

# TERMS AND CONDITIONS OF PURCHASE

**1. TERMS AND CONDITIONS:** The terms and conditions contained herein and on the reverse side hereof and any other terms and conditions of Buyer attached hereto, if any, contain all of the terms and conditions of the purchase and sale between Seller and Buyer, such terms and conditions being intended as a final expression and complete and exclusive statement of the terms of the purchase and sale, and any additional or different terms which may be contained in any documents furnished by Seller are hereby objected to. If this purchase order shall be deemed an acceptance of an offer by Seller, such acceptance is expressly made conditional upon Seller's assent to any additional or different terms and conditions contained herein. Seller's commencement of work on or shipment of the goods referred to herein shall be deemed an effective mode of acceptance of the terms and conditions contained in this purchase order. Buyer may withdraw this order at any time before acceptance by Seller. This order is non-assignable in whole or in part by Seller.

**2. CHANGES BY BUYER:** Buyer at any time before Seller's shipment of material or commencement of performance may change any of the specifications, terms or conditions of purchase by written notice, signed by an authorized representative of Buyer and given to Seller in the manner herein provided, and any such changes are hereby expressly incorporated in the terms and conditions of this order. Notwithstanding such changes or any other reason presented by Seller, no adjustment shall be made to the price stated herein except by written instrument signed by Buyer prior to shipment or commencement referring specifically to this order and the price stated herein. Nothing contained in this paragraph shall relieve Seller from proceeding without delay in the performance of this order as changed.

**3. SHIPMENT AND TIME OF PERFORMANCE:** TIME IS OF THE ESSENCE IN THIS ORDER. If delivery in accordance with this order is not made within the time specified herein, Buyer may, in addition to any other remedy provided herein or by law, cancel this order or such part of it as has not been completed and delivered by Seller, without liability therefore to Seller, and Buyer may procure such undelivered items from any other source of its own choosing and charge Seller (or set off in whole or in part against any sums payable to Seller under this order or otherwise) the amount by which all costs and expenses of such procurement, when added to any sums paid or payable hereunder for delivered items, exceed the total price. Undue delay by Seller in making shipment shall give Buyer the right to require Seller to expedite by faster freight and to pay the difference in the higher rate for shipment. Seller shall comply with routing or shipping instructions contained herein or otherwise contained in written notice sent to Seller in accordance herewith. All merchandise shipped by Seller shall be labeled, packaged and shipped, and shipping containers shall be marked, in accordance with the shipping instructions and directions set forth in this order or, in the absence of specific instructions and directions set forth herein, in recognized standard containers conforming to carriers' specifications, and packaged to secure the lowest transportation cost reasonably practicable, having due regard for the nature of the goods and the hazards of transportation. No charge will be allowed for handling, packaging, crating, storage, transportation, insurance in transit or any other service unless expressly stated herein. Orders are to be shipped complete. Delivery must be in the exact quantity ordered except that this contract shall be severable and the items delivered in lots at the option of Buyer. Seller will have full responsibility (i) for risk of loss until delivery conforming to contract on the date and at the location specified on the face of this order, (ii) for damages arising from loss or default, and (iii) for risk of loss of or damage to rejected materials or parts thereof.

**4. INSPECTION, REJECTION AND RETURN:** Payment for materials covered by this order shall not constitute an acceptance thereof, and all materials are subject to inspection and return by Buyer. Failure of Buyer to inspect and accept or reject materials shall not relieve Seller from responsibility for defective or nonconforming materials, nor constitute a waiver of, or adversely affect any of Buyer's rights or remedies hereunder. Buyer may reject and receive full credit for any materials which are not as warranted, which are defective as to material, workmanship, quality or otherwise, or which are not in conformity with any specifications, drawings, samples or descriptions approved by Buyer. Buyer may, in its discretion and at Seller's risk and expense, either return such materials or hold same. In addition to all legal remedies available, Buyer shall have the right to require Seller to repair or replace, at Seller's cost and expense, and in a manner satisfactory to Buyer, any materials found to be defective or not as warranted within one (1) year from date of delivery, or completion of installation, or initial use of operation, whichever case is latest, including materials damaged because of unsatisfactory packing or packaging by Seller, provided that no replacement of such materials shall be made unless specified by Buyer. Seller will be notified of rejected materials and such materials will be returned to Seller COLLECT.

