



## Purchase Order Terms and Conditions

Rev. 12/12/2022

**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 and conditions stated herein. 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.

**Termination** - Purchaser reserves the right to terminate this order or any parts hereof, at any time, even though the Seller is not in default, by giving written notice to the Seller. In the event of such termination, Seller shall immediately upon receipt of notification discontinue all work in progress. Purchaser shall pay for all goods and services delivered and completed, 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. Seller shall not unreasonably anticipate the requirements of this order.

Late deliveries, deliveries of products which are defective or which do not conform to this order, and failure to provide Purchaser, upon request, with adequate assurances of future performance shall be cause for default and allow Purchaser to 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 seller, including but not limited to drawings, specifications, or other documents prepared 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 first obtains written permission from Purchaser to do so.

**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 respect 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. Seller recognizes that Purchaser’s production requirements may require immediate repairs or reworking of defective goods, without notice to the Seller. In such event, Seller shall reimburse Purchaser for the costs, delays, or other damages which Purchaser has incurred.

**Price Warranty** - Seller warrants that the prices for the articles sold to 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. Seller warrants that prices shown on this purchase order shall be complete, and no additional charges of any type shall be added without Purchaser’s express written consent. Such additional charges include, but are not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing, and crating.

**Goods Held in Seller’s Possession** – In the event that Seller’s obligations hereunder require that Purchaser provide goods to Seller for processing and/or modification, Seller assumes liability for such goods at the time Purchaser places the goods in the possession of a carrier and notifies Seller of the shipment, and Seller retains liability for such goods until returned to the possession of Purchaser. Any cost of provision of replacement goods to be provided to Seller, including but not limited to manufacturing, labeling, boxing, and shipping, arising during the aforementioned period of Seller’s liability, shall be borne by Seller.

**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. Seller shall also be excused if delivery is delayed by the occurrence of unforeseen and unforeseeable events, provided



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seller notifies Purchaser of such events as soon as they occur, and gives Purchaser its best estimate of revised delivery dates. If any delay exceeds 30 days from the original delivery date, Purchaser may cancel this order without any liability. If Seller's production is only partially restricted or delayed, it shall use its best efforts to accommodate the requirements of Purchaser, including giving this order preference and priority over those of other customers which were placed after this order.

**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 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, including public liability and Workers' Compensation insurance, and any other insurance required to be maintained by law. Seller shall defend, indemnify and hold harmless Purchaser from any and all claims or liabilities arising out of the work covered by this paragraph.

**Indemnification** - Seller shall defend, indemnify and hold harmless Purchaser 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 hereunder, or from any act or omission of Seller, its agents, employees or subcontractors. This requirement of defense and indemnification shall be in addition to the warranty obligations of Seller.

**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.

**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 nonconformity is 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.

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

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

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

**Shipment** - 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. Seller shall bear all risk of loss of all merchandise covered by this order until such merchandise has been delivered to the designated location.

**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.

**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 on a year after the cause of action has accrued.