

# TERMS AND CONDITIONS

## 1. ACCEPTANCE

This purchase order is an offer and in order to constitute a contract actual and/or implied, acceptance by Seller must be limited to the precise terms and conditions of this offer. Commencement of performance by Seller will constitute acceptance in accordance with the terms and conditions in this document. No further terms and conditions stated by Seller in accepting or acknowledging this order will be binding on Buyer unless accepted in writing by Buyer.

## 2. PRICE AND PRICE WARRANTY

Buyer is obligated to pay only the price and other charges stated in this order or Seller's current price for the goods or services whichever is lower at the date of shipment. When prices are not stated, the prices charged are not to exceed those charged on the last invoice to buyer of the same goods or services or Seller's current price for these goods or services if lower than that charged on this invoice. No payments are to be made in advance unless otherwise agreed to on the face of this order. Seller warrants that the prices for the goods or services sold under this purchase order are not less favorable than those currently extended to any other customer for the same or similar services or the same or similar goods in similar quantity. Seller warrants that the prices shown on this purchase order shall be complete, and no additional charges of any type may be added without Buyer's prior written consent. Such additional charges include, but are not limited to, shipping, packaging, labeling custom duties, taxes, storage, insurance, boxing and crating.

## 3. TAXES

This order includes taxes required under any existing or future law upon or with respect to the sale, purchase, delivery, storage, processing, use, consumption or transportation of any of the material covered in this order, including taxes upon or measured by the receipts from the sale of any of the material covered in this order.

## 4. GOVERNING LAW

The contract resulting from the acceptance of this order is to be construed according to the laws of the State of Ohio.

## 5. ASSIGNMENT AND DELEGATION

Seller must not assign this contract nor assign or pledge the consideration of this contract, nor delegate any obligation which seller may have under this contract without Buyer's prior written consent. Any such attempted assignment or delegation by Seller without prior written consent of Buyer is wholly void for all purposes.

## 6. DELIVERY AND RECEIPT OF SHIPMENTS

Deliveries are to be made in the quantities and at times and places and in the particular manner specified in this order or in schedules furnished by Buyer. Buyer will have no liability for payment for material or items delivered to Buyer which are in excess of quantities so specified, and excess quantities shipped may be returned at Seller's expense. Buyer may, without extra cost, change the time of deliveries or delivery schedules or direct the temporary suspension of scheduled shipments. Seller waives all obligations of Buyer with respect to the provisions of this section, or to facilities for receipt of goods being delivered.

## 7. TIME

Time is of the essence and delivery must actually be effected within the time stated on this order. In the event of any failure or delay in delivery, Buyer has the right to place this order elsewhere and to hold Seller liable for any excess cost involved as well as for any damages. Unless otherwise expressly provided, Seller is obligated to make delivery to Buyer's premises as designated on the face of this order, and all prices stated on the face of this order is for such delivery free from all freight, transportation, drayage, boxing and similar charges. No charge will be allowed for packing, boxing or cartage unless agreed upon at the time of purchase. Damage to any goods not packed to insure proper protection will be charged to Seller.

## 8. CANCELLATION

Buyer has the right to cancel the unfilled portion of this order upon giving seller written notice. If Buyer elects to cancel this order, Buyer is entitled to take any goods or services included in this order whether finished, unfinished or in process upon the terms as Buyer and Seller may then agree upon.

## 9. EMERGENCIES

Buyer may not be held responsible for failure to accept or delay in accepting goods or services if such failure or delay is due to act of God or the public enemy, war governmental acts or regulations, fire, flood, embargo, quarantine, epidemic, strike, accident, unusually severe weather or other cause which is beyond Buyer's control. In the event of failure to accept or delay in acceptance of goods sold or performance of services for any such cause, the quantity of goods and period of services provided for in the order may be reduced accordingly by written notice by Buyer to Seller.

