

## Purchase Order TERMS AND CONDITIONS

1. **DEFINITION:** "Materials" as used in this Order means materials, equipment and any other articles covered by this Order.
2. **CONTRACT:**
  - (a) This Order constitutes the entire contract between the parties. Acceptance is limited to the terms hereof and Buyer hereby objects to any additional or revised terms proposed by Seller. No revision of or addition to this Order or any of its terms and conditions shall be effective (whether or not in Seller's acknowledgement or other form) unless agreed to in writing by Buyer. Shipment of any of the Materials constitutes acceptance of all the terms and conditions hereof whether or not Seller has acknowledged this Order.
  - (b) In the event of any inconsistency between these printed terms and conditions, and the face hereof or any supplemental conditions attached hereto, the face or such supplemental conditions shall prevail.
  - (c) Buyer shall have the right to make changes within the general scope of this Order, but no additional charge will be allowed unless authorized in writing by Buyer. If such changes affect the delivery schedule or the amount to be paid by Buyer, Seller shall notify Buyer immediately and negotiate an adjustment.
3. **PRICE:** This Order shall not be filled at higher prices than specified herein. If price is omitted, the Materials shall be billed at price last quoted or paid, or at the prevailing market price on the date of this Order, whichever is lower.
4. **DELIVERY:** Time is of the essence. If seller fails to make shipment or delivery when due, or if any shipment or delivery is made which is not in all respects in accord with this Order (including time of shipment or delivery). Buyer reserves the right to reject such delivery and, if Buyer so elects, Buyer may treat this Order as repudiated by Seller and cancel it or any outstanding deliveries hereunder, without prejudice to Buyer's rights to claim damages or to enforce any other remedy provided by law. All expenses of transportation and storage, if any resulting there from shall be for Seller's account.
5. **INSPECTION:** Buyer shall have the right to inspect at Seller's plant or following receipt, at its election, any and all Materials and to reject those which do not conform to Buyer's specifications, or, if not so specified, which do not conform to standard specifications. All costs incurred and damages sustained by Buyer as a result of rejections made under the provisions hereof shall be for Seller's account and Buyer may return such Materials at Seller's expense. Materials are subject to Buyer's inspection notwithstanding prior payment.
6. **WARRANTY:** All Materials and their packaging shall conform with the description by which they are ordered herein and shall be in all respects suitable for the particular purpose or use for which they are purchased by Buyer, if the Seller knows or has reason to know the purpose or use, Seller warrants all Materials furnished and/or installed by it hereunder to be new and not used or reconditioned (unless otherwise specified in this Order) and free from defects in materials or workmanship. At Buyer's option, Seller shall repair or replace without cost to Buyer any defective Materials and upon failure to do so within a reasonable time under usual practice, after three days' prior written notice, Buyer may do so at Seller's expense.

7. **FOOD AND DRUG GUARANTY:** If this Order relates to the purchase of any food, drug, or cosmetic, or substance, the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food), Seller hereby guarantees that the article comprising each shipment or other delivery new or hereafter made by Seller to Buyer, as the date of such shipment or delivery, is not adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act, as amended, or within the meaning of applicable State laws or Municipal ordinances in which the definitions of adulteration and misbranding are substantially the same as those contained in the above Act, and not an article which may not, under the provision of Section 404 and 505 of said Act, be introduced into interstate commerce.
8. **THIRD PARTY CLAIMS:** Seller agrees to hold harmless and indemnify Buyer from any and all claims, liabilities, losses, costs, and expenses including reasonable attorney's fees, arising out of any alleged death or injury to any person, or any alleged damage or loss of property resulting or claimed to result from any actual or claimed defect in the materials sold under this Order.
9. **PACKING:** Buyer is not responsible for any charge for packing, boxing, storage or cartage.
10. **EXCUSABLE DELAYS:** Neither party shall be liable for any delay or failure of performance due solely to strikes, fires, or other causes beyond its control and without its fault or negligence, provided that the party subject to such cause shall have given written notice thereof to the other as soon as the same could be anticipated, and if it could not be anticipated, promptly following the commencement thereof, if Seller should be unable, due to such a cause, to meet all of its delivery commitments for the Materials ordered herein as they become due, Seller shall not discriminate against Buyer or in favor of any other customer in making deliveries of such Materials, Seller shall use its best efforts to anticipate the effect of such cause and mitigate the effect of such cause and to make deliveries as expeditiously as possible. However, if Buyer believes that the delay or anticipated delay in Seller's deliveries may impair its ability to meet its production schedules or may otherwise interfere with its operations. Buyer may at its option, and without liability to Seller, cancel outstanding deliveries hereunder wholly or part. Notwithstanding any provision of this Order, Seller agrees it will not claim impracticability to excuse its performance, whether by reason of Section 2-615 of the Uniform Commercial Code, usage of trade or otherwise.
11. **TITLE AND RISK OF LOSS:** Title to, and risk of loss of, shall rest upon Seller until such Materials are delivered at the F.O.B., or other point specified in the Order, or at point therein designated where title passes, or, if no such point is given, then until they are delivered to a public carrier consigned to Buyer, or are delivered to Buyer, whichever delivery shall occur first, provided, however, that in the case of deliveries by barge or ship, title and risk of loss will pass when the Materials are unloaded into Buyer's tanks, bins, or other storage facilities. If Materials purchased are of an explosive, inflammable, toxic, hazardous or otherwise dangerous nature, Seller shall hold Buyer harmless against any claims asserted against Buyer on account of any personal injury and property damages caused by such Materials, or by the transportation or handling thereof prior to the completion of unloading at personal injury and property damages caused by such Material, or by the transportation or handling thereof, prior to the completion of unloading at Buyer's plant or warehouse.

