



PURCHASE ORDER TERMS AND CONDITIONS

1. Acceptance of Buyer's Offer: This Purchase Order constitutes Buyer's offer to Seller, and becomes a binding contract on the Terms and Conditions set forth herein (which Terms and Conditions are hereby deemed incorporated into and made a part of the Purchase Order) when it is accepted by Seller either by acknowledgement or commencement of performance hereof. No revisions, modification and/or changes to the Purchase Order (inclusive of any of these terms and conditions) shall be valid or binding on Buyer unless in a "signed writing". A signed writing shall be defined herein as requiring both a signature of an authorized representative of the Buyer's corporate procurement department. Furthermore, no Terms or Conditions stated by Seller in accepting or acknowledging this contract shall be binding upon Buyer if any of the same may be in conflict with, inconsistent with, and/or in addition to the express written terms and conditions hereof and/or the Buyer's written Purchaser Offer unless expressly accepted otherwise in a signed writing (as defined above) by Buyer.

2. Changes: Buyer may at any time by a written notice, and without notice to sureties or assignees, make changes within the general scope of the Buyer's Purchase Order in any one or more of the following: i) drawings, designs, statement of work or specifications; ii) method of shipment or packing; iii) place of inspection, acceptance or delivery; iv) quantities; and v) delivery schedule. Should any such change cause an increase or decrease in the cost of, in the time required for the performance of any part of, the work under this contract, whether or not changed by such notice, a reasonably equitable adjustment shall be made in the purchase price schedule, of both, and this contract shall be deemed modified in writing accordingly. Any claim by Seller for adjustment under this clause must be asserted promptly and in all events within twenty (20) days from the date of receipt by Seller of such written notice. Nothing contained in this clause shall relieve Seller from proceeding without delay in the performance of the Buyer's Purchase Order as changed. In the event Seller considers that any conduct of Buyer or Buyer's employees constitutes a change to this contract, Seller shall immediately notify Buyer, setting forth in written detail the nature of the conduct and the effect upon performance of the Buyer's Purchase Order. Pending written direction from Buyer, Seller shall take no action to implement the change that Seller believes has occurred.

3. Inspection and Rejection: All goods and/or materials received is/are subject to inspection and to rejection by Buyer if the material is defective or does not meet Buyer's specifications. Buyer specifically reserves the right: i) to have the rejected material replaced by the Seller at the purchase price stipulated in this order or in the contract, or ii) to return the rejected material for full credit at the price charged plus transportation charges. Buyer reserves the right to accept a part of any shipment and reject the balance, considering the contract breached to the extent of the rejected material. Buyer's rights with respect to the rejection of material are not waived by the failure of Buyer to notify the Seller promptly upon receipt of delivery.

4. Warranty: Seller expressly warrants, represents, states and agrees that all goods or serviced furnished under the Buyer's Purchase Order shall conform to all specifications and appropriate workmanship for a period of twelve (12) months from delivery. Seller warrant, represents, states and agrees 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 knows or has reason to know the particular purpose for which Buyer intends to use the goods or services, Seller warrants, represents, states and agrees that goods or services furnished will conform in all respect to samples, Inspection, test, acceptance or use of the goods or services furnished sold by Buyer. Seller agrees to replace or correct defects of any goods or services not conforming to the foregoing warranty promptly, without expense to Buyer, when notified of such non-conforming by buyer, provided Buyer elects to provide Seller with the opportunity to do so. In the event of failure of Seller to correct defects in or replace non-conforming goods or services promptly, Buyer, after reasonable notice to Seller, may make such corrections or replace such goods and service and charge Seller for the cost incurred by Buyer in doing so. This warranty shall be in addition to any and all warranties otherwise provided by law.