## 10. WARRANTY

Seller expressly warrants that all material and work covered by this order will conform to the specifications, drawings, samples or other description furnished or specified by Buyer, and all materials and workmanship will be of first class quality and free from defects. Seller expressly warrants that all material and work covered by this order will conform to the specifications, drawing, samples or other description furnished or specified by Buyer, and all materials and workmanship will be of first class quality and free from defects. Seller expressly warrants that all the materials covered by this order which is the product of seller or is in accordance with Seller's specifications, will be fit and sufficient for the purposes intended. All warranties of Seller contained in this document survives delivery and will not be deemed waived, either by reason of inspection and/or acceptance of said goods or services, or by the payment by Buyer.

## 11. INSPECTION

All materials will be received subject to Buyer's inspection and rejection. Defective material or material not in accordance with Buyer's specifications will be held for Seller's instructions and at Seller's risk, and if Seller so directs, will be returned at Seller's expense. No goods returned as defective are to be replaced without a new order. Payment for material on this order prior to inspections does not constitute an acceptance.

## 12. BREACH OF TERMS

In the event this order is not filled in each particular, as specified, or if Seller breaches any of the terms of this document, Buyer reserves the right to do any one or more of the following:

- (1) To cancel this order in part or in its entirety.
- (2) To recover all loss, damage and expense caused by such failure.
- (3) To require delivery by any means. Seller is to pay any increased transportation expense.

## 13. CHANGE IN SPECIFICATIONS

Buyer reserves the right at any time to make changes in drawings and specifications as to any material and/or work covered by this order. Any difference in price or time for performance resulting from these changes will be equitably adjusted and the contract will be modified in writing accordingly

## 14. MATERIAL FURNISHED BY BUYER

Whenever Seller, by virtue of this order, has in its possession property of Buyer of its customer, Seller will be deemed an insurer of this property and is responsible for the safe return to Buyer. Seller must carry insurance to adequately protect Buyer in accordance with the provision.

## **15. TOOLS**

Unless otherwise agreed, Seller at its own expense must furnish, keep in good condition and replace when necessary all dies, tools, gauges, fixtures and patterns necessary for the production of the material ordered. The cost of changes in the aforementioned items necessary to effect design or specification changes ordered by Buyer will be paid for by Buyer. Buyer has the option, however, to take possession of and title to any dies, tools, gauges, fixtures and patterns that are special for the production of the material covered by this order, and will pay to Seller the unamortized costs of this possession and title, provided, however, that this option does not apply if the material ordered is the standard product of Seller or if a substantial quantity of like material is being sold by Seller to others.

## **16. PATENT INFRINGEMENTS**

By acceptance and in consideration of this contract, the Seller warrants that the articles ordered on the face of this document do not in any way infringe on any patent trademark or copyright and seller agrees to defend, protect indemnify and save harmless Buyer, successors, assigns, customers, dealers, agents and users of its products against all suits at law or in equity, and from all damages, loss, claims and demands for actual or alleged infringement of an United States or foreign patent, trademark or copyright.

## **17. CONFIDENTIALITY AND ADVERTISING**

Seller agrees to be responsible for the safeguarding of all secret, confidential or restricted matter that may be disclosed or developed in connection with this order and will bring this provision to the attention of all persons connected with the performance of the order. Seller must not, without first obtaining the written consent of Buyer, in any manner advertise, publish, or otherwise inform or advice the fact that Seller has contracted to furnish or furnished Buyer the material ordered on the face of this document, and for the failure to observe this provision, Buyer shall have the right to terminate the contract resulting from the acceptance of this order without any obligation to accept deliveries after the date of termination or make further payments except for completed articles delivered prior to termination.

## **18. MECHANICS LIENS INSURANCE, AND INDEMNITY FOR SERVICES PROVIDED AT BUYER'S PERMISES**

If Seller's work under this order involves operations by Seller on the premises of Buyer, or one of its customers, or covers the performance of labor for Buyer, it is agreed that

(1) Seller will keep premises and work free and clear of all mechanics liens, and furnish Buyer proper affidavits and/or waivers certifying that premises and work are and clear of all mechanics liens.

