

## **Purchase Order Terms & Conditions**

**1. Complete Agreement.** This Order constitutes Buyer's offer to Seller and shall become a binding contract unless Seller gives Buyer written notice of objection within forty-eight (48) hours following Seller's receipt hereof. This Order is not valid unless signed by a duly authorized representative of Buyer. Buyer may withdraw the Order any time before it is accepted by Seller. The specifications on the face of this Order, these Terms and Condition, any other special conditions contained in a schedule attached hereto, if any, and any specifications or other documents referenced in such schedule or on the face of this Order constitute the entire agreement (collectively, the "Agreement") between Buyer and Seller and supersede all previous communications, either written or oral, with respect to the subject matter of this Order. This Order expressly limits acceptance to these Terms and Conditions stated herein, which Terms and Conditions may not be varied except by a writing referencing the number of this Order and signed by Buyer's duly authorized representative. The terms and conditions of the Agreement prevail over any terms or conditions contained in any other documentation and expressly exclude any of Seller's general terms and conditions of sale or any other document issued by Seller in connection with the Order. Any reference on the face hereof to Seller's proposal or any other document published by Seller shall be deemed to incorporate only typed or handwritten information and not any standard printed terms or conditions of Seller's documents other than descriptions of the goods, services and prices offered by Seller. The invalidity in whole or in part of any provision of this Order shall not affect the validity or enforceability of any other of its provisions.

**2. No Waiver.** Failure of Buyer to insist on performance of any of the Terms and Conditions or requirements of any Order shall not be construed as a waiver of such terms, conditions or requirements, and shall not affect the right of Buyer thereafter to enforce each and every term, condition or requirement. No waiver shall be effective unless explicitly set forth in writing and signed by the party so waiving. IN NO EVENT SHALL BUYER BE LIABLE TO SELLER FOR ANY INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES.

**3. Governing Law.** All matters arising out of or relating to the Order shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Delaware. The United Nations Convention on Contracts for the International Sale of Goods does not apply to any Order. Any legal suit, action or proceeding arising out of or relating to any Order shall be instituted in the courts located in

the state identified in the address for the Buyer in the Order or any federal courts of the United States of America with jurisdiction over such state and the county in which such address is located, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

**4. Time of Essence; Force Majeure.** Timely delivery of the goods and/or services hereunder is of the essence. Goods and/or services must be shipped, delivered or performed pursuant to the shipment and delivery date(s) specified in the Order. However, Seller shall not be liable for delays in manufacture or delivery of goods and performance of services to the extent such delays are due to causes beyond Seller's reasonable control and provided Seller uses its best efforts to remedy the situation and first allocates all available production and deliveries to Buyer, and provided further that Seller has notified Buyer promptly (but in any event within seven days) of the occurrence which causes such delay. Buyer shall not be liable to accept any part of such goods and services which are delayed and may, at its option, cancel the Order. Causes deemed beyond a party's reasonable control include acts of God, acts of civil or military authorities, fires, labor disturbances, epidemics, pandemics, war or riot, and acts of the other party; provided, however, Seller's financial inability to perform, changes in cost or availability of materials, components or services, market conditions or supplier actions or contract disputes shall not be deemed beyond Seller's control. Whenever Seller has knowledge of a condition or event that may delay or lead to a delay in the timely performance of an Order, Seller shall immediately give notice thereof, including all relevant information with respect thereto, to Buyer. Any order may be cancelled by Buyer at any time prior to delivery if its business is interrupted by causes beyond Buyer's reasonable control, provided that Buyer shall give prompt notice of such cancellation to Seller.

