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**IMPORTANT - PLEASE READ:**

## **STANDARD TERMS AND CONDITIONS OF PURCHASE**

### **1. ACCEPTANCE OF ORDER; COMPLETE AGREEMENT; CHANGES AND ADDITIONS**

- If your acceptance by your signature is requested on this purchase order and/or copy thereof, you may accept this order only by signing and returning the order or copy to us immediately, which will also constitute your acceptance of all terms and conditions herein. Your performance, including delivery of the goods or services ordered, will constitute acceptance of this Order.
- If you do not intend to accept this order, please notify us promptly.
- This order, when accepted, constitutes the complete and exclusive agreement, and supersedes all previous agreements, understandings, or statements, oral or written, for the same goods or services. We object to and shall deem as a material alteration hereof any past or future additional, different, or inconsistent terms or conditions proposed by you, in documents, by writings accompanying or printed on the goods, or otherwise, unless we indicate our express consent in writing.
- Such express consent shall not be deemed given by the mere statement on the face side of this order that your specifications or other entire documents - as opposed to specific pages, paragraph numbers, or other specific provisions contained in such documents - are incorporated in this order, unless accompanied by (a) statements such as "paragraph 3 of purchase order deleted," "Additional (inconsistent) terms or conditions in your specifications supplement (supersede) those of this purchase order" or (b) action such as our crossing out and initialing paragraphs of this order which are superseded.
- Accordingly, you may not assume that our silence in response to any of your past or future documents or writings, coupled with our acceptance of your goods and/or services, indicates our acquiescence in such terms or conditions. Rather, **IT IS YOUR RESPONSIBILITY TO OBTAIN OUR EXPRESS WRITTEN CONSENT TO YOUR ADDITIONS OR CHANGES!**
- The terms "order" and "agreement" refer throughout to this order, when accepted by you. The term "delivery" includes "shipment".

### **2. CHANGES**

We 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 and Seller agrees to accept such changes. If any such changes cause an increase or decrease in the cost or time required for performance, an equitable adjustment shall be made and this agreement shall be modified in writing accordingly. Any request by you for such adjustment shall be deemed waived unless asserted in writing and itemized within fifteen days (15) of your receipt of the change.

### **3. TERMINATION**

- We reserve the right to terminate this order or any part hereof for our sole convenience. In the event of such termination, you shall immediately stop all work hereunder, and shall immediately cause any of your suppliers or subcontractors to cease such work and observe any instructions from us as to work in process. You shall be paid a reasonable termination charge consisting of a percentage of the order price reflecting the percentage of the work performed prior to the notice of termination, plus actual direct costs resulting from termination. Unless otherwise agreed in writing, you shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by your suppliers or subcontractors which you could reasonably have avoided.
- We may also terminate this order or any part hereof for cause in the event of any default by you or your failure to comply with any of the terms and conditions of this order. Late deliveries, deliveries of products which are defective or which do not conform to this

order, and failure to provide us upon request with reasonable assurances of future performance shall be causes allowing us to terminate this order for cause, among others. In the event of termination for cause, we shall not be liable to you for any amount and you shall be liable to us for any and all damages sustained by reason of the acts or failure to act which gave rise to the termination. If it should be determined that we improperly terminated this contract for default, such termination shall be deemed to be for our convenience.

#### **4. APPLICABLE LAW AND ARBITRATION**

This order shall be construed under and solely governed by the laws of the State of Indiana, excluding any choice of law rules which may direct the application of the laws of another jurisdiction. Any controversy or claim arising out of or related to this Agreement or the breach thereof, shall at our option be finally settled by arbitration under the Rules of the American Arbitration Association. Judgment on the award rendered may be entered by any court having jurisdiction thereof. Claims in the nature of indemnification for liability or potential liability to third parties are not subject to arbitration without our consent.