(2) Unless otherwise provided by written contract the work will remain at Seller's risk prior to written acceptance by Buyer and Seller will replace at Seller's own expense all work damaged or destroyed by fire, force or violence of the elements or any other causes whatsoever.

(3) Seller will indemnify, save harmless and defend Buyer from all liability for loss, damage or injury to person or property in any manner arising out of or incident to the performance of this contract.

(4) Seller will indemnify, save harmless and defend Buyer from any and all claims, demands, or suits made or brought against buyer on account of any of the terms or provisions of any applicable Workmen's Compensation law and will furnish Buyer with proper evidence that seller is insured against all liability under such law.

(5) Seller further agrees to furnish insurance carrier's certificates showing that Seller had adequate public liability and property damage insurance coverage. This certificate must set forth the amount of coverage, policy number and date of expiration.

## **19. PROOF OF COMPLETION**

On all orders covering service or work performed inside or outside Buyer's plant, Seller must furnish proof of satisfactory completion to Buyer before payment of invoice covering this work will be made. This proof must consist of any standard form showing Buyer's purchase order number, date of completion, and must be signed by authorized agent of Buyer.

## **20. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS**

All Federal and State laws and regulations applicable to the subject matter are a part of the contract, and will be read into it though not referred to or recited. Seller represents that the items called for on the face of this document will be produced, manufactured and delivered in accordance with all applicable Federal, State and Local laws, including without limitation, all applicable requirements of the Fair Labor Standards Act of 1938, as amended, the Solid Waste Disposal Act, as amended, and the Federal Occupational Safety and Health Act of 1970, as amended. All invoices, in order to be passed for payment, must contain a statement certifying that the items covered by such invoices were produced, manufactured and delivered in compliance with Sections 6,7, and 12 of the Fair Labor Standards Act, as amended, and of the regulations and order of the United States Department of Labor issued under Section 14 thereof. Seller agrees to indemnify Buyer and save Buyer harmless if Seller fails to comply with the provisions of these sections and in the event of such failure Buyer may, in addition, cancel this order and contract.

## **21. DUTY DRAWBACK RIGHTS**

This purchase order includes all related customs duty and import drawback rights (including rights developed by substitution and rights which may be acquired from Seller's suppliers) which Seller can transfer to Buyer. Seller agrees to inform Buyer of the existence of any of those rights and upon request to supply these documents as may be required to obtain this drawback.

## **22. INDEMNIFICATION**

Seller shall defend, indemnify, and hold Buyer harmless against all damages, claims, or liabilities and expenses (including attorney's fees) arising out of or resulting in any way from any defect in the goods or services purchased under this purchase order, or from any act or omission of Seller, its agents, employees, or subcontractors. This indemnification shall be in addition to the warranty obligations of the Seller and shall survive any termination of this purchase order.

## **23. REMEDIES**

The remedies herein reserved are additional to any other remedies provided in law or equity. No waiver of a breach of any provision of this contract shall constitute a waiver of any other breach, or of such provision. In addition to the remedies specified above by this contract, Buyer and Seller will each have all the remedies provided for by the Uniform Commercial Code of the State of Ohio, except the Seller's remedy to cure will in no event bind Buyer to accept a new conforming tender (a) subsequent to Seller's taking back of nonconforming goods and refunding (or otherwise crediting to Buyer) the purchase price, or (b) subsequent to the expiration of the time for performance specified in this contract.

## **24. LIMITATION OF BUYER'S LIABILITY**

Buyer shall not be liable for anticipated profits or for incidental or consequential damages. Buyer'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 of this agreement shall in no case exceed the price allocable to the goods or services or unit thereof which gives rise to the claim. Any action resulting from any breach by Buyer as to goods or services delivered hereunder must be commenced within one year after the cause of action accrued.

## **25. SETOFF**

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

## **26. DIVISIBILITY**

If any provision or part of these terms and conditions is held invalid or unenforceable the remainder of these terms and conditions are nevertheless deemed valid and binding upon the parties to this document.