**5. Shipping Instructions.** All goods shall be packed for shipment according to Buyer's instructions or, if there are no instructions, in a manner sufficient to ensure that the goods are delivered in undamaged condition. Seller must provide Buyer prior written notice if it requires Buyer to return any packaging material. Any return of such packaging material shall be made at Seller's expense. Packing slips must accompany each shipment and should not show prices. Buyer's count will be accepted as final and conclusive on all shipments not accompanied by packing slips. All articles are to be suitably packed or otherwise prepared for shipment so as to secure the lowest transportation and insurance rates and to meet carrier requirements. No charges will be allowed for drayage boxing or packing unless specifically approved by Buyer in the Agreement. Any goods shipped by parcel post must be insured for face value. Goods must be shipped as instructed by Buyer pursuant to this Agreement, or additional shipping and handling costs will be back charged to Seller. In the absence of such instructions, shipments shall be routed via the most

economical mode of commercially reasonable transportation available consistent with the time requirements established for the Order and risk of loss on the goods shall be borne by Seller until delivery at the facility destination designated by Buyer. All goods shall be delivered to the "Ship To" address specified in the Order during Buyer's normal business hours or as otherwise instructed by Buyer. Delivery shall be made FOB, the "Ship To" location, unless a different delivery term is specified in the Order. Title and risk shall pass to Buyer on delivery in accordance with the applicable delivery term. Seller shall provide Buyer all shipping documents necessary to release the goods to Buyer. The Order number must appear on all shipping documents, invoices, correspondence and any other documents pertaining to the Order. If the Order is for chemicals, then the shipment must include a Safety Data Sheet, Certificate of Analysis, Country of Origin Certification, Allergen Statement, and Animal Testing Statement.

**6. Right to Reject; Specifications.** Buyer has the right to inspect the Goods on or after the delivery date. Buyer, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If any Goods are nonconforming or defective, then in addition to any other rights or remedies available to Buyer under applicable law, Seller shall, at its expense, promptly replace the nonconforming or defective Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the nonconforming or defective Goods and the delivery of replacement Goods. If Seller fails to timely deliver replacement Goods, Buyer may, in addition to any other rights or remedies available to Buyer under applicable law, replace them with goods from a third party and charge Seller the cost thereof and terminate the Order for cause as provided below. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller's obligations under the Order, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions. Buyer may, by written order, change any one or more of the following terms of this Order (i) the specifications, drawings or performance criteria, (ii) method of shipping or packing, (iii) place of inspection, acceptance or point of delivery, (iv) delivery schedule, and (v) quantity. In this event and if appropriate, Buyer may in writing request an equitable adjustment in the prices or delivery terms of this Order, and Seller may in writing make claim for the cost of any redundant material or work in process but not for any cost of design, engineering, or development, special tooling or general purpose equipment unless such terms have been specifically ordered and separately priced in this Order; provided, however, that Seller shall in all events, proceed diligently to supply the goods or services contracted for under this Order as so changed. Any and all claims and requests by Seller under this section shall be deemed waived unless made in writing and

received by Buyer within ten (10) business days from the receipt by Seller of the written change order.

**7. Representations and Warranties.** Seller represents and warrants that: (A) Buyer's purchase, use or sale of the goods or services furnished pursuant to each Order, in the form in which furnished to Buyer, will not infringe any United States or foreign patent, trademark, copyright, trade secret or other proprietary right of a third party and Seller agrees to indemnify, defend and hold Buyer harmless against any claim, action or suit that may be brought against Buyer for patent, trademark, copyright, trade secret infringement or for the infringement of any other proprietary right by reason of Buyer's purchase, use or sale of such goods, and upon delivery, Buyer will receive good title to all goods furnished hereunder, free and clear of all liens; (B) All goods and services covered by each Order are unencumbered and will conform to the specifications, drawings, plans, instructions, samples or other description furnished or adopted by Buyer, will be well made, of good materials, merchantable, fit and sufficient for the purpose intended, including any special requirements of Buyer which have been disclosed to Seller, and shall be free from defects, whether latent or patent, in material and workmanship. Seller shall immediately replace or repair free of charge, f.o.b. Buyer's plant, any goods or parts of any goods supplied in an Order which prove to be defective in workmanship or material within one year from date of shipment; (C) Seller shall comply with all applicable local, state and federal laws, rules, regulations and ordinances, and all goods furnished pursuant to each Order will comply with said laws, rules, ordinances, standards and regulations; (D) Seller shall not use or disclose any data, designs, or other information belonging to, supplied by or on behalf of Buyer except as may be required to ensure performance hereunder. Upon completion by Seller of its obligations under this Order or upon Buyer's request, such data, designs and other information or any copies thereof shall be returned to Buyer. Where in accordance with Buyer's written authorization, Buyer's data, designs or other information is furnished to Seller's suppliers for procurement of supplies by Seller for use in the performance of this Order, Seller shall insert the substance of this provision in its own purchase order. Unless otherwise authorized by Buyer, Seller shall not advertise or publish the fact that Seller has contracted to furnish Buyer the goods or services; and (E) The goods covered by each Order are in conformity with the specifications, samples, or other descriptions furnished by Seller to Buyer or designated by Buyer. The warranties of Seller, together with its guaranties, shall be enforceable not only by Buyer but also by its assigns and each successive customer. In addition, Seller assigns to Buyer the benefit of any warranty that Seller receives from its suppliers of any items purchased by Buyer in an Order.