#### **5. WARRANTIES**

- You expressly warrant that any goods and services furnished under this Agreement conform to all the specifications, drawings, samples, models, or other written or physical descriptions or guides stated or referenced in this order; are free from any latent or patent defects in labor, materials, and workmanship; meet (or, to the extent necessary to meet our requirements and specifications, exceed) the standard of merchantability, or, in the case of services, meet (or, to the extent necessary to meet our requirements and specifications, exceed) the standard acceptable in the trade; will fulfill our ordinary purposes (or our special purpose, if specified); will not, if used for our ordinary purposes (or our special purpose; if specified) result in a violation of the law, are free of security interests, liens and other encumbrances; do not infringe any patent, trademark, copyright or other rights; and that you have good and marketable title to the goods furnished.
- You shall defend, indemnify and save us harmless from any breach of this warranty, and no limitations on your documents shall operate to reduce this indemnification. At our option, in addition to any other rights we may have, upon notification to you we may require you to promptly replace or correct the defects of any goods or services not conforming to the foregoing warranty, or we may arrange to make such corrections or replace such goods and services and charge you for any costs incurred by us. You agree to extend all warranties you receive from your vendors or subcontractors and your warranties shall extend to our customers.

#### **6. PROPRIETARY INFORMATION; CONFIDENTIALITY; ADVERTISING**

You shall consider all information furnished by us to be confidential and you agree not to disclose any such information to any other person or entity, or use such information for any purpose other than performing this contract, unless you obtain express written permission from us to do so. This paragraph shall apply to, but is not limited to (a) drawings, specifications, or other documents you prepare for us in connection with this order; (b) formulas, methods techniques, processes, technology, or know-how used by us; (c) the design, detail, operation, or layout of any machines, equipment or other items used by us; and (d) any research, marketing, or sales data or information as to the identity of our suppliers, distributors or customers. You further agree that only those employees or agents or yours who need to have access to the foregoing information and items will be authorized to have such access, and then only to the extent needed. Upon our request you will require such employee to execute a document containing the secrecy and confidentiality provisions provided herein. You shall not advertise or publish the fact that we have contracted to purchase goods from you, nor shall you disclose any information relating to the order without our written permission. Unless otherwise agreed in writing, no commercial, financial or technical information you disclose to us in any manner or at any time shall be deemed secret or confidential and you shall have no rights against us with respect thereto except such rights as may exist under patent laws.

## **7. LABOR DISPUTES**

You represent that you are not experiencing and are not threatened with any labor disputes and you do not contemplate a strike or other labor dispute that will in any way jeopardize your performance hereunder.

## **8. CONTINGENCIES AND YOUR AGREEMENT TO PERFORM FULLY**

- You assume all risks of any contingencies. Contingencies include, but are not limited to, shortages, labor difficulties, and acts of God.
- You agree not to subject this order to any allocation plan you may adopt without our prior express written consent.
- We may delay delivery or acceptance occasioned by causes beyond our control. You shall hold such goods at our direction and shall deliver them when the cause affecting the delay has been removed. We shall be responsible only for your direct additional costs in holding the goods or delaying performance of the Agreement at our request. Causes beyond our control shall include government action or failure of the government to act where such action is required, strike or other labor trouble, fire, or unusually severe weather.

