



## TERMS AND CONDITIONS OF PURCHASE

### Acceptance-Agreement

Seller's commencement of work on the goods subject to this purchase order or shipment of goods, whichever occurs first, shall be the effective mode of acceptance of this purchase order. Any acceptance of this purchase order is limited to acceptance of the express terms contained on the face and back hereof. Any 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 purchase order shall be deemed an acceptance of prior offer by Seller, such acceptance is limited to the express terms contained on the face and on the back hereof. Additional or different terms or any attempt by Seller to vary in any degree any of the terms of this purchase order shall be deemed material and are objected to and rejected but this purchase order shall not operate as a rejection of Seller's offer unless it contains variances in the terms of the description, quantity, price or delivery schedule of the goods.

### Termination for Convenience of Purchaser

Purchaser reserves the right to terminate this order 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 a reasonable termination charge consisting of a percentage of the order price reflecting the percentage of the work performed prior to the notice of termination, plus actual direct costs resulting from termination. Seller shall not be paid for any work done after receipt of notice of termination, nor for any costs incurred by Seller's suppliers or subcontractors which Seller could have reasonably avoided.

### Termination for Cause

Purchaser may also terminate this order 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 or conditions of this order. Late deliveries, deliveries of products which are defective or which do not conform to this order, and failure to provide Purchaser, upon request, or reasonable assurances of future performance shall all be causes allowing Purchaser to terminate this order 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.

### 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 contract, unless Seller obtains written permission for Purchaser to do so. This paragraph shall apply to drawings, specifications, or other documents prepared by Seller for Purchase in connection with this order. Seller shall not advertise or publish the fact that Purchaser has contracted to purchase goods from Seller, nor shall any information relating to the order be disclosed without Purchaser's written permission. Unless otherwise agreed in writing, no commercial, financial or technical information disclosed in any manner or at any time by Seller to Purchaser shall be deemed secret or confidential and Seller shall have no rights against Purchaser with respect thereto except such rights as may exist under patent laws.

### Warranty

Seller expressly warrants that all goods or services furnished under this agreement shall conform to all specifications and appropriate standards, will be new, and will be free from defects in material or workmanship. Seller warrants that all such goods or services will conform to any statements made of the containers or labels or advertisements for such goods or services, and that any goods will be adequately contained, packaged, marked and labeled. Seller warrants that all goods or services furnished hereunder will be merchantable, and will be safe and appropriate for the purpose for which goods 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 goods or services, Seller warrants that such goods or services will be fit for such particular purpose. Seller warrants that goods or services furnished will conform in all respects to sample. Inspection, test, acceptance or use of the goods 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. Seller agrees to replace or correct defects of any goods or services not conforming to the foregoing warranty promptly, without 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 goods or services promptly, Purchaser, after reasonable notice to Seller, may make such corrections or replace such goods and services and charge Seller for the cost incurred by Purchaser in doing so. Seller warrants that the prices for the articles sold 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 contract, Seller agrees to reduce the prices hereof correspondingly. Seller warrants that prices shown on this purchase order 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, customs duties, taxes, storage, insurance, boxing and crating.

### Force Majeure

Purchaser may delay delivery or acceptance occasioned by causes beyond its control. Seller shall hold such goods 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 goods or delaying performance of this contract at Purchaser's request. Causes beyond Purchaser's control shall include acts of God, government action or failure of the government to act where such action is required, strike or other labor trouble, fire, or unusually severe weather.

### Patents

Seller agrees upon receipt of notification to promptly assume full responsibility for defense of any suit or proceeding which may be brought against Purchaser or its agents, customers, or other vendors for alleged patent infringement, as well as for any alleged unfair competition resulting from similarity in design, trademark, or appearance of goods or services provided hereunder, and Seller further agrees to indemnify Purchaser, its agents and customers against any and all expenses, losses, royalties, profits and damages including court costs and attorneys' fees resulting from any such suit or proceeding, including any settlement. Purchaser may be represented by and actively participate through its own counsel in any such suit proceeding if it so desires, and the costs of such representation shall be paid by Seller.

**Insurance**

In the event that Seller's goods or services hereunder require or contemplate performance of services by Seller's employees, or persons under contract to Seller, 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 coverage's, including public liability and Workers' Compensation insurance. 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.

**Indemnification**

Seller shall defend, indemnify and hold harmless Purchaser against all damages, claims or liabilities and expenses (including attorney's fees) arising out of or resulting in any way from any defect in the goods and/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 the Seller.

**Changes**

Purchaser shall have the right at any time to make changes in drawings, designs, specification, 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.

**Inspection/Testing**

Payment for the goods delivered hereunder shall not constitute acceptance thereof. Purchaser shall have the right to inspect such goods and to reject any or all of said goods, which are in the Purchaser's judgment defective or nonconforming. Goods rejected and goods 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 goods. In the event Purchaser receives goods whose defects or nonconformities are not apparent on examination, Purchaser reserve the right to require replacement, as well as payment of damages. Nothing contained in this purchase order shall relieve in any way Seller from the obligation of testing, inspection and quality control.

**Right of Entry**

The supplier shall include right of entry provisions in any contract. These provisions shall allow the supplier, its customers and regulatory agencies to determine and verify the quality of work, records, and material at any place, including the plant of the subcontractor.

**Entire Agreement**

This purchase order, and any documents referred to on the face hereof, constitute the entire agreement between the parties.

**Assignments and Subcontracting**

No part of this order may be assigned or subcontracted by Seller or its agents without prior written approval of Purchaser.

**Set-off**

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

**Packaging**

All supplies provided under this Order shall be suitably prepared and packed for shipment so as to assure safe delivery, the lowest transportation rates, and to meet carrier's requirements unless otherwise stipulated in the Order. No charge shall be allowed for packing, crating, or carriage unless stated in the Order. Each container shall be clearly marked to show Purchaser's Order Number. A packing sheet showing Order Number must be included in each container or single unit of shipment, or with each truckload shipment.

**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 purchase order, any increased transportation costs resulting therefrom shall be paid for by Seller unless the necessity for such rerouting or expedited handling has been caused solely and exclusively by the Purchaser.

**Waiver**

Purchaser's failure to insist on performance of any of the terms or conditions contained herein 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 of the same or similar type.

**Delivery**

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

**Counterfeit Items**

Purchase parts may not be or contain Counterfeit Items. A Counterfeit Item is defined to include, but is not limited to, an item that is an illegal or unauthorized copy or substitute of an Original Equipment Manufacturer ("OEM") item; an item that does not contain the proper external or internal materials or components required by the OEM or that is not constructed in accordance with OEM design; an item or component thereof that is used, refurbished or reclaimed but the Seller represents as being a new item; an item with a label or other marking intended, or reasonably likely, to mislead a reasonable person into believing a non-OEM item is a genuine OEM item when it is not.

**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 contract or from the performance or breach thereof shall in no case exceed the price allocable to the goods or services or unit thereof, which gives rise to the claim. Purchaser shall not be liable for penalties of any description. Any action resulting from any breach on the part of Purchaser as to the goods or services delivered hereunder must be commenced within one year after the cause of action has accrued.