

TERMS AND CONDITIONS

GENERAL

1. **ACCEPTANCE AND MODIFICATIONS.** Acceptance of this Purchase Order, whether by written acknowledgment or by performance by Seller, or otherwise, shall be upon the terms and conditions hereof; no other terms or conditions shall be binding on Buyer unless written approval thereof by Buyer specifically referring to such other terms and conditions shall have been given to Seller. No modifications of PO or terms and conditions thereof, shall be binding unless in writing and accepted by Buyer.

2. **INVOICES.** Separate invoices shall be supplied for each purchase order shipment. Each invoice shall be itemized and shall show terms, discounts, date of shipment and purchase order number.

3. **SHIPPING.** Seller will indicate plainly the purchase order number on all bills of lading, all goods shipped pursuant to said purchase order and on all invoices, freight bills and packages. Each package must contain a memorandum showing Seller's name, contents of package and purchase order number. Partial shipments must be identified as such on shipping memoranda and invoices. Shipment of goods specified on this Purchase Order should result in lowest possible freight rate unless otherwise specified by Buyer. Penalties or increased charges due to failure to observe this provision will be charged to Seller. Shipping costs for goods on back-order shall be paid only at the rate which would have been applicable had the complete order been shipped at one time. All excess costs shall be borne by Seller. When shipping, Seller will make no declaration of value to carrier, except where shipment is subject to released value ratings.

4. **DELIVERY.** Unless otherwise expressly provided, the Seller shall be obligated to make delivery to Buyer's premises as designated herein; and all prices stated herein shall be for such delivery, free of all freight, transportation, drayage, boxing and similar charges, which shall be prepaid for account of Seller, unless otherwise stated in writing by Buyer. In the event of a late delivery, Seller shall be held responsible for all cost incurred by the Buyer.

5. **CANCELLATION.** Buyer reserves the right to cancel all or any part of this Purchase Order at any time. In the event that the Buyer terminates for convenience, Buyer will be responsible for reasonable cost incurred to point of notification. In the event that Buyer terminates on the basis of breach or non-performance by Seller, Seller will be held responsible for all cost incurred by Buyer to remedy the situation. Partial shipments must be identified as such on shipping memoranda and invoices.

6. **DECLINE IN PRICES.** Buyer shall be protected against declining prices on the undelivered portion of this Purchase Order. Seller may elect to meet price reductions of other Sellers or its own lower prices to other purchasers; but if Seller should refuse to do so, Buyer shall have the right to cancel any or all of the balance due on this Purchase Order without cost to Buyer.

7. **FORCE MAJEURE.** Any cause beyond the control of the parties, including but not limited to fire, flood, strikes, riot, insurrection, war, act of any governmental authority, priorities granted at the request or for the benefit directly or indirectly of any government or agency thereof, or act of God, which results in failure of either party to perform in accordance with the terms hereof, shall not give rise to any liability for damages on account of such delay or nonperformance, but shall entitle either party to cancel the purchase order on notice in writing to the other party. Where only a part of Seller's capacity to perform is excused under this paragraph, Seller must allocate production and deliveries among the various customers then under contract for similar goods during the period. The allocation must be made in a fair and equitable manner. Where either Seller or Buyer claims an excuse for nonperformance under this paragraph, it must give notice in writing to the other party. Seller shall not be obligated to sell or provide, nor Buyer obligated to purchase at a later date, that portion of the goods or services that Seller is unable to deliver or Buyer is unable to receive or use because of any of the aforementioned causes. No goods or services are to be tendered by Seller after the expiration of the terms specified in this Purchase Order without consent of Buyer.

8. **WARRANTY.** Seller expressly warrants that all goods and work covered by this order shall conform to the specifications, drawings, samples or other description furnished Buyer; shall be free from defects in materials, workmanship and design (unless designed by Buyer); shall be fit for the purposes intended; and shall conform with applicable governmental standards, rules and regulations, if any, Seller will, without expense to Buyer, repair or replace, at Buyer's option, any nonconforming or defective goods and reimburse Buyer for all reasonable costs incurred by Buyer as the direct result of such nonconforming or defective goods. Seller warrants and agrees that all merchandise and equipment (unless designed by Buyer) furnished hereunder, and the normal use thereof are and shall be free and clear of infringement of any patent.

9. **INDEPENDENT CONTRACTOR.** Seller acknowledges that it is an independent contractor and is not an agent, partner, joint venture nor employee of Buyer. If Seller is required to have access to Buyer's premises then, by acceptance of this order, it is agreed that Seller shall be solely and independently responsible for the direction, supervision and control of its employees and for any other persons or firms Seller engages to assist in performance. Seller shall maintain adequate safeguards and use reasonable care to protect Buyer's employees and property, and the person and property of others on or near the premises. Seller further agrees that it carries and will continue to carry the following insurance with limits adequate to insure against all reasonably foreseeable injury or damage to the persons and property hereinabove set forth for which Seller might be held fully or partially liable: workers' compensation insurance, public liability insurance and in the event Seller employs a subcontractor, protective liability insurance.

10. **ASSIGNMENT.** Neither party may assign its rights and obligations under this Agreement without the prior written consent of the other; provided, however, that either party shall have the right, without such consent of the other, to assign its rights and obligations in whole or in part hereunder to any successor to all or substantially all of the business or assets of such party (whether by merger, transfer of assets or equity interests).