**8. Termination.** This Order may be terminated by Buyer (i) upon written notice to Seller for the convenience of Buyer; (ii) at any time if Seller is in default under or breaches this Order

(including a breach of any warranty contained herein), fails to use properly skilled personnel, fails to make prompt payment to any subcontractors it may have, fails to make prompt payment for any materials, labor or any other or expenses it incurs in the production or construction of the goods or the performance of any services; (iii) at any time upon the insolvency of Seller or in the event of the institution of any proceeding by or against Seller in bankruptcy or insolvency or under any provisions of the Bankruptcy Act or for the appointment of a receiver or trustee or any assignment for the benefit of creditors of Seller; or (iv) upon any sale, transfer or other disposition in the aggregate of more than ten percent (10%) of the stock or other evidence of ownership of Seller. Buyer may require a financial statement from Seller at any time during the term of this Order for the purpose of determining Seller's financial responsibility. Any termination pursuant to parts (ii), (iii) or (iv) of this subsection (a) shall be deemed to be a termination for default. In the event of termination for the convenience of Buyer, Seller may in writing make claim for the cost of any work or service, or both, in process, but not for any cost of design, engineering or development, special tooling or general purpose equipment unless such items have been specifically ordered and separately priced in this Order. Other than as specified in the preceding sentence, Seller shall not be entitled to any claim, remedy or damages from Buyer. Any and all claims or requests by Seller under this subsection (b) shall be deemed waived unless made in writing and received by Buyer within ten (10) business days from the date of termination. In the event of termination by Buyer pursuant to (ii), (iii) or (iv) of subsection (a) above, Seller shall be entitled to no claim for damages or for the cost of any work or service, or both, in process. At Buyer's option, Buyer may produce or purchase or otherwise acquire goods or services elsewhere on such terms or in such manner as Buyer may deem appropriate and Seller shall be liable to Buyer for any excess cost or other expenses incurred by Buyer and/or Seller shall deliver to Buyer any of the goods or services for which Buyer makes written request at or after termination, and Buyer will pay Seller the lesser of the herein contained or fair value of any of such goods or services so requested. Buyer shall have, in addition to any rights or remedies set forth herein, all remedies available at law, in equity, by statute, in any other agreement between the parties, or otherwise, including, without limitation, the right to cancel, cover, and to recover indirect, incidental, special and consequential damages, and the exercise of any right or remedy shall not preclude or waive Buyer's exercise of any other rights or remedies.

**9. Indemnity.** Seller shall indemnify, defend and hold harmless Buyer, its affiliated companies and their agents and employees from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, fees and the costs of enforcing any right to indemnification under this Agreement and the

cost of pursuing any insurance providers, relating to, arising out of, occurring in connection with or resulting from (a) the act or omission of Seller, its agents, servants and employees while on or about the premises of Buyer for the purposes of delivering, installing or providing the goods and services required by any Order; (b) the negligence or wrongful acts or omissions of Seller, its agents, servants and employees; (c) any misrepresentation, breach of warranty, or non-fulfillment of any obligation or agreement made by Seller in connection with this Agreement or any Order; (d) the products or services purchased from Seller; and (e) any and all claims, demands and liens for the value of goods furnished or labor performed pursuant to any Order.

