

PURCHASE ORDER TERMS AND CONDITIONS

1. **DEFINITIONS:** In these Terms and Conditions and all documents related to the Purchase Order: “Purchaser” means the entity issuing the Purchase Order as identified on the front of the Purchase Order, “Seller” means the person, firm or company to whom the Purchase Order is placed, “Purchase Order” means the Purchaser’s Purchase Order and any written amendments thereto signed by Purchaser, “Article(s)” means all articles, products, materials, or services described in the Purchase Order.
2. **ACKNOWLEDGEMENT AND ACCEPTANCE:** These Terms and Conditions are an integral part of the Purchase Order and shall apply to any Articles ordered except to the extent that they may be inconsistent with any special terms and conditions appearing on the face of, or otherwise incorporated in, the Purchase Order or in any written amendment signed by Purchaser. The Purchase Order number shall be quoted on all correspondence related to the Purchase Order. Any acceptance of the Purchase Order by the Seller, either in writing or by performance, is limited to and shall be subject to these Terms and Conditions, any special terms and conditions on the face of the Purchase Order, or in any written amendment signed by Purchaser only and Seller is bound by them. Any proposal for additional or different terms in any document supplied by Seller to change the terms of the Purchase Order is rejected and shall not be effective.
3. **CONFORMITY WITH PURCHASE ORDER:** The Articles shall conform to the quantity, quality, and technical specifications and requirements stated in these Terms and Conditions and the Purchase Order, and shall be fit for the purposes for which they are required by Purchaser.
4. **PRICE:** Unless otherwise stated on the face of the Purchase Order, prices shall be fixed and firm and inclusive of all levies, taxes, duties, packing, and delivery of the Articles to their destination(s) specified in the Purchase Order. Seller warrants that the prices shown on the Purchase Order are complete, and no additional charges of any type shall be added without Purchaser’s express written consent. Unless specified otherwise, all currency amounts contained in the Purchase Order are references to United States Dollars.
5. **DELIVERY:** Purchaser’s schedules are based upon the delivery dates shown on the face of the Purchase Order. **TIME IS OF THE ESSENCE, AND SELLER SHALL BE RESPONSIBLE FOR ALL DAMAGES OF ANY KIND INCURRED OR SUFFERED BY PURCHASER AND BY THE ULTIMATE PURCHASERS AND USERS CAUSED BY ANY DELAY OF SELLER, REGARDLESS OF CAUSE, BEYOND THE SCHEDULED DELIVERY DATES.** Articles shall be delivered in the quantities and on the dates or on expiry of the periods specified in the Purchase Order to the place(s) named therein at the risk and expense of the Seller. The Articles shall be properly packed and secured by Seller to guard against breakage, loss or damage so that upon delivery they conform in all respects with the Purchase Order. Title to the Articles shall pass to Purchaser on delivery and acceptance by Purchaser. To the extent that any Article incorporates a design created by Seller for Purchaser, Purchaser shall own such design upon the transfer of title to the Article and Seller shall furnish Purchaser with any documentation of the design in Seller’s possession. Transfer of such title shall not in any way prejudice Purchaser’s right to reject the Articles hereunder. If any or all the Articles are not delivered on the date(s) specified herein, or do not conform to the Purchase Order and these Terms and Conditions the Purchaser shall be entitled to accept or reject any such Articles and return rejected Articles to Seller at Seller’s risk and expense without prejudice to any other right or