successors, assigns and customers, and users of products sold by Purchaser. In addition to all other remedies, Seller agrees to replace or correct defects of any products or services not conforming to the foregoing warranty promptly, without any expense to Purchaser, when notified of such nonconformity by Purchaser, provided Purchaser elects to provide Seller with the opportunity to do so. In the event of failure of Seller to correct defects in or replace nonconforming products or services promptly, Purchaser, after reasonable notice to Seller, may make such corrections or replace such products and services and charge Seller for the cost incurred by Purchaser in doing so. Seller shall be liable for incidental or consequential damages resulting from failure to conform to any contract specifications.

9. Price Warranty. Seller warrants that the prices for the articles sold to Purchaser hereunder are not less favorable than those currently extended to any other customer for the same or similar articles in similar quantities. In the event Seller reduces its price for such article during the term of this Agreement, Seller agrees to reduce the prices hereof correspondingly. Seller warrants that prices shown on this Agreement shall be complete, and no additional charges of any type shall be added without Purchaser's express written consent. Such additional charges include, but are not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing, or crating.

10. Force Majeure. Purchaser may delay delivery or acceptance occasioned by causes beyond its control. Seller shall hold such products at the direction of the Purchaser and shall deliver them when

the cause affecting the delay has been removed. Purchaser shall be responsible only for Seller's direct additional costs in holding the products or delaying performance of this Agreement at Purchaser's request. Causes beyond Purchaser's control shall include, but are not limited to, government action or failure of the government to act where such action is required, fire, or unusually severe weather.

11. Insurance. In the event that performance of services by Seller's employees, or persons under contract to Seller, is to be done on Purchaser's property, or property of Purchaser's customers, the Seller agrees that all such work shall be done as an independent contractor and that the persons doing such work shall not be considered employees of the Purchaser. Seller shall maintain all necessary insurance coverages, including public liability and Workers' Compensation insurance. Seller agrees to name Purchaser as an ADDITIONAL NAMED INSURED on any of its primary and excess insurance policies for either product liability or general liability coverage arising out of the sale of any products or performance of work under this Agreement. Seller shall furnish to Purchaser a certificate of insurance evidencing this coverage, but failure of the Seller to provide such certificate shall not be deemed a waiver of this requirement. Seller shall indemnify and save harmless and defend Purchaser from any and all claims or liabilities arising out of the work covered by this paragraph.

12. Indemnification. Seller shall defend, indemnify and hold harmless Purchaser against all damages, claims or liabilities and expenses (including attorneys' fees) arising out of or resulting in any way from any actual or alleged defect in the products or services purchased hereunder, or from any act or omission of Seller, its agents, employees or subcontractors. This indemnification shall be in addition to the warranty obligations of Seller.

13. Changes. Purchaser shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation. If any such changes cause an increase or decrease in the cost, or the time required for the performance, an equitable adjustment shall be made and this agreement shall be modified in writing accordingly. Seller agrees to accept any such changes subject to this paragraph.

14. Inspection/Testing. Payment for the products delivered hereunder shall not constitute acceptance thereof. Purchaser shall have the right to inspect such products and to reject any or all of said products which are in Purchaser's judgment defective or nonconforming. Products rejected and products supplied in excess of quantities called for herein may be returned to Seller at its expense and, in addition to Purchaser's other rights, Purchaser may charge Seller all expenses of unpacking, examining, repacking and reshipping such products. In the event Purchaser receives products whose defects or nonconformities are not apparent on examination, Purchaser reserves the right to require

replacement, as well as payment of damages. Nothing contained in this Agreement shall relieve in any way the Seller from the obligation of testing, inspection and quality control.

15. Entire Agreement. This Agreement and any documents referred to on the face hereof, constitute the entire agreement between the parties.

16. Assignments and Subcontracting. No part of this order may be assigned or subcontracted without prior written approval of Purchaser.

17. Setoff. All claims for money due or to become due from Purchaser shall be subject to deduction or setoff by the Purchaser by reason of any counterclaim arising out of this or any other transaction with Seller.

18. Shipment. If in order to comply with Purchaser's required delivery date it becomes necessary for Seller to ship by a more expensive way than specified in this Agreement, any increased transportation costs resulting there from shall be paid for by Seller, unless the necessity for such rerouting or expedited handling has been caused by Purchaser.

19. Waiver. Purchaser's failure to insist on performance of any of the terms or conditions of this Agreement, or to exercise any right or privilege or Purchaser's waiver of any breach hereunder shall not thereafter waive any other terms, conditions, or privileges, whether or not of the same or similar type.

20. Delivery. Time is of the essence in this Agreement, and if delivery of items or rendering of services is not completed by the time promised, Purchaser reserves the right, without limitation or liability, in addition to its other rights and remedies, to terminate this Agreement by notice effective when received by Seller as to items not yet shipped or services not yet rendered and to purchase substitute items or services elsewhere and charge Seller with any loss incurred.

