

PROCUREMENT ORDER TERMS AND CONDITIONS

Acceptance. Seller's commencement of work on the services or 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 and the express terms contained within these Purchase Order Terms and Conditions (hereinafter referred to as the "order"). Any proposal for additional 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 services or 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 order shall be deemed an acceptance of a prior offer by Seller, such acceptance is limited to the express terms contained herein.

Termination for Convenience of Buyer. Buyer reserves the right to terminate this order or any part hereof for its sole convenience. 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 be paid a reasonable termination charge consisting of a percentage of the order price reflecting the percentage of the work or services performed or goods delivered prior to the notice of termination plus actual direct costs resulting from termination. Seller shall not be paid for any work done after receipt of notice of termination or for any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided.

Termination for Cause. Buyer may also terminate this order or any part hereof for cause in the event of any default by the Seller or if the Seller fails to comply with any of the terms and conditions of this offer. Late deliveries, deliveries of goods, products or services which are defective or which do not conform to this order, and failure to provide Buyer, upon request, of reasonably assurances of future performance shall all be causes allowing Buyer to terminate this order for cause. In the event of any proceedings, voluntary or involuntary, in bankruptcy or solvency, by or against Seller, or in the event of the appointment of an assignee for the benefit of creditors or of a receiver, then Buyer may, at its option, terminate this order. 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.

Proprietary Information, Confidentiality, Advertising. Seller shall consider all information furnished by Buyer 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 order, unless Seller obtains written permission from Buyer to do so. This paragraph shall apply to drawings, specifications, or other document prepared by Seller for Buyer in connection with this order. Seller shall not advertise or publish the fact that Buyer has contracted to purchase goods or services from Seller, nor shall any information relating to the order be disclosed without Buyer's 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.

Warranty. Seller expressly warrants that all goods or services furnished under this order 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 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 Buyer 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 respects 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 Buyer, its successors, assigns and customers, and beneficiaries of Services and users of goods and products 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-conformity 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 nonconforming goods or services promptly, Buyer, after reasonable notice to Seller, may make such corrections or replace such goods and services and charge Seller for the cost incurred by Buyer in doing so.

Price Warranty. Seller warrants that the prices for the articles or services sold to Buyer hereunder are not less favorable than those currently extended to any other customer for the same or similar services or articles in similar quantities. In the event Seller reduces its price for such articles or services during the term of this order, Seller agrees to reduce the prices hereof correspondingly. Seller warrants that prices shown on this order shall be complete, and no additional charges of any type shall be added without Buyer's express written consent.

Force Majeure. Buyer may delay delivery or acceptance occasioned by causes beyond its control. Seller shall hold such goods at the direction of the Buyer and shall deliver them when the cause affecting the delay has been removed. Buyer shall be responsible only for Seller's direct additional costs in holding the goods or delaying performance of services under this order at Buyer's request. Causes beyond Buyer's 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.

Intellectual Property. Seller agrees upon receipt of notification to promptly assume full responsibility for defense of any suit or proceeding which may be brought against Buyer or its agents, customers, 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 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.

Insurance. Seller shall maintain all necessary insurance coverage, including Commercial General Liability, Employer's Liability, and Workmen's Compensation Insurance.

Indemnification. To the extent Seller's employees, agents or sub-contractors enter upon Buyer's property or property of its customers or suppliers, in the course of performance of this order, the Seller shall indemnify, defend and hold Buyer harmless from and against any and all damages for injury caused to persons including both Buyer's and Seller's employees, or property by reason of Seller's operations hereunder, other than for such damages caused by the negligence of Buyer, its agents or employees. Further, Seller shall defend, indemnify and hold harmless Buyer 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 or Seller, its agents, employees or subcontractors. This indemnification shall be in addition to the warranty obligations of Seller.

Changes. Buyer 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 order shall be modified in writing accordingly. Seller agrees to accept any such changes subject to this paragraph.

Inspection/Testing. Payment for the goods delivered or services performed hereunder shall not constitute acceptance thereof. Buyer shall have the right to inspect such goods and services and to reject any or all of said goods or services which are in Buyer's judgment defective or nonconforming. Goods or services rejected and goods supplied in excess of quantities called for herein may be returned to Seller at its expense and, in addition to Buyer's other rights, Buyer may charge Seller all expenses of unpacking, examining, repacking and reshipping with respect to such goods or may obtain a credit with respect to such rejected services. In the event Buyer receives goods whose defects or nonconformity is not apparent on examination, Buyer reserves the right to require replacement, as well as payment of damages. Nothing contained in this order shall relieve in any way the Seller from the obligation of testing inspection and quality controls.

Entire Agreement. This order and any documents referred to on the face hereof, constitute the entire agreement between the parties and may be superseded only in the event of the existence of a written contract, separate from this document, between the Buyer and Seller.

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

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

Shipment. 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 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 Buyer.

Waiver. Buyer's failure to insist on performance of any of the terms or condition 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.

Delivery. Time is of the essence of this order, and if delivery of items or rendering of services is not completed by the time promised, Buyer reserves the right without liability in addition to its other rights and remedies to terminate this order by notice effective when received by Seller as to items not yet shipped or services not yet rendered and to purchase substitute items or services elsewhere and charge Seller with any loss incurred.

Limitation of Buyer's Liability – Statute of Limitations. In no event shall Buyer 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 order or from the performance or breach thereof shall in no case exceed the price allocable to the goods or services or unity thereof which gives rise to the claim. Buyer shall not be liable for penalties of any description. Any action resulting from any breach on the part of Buyer as to the goods or services delivered hereunder must be commenced within one year after the cause of action has accrued.