

## Purchase Order Terms and Conditions

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**Orders:** Purchase orders are not valid unless signed by the Purchaser's buyer. Purchaser will not recognize claims based on verbal orders.

**Acceptance** -Agreement. Seller's commencement of work on the goods subject to this purchase order or shipment of such goods, whichever occurs first, shall be deemed an 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 description, quantity, price, or delivery schedule of the goods, but shall be deemed a material alteration thereof, and this offer shall be deemed accepted by Seller without said additional or different terms. If this purchase order shall be deemed an acceptance of a 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 the Seller's offer unless it contains variances in the terms of the description, quantity, price, or delivery schedule of the goods.

**Shipment.** If delivery is not made by the date indicated in this Order, Purchaser may, in addition to its other rights, cancel this Order, without any liability whatsoever. 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 by Purchaser.

**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 agreement at Purchaser's request. Causes beyond Purchaser's control shall include government action or failure of the government to act where such action is required, strike or other labor trouble, fire, or unusually severe weather.

**Changes.** Purchaser 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. 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.

**Price and Payment:** 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 order, Seller agrees to reduce the prices hereof correspondingly. The price stated in this Order includes all charges for packaging, boxing, crating, and special handling. No modification or adjustment of the stated price may be made without the signed written agreement of Purchaser. If the price is not stated on this Order, the price shall be the lower of: the later price last quoted or paid, or the prevailing market price.

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

**Delivery and Risk of Loss:** Delivery shall be F.O.B. origin unless otherwise specified on the face of this order. Notwithstanding any agreement by Purchaser to pay freight or other transportation charges. Delivery is not complete until the goods have been actually received and accepted. Purchaser reserves the right to refuse C.O.D. shipments.

**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 on 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 samples. 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.

**Indemnification.** Seller shall defend, indemnify and hold harmless Purchaser against all damages, claims or liabilities and expenses (including attorneys' 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. This indemnification shall be in addition to the warranty obligations of Seller.

**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 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 reserves the right to require replacement, as well as payment of damages. Nothing contained in this purchase order shall relieve in any way the Seller from the obligation of testing, inspection and quality control.

### **Quality Clauses**

Seller shall produce the goods in accordance with the quality clauses referenced elsewhere in this purchase order.

**Identification.** All invoices, packing lists, packages, shipping notices, instruction manuals, and other written documents affecting this Order shall contain the applicable order number. Packing lists shall be enclosed in each and every box or package shipped pursuant to this Order, indicating the content of such boxes or packages.

**Waiver.** Purchaser's failure to insist on performance of any of the terms or conditions 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.

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

**Bankruptcy.** In the event of any proceeding, voluntary or involuntary, in bankruptcy or insolvency by or against the Vendor, including any proceeding under the United States bankruptcy laws, or in the event of the appointment, with or without Vendor's consent, of a receiver of an assignee for the benefit of creditors, Purchaser shall be entitled to cancel any unfulfilled part of this Order without any liability whatsoever.

**Taxes.** Unless otherwise indicated on the face of the Order, Purchaser agrees to pay all state of California sales or use taxes. Vendor will not charge for federal excise taxes, and Purchase agrees to furnish Vendor, upon acceptance of goods or materials supplied under this Order, with an exemption certificate.

**Antitrust Assignment Clause.** Vendor and Purchaser acknowledge that overcharges by manufacturers are in fact borne by the Purchaser and not the Vendor. Vendor therefore, agrees to assign to purchaser any and all claims which it may have for overcharges, as to goods and materials purchased in connection with any contract between Purchaser and Vendor, arising out of antitrust or similar actions, except as to overcharges which commence after the price is established under any contract between Purchaser and Vendor and which are not passed on to the Purchaser under an escalation clause.

**Equal Opportunity.** Vendor agrees to comply with all laws prohibiting discrimination against any employee or applicant for employment because of race, religion, color, national origin, sex, age or because of a physical or mental handicap, including Title VII of the Civil Rights Act of 1964 as amended, Executive Orders 10925, 11141 and 11246 as amended. Sections 402 and 503, the regulations at 41 C.F.R. Parts 60-1 through 60-60, 60-250 and 60-741, and ASPR 12-802 as modified by ASPR-12-803m which are part of hereof by reference.

**Compliance:** Seller warrants that all goods and services sold hereunder shall have been produced, sold, delivered and furnished in strict compliance with all applicable laws and regulations, including EEO and Affirmative Action, to which they are subject. Seller shall execute and deliver such documents as may be required to effect or to evidence compliance. All laws and regulations required in agreements of this

character are hereby incorporated by this reference, as applicable, including provisions of 38 U.S. Code 4212, Executive Orders 11246, 11375, 11758, 11701, 12086, 13201 (including 29 CFR Part 470), as amended, and any subsequent executive orders relating to equal opportunity for employment on government contracts.

**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 the notice of termination, nor for any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided.

**Termination for Cause.** Purchaser may also terminate this order or any part hereof for cause in the event of any default by the vendor or if the vendor fails to comply with any of the terms and conditions of this offer. Late deliveries, deliveries of products which are defective or which do not conform to this order, and failure to provide Purchaser, upon request, of 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 from Purchaser to do so. This paragraph shall apply to drawings, specifications, or other documents prepared by Seller for Purchaser 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.

**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 furnished 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 or proceeding if it so desires, and the costs of such representation shall be paid by Seller .

**Insurance.** In the event that Seller's objections 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.

**Assignments and Subcontracting.** No part of this order may be assigned or subcontracted without prior written approval of Purchaser.

**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 agreement 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.

**Termination.** In the event of a breach by Vendor of any of the provisions of this contract. Purchaser reserves the right to cancel and terminate this contract, upon giving oral or written notice to the Vendor. Vendor shall be liable for damages suffered by Purchaser resulting from Vendor's breach of this contract.

**Sever ability.** If any provision hereof shall be found to be inoperable or in violation of any law or regulation, only that provision shall be stricken from this order and the remainder of the order shall not be affected.

***Governing Law.*** The laws of the State of California shall govern this Order and the right and the obligations of the parties hereunder, and the venue of any action brought hereunder shall be in the Orange County Superior Court, , State of California.