**10. Premium Time.** Seller shall not undertake any extras nor incur any premium time chargeable to Buyer without Buyer's prior written approval and authorization to proceed. If premium time is approved by Buyer, Buyer will only pay as an addition to the price stated for each Order pursuant to this Agreement, the premium cost portion of such work. The submission by Seller of daily time sheets showing such labor costs in a form acceptable to Buyer shall be a condition to any such additional payment. Any extra work or premium time incurred without Buyer's prior written approval shall be at Seller's sole expense.

**11. Ownership of Design** In the event that the goods which are the subject of any Order are to be provided by Seller in accordance with ideas, designs or specifications, the essential secret or novel features of which originated with Buyer, or were developed by Buyer, or are owned or controlled by Buyer ("Buyer Materials"), then Seller acknowledges Buyer's ownership thereunder and (i) will not disclose any confidential ideas, designs or specifications of Buyer to anyone; (ii) will not take any action inconsistent with Buyer's ownership of the ideas, designs, or specifications, including filing any patent, trademark or copyright applications thereon; and (iii) will, upon Buyer's request, execute and cause its employees and independent contractors to execute any document necessary or desirable to acknowledge or convey title thereto in Buyer. Seller hereby assigns all of its right, title, and interest in and to the Buyer Materials to Buyer.

**12. Pricing.** Prices shall be firm and not subject to adjustment or variation unless specifically approved in writing by Buyer. Except as otherwise provided herein, the prices herein include all costs and charges to be incurred by Seller, including without limitation, installation and other service charges, all applicable federal, state and local taxes and duties, all wages and fees for services and materials, all charges for transportation, packing, packaging and returnable containers, all costs of design, engineering and development, and all costs for tooling, gauges, jigs, fixtures, dies, molds, patterns and similar property that may be obtained or required by Seller for use in the manufacture, fabrication or assembly of the goods or performance of the services called for by this

Order. Seller shall issue an invoice to Buyer on or any time after the completion of delivery and only in accordance with the terms and conditions of the Order. Buyer shall pay all properly invoiced amounts due to Seller Net Sixty Days after Buyer's receipt of such invoice (unless a different payment term is specified the Order), except for any amounts disputed by Buyer in good faith. All payments hereunder will be in US dollars.

**13. Miscellaneous.** Seller agrees that Buyer shall have the right to set off against amounts which may become payable by Buyer to Seller under contract or otherwise, any present or future indebtedness of Seller to Buyer, whether arising under this Order or otherwise. In the event Seller fails to perform when due any delivery and/or service required by an Order, or Buyer in good faith has any other reason to question Seller's intent or ability to perform Buyer may, at its election, demand adequate assurance of performance, including that Seller furnish, at Seller's expense, a performance bond or letter of credit, conditioned to indemnify Buyer for any loss Buyer may sustain by failure of Seller to perform its obligations. In the event Seller fails to comply with such demand within ten (10) business days thereafter, Buyer may treat this failure as a default. Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under the Order without the prior written consent of Buyer. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve Seller of any of its obligations hereunder. Except as set forth herein, this Agreement benefits solely the parties hereto and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, franchise, business opportunity, joint venture, or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. No relationship of exclusivity shall be construed from this Agreement. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., [www.docusign.com](http://www.docusign.com)) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes. If any term or provision of the Order is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Provisions of the Order which by their nature should apply beyond

their terms will remain in force after any termination or expiration of the Order. Seller may not assign its rights or delegate its duties under this Agreement or in connection with any Order without the prior written consent of Buyer, and any attempted assignment or delegation without such consent shall be void. No completed articles shall be shopped out or subcontracted without Buyer's prior written approval.