

PURCHASE ORDER TERMS AND CONDITIONS

1. ACCEPTANCE

- 1.1. This Purchase Order is an offer to buy the goods and/or services described herein and becomes a binding contract on the terms and conditions herein when accepted by the seller either by acknowledgment or by shipment or other commencement of work.
- 1.2. Any acceptance hereof is limited to acceptance of the express terms of the offer contained on the face and back hereof.
- 1.3. No revision of this order or any of the terms and conditions hereof shall be valid unless in writing and signed by an authorized representative of Buyer, and no condition stated by Seller in acceptance of or acknowledging this order shall be binding upon Buyer if in conflict with, inconsistent with, or in addition to the terms and conditions contained herein unless expressly accepted in writing by Buyer.

2. TERMINATION

- 2.1. Buyer reserves the right to terminate any undelivered or unperformed portion of this order for its sole convenience without liability to Seller other than for work performed by Seller prior to the notice of termination.
- 2.2. Buyer may also terminate this order or any part hereof for cause and in such event, Buyer shall not be liable to Seller for any amount and Seller shall be liable to Buyer for any and all damages sustained by reason of the cause which gave rise to the termination.
- 2.3. For purposes of the foregoing sentence "cause" shall include late delivery or performance, a delivery of defective or nonconforming goods or workmanship, a breach of any of Seller's warranties hereunder, any other material default or failure of compliance by Seller with the terms and conditions hereof, the commencement or continuance of any bankruptcy or insolvency proceeding by or against Seller, or any legal process or order directing or requiring Buyer to undertake or refrain from undertaking any business or certain types of business with the result that the goods and/or services ordered hereunder shall be unnecessary to Buyer.

3. QUANTITIES AND SPECIFICATIONS

- 3.1. By acceptance hereof, Seller shall be deemed to have inspected and approved all plans, drawings, and specifications applicable to the goods and/or services ordered hereunder.
- 3.2. Articles or goods not conforming to such drawings or specifications may be rejected.
- 3.3. Seller shall not deliver and Buyer shall not have any obligation or liability with respect to any quantity of goods in excess of the quantity specified herein unless Buyer shall otherwise direct in writing.

4. WARRANTIES

- 4.1. Seller expressly warrants that it will convey good title to all goods furnished hereunder and that all goods and/or services furnished hereunder will conform to all specifications and appropriate standards, will be free from defects in material and workmanship, will be merchantable, and will be safe and appropriate for the purpose for which goods of that kind are normally used.
- 4.2. If Seller knows or has reason to know the particular purpose for which Buyer intends to use the goods, Seller warrants that such goods will be fit for such particular purpose.
- 4.3. The warranties of Seller shall run to Buyer, its successors, assigns, and customers and users of products sold by Buyer.
- 4.4. Seller hereby assigns to Buyer any warranties or guaranties provided by manufacturers or sellers of products incorporated into goods or services provided by Seller hereunder and shall upon request enforce any such warranty or guaranty on behalf of Buyer.
- 4.5. NO ATTEMPT BY SELLER TO DISCLAIM, EXCLUDE, LIMIT, OR MODIFY ANY WARRANTIES OR SELLER'S LIABILITY OR CONSEQUENTIAL DAMAGES SHALL BE OF ANY FORCE OR EFFECT.

5. DEFECTIVE OR NONCONFORMING GOODS OR SERVICES

- 5.1. No goods or services received by Buyer pursuant hereto shall be deemed accepted until Buyer has had reasonable opportunity to inspect and/or observe performance of such goods or services.
- 5.2. Buyer shall have access to and the right to inspect all work prior to its completion.
- 5.3. Notwithstanding any such inspection, Seller shall be solely responsible for the conformance of the work to the specifications.
- 5.4. Seller shall promptly correct defects or replace any goods or services not conforming to any of Seller's warranties hereunder without expense to Buyer, provided Buyer elects to provide Seller with the opportunity to do so.
- 5.5. Irrespective of whether such defect or nonconformity was discovered upon initial inspection, or a later time if not readily ascertainable upon initial inspection in the event of a failure by Seller to correct defects or replace

nonconforming goods promptly, Buyer after reasonable notice to Seller may make such corrections or replace such goods and charge Seller for the costs incurred by Buyer in doing so.

- 5.6. Such remedies shall not affect Buyer's discount privileges and shall not exclude any other legal, equitable or contractual remedies of Buyer as a result of Seller's delivery of defective or nonconforming goods or services.

6. PRICE WARRANTY

- 6.1. Seller warrants that the prices for the goods sold to Buyer hereunder are not less favorable than those currently extended to any other customer of Seller for the same or similar goods in similar quantities.
- 6.2. If Seller reduces its price for such goods during the term of this order, Seller agrees to reduce the prices hereof correspondingly.
- 6.3. Seller warrants that prices shown on this Purchase Order shall be complete and no additional charges or charges of any type shall be added without Buyer's express written consent.
- 6.4. Such additional charges include, but are not limited to, shipping, packaging, labeling, customer duties, taxes, insurance, storage, boxing and crating.
- 6.5. Delay in receiving invoices and errors and omissions on statements or invoices will be considered just cause for withholding settlement without losing discount privileges.

7. DELIVERY

- 7.1. Time is of the essence of this Purchase Order. In the event that Seller shall fail to deliver any goods or perform any services on time, Seller shall reimburse Buyer upon demand for any and all loss, cost, damage, and expense which Buyer shall sustain as a result or in consequence of such failure.
- 7.2. In addition, failure to make deliveries in accordance with schedules will be proper cause, at Buyer's option, for cancellation of this order.
- 7.3. If in order to comply with Buyer's required delivery date it becomes necessary for Seller to ship by a more expensive way than specified herein, any increased transportation costs resulting there from shall be paid for by Seller unless the necessity for such costs has been caused by Purchaser.
- 7.4. Seller shall notify the Buyer promptly of any delays or threatened delays in the performance of this order.
- 7.5. 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.