5. Warranty of Price: Seller warrants that the prices for the goods or services sold hereunder are not less favorable than those currently extended to any other customer for the same or like goods or services in substantially similar quantities and under substantially the same terms and conditions. In the event Seller reduces its price for such goods or services during the term of the Buyer's Purchase Order, Seller shall reduce the price hereof correspondingly.
6. Shipment: Unless otherwise expressly requested in writing by Buyer, Seller shall ship by the lowest classification and rate applicable. If, in order to comply with Buyer's required delivery date, it becomes necessary for Seller to ship by a more expensive way than specified in this contract, any increased transportation costs resulting therefrom shall be paid for by the Seller unless the necessity for such rerouting or expedited handling has been caused by Buyer, and such increased costs are approved in advance, in writing, by Buyer.
7. Waiver: Buyer's failure to insist on performance (strict or otherwise) of any of the terms and conditions herein or to exercise any right or privilege or Buyer's waiver of any breach hereunder shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type.
8. Delivery: Time is of the essence of this contract, and if delivery of goods or rendering of services is not completed by the time promised, Buyer reserves the right in addition to its other rights and remedies to terminate this contract without liability by notice effective when received by Seller as to goods not yet shipped or services not yet rendered and to purchase substitute goods or services elsewhere and charge Seller with any loss incurred.
9. Assignments and Subcontracting: No part of the Buyer's Purchase Order may be assigned or subcontracted without the prior written consent of Buyer.
10. Setoff: Buyer may, in its sole discretion, set off any monies due Buyer from Seller with any monies due Seller from Buyer whether or not due under and/or in connection with the Buyer's Purchase Order.
11. Termination for Convenience of Buyer: Buyer reserves the right to terminate the Buyer's Purchase Order or any part hereof at any time and for any reason by written notice to Seller. 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 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.
12. Termination for Cause: Buyer may also terminate the Buyer's Purchase Order or any part thereof for cause if Seller fails to strictly comply with any portion of the Buyer's Purchase Order (inclusive of Terms and Conditions) or in the event of any one of the following defaults by Seller: i) if Seller fails to make delivery of the goods or services within the time specified herein or any extension thereof, or ii) if Seller fails to perform any of the other provisions or portion of the Buyer's Purchase Order (inclusive of Terms and Conditions), or so fails to make progress as to endanger performance of the Terms and Conditions, and/or fails to strictly comply with any portion of the Buyer's Purchase Order in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten (10) days, or such longer period as Buyer may authorize in writing, after receipt of notice from Buyer specifying such failure. In the event of termination for cause, Buyer shall not be liable to Seller for any amount, and Seller shall be liable to Buyer for any and all damages sustained by reason of the default which gave rise to the termination. If it should be determined that the Buyer has improperly terminated this contract for default, such termination shall be deemed to be for the convenience of Buyer.
13. Force Majeure: Buyer may delay delivery or acceptance occasioned by causes beyond its control. Seller shall hold such goods at the direction of Buyer and shall deliver them when notified by Buyer that the cause affecting the delay has been removed. Buyer shall be responsible only for Seller's direct additional costs in holding the goods or services furnished hereunder, and Seller further agrees to indemnify Buyer, its agents and customers against any and all expenses, losses, royalties, profits and damages including court costs and attorney's fees resulting from any such suit or proceeding, including any settlement. Buyer 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.

14. Patents: Seller agrees upon receipt of notification, to promptly assume full responsibility for defense of any suit, arbitration, or other proceedings which may be brought against Buyer (and Buyer's agents, servants, employees, customers, and/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, reimburse, defend and hold harmless Buyer (and Buyer's agents, servants, employees, customers, and/or other vendors) against any and all expenses, losses, royalties, profits and damages including, but not limited to, court costs and reasonable attorney's fees resulting from any such suit, arbitration, or proceeding, including any settlement. Buyer may be represented by and actively participate through its own counsel in any such suit, arbitration, or proceeding if it so desires, and the costs of such representation shall be paid by Seller.

15. Insurance: In the event that Seller's obligations hereunder require or contemplate performance of services by Seller's employees or persons under contract to Seller, to be done on Buyer's property, or property of Buyer's customers, 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 Buyer. Seller shall maintain all necessary insurance coverage (including, but not limited to, public liability and Worker's Compensation insurance). Seller shall indemnify, reimburse, hold harmless and defend Buyer from any and all claims or liabilities arising out of the work covered by this paragraph.

16. Indemnification: Seller shall defend, indemnify, reimburse and hold harmless Buyer against all damage claims and/or liabilities and expenses (including attorney's fees) of any kind and/or nature whatsoever 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.

17. Choice of Law/Merger Clause: Except as is otherwise expressly provided to the contrary in these Terms and Conditions, these Terms and Conditions arising pursuant to and/or in connection with the Buyer's Purchase Order shall be governed, interpreted and/or construed solely by the laws of the State of New York without regard to its conflict of law principals. Any rights, remedies, and warranties, not inconsistent herewith, available to Buyer by operation of law, may only be waived or modified in writing by Buyer in a supplement to this contract. The parties hereby agree to submit the resolution of any dispute or litigation arising hereunder to the jurisdiction of the appropriate State or Federal court sitting in the State of New York. Notwithstanding anything to the contrary contained elsewhere, any and all prior understanding(s), agreement(s), statement(s), warranties, etc. whether express and/or implied, between Buyer and Seller (and their respective principals, agents, servants, employees, or other) of any kind and/or nature, shall be merged in the Buyer's Purchase Order and these Terms and Conditions. Neither Buyer nor Seller shall rely upon any understanding(s), agreement(s), statement(s), representation(s), warranties, etc., whether express and/or implied, made by any person and/or entities that is/are not expressly set forth in the buyer's Purchase Order and these Terms and Conditions. In the event of any inconsistency and/or conflict between any of these Terms and Conditions and the Buyer's Purchase Order, it is expressly understood and agreed that these Terms and Conditions set forth herein shall supersede and control over said Purchase Order.