21. Limitation on Purchaser's Liability - Statute of Limitations. In no event shall Purchaser be liable for anticipated profits or for incidental or consequential damages. Purchaser's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this Agreement or from the performance or breach thereof shall in no case exceed the price allocable to the products or services or unit thereof, which gives rise to the claim. Purchaser shall not be liable for penalties of any kind or description. Any action resulting from any breach on the part of Purchaser as to the products

or services delivered hereunder must be commenced within one year after the cause of action has accrued.

22. Compliance with Laws. Seller guarantees that all products delivered or services performed (including production of such products) by Seller pursuant to this order will comply with all applicable federal, state and local laws, ordinances and regulations to the extent applicable to such products and/or services and Seller shall identify Purchaser, its customers (if any) and users from and against any and all claims, or liability arising from failure of such products and/or services to comply therewith. Without limiting the generality of the foregoing regulations, rulings or executive orders there under (or any amendments thereof, successors thereto, or other similar laws and regulations); any and all such provisions are incorporated herein by reference. Applicable laws, regulations, rulings and executive orders include, but are not limited to, the following:

- (a) The Fair Labor Standards Act (29 U.S.C. 201-219).
- (b) Non-discrimination in Employment (Executive Order 11246 as amended, Executive Order 11375 and the rules regulations, and relevant orders of the Secretary of Labor).
- (c) Occupational Safety and Health Act of 1970 (84 U.S. Stat 1590), as amended and state plans approved under such act and the regulations there under.
- (d) Vietnam Era Veterans Readjustment Assistance Act of 1978.
- (e) Rehabilitation Act of 1974.
- (f) Veterans Compensation, Education and Employment Amendment of 1982.

23. Settlement of Disputes and Mediation. Authorized representatives of both Parties shall use commercially reasonable best efforts to settle disputes in good faith related to this Agreement within 30 (thirty) days of notice of a dispute by a party. In the event such parties are unable to resolve a dispute within such 30 day period, Senior management of either party shall, upon the request of the authorized representatives, utilize a non-binding resolution procedure whereby each presents its case before a panel consisting of a Senior Executive of each of the parties and a mutually acceptable neutral advisor. The hearing shall occur no more than ten (10) business days after receipt of such request by the authorized representative(s).

If the matter cannot be resolved by such Senior Executives, the neutral advisor may be asked to assist such senior executives in evaluating the strengths and weaknesses of each party's position on the merits of their dispute. The parties shall each bear their respective costs incurred in connection with the procedure set forth in this clause, except that they shall share equally the fees and expenses of the neutral advisor, if any, and the cost of the facility for the hearing.

Nothing in this section shall be construed to preclude any party from seeking injunctive relief in order to protect its rights during the resolution process. If the parties are unsuccessful in resolving the dispute through the processes defined herein, either party may elect to proceed with either arbitration as defined and limited in Paragraph 26 below, or with legal action in a federal or state court situated in Cook County, Illinois.

24. Limited Arbitration or Legal Action.; (a) Any dispute, controversy or claim arising out of or relating in whole or in part to this Agreement, for breach or any alleged breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the AAA so long as either the individual or aggregate claims for damages are less than one million dollars (\$1,000,000.00). The arbitration hearing shall proceed at the offices of the AAA located in Chicago, Illinois, and the Arbitrator(s) shall apply the substantive laws of Illinois. The Arbitrator(s) shall not be allowed to issue any punitive, exemplary or treble damages against either party, nor will any party seek, nor shall the Arbitrator(s) be allowed to award more than one million dollars (\$1,000,000.00) for any individual claim or aggregate of claims arising under this Agreement. (b) Either party may appeal the award of the Arbitrator(s) to the state or federal courts sitting in Cook County, Illinois within thirty days after receipt of the Arbitrator(s) written award. Such court shall review the legal and factual findings of the Arbitrator(s) on a *de novo* basis and shall not be limited in any way to simply a review of the statutory basis for vacating an arbitration award. (c) Any individual or aggregate claims exceeding one million dollars (\$1,000,000.00) shall not be arbitrated but shall be adjudicated by the federal or state courts sitting in Cook County, Illinois. The parties irrevocably submit to the jurisdiction of such courts for the purpose of any such suit, action or other proceeding arising out of or based on the Agreement or their subject matter. The substantive law of Illinois shall apply to any such legal proceeding.

25. Waiver of Jury Trial. Each party waives, to the fullest extent permitted by law, the right to trial by jury in any legal proceedings arising out of or relating to this Agreement.

26. Fees and Costs. In any arbitration or legal action filed under this Agreement, the prevailing party will be entitled to all of its fees and costs, including reasonable attorney's fees.

***27.EEOA. "Illinois Tool Works Inc. complies with contractor obligations under the Office of Federal Contract Compliance Programs, U.S. Department of Labor, Sections 60-1, 60-2, 60-250 and 60-741 and requests that all contractors and subcontractors providing supplies and services to Illinois Tool Works Inc. comply with the same rules and regulations."***