**5. PRICES AND TAXES:** Seller agrees that the per unit price or total price set forth on the face of this order is firm, not subject to increase, and includes all applicable Federal, State, municipal or other sales, use, value-added, import, export or other excise taxes, if any, on materials covered herein. If no price is stated on the face of this order, the price shall be deemed to be the price at which the items were last supplied to Buyer by Seller, or the prevailing market price, whichever is lower. Seller agrees that Buyer shall receive the full benefit of any reduction in the price of any materials covered by this order if that reduction is made subsequent to Seller's receipt of this order. If any tax is included in the prices paid to Seller and is hereafter refunded to Seller, Seller shall immediately pay Buyer the amount of such refund. Seller warrants that the prices indicated on this order do not and will not at the date of delivery of the materials specified herein exceed Seller's price, or legitimate prices offered by competitors of the Seller, to other customers for materials of like quantity and quality; and Seller agrees that it will make all reductions in price necessary to comply with said warranty and that Buyer may cancel any unshipped portion of this order if Seller's prices are not so reduced when necessary to comply with said warranty.

**6. TERMS OF PAYMENT:** Seller shall bill Buyer in accordance with Buyer's billing procedure set forth herein or otherwise contained in written notice sent to Seller in accordance herewith. All invoices for goods shipped or services performed hereunder shall be marked conspicuously with the number of this purchase order, shall be submitted in duplicate, on the day of shipment, and shall be accompanied by all pertinent shipping receipts. Following Seller's submission to Buyer of a proper invoice, Buyer shall pay Seller the price specified in this order for articles delivered and accepted or services rendered and accepted pursuant to the terms and conditions set forth herein. Unless freight or other charges are itemized, any discount will be taken out of full amount of invoice.

**7. WARRANTY:** By accepting this Order, Seller warrants that the articles are free from defects in materials, workmanship and fabrication, and that all merchandise delivered shall be of the quality, quantity, size, description and dimensions specified and shall be strictly in accordance with Buyer's specifications, drawings, and approved sample, if any, and suitable for the purpose designated. These warranties shall survive acceptance and payment and shall run to Buyer, the successors, assigns, customers and the user of its products and shall not be deemed to be exclusive.

**8. INDEMNIFICATION:** Seller agrees to protect, defend, hold harmless and indemnify Buyer from and against any and all liability, loss, damages and claims, whether based upon contract, breach of warranty, negligence or otherwise, and related costs, attorneys' fees, and expenses at any time arising out of or resulting from (a) the nature of, or any defect or alleged defect in the materials furnished hereunder, or any part or components thereof, (b) the allegedly improper or faulty construction, design, testing or inspection of such materials, (c) failure of Seller timely to inform and/or warn Buyer, its employees, agents, customers, users of the materials, or any other persons affected thereby of any defects or hazards in the materials or the handling of use thereof, of which defects or hazards Seller has, or by the exercise of reasonable diligence should have knowledge,

(d) failure of the materials to comply with specifications or with any express or implied warranties of Seller, (e) alleged or actual violation by such materials, or in the manufacture or sale thereof of any applicable law, rule, regulation or requirement of any governmental authority having jurisdiction, (f) any contract, law, rule, regulation or requirement mandating payment to Seller's employees or to Workmen's Compensation or other funds for work and services performed or for injuries sustained, occupational diseases incurred or death resulting to Seller's employees arising out of or in the course of their employment in the performance of work provided by this order and (g) any actual, alleged or threatened breach of any representation, warranty, agreement or guarantee set forth herein. Seller shall maintain such public liability insurance, including products liability, completed operations, contractors' liability and protective liability, automobile liability insurance, and workmen's compensation and employer's liability insurance as will adequately protect Buyer against such liability, loss, damage and claims. Upon Buyer's request, Seller agrees to submit certificates of insurance evidencing its insurance coverage. The Seller agrees upon receipt of notice from Buyer promptly to assume full responsibility for the defense of any suit or proceeding which may be brought against Buyer or its agents for the alleged infringement of any patent, trademark, copyright or right of others, as well as for the alleged unfair competition resulting from such alleged infringement, by reason of the use or sale of any goods furnished under this contract, and Seller further agrees to indemnify Buyer against any and all liability, loss, cost, damage or expense, including court costs and reasonable attorneys' fees, suffered or incurred as a result of the bringing of such suit or proceedings and any settlement thereof or decree of judgement entered therein, Buyer may be represented by and actively participate through its own counsel, at Seller's expense, in any such suit or proceedings.