8. RISK OF LOSS

- 8.1. All risk of loss shall be upon Seller from the time the goods first come under Seller's control until such time as the goods shall be delivered to the destination specified herein and there accepted by Buyer.
- 8.2. Seller agrees to indemnify and hold Buyer harmless for any and all loss, cost, damage, and expense which Buyer shall sustain as a result or in consequence of the loss of or damage to the goods during such period of time.

9. LEGAL COMPLIANCE

- 9.1. Seller warrants and agrees that in the performance of its obligations hereunder, Seller, its agents, employees, carriers and subcontractors shall (a) comply with all applicable laws, ordinances, codes, rules, regulations and orders, including executive orders now existing or hereafter enacted, adopted or enforced by any governmental body or agency, including where applicable all such laws, ordinances, codes, rules, regulations and orders pertaining to labor and working conditions, safety and health, food and drug quality, and hazardous materials; (b) apply for, obtain, and pay for all necessary permits and licenses, and pay applicable fees in connection therewith, and (c) pay promptly when due any and all applicable sales, excise, or other taxes due on materials furnished in connection with services performed, and all taxes and amounts due under applicable unemployment, social security, and worker's compensation laws.
- 9.2. The Equal Employment Opportunity Clause required under Executive Order 11246, the affirmative action commitment for disabled veterans and veterans of the Vietnam era, set forth in 41 DVF 60-250.4, the affirmative action clause for handicapped workers, set forth in 41 CFR 60-714.4, and the related regulations of the Secretary of Labor, 41 CFR Chapter 60, are incorporated by reference in this purchase order.
- 9.3. By accepting this purchase order, vendor certifies that it complies with the authorities cited above and that it does not maintain segregated facilities or permit its employees to perform services at locations where segregated facilities are maintained, as required by 41 CFR 60-1.8.

10. INDEMNIFICATION

- 10.1. To the fullest extent permitted by law, Seller shall save and hold Buyer, its directors, officers, employees, agents and representatives harmless from and indemnify, defend, and protect such parties against all liability, loss, claims, demands, damage (including damage to property or bodily injury), and expense (including reasonable attorney's fees) arising out of or in any way resulting from Seller's performance or non-performance hereunder, including any defect or nonconformity with Seller's warranties of the goods and services delivered hereunder, any act or omission of Seller, its agents, employees, or subcontractors; any act or omission of any carrier selected and employed by



Seller to deliver goods ordered hereunder to Buyer; any failure by Seller, its agents, employees, carriers, or subcontractors to comply with the terms hereof; any infringement or claim of infringement of any patent, unpatented invention, copyright, design process, trademark, trade name, brand, slogan, unfair competition, or other adverse rights; or any litigation based on or arising out of the foregoing.

11. SET OFF

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

12. FORCE MAJEURE

12.1. Buyer or Seller may delay delivery or acceptance occasioned by causes beyond its control.

12.2. Seller shall hold such goods at the direction of Buyer and shall deliver them when the cause affecting the delay has been removed.

12.3. Causes beyond the control of Buyer or Seller shall include government action or failure of the government to act where such action is required, acts of god, strikes, fires, accidents, or other such causes not due to Buyer's fault or negligence.

13. CHANGES

13.1. Buyer 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.

13.2. If any such changes cause an increase or decrease in the cost or the time required for the performance, an equitable negotiated adjustment shall be made and the agreement created by the acceptance of this Purchase Order shall be modified in writing accordingly.

13.3. Seller agrees to accept any such changes subject to this paragraph.

13.4. Seller shall undertake no work on any such change, addition or omission unless and until Seller delivers a Quote and Buyer issues a written change order.

14. CONFIDENTIALITY

14.1. The contents of this order and all related commercial and technical information shall be kept secret and confidential by Seller and will not be divulged by Seller to any third party or utilized by Seller otherwise than in connection with this order.

14.2. Unless otherwise agreed in writing, no commercial or technical information disclosed in any manner or at any time to Buyer by Seller shall be deemed secret or confidential and Seller shall have no rights against Buyer with respect thereto except such rights as any exist under any applicable patent law.

15. ASSIGNMENT

15.1. Seller shall not assign, transfer or hypothecate this Purchase Order or any part hereof or any monies payable or to become payable hereunder without in each case obtaining the prior written consent of Buyer, which may not be unreasonably withheld.

16. WAIVER

16.1. Any waiver by Buyer of strict compliance with any of the provisions hereof shall not be deemed a waiver of any other provisions hereof and shall not be deemed a waiver of any of Buyer's rights, privileges, claims, or remedies, nor of Buyer's right to insist on strict compliance thereafter.

17. GENERAL

17.1. This Purchase Order and any documents referenced to on the face hereof constitute the entire agreement between the parties, and all prior agreements, written or oral, relating to the subject matter hereof are superseded by the terms hereof. Such terms may be modified only by a writing signed by both parties.

17.2. The provisions of this Purchase Order are severable and in the event any provision is held to be unenforceable, the remaining provisions will continue in full force and effect.

17.3. It is understood that Seller is an independent contractor and not an employee or agent of Buyer and that Seller shall have no power whatsoever to bind Buyer in any way in any dealings between Seller and third parties and shall not attempt or purport to do so.

17.4. This Purchase Order and the contract created by the acceptance thereof are governed by and shall be construed in accordance with the laws of the state in which the goods are to be delivered or the services are to be performed without regarding the conflicts of laws principles thereof.