

## TERMS AND CONDITIONS OF PURCHASE

1. **AGREEMENT.** The Agreement (the "Purchase Agreement") between Buyer and Seller with respect to the purchase of goods (the "Goods") or performance of work or services (the "Services") shown on this order shall consist of the terms appearing hereon together with the purchase order to which these terms and conditions are incorporated, attached or appended. **BUYER SHALL NOT BE BOUND BY ANY ADDITIONAL OR DIFFERENT TERMS APPEARING IN SELLER'S QUOTATION, PROPOSAL, ACKNOWLEDGMENT OR ANY OTHER FORMS OR COMMUNICATIONS FROM SELLER AND NO REFERENCE THEREIN SHALL BE DEEMED TO INCORPORATE ANY SUCH ADDITIONAL OR DIFFERENT TERMS UNLESS SUCH TERMS ARE MUTUALLY AGREED TO IN WRITING AND SIGNED BY BUYER AND SELLER.** Acceptance of this order will occur upon Seller executing and returning to Buyer the acknowledgement copy hereof or in lieu thereof, by Seller delivering any of the Goods or performing any of the Services herein ordered, whichever shall first occur.

2. **PRICE.** Prices shown on this order shall not be subject to increase without the written consent of Buyer. If prices are not shown for any of the Goods or Services then prices to be charged by Seller shall not be higher than prices last quoted or charged to Buyer for the same or commercially similar Goods or Services, or at prevailing market price, whichever is lower, unless otherwise agreed upon in writing. The period of the cash discount as shown on this order shall extend from the date of receipt of the invoice by Buyer or from the date of receipt by Buyer of any correct invoice, whichever is later. Prices include all costs and charges for crating, wrapping and packing and all other expenses of Seller's performance of the Purchase Agreement except as otherwise shown on this order.

3. **PRICE WARRANTY.** Seller warrants that the prices for the articles sold to Buyer 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 order, 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 Buyer's express written consent. Such additional charges include, but are not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing, crating.

4. **TAXES.** Unless taxes are expressly shown with prices on the order hereof, Seller shall indemnify and hold harmless Buyer against the assessment or imposition of any excise, use or other tax (however designated) upon the production, sale or delivering of Goods shipped hereunder or upon the performance of Services rendered hereunder, to the extent such assessments or impositions are required or not forbidden by law to be borne by Seller.

5. **DELIVERY.** Time is of the essence. Seller shall not deliver any of the Goods or perform any of the Services except at the time or dates indicated on the face hereof. No change in the scheduled delivery date or performance will be permitted without Buyer's prior written consent. No acceptance of Goods or Services after the scheduled delivery date will waive Buyer's rights with respect to such late delivery, nor shall it be deemed a waiver of future compliance with the terms hereof. In the absence of designated times for delivery or performance Seller shall deliver or perform in accordance with such subsequent directions given by Buyer or otherwise as expeditiously as possible. Failure of Seller to deliver or perform in accordance with the times required therefore, as herein provided, shall constitute a breach of the Purchase Agreement.

6. **BREACH.** In the event that Seller shall breach any of its obligations hereunder, Buyer may purchase substitute Goods or Services, and Seller shall pay to Buyer expenses incurred by Buyer. At the election of Buyer, Buyer may notify Seller that the delay will result in damages and deduct the damages from the sale price upon acceptance of the Goods. The remedy stated in this paragraph shall be in addition to, and not in lieu of, other remedies which Buyer may have under the Purchase Agreement or under applicable law and acceptance by Buyer of any payment by Seller of amounts herein provided shall not be a waiver of Buyer's right or recover against Seller any other amounts, damages, or losses occasioned by Seller's breach. Buyer may not be required to accept replacements of substitutes or permit cure of defects in any Goods or Services rightfully rejected. Seller shall be liable for any actual, consequential or incidental damages relating to the breach.

7. **QUANTITIES.** Unless otherwise agreed in writing by Buyer, deliveries of Goods must be in the exact quantities stated on the face hereof. If Seller ships or delivers a quantity of Goods greater than or less than the quantity prescribed for each shipment, Buyer shall have the right at its election to reject the shipment in its entirety or to accept any part thereof and reject the remainder or to accept the entire shipment. In no event shall Buyer be responsible for any additional shipping or transportation charges resulting from shipments by Seller in less than specified quantities or from partial shipments.

8. **REJECTION.** Rejected Goods may at the election of Buyer be returned to Seller at Seller's expense and risk or held at Seller's risk for Seller's instructions. Acceptance of a portion of the Goods shall not preclude subsequent rejection of the remainder in whole or in part. Any inspection of the Goods or Services by Buyer shall not constitute a waiver or acceptance as to any defects therein or breaches by Seller and actually discovered by Buyer pursuant to such inspection.