**9. CONFIDENTIAL INFORMATION:** All patterns, designs, specifications, materials, supplies, and the like, furnished or supplied by Buyer in connection with this order shall be Buyer's property, used exclusively on Buyer's products, and shall be treated as confidential by Seller and not disclosed to anyone else. The obligations under this section shall survive the cancellation, termination or completion of this purchase order and/or its performance.

**10. DEFAULT AND TERMINATION:** Buyer may, by notice of default to Seller, terminate this order or any part thereof without liability to Seller if Seller so fails to make progress as to endanger performance of this order, or fails to comply with any of the other provisions of this order and does not cure such failure within a period of ten (10) days after notice from Buyer specifying such failure, or appears to be so insolvent or in such financial condition as, in Buyer's reasonable opinion, to endanger performance. In the event of such termination, Buyer may purchase similar materials elsewhere but shall not be under an obligation to do so and Seller shall be liable to Buyer for any excess costs and expenses of Buyer, including without limiting the generality of the foregoing any lost profits and liabilities to any person or entry arising because of such default, and any costs, damages and expenses incidental or consequential to or arising out of such default, whether or not Buyer terminates this order or any part thereof. The retention or acceptance of goods or performance after the occurrence of any of the above events of default, or the termination of this order pursuant to this paragraph, shall not waive or adversely affect any of Buyer's rights or remedies, including rights of set-off (where applicable) the right of Buyer to cancel and terminate this order. Buyer may at any time terminate this order in whole or in part for its convenience upon written notice to Seller, in which event Seller shall be entitled to reasonable termination charges consisting of a percentage of the order price reflecting the percentage of the work performed prior to such termination; provided, however, that any claim for such termination charges shall be deemed waived unless asserted in writing within thirty (30) days from such termination notice. Payment under this clause will constitute Buyer's only liability in the event that this order is terminated under this clause.

**11. SET-OFF:** Any amounts chargeable to Seller or payable by Seller to Buyer under the provisions of this order or in connection with the merchandise referred to herein may at Buyer's election be set off in whole or in part against any sums payable to Seller, whether arising under this order or otherwise, and any amounts chargeable to Seller or payable by Seller to Buyer, under any other order or in connection with any other merchandise sold by Seller to Buyer or otherwise, may at Buyer's election be set off in whole or part against any sums payable to Seller under this order or in connection with the merchandise referred to herein; and any such set off shall be without prejudice to any claims of Buyer based on any loss, damages or expense not reflected in such set off.

**12. REMEDIES:** All remedies for breach of any obligation of Seller shall be cumulative and not alternative, continuing and not exhausted by any one or more uses thereof, and exercisable at any time or from time to time, and in addition to all other rights and remedies available at law or in equity, and any election by Buyer to exercise any right or remedy may be changed, and any option of Buyer may be exercised or changed, at any time or from time to time. A waiver of Buyer of any of the terms or conditions of this order shall not be deemed to be a continuing waiver but shall apply solely to the instance to which the waiver is directed. NO ACTION SHALL BE BROUGHT BY SELLER FOR ANY BREACH OF THIS AGREEMENT MORE THAN ONE (1) YEAR AFTER THE ACCRUAL OF THE CAUSE OF ACTION THEREOF.

**13. NOTICES:** Notices and instruments shall be deemed given and delivered to a party when delivered or mailed first class, postage prepaid to the address given for that party on the face hereof, except that either party may from time to time by written notice to the other designate another address which shall thereupon become the effective address of such party.

**14. APPLICABLE LAW:** The contract between Seller and Buyer shall be subject to, governed by, and constructed in accordance with the laws of the Commonwealth of Massachusetts. If the materials to be furnished under this order are to be used in the performance of a U.S. Government contract or subcontract and a Government contract number shall appear on this order, those clauses of the applicable orders and regulations which are required by federal law to be included in Government contracts shall be deemed incorporated herein by reference.

**15. SEVERABILITY:** If any term or provision of this agreement, or the applicable thereof to any circumstance, shall be invalid or unenforceable, the remainder of this agreement, or the application thereof to any circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this agreement shall be valid and enforced to the fullest extent permitted by law.

**16. EQUAL EMPLOYMENT OPPORTUNITY:** The Equal Employment Opportunity Clause in Section 202 of Executive Order 11246, as amended, relative to equal employment opportunity, and the implementing rules and regulations of the Office of Federal Contracts Compliance are incorporated herein by specific reference.