18. Taxes: Seller agrees to pay any taxed imposed by law upon or on account of the material ordered hereunder unless otherwise agreed.

19. Bankruptcy: In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Seller, including any reorganization or arrangement proceeding, or in the event of the appointment, with or without Seller's consent, of an assignee for the benefit of creditors or of a receiver, then Buyer may cancel this contract for default and hold Seller accountable for any additional costs or damages incurred by Buyer. Buyer's only liability shall be for deliveries previously made or for goods covered by this order then completed and subsequently delivered in accordance with the terms of the order.

20. Proprietary Information/Confidentiality/Advertising: Seller shall treat as confidential any and all information furnished by Buyer and shall not disclose such information to any person and/or entity or use such information for any purpose other than performing the Buyer's Purchase Order unless Seller obtains prior written permission from Buyer to do so. This paragraph shall apply without limitation to drawings, specifications, or other documents prepared by Seller for Purchaser in connection with this contract, and to all documents including without limitation advertising copy, advertisements, supplements and advertising coupons obtained by or otherwise coming into the possession of Seller until such documents

are made available by Buyer to the general public. Seller shall not advertise or publish the fact that Buyer has contracted to purchase goods from Seller, nor shall any information relating to the order be disclosed without Buyer's prior written permission. Unless otherwise agreed in writing, no commercial, financial, or technical information disclosed in any manner or at any time by Seller to Buyer shall be deemed secret or confidential and Seller shall have no rights against Buyer with respect thereto except such rights as may exist under patent laws. Seller's failure to comply with this paragraph shall be grounds for immediate termination for cause within the meaning of paragraph 12.

21. Limitation on Buyer's Liability: In no event shall Buyer be liable for anticipated profits and/or for incidental and/or consequential damages of any kind and/or nature whatsoever. If Buyer defaults and/or breached hereunder Seller's sole and exclusive remedy as liquidated damages shall be, and Buyer's liability on any claim of any kind and/or nature whatsoever for any loss and/or damages arising out of and/or in connection with and/or resulting from Buyer's Purchase Order or from the performance of breach thereof shall, in no case exceed the price allocable to the goods and/or services and/or unit thereof which gives rise to the claim. It being agreed that Seller's damages in the case of Buyer's default might be impossible to ascertain and that the aforementioned liquidated damages constitutes a fair and reasonable amount of damages under the circumstance and is not a penalty. Buyer shall also not be liable for penalties of any kind, nature and/or description. Any action and/or other legal proceeding resulting from any breach on the part of Buyer as to the goods and/or services delivered hereunder must be commenced within one (1) year after the cause of action has accrued.

22. E-Transmittal: Any and all emails and/or facsimile communications as well as any and all documents and/or information of any kind and/or nature transmitted in connection with the Buyer's Purchase Order and the Terms and Conditions (hereafter collectively referred to as "E-TRANSMITTAL") shall not be governed, construed and/or enforced by The Electronic Signatures in Global and National Commerce Act, the Uniform Electronics Transactions Act, the New York State Electronic Signatures and Records Act and/or similar laws, now and/or as hereafter amended. Any and all prior understanding(s), agreement(s), statement(s), representation(s), warranties, etc., whether express and/or implied, between Sender and Recipient(s), their principals, agents, servants, employees, or others of any kind and/or nature, shall be merged into the subject E-TRANSMITTAL. Neither Sender(s) nor any and all Recipient(s) of such an E-TRANSMITTAL shall rely upon any understanding(s), agreement(s), representation(s), warranties, etc., whether express and/or implied, made by any person and/or entities that is/are not expressly set forth in said E-TRANSMITTAL. No symbol, process, legend and/or information of any kind and/or nature located anywhere on any such E-TRANSMITTAL in connection herewith shall be deemed a legally binding, valid, and/or enforceable Electronic Signature or otherwise except in the sole event such E-TRANSMITTAL shall be Buyer's signed writing (as defined above).