9. **WARRANTIES.** In addition to Seller's customary warranties and any other warranties implied in fact or by law, Seller warrants to Buyer and to any third party ultimately using any item, whether such third party is a customer of Buyer or not, unless otherwise agreed in writing and signed by the parties, that the Goods delivered hereunder shall conform to all descriptions and specifications and to samples furnished by the Buyer and shall be of merchantable quality, free of defects, latent or patent, in design, material and workmanship, and fit for intended purposes, and all Services performed hereunder shall be performed in a professional, workmanlike manner with the degree of skill and care that is required by current, good and sound industry practice. **SELLER'S WARRANTY SHALL EXTEND FOR A PERIOD OF 12 MONTHS AFTER THE ITEM IS DELIVERED OR SERVICE RENDERED AND ACCEPTED BY BUYER, AND APPLIED TO ITS INTENDED USE** where Buyer incorporates that item into a product of Buyer to be delivered to its customer. Seller's obligation under this clause shall be for the benefit of Buyer's customer and shall extend to one year after application of the item to its intended use.

10. **DEFECTIVE GOODS.** If any of the Goods or Services fails to meet warranties contained in paragraph 9, Seller shall, upon notice from Buyer and at Buyer's election, promptly correct or replace the same at Seller's expense. If Seller fails to do so, Buyer may cancel this order as to all such Goods and in addition, may cancel the then remaining balance of the order. After notice to Seller, all such Goods will be held at Seller's risk and all transportation charges both to and from the original destination, shall be paid by Seller. Any payment for such Goods shall be refunded by Seller unless Seller promptly corrects or replaces the same at its expense.

11. **FORCE MAJEURE.** Buyer may delay delivery or acceptance occasioned by causes beyond its control. Seller shall hold such Goods at the direction of the Buyer and shall deliver them when the cause affecting the delay has been removed. Buyer shall be responsible only for Seller's direct additional costs in holding the Goods or delaying performance of the Purchase Agreement at Buyer's request. Causes beyond Buyer's control shall include government acts or omissions, war, strike or other labor trouble, fire, or acts of god.

12. **INDEMNIFICATION.** Seller shall defend, indemnify and hold harmless Buyer's request 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 or Services purchased hereunder, or from any act or omission of Seller, its agents, employees or subcontractors. The indemnification shall be in addition to the warranty obligations of Seller and Seller agrees to provide Certificates of insurance for such indemnity upon request.

13. **RISK OF LOSS.** Regardless of F.O.B. point, Seller agrees to bear all risk of loss, injury or destruction of Goods and materials ordered herein which occur prior to acceptance by Buyer. No such loss, injury, or destruction shall release Seller from its obligations hereunder.

14. **SHIPPING COSTS.** All Goods are to be shipped freight prepaid, F.O.B. destination, unless otherwise stated. Where Buyer has so authorized in writing, Goods may be shipped F.O.B. shipping point. Seller shall prepay all shipping charges, route the Goods by the cheapest common carrier, or the carrier specified, and list said charges as a separate item on Seller's invoice.

15. **COMPLIANCE WITH LAW.** Seller warrants that all applicable laws, rules and regulations of governmental authority, including any applicable Executive Order mandating use of American materials covering the production, sale and delivery of Goods and the performance of Services under the Purchase Agreement shall be complied with.

16. **CHANGES.** Buyer may at any time cancel the Purchase Agreement with respect to any Goods not then delivered or Services not then performed. If such cancellation shall be for other than breach of the Purchase Agreement by Seller, Buyer shall pay to Seller cancellation charges as may be agreed between Buyer and Seller, but not to exceed the lesser of the purchase price applicable to such cancelled Goods or Services or the labor, material and manufacturing overhead costs actually incurred by Seller through the date of cancellation in the production of the Goods or performance of the Services, in each case, however, less the reasonable resale or salvage value of materials and work in process. Notwithstanding the foregoing, Buyer shall not be liable for cancellation charges if the Goods are standard or stock items of Seller. Buyer may also issue additional instructions and make changes in connection with the Purchase Agreement in any one or more of the following: (i) designs or specifications; (ii) method of shipment or packing, and (iii) time and destination of deliveries. If any such change results in an increase or decrease in the cost of performance by Seller the parties shall agree in writing upon an equitable adjustment in the purchase price. Seller shall perform in accordance with the change pending the assertion on any such claim and pending agreement upon any equitable adjustment.

17. **PROPERTY FURNISHED TO SELLER BY BUYER INCLUDING DIES AND MOLDS.** All dies, molds, patterns, jigs, fixtures, materials, supplied and any other property furnished to Seller by Buyer or paid for by Buyer for use in the performance of the Purchase Agreement shall be and remain the property of Buyer and shall be subject to removal upon Buyer's instructions, shall be used only in filling orders from Buyer, shall be held at Seller's risk and upon recall by Buyer shall be packaged at Seller's expense for shipment to Buyer in accordance with Buyer's instructions and shall be kept insured by Seller at Seller's expense to the extent of their full insurable value. Evidence of insurance shall be furnished to Buyer on request comparable to the total value of material received. Unless Buyer and Seller agree in writing and signed by both parties to other terms and conditions, any costs expended by Seller for dies, molds, or forms made in connection with the Purchase Agreement, are included in the payments hereunder by Buyer and thereby are recovered by Seller through the Purchase Agreement.

