

# ORDER TERMS AND CONDITIONS

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1. **CONTRACT:** This Purchase Order constitutes an offer by Buyer to purchase the goods and/or services specified upon the terms and conditions and at the price(s) and with the delivery date(s) stated herein and is not an acceptance of any offer by Seller to sell. Seller shall indicate its acceptance of this offer by verbal acceptance, by written acceptance on the face hereof or other written confirmation, by commencing work on this Purchase Order in any manner, or by delivering the goods or performing the services. This Purchase Order, together with the documents attached here to or incorporated herein by reference, shall constitute the final and complete agreement of the parties and may not be modified or rescinded except by a written change order issued by Buyer. No terms stated by Seller in its proposal or in accepting or acknowledging this Purchase Order shall be binding; and Seller is hereby notified of Buyer's objection to and rejection of any additional or different terms in Seller's quotation, acknowledgement, invoice or other forms. Buyer's Purchase Order expressly limits acceptance to the terms and conditions contained herein, and notice of objection to any different or additional terms in any response is hereby given. If this Purchase Order is construed as an acceptance of an offer, this acceptance is expressly conditioned upon the offerer's assent to any different or additional terms contained in this Purchase Order or any attachments or exhibits there to. If this Purchase Order is construed as a confirmation of an existing non-written contract, the parties agree that this confirmation states the exclusive terms of such contract between the parties. The parties further agree that this Purchase Order, when used by the parties to place orders for goods or services in conjunction with or pursuant to a written contract, shall be construed to supplement the terms of such written contract to the extent that the terms of this Purchase Order are not inconsistent with such written contract. Regardless of its construction, this Purchase Order incorporates by reference all terms of the Uniform Commercial Code providing any protection to Buyer, including, but not limited to, a 11 warranty protection (express or implied) and all of Buyer's remedies under the UCC.
2. **WARRANTY:** Seller warrants title to goods, sold hereunder, to be free and clear of all liens, encumbrances and/or colorable claims, and that all goods and/or services shall be of merchantable quality, free from defects in material, design and workmanship, shall be fit for the particular purposes intended, and shall conform to all requirements of this Purchase Order including without limitation, all specifications, samples, drawings and plans, if any, and shall be performed in a sound, professional and competent manner. Seller warrants that in furnishing the items described above which are, or may become, subject to the provisions of the Federal Food, Drug and Cosmetic Act, as amended, it will furnish no item which is adulterated or misbranded within the meaning of such Act, or is an article which may not, under the provisions of Section 404 or 505 of this Act, be introduced into interstate commerce. Seller further warrants that items described are not articles, which cannot be legally transported or sold under the provisions of any federal, state or local law and are not misbranded within the meaning of any federal, state or local law, when bearing labels affixed by Seller.
3. **PRODUCT UNIFORMITY:** Seller shall not make any changes in the goods that may alter properties, impurities, specifications, dimensions, or any other characteristic of the goods.
4. **INDEMNITY:** Seller agrees to defend, indemnify, and save harmless Buyer from any loss, cost, damage, claim or expense, including reasonable attorney's fees, of any nature including, but not limited to, any claim of death or injury to persons or damage to property, arising out of, or related in any way, directly or indirectly to, the goods and/or services supplied hereunder, including, without limitation, defects in design, materials, workmanship or manufacture, regardless of whose actions, omissions, or negligence may have caused the incident, except where such loss, cost, damage, claim or expense results from the sole negligence of Buyer.
5. **INFRINGEMENT:** Seller warrants that the use or sale of goods and/or services shall not infringe any United States' patent claims, trademarks or other intellectual property rights. Seller shall indemnify and hold harmless Buyer from all expenses, including attorneys' fees, claims and liabilities arising out of a breach of warranty.
6. **REJECTION AND REVOCATION OF ACCEPTANCE:** Buyer shall have a reasonable opportunity to inspect goods and reject them if they fail to conform to the requirements of this Purchase Order, and to revoke its acceptance of them where appropriate. With regard to goods that are rejected or for which acceptance has been revoked, Buyer, at its option and at the expense and risk of Seller, may return such goods to Seller or store them until Seller provides instructions for disposal. Payment for goods without reasonable opportunity to inspect the same shall not constitute acceptance.
7. **SHIPMENT:** Seller's performance shall be in strict conformance with the delivery and other time provisions specified in this Purchase Order. Time is of the essence. If Seller fails to perform according to the terms of this order within the required time, Buyer may cancel this Purchase Order and purchase the goods and/or services elsewhere, and hold Seller liable for any costs or damages incurred. Seller shall forward notice of shipment of goods to Buyer within twenty-four hours, and such notice is an express condition to Buyer's duties under this Purchase Order. The original Bill of Lading must accompany the invoice and be mailed in accordance with the instructions on the face of this Purchase Order. Complete packing lists must accompany each shipment. Separate invoices are required for each Purchase Order and for each shipment when partial deliveries are made.
8. **TAXES:** Any applicable federal, state or local taxes related to the manufacture of goods sold herein are included in the Purchase Order price and shall be paid by Seller.
9. **FORCE MAJEURE:** No liability shall result from delay in performance, or non-performance, caused by circumstances beyond the reasonable control and without the fault or negligence of the party affected, including, but not limited to, Acts of God, fire, flood, war, Government action, accident, labor trouble or shortage, inability to obtain material, equipment or transportation. The curing of any delay in performance or non-performance as a result of the causes described in the foregoing sentence shall be prosecuted with due diligence by the affected party and shall include reasonable updates as to the status of such condition and its expected impact on the ability to perform under this Purchase Order. At Buyer's option, quantities so affected by the causes described in the first sentence of this paragraph may be eliminated from this Purchase Order without liability, but this Purchase Order shall remain otherwise unaffected.