11. **COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS.** By acceptance hereof, Seller warrants: (a) that all of the goods, merchandise and materials delivered and services rendered hereunder will have been produced and provided in compliance with all requirements of the Fair Labor Standards Act of 1938, as amended, and that it will so state on each invoice covering any of the same, and (b) that all goods, materials and equipment delivered hereunder shall comply with the applicable federal standards prescribed by the Occupational Safety and Health Act of 1970, and (c) that all chemical substances, and products containing chemical substances, will comply with the applicable federal standards prescribed by the Toxic Substances Control Act (TSCA) and regulations promulgated under it, and (d) the Seller will comply with applicable laws, rules and regulations of federal, state and local governments and agencies thereof, including Executive Orders 11246 (Equal Employment Opportunity), Executive Order 11458 (Minority Business Enterprise), Public Law 93-112, Sec. 503 (Rehabilitation Act of 1973), Public Law 93-508, Sec. 402 (the Vietnam Era Veterans Readjustment Act of 1974) and all rules and regulations passed pursuant thereto which are hereby incorporated herein by this reference, unless this Purchase Order is exempt pursuant to said Executive Orders of Acts and regulations issued there under.

12. **INSOLVENCY.** If Seller shall become insolvent, file a petition under the Bankruptcy Act or make an assignment for the benefit of creditors, or if a receiver or trustee shall be appointed of or for any of Seller's property or business, this Purchase Order may be canceled at Buyer's option without liability.

13. **CONFIDENTIALITY.** Seller, on behalf of itself and its employees, agrees that any ideas, concepts, information or processes received from Buyer or created by Seller in connection with the performance of this Purchase Order shall be the property of Buyer and shall be preserved in confidence by Seller and shall not be disclosed by Seller to third persons except to the extent that such disclosure is necessary for the proper performance of this Purchase Order. If requested by Buyer, Seller agrees to execute an additional Confidentiality Agreement for any services performed.

14. **TAXES.** Seller agrees to cooperate with this Buyer in opposing the imposition of any tax on any article covered by this Purchase Order, the legality of which is questioned by this Buyer, and in securing any abatement or any refund thereof sought by this Buyer.

15. **FOREIGN SHIPMENTS.** Foreign shipments must be preceded by all documentation necessary to allow shipment to enter the United States, including formal Consular Invoice whenever required. At time of shipment, ocean bills of lading, consular invoice, commercial invoices or any other documentation required for foreign shipment, in triplicate, shall be forwarded directly to the purchasing agent issuing this Order.

16. **MASTER CONTRACT.** If this Purchase Order is issued as shipping instructions and/or release document pursuant to the terms of an existing contract between Buyer and Seller, this Purchase Order shall be governed exclusively by the terms of said existing contract.

17. **INDEMNIFICATION.** Seller assumes the entire responsibility and liability for, and agrees to indemnify, defend and hold harmless Buyer, its officers, agents, employees, successors, assigns, customers and users of the goods purchased hereunder, from and against any and all losses, expenses (including without limitation, reasonable attorneys' and other professional fees), costs, damages (including consequential and incidental damages), demands, liabilities, suits and claims in connection with or arising out of any actual or alleged personal injury (including death) or damage or destruction to property (including loss of use) by whomsoever suffered, sustained or alleged to have been sustained by reason of (a) any act, error or omission, whether negligent or not, of Seller or its agents, employees, suppliers, subcontractors and consultants, provided that such injury, death, damage or destruction is not occasioned by the sole negligence of Buyer or its agents, employees and subcontractors, or (b) any defect, whether latent or patent, in any product or service of Seller which was sold to Buyer hereunder, or (c) any failure of the goods or services sold to the Buyer hereunder to comply with any warranty of Seller.

18. **CHANGES/AMENDMENTS.** No modification to this Purchase Order will be considered valid unless provided in writing and agreed to by Buyer.

19. **GOVERNING LAW.** This Purchase Order shall be governed by the laws of the Commonwealth of Pennsylvania.

20. **INSURANCE.** Seller shall throughout the Term of the Agreement, effect and maintain workers' compensation insurance to protect Buyer against claims under workers' compensation acts for injuries to the Seller's servants, employees or agents; excess liability insurance in an amount not less than \$1,000,000.00 per occurrence; general liability insurance in an amount not less than \$2,000,000.00 per occurrence; and an automobile liability policy (with non-owned and hired vehicle coverage) in an amount not less than \$1,000,000.00 per accident. Seller agrees to provide Buyer with at least thirty (30) days prior written notice of cancellation of such policies of insurance. Prior to beginning work at the Facility, Seller shall provide Buyer with certificates of insurance evidencing such coverage, which certificate shall show Buyer as an additional insured on such policy and include a waiver of subrogation for automobile and liability coverage.

21. **CONFLICT.** In the event of any conflict between any provisions of this Purchase Order and the provisions of the contract documents (i.e. proposal, bid, etc.), the provisions of this Purchase Order shall control. The non-enforcement of any provisions by Buyer shall in no event be construed as a waiver of such provision or of any other provision.