18. **CONFIDENTIALITY.** All descriptions, specifications and samples, drawings, flow charts, data reports, photos, artwork, software, etc. furnished to Seller by Buyer shall be and remain the property of Buyer. Seller shall consider all information furnished by Buyer to be confidential and shall not disclose any such information to any other party or use such information for any purpose other than performing the Purchase Agreement unless Seller obtains written permission from Buyer to do so. Seller agrees to return such items at Seller's expense, upon request of Buyer.

19. **INFRINGEMENT.** Seller warrants that the Goods shall be free of the rightful claim of third persons, by way of infringement of any U.S. or foreign letters patent of any other intellectual property right. Seller shall indemnify and hold harmless Buyer and its customer and users of its products against all losses, liabilities, damages, costs and expense (including attorneys' fees) incurred or arising in connection with any such infringement or claims thereof, and after notice. Seller shall appear and defend, at its own expense by counsel acceptable to Buyer any suits based on any infringement or claim thereof. This warranty shall not extend to any compliance to designs or specifications furnished or specifications furnished by Buyer.

20. **SERVICES ON BUYER'S PREMISES.** If the Services are to be performed on Buyer's premises, Seller shall indemnify and hold harmless Buyer against all losses, liabilities, damages, costs and expenses (including attorney's fees) caused by or arising out of the performance thereof. Seller shall maintain public liability, property damage, and worker's compensation insurance with liability limits and other terms and conditions reasonably satisfactory to Buyer and upon Buyer's request shall furnish copies of policies or certificates evidencing such insurance. Buyer shall have no obligation to pay for any of the Services until waivers of all applicable mechanics liens have been delivered to Buyer. The provision of the paragraph shall also apply to any other party or subcontractor engaged by Seller of the performance of the Services.

21. **EQUAL EMPLOYMENT CLAUSE.** Unless exempt under the rules and regulations of the United States Secretary of Labor, the provisions of Executive Order 11246, the Vietnam Era Veterans Readjustment Assistance Act of 1974 and the Rehabilitation Act of 1973 and the Implementing regulations issued hereunder shall constitute a term of this Purchase Agreement and Seller agrees to be bound thereby. At the request of Buyer, Seller shall execute and deliver to Buyer a written agreement and certificate embodying the Equal Opportunity Clause, a Certification of non-segregated Facilities and, if applicable, Seller's written Affirmative Action Compliance Program and Standard Form 100 (EEO-1). The provisions of this paragraph shall also apply to any other party of subcontractor engaged by Seller for the production and sale of the Goods or the Performance of the Services.

22. **ASSIGNMENT.** The Purchase Agreement shall be binding upon and shall inure to the benefit of Buyer and Seller and their respective successors and assigns. Seller shall not assign the Purchase Agreement or any interest hereunder without Buyer's prior written consent.

23. **WAIVER.** Buyer's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or Buyer's waiver of any breach hereunder shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type.

24. **SEVERABILITY.** If any term, clause or provision contained in the sales contract is declared or held invalid by a court of competent jurisdiction, such declaration or holding shall not affect the validity of any other term, clause or provision herein contained.

25. **LIMITATION ON BUYER'S LIABILITY - STATUTE OF LIMITATIONS.** In no event shall Buyer be liable for anticipated profits or for incidental or consequential damages. Buyer's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from the Purchase Agreement or from the performance or breach hereof shall in no case exceed the price allocable to the Goods or Services or unit thereof which gives rise to the claim. Buyer shall not be liable for penalties of any description. **ANY ACTION RESULTING FROM ANY BREACH ON THE PART OF BUYER AS TO THE GOODS OR SERVICES DELIVERED HEREUNDER MUST BE COMMENCED WITHIN ONE YEAR AFTER THE CAUSE OR ACTION HAS ACCURED.**

26. **GOVERNING LAW.** The laws of the State of Illinois govern the Purchase Agreement.

27. **CLAIMS OR CONTROVERSIES.** Any claim arising out of the Warranty and policy statement or any other claim whatsoever related to the subject matter of the agreement, shall be litigated in any federal or state court in Illinois, which Buyer and Seller agree is the most convenient forum for such purposes and Seller consents to service of process and submits to such jurisdiction. Seller hereby waives any right to transfer or change the venue of any litigation brought in accordance with this paragraph.

28. **MODIFICATIONS.** Changes, modifications, waivers, additions or amendments to these terms and conditions shall be binding on Buyer only if such changes, modifications, waivers, additions, or amendments are in writing and signed by a duly authorized representative of Buyer.

29. **SETOFF.** Buyer shall be entitled at all times to offset any amount owed to it by Seller hereunder, for any reason, at any time, against any amount payable to Seller or any of its affiliated companies.

30. **M.S.D.S LABELING INCOMING.** It is Seller's obligation under the O.S.H.A Hazard Communication standard to: (a) insure proper labeling on all containers Buyer receives; and (b) supply Buyer with updated Material Safety Data Sheets. This requirement is a condition of all purchase Orders we issue. Buyer will consider Seller's failure to comply with this requirement as a basis for rejection of the shipment.