10. **CONFIDENTIALITY:** All drawings, plans, specifications or other documents, data or information furnished by Buyer to Seller, orally or in writing, shall be treated as confidential by Seller. Seller shall not make any commercial use thereof except in performance of this Purchase Order. Seller shall not disclose same to anyone before or after performance of this Purchase Order without having obtained the written consent of Buyer. All such drawings, plans, specifications or other documents, data or information shall be returned to Buyer upon request.
11. **GOVERNMENTAL LAWS:** Seller shall comply with the Fair Labor Standards Act. Seller shall not discriminate against any employee or applicant for employment because of age, race, color, creed, national origin or sex. Seller shall comply with all applicable federal, state and local fair employment practices laws, including all provisions of Executive Order 11246 of September 24, 1965, the Rehabilitation Act of 1973, and the Vietnam Era Veterans Readjustment Assistance Act of 1974, and any amendments thereto. Any clause required to be in a document of this type by any applicable law or administrative regulation having the effect of law shall be deemed to be incorporated herein. Seller warrants that the goods and/or services shall comply with all applicable laws, standards and regulations, whether governmental or industrial, in effect on the date of delivery or known in the industry to become effective after such date.
12. **ASSIGNMENT:** This Purchase Order shall not be assigned by Seller without Buyer's prior written consent. Seller shall not subcontract all or any part of its performance of this Purchase Order to any other party without Buyer's prior written consent. No assignment or subcontracting by Seller, with or without Buyer's consent, shall relieve Seller of any obligations under this Purchase Order.
13. **APPLICABLE LAW:** This Purchase Order and all of the rights, duties and obligations of the parties here-to shall be construed, interpreted and controlled by the laws of the Commonwealth of Pennsylvania, and all claims arising out of or related to the parties' performance of their obligations hereunder, whether sounding in contract, tort or otherwise, shall be governed by the laws of the Commonwealth of Pennsylvania, including Pennsylvania's statutes of limitations, but not including its or any other state's choice of laws rules. The applicability of the provisions of the United Nations Convention on Contracts for the International Sale of Goods is hereby expressly excluded from this Purchase Order.
14. **CHANGES:** Buyer may direct Seller to make changes in the goods and/or services ordered including, without limitation, reasonable changes to quantities or delivery dates, or changes in the requirements of the drawings, specifications or instructions. Seller shall promptly review such changes and within five (5) days inform Buyer of any change in Seller's cost of performance or delay in delivery. Upon mutual agreement as to any price or delivery change, Buyer shall issue a written change order. In the event Seller shall fail to comply with this procedure, Seller shall be deemed to have waived all claims for increased cost or extension of time of performance.
15. **SUSPENSION OR TERMINATION:** Buyer, for its convenience, shall have the right to suspend or terminate Seller's work hereunder, or any part thereof, including delivery, upon notice to Seller. Seller shall promptly comply with Buyer's instructions to minimize the cost to Buyer. In the event of suspension for convenience, Seller shall be entitled to recover only its uncompensated actual direct costs resulting from any suspension. In the event of termination for convenience, Seller shall be entitled to recover only its uncompensated actual direct costs incurred prior to the date of Buyer's termination, plus those actual direct costs arising from Buyer's termination, provided that in no event shall the total price paid by the Buyer exceed the price(s) specified in this Purchase Order. Any cost claimed by Seller under this Article shall be subject to the audit and approval of Buyer. Upon termination, the goods shall become the property of Buyer in their then state of completion.
16. **WAIVER:** Buyer's waiver of any breach by Seller of any of the provisions of this Purchase Order shall not constitute a waiver of any other breach of the same or any other provision. Buyer's rights and remedies under any provision of this Purchase Order shall be in addition to, and not in substitution or limitation of, any other rights or remedies available to Buyer under applicable law.
17. **LOST PROFIT:** In no event shall Buyer be responsible for any consequential damages including, but not limited to, Seller's loss of actual or anticipated profits arising out of, or resulting from, this Purchase Order or from the performance, suspension, termination or breach hereof.
18. **HEADINGS AND SEVERABILITY:** Any headings preceding the several articles hereof are inserted solely for convenience of reference, shall not constitute a part of the Purchase Order and shall not otherwise affect the meanings, content, effect or construction of this Purchase Order. In the event that any provision contained herein is held to be invalid or unlawful, such provision shall be severable from the remaining provisions of this Purchase Order, which shall remain in full force and effect.
19. **PUBLICITY:** Seller shall not, and shall require that its subcontractors and suppliers of any tier shall not, cause or permit to be released any publicity, advertisement, news release, public announcement, or denial or confirmation of same, in whatever form, regarding any aspect of this Purchase Order or the goods and/or services to which they pertain without Buyer's prior written approval.
20. **RESPONSIBILITY FOR PROPERTY:** Unless otherwise specified, upon delivery to Seller, or manufacture or acquisition by Seller, of any materials, parts, tooling, data or other property, title to which is held by Buyer, Seller assumes the risk of and shall be responsible for any loss thereof or damage thereto. In accordance with the provisions of this Purchase Order, but in any event upon completion thereof, Seller shall return such property to Buyer in the condition in which it was received, except for reasonable wear and tear, and except for such property as has been reasonably consumed in the performance of this Purchase Order.
21. Supplier agrees to provide a valid NAFTA Certificate (including product name, country of origin and harmonized tariff system number), or, in the alternative, a statement that the product does not qualify for NAFTA. In the case of imported products, Supplier agrees to provide a Certificate of Delivery.