12. **INSURANCE ON MATERIALS:** Seller shall not insure the Materials for Buyer's account unless the terms of this Order so require.
13. **INFRINGEMENT:** It is anticipated that the Materials will be possessed, used and/or sold by the Buyer and/or its customers. If by reason of any of these acts a suit is brought or threatened for infringement of any patent on the Materials, their manufacture or use, or for infringement of any trademark, trade name or copyright, Seller shall at its own expense defend such suit and indemnify Buyer and its customers against all loss and expense in connection with such suit or threatened suit, including awards of damages, costs and attorney's fees.
14. **LABOR:** If this Order covers the performance of labor and/or supervision of installation on Buyer's premises, Seller will furnish Buyer a certificate or other satisfactory evidence of insurance to the effect that Seller has and will maintain while on Buyer's premises adequate insurance coverage (including public liability and property damage, automobile liability and workmen's compensation) in such amounts and with such insurance companies as are satisfactory to Buyer. Seller also agrees that it, its employees, agents, and subcontractors, will comply with all of Buyer's safety and other rules covering outside contractors while on Buyer's premises.
15. **TAXES:** Unless otherwise provided herein, prices shown on this Order include all taxes not expressly imposed by law on the Buyer of the Materials ordered hereunder.
16. **COMPLIANCE WITH LAW:** In the performance of this Order, Seller shall comply with all applicable laws, ordinances, rules and regulations, Federal, State and Local. Seller certifies to Buyer that the Materials were produced in compliance with all applicable requirements of the Fair Labor Standards Act of 1938, as amended, including requirements as to records. The Equal Employment Opportunity clause prescribed by Executive Order No. 11246 of Sept. 24, 1965, as amended from time to time, the Affirmative Action for Handicapped Workers Clause prescribed by the Rehabilitation Act of 1973, as amended, and the Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era clause prescribed by the Vietnam Era Veterans Readjustment Assistance Act of 1972, as amended, are incorporated herein, unless this transaction is exempt, and Seller agrees to submit reports, certificates and other documents required of subcontractors by such Executive Order, and the aforementioned Acts, and the rules, regulations and relevant orders issued under the authority of any of the foregoing. If required by applicable regulations, a copy of said clause(s) is attached as a supplement hereto and made a part thereof.

Seller represents and warrants that the manufacturing, packaging, pricing, sale and delivery of all goods and performance of services supplied pursuant to this Order will comply with all applicable laws, ordinances and regulations, including without limitation environmental laws, and that such goods do not contain any hazardous materials, or exceed legal limits therefore, as defined by any applicable laws, rules and regulations and further Seller shall provide all permits, certificates and licenses which may be required for the performance of the Order. Seller agrees to indemnify, defend, and hold harmless Buyer and its affiliated companies and their respective officers, employees, directors, agents, representatives, successors, assigns and insurers ("Indemnitees") from and against any and all claims, actions, liability, costs and expenses that may be imposed on or incurred by any Indemnitee arising from Seller's breach of this representation and warranty.

17. **DESIGNS, TOOLS, DIES, ETC:**

(a) All designs, drawings, blue-prints, tools, dies, patterns or printing plates required to perform this Order, furnished by or paid for by Buyer, shall be the property of Buyer, and Seller shall return the same to Buyer at the latter's request upon completion or cancellation of this Order, and they shall not be copied or used by Seller other than in filling orders from Buyer without Buyer's written consent.

(b) Unless otherwise agreed herein, Seller at its cost shall supply all material, equipment, tools and facilities required to perform this Order. Any material, equipment, tools or other property furnished by Buyer or specifically paid for by it shall be Buyer's property, shall be used only in filling orders from Buyer and may on demand be removed by Buyer without charge. Seller shall use such property at its own risk and shall be responsible for all loss of or damage to the same while in Seller's Custody. Seller shall at its cost store and maintain all such property in good condition and repair. Buyer makes no warranties of any nature with respect to any such property, which is furnished "**AS IS**".

18. **ASSIGNMENT:** No assignment of this Order or of monies due or to become due hereunder shall be made without prior written consent of Buyer.

19. **INSOLVENCY:** Buyer may cancel this Order if Seller files a voluntary petition under any Federal or State Bankruptcy Act, or is adjudicated a bankrupt or if Seller becomes insolvent or commits an act of bankruptcy.

20. **PROTECTION OF STRATOSPHERIC OZONE:** If the goods to be supplied to Buyer pursuant to this Purchase Order contain or were manufactured with any chemical defined as an "ozone-depleting substance" in 40 CFR P art 82, Seller shall label such goods in full compliance with the requirements of 40 CFR 82.

21. **INSURANCE.** Seller shall obtain and keep in force for three years after the last delivery under this Order general comprehensive liability insurance covering each occurrence of bodily injury and property damage in an amount of not less than \$1 million (or any other amount Buyer may indicate in this Order) combined single limit with special endorsements providing coverage for (a) Products and Completed Operations Liability; (b) Blanket Broad Form Vendor's Liability, and (c) Blanket Contractual Liability.

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If services are performed under this Order on Buyer's premises, Seller shall also obtain Premises-Operations, Personal injury and independent Contractors Protective Liability endorsements and shall further obtain Workers' Compensation, Employer's Liability and Automotive Liability Insurance coverage in amounts acceptable to Buyer.

If requested, Seller shall furnish Buyer with a certificate evidencing the required insurance."