## **9. COMPLIANCE WITH LAW; GUARANTEES AND CERTIFICATES**

- You expressly represent that you and the goods or services covered by this order comply with all applicable governmental statutes, regulations, orders and ordinances, incorporated by reference herein, including, but not limited to the following, to the extent applicable; the Fair Labor Standards Act of 1938, as amended, and regulations thereunder; the Federal Food, Drug, and Cosmetic Act, as amended, and regulations thereunder; the Federal Hazardous Substances Act, as amended, and regulations thereunder, the Occupational Safety and Health Act, and regulations thereunder; the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and regulations thereunder; Executive Order 11246 (relating to non-segregated facilities and equal employment opportunity), 41 C.F.R. Section 60-741.4 (relating to employment of the handicapped), Executive Order 11701 (relating to job listing for veterans), and 41 C.F.R. section 60-250.4 (relating to employment of qualified disabled veterans and veterans of the Vietnam era), Executive Order 11625 (relating to utilization of minority business enterprises) and regulations promulgated pursuant thereto; and applicable foreign law, if we have indicated to you the goods are to utilize abroad. In the event that any law referred to herein is changed or amended, such changes or amendments are incorporated by reference herein to the extent applicable, and you agree to comply with the requirements of such changes of amendments. You expressly warrant that any chemical substance furnished hereunder is on the Toxic Substances Control Act inventory, or that you have satisfied the Toxic Substances Control Act pre-manufacture notice requirements and that the chemical is legally available for sale and use.
- You expressly agree, as part of your performance under this order, to sign and promptly return to us such separate guarantees and certifies (affirming that you and any goods or services covered by this order comply with applicable governmental statutes, regulations, orders and ordinances) as we may from time to time deliver to you. Any such guarantees and certificates are reasserted and incorporated by reference herein.

## **10. PACKAGING AND DELIVERY**

- Each package shall be numbered and labeled with contents, weight, order number, your part number, contents, weight, and your product and production code (or other identification of time and place of production); shall contain an itemized packing slip; and shall be properly marked and packed to avoid loss or damage in delivery. No charges will be allowed for packing, crating, freight, express or cartage unless expressly so specified on the reverse side of this order.
- If in order to comply with our required delivery date it becomes necessary for you to ship by a more expensive means than specified in this purchase order, you shall pay any increased transportation costs resulting therefrom unless we caused the necessity for such rerouting or expedited handling. Unless otherwise specifically specified in writing

herein, you shall bear the risk of loss until the goods or services have been accepted by us.

#### **11. TIME IS OF THE ESSENCE IN THIS CONTRACT**

If delivery of items or rendering of services is not completed by the time promised we reserve the right, without liability and in addition to our other rights and remedies, to terminate this contract by notice effective when you receive it as to items not yet shipped or services not yet rendered and to purchase substitute items or services elsewhere and charge you with any loss incurred.

#### **12. INCONSISTENCIES**

In the event of any inconsistencies between this side and the face side of this order, the face side controls.

#### **13. INDEMNIFICATION**

- You shall defend, indemnify and hold us harmless from all liability, loss, damage, cost or expense (including reasonable attorneys' fees) arising out of or resulting in any way from your performance in connection with this Order, any defect in the goods or services purchased hereunder or any claim or proceeding, including a third party claim or proceeding, involving you or any of your agents', employees' or subcontractors' wrongful or allegedly wrongful act, or failure to act, whether such commission or omission was intentional, negligent, or otherwise.
- We will notify you our receipt of any such claim or proceeding and will permit you, if you so elect, to participate in the defense of such claim.
- This indemnification shall be in addition to your warranty obligations.

#### **14. INSPECTION AND OUR ACCEPTANCE OF GOODS OR SERVICES**

- Payment alone shall not constitute acceptance.
- You agree to allow us, on request, free access to your plant and operations for the purpose of preliminary inspection. However, any approval by us during or related to preliminary inspection shall not constitute acceptance of the goods or services, which may only be given after delivery of the goods or completion of the services.
- We shall have the right to inspect all delivered goods and to reject any or all of said goods which in our judgment are defective or nonconforming.
- We may return to you at your expense goods we reject or goods that are supplied in excess of quantities called for in this Order, and in addition to our rights we may charge you all expenses of unpacking, examining, repacking, and reshipping such goods. We reserve the right to require replacement as well as payment of damages for goods whose defects and nonconformity are not apparent on examination. Nothing contained in this order relieves you in any way of your obligation of testing, inspection and quality control.

#### **15. PRICE**

- Subject to applicable law you warrant that the prices for the goods covered by this order are not less favorable than those you currently extend to any other customer for the same or similar goods in similar quantities. If during the term of this Agreement, you shall sell such goods in such similar quantities, to any other customer at a price that is lower than the price then in effect under this order, such lower price shall apply on all goods thereafter delivered pursuant hereto during the time such lower price remains in effect. This provision shall not apply if the lower price offered such customer is given to meet a lower price offered by your competitor to that customer.
- You represent that we have not induced or been granted a price which violates the Robinson-Patman Act (relating to discriminatory pricing of goods).
- You warrant that the prices shown on this purchase order are complete, and no additional charges of any type shall be added without our express written consent.

#### **16. PATENTS**

You agree upon receipt of notification to promptly assume full responsibility for defense of any suit or proceeding which may be brought against us or our agents, customers, or other vendors

for alleged patent, trademark, trade secret infringement or violation of any other proprietary right as well as any alleged unfair competition, resulting from similarity in design, trademark or appearance of goods or services furnished hereunder, and you further agree to indemnify us, our agents, and customers against any and all expenses, losses, royalties, profits and damages including court costs and attorneys' fees resulting from any such suit or proceeding, including any settlement. We may be represented by and actively participate through our own counsel in any such suit or proceeding if we so desire, and you agree to pay the costs of such representation.

#### **17. INDEPENDENT CONTRACTOR / INSURANCE**

In the event that this Order requires performance of services by your employees, or person under contract to you, on our property or property of our customers, you agree that you will do all such work as an independent contractor and that the persons doing such work shall not be considered our employees. You shall be responsible for the establishment and enforcement of safety procedures regarding the work done by your employees or those under contract to you and shall comply with all our safety rules. You shall maintain all necessary insurance coverage, including general and product liability and Workers' Compensation insurance and shall indemnify, hold harmless and defend us from any and all claims or liabilities arising out of the work covered by this paragraph.

#### **18. ASSIGNMENTS AND SUBCONTRACTING**

No part of this order may be assigned or subcontracted without our prior express approval.

#### **19. SETOFF**

All claims for money due or to become due from us shall be subject to deduction or setoff by us by reason of any claim arising out of this or any other transaction with you.

#### **20. WAIVER**

Our failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or our waiver of any breach hereunder shall not constitute a waiver of any other terms, conditions, or privileges, whether of the same or similar type.

#### **21. TAXES**

Sales, use or other applicable government taxes must be included on original invoices as separately stated items, it being understood that vendor shall not charge us for any sales, use or other governmental tax with respect to which we have furnished vendor a certificate of resale or other exemption certificate.

#### **22. LIMITATION ON OUR LIABILITY; STATUTE OF LIMITATIONS**

In no event shall we be liable for anticipated or lost profits or for incidental or consequential damages. Our 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. We shall not be liable for penalties of any description. Any action resulting from any breach on our part as to the goods or services delivered hereunder must be commenced within one year after the cause of action has accrued.

#### **23. INDEMNIFICATION OF FREIGHT - UNDERCHARGE CLAIMS AND LITIGATION**

- For shipment from and after the date of this Order, you agree to defend, indemnify and hold us harmless from and against any and all liability, including legal fees and costs,

arising out of or in connection with claims, demands and causes of action for 1) collection of alleged undercharges of freight and/or transportation charges, and/or 2) alleged violation and/or enforcement of tariff rates, classification, rules and/or practices, by a freight carrier or its representatives including a bankruptcy trustee, collection agent, assignee or tariff auditor. This indemnification agreement shall apply if you contracted for transportation. We agree to notify you of receipt of any such claims, demand or suit within a reasonable time and to provide you with the full right and opportunity to defend or settle such claim, demand or suit with our cooperation.

- **WE OBJECT TO ANY MODIFICATION OR EXCLUSION OF ANY OF THE FOREGOING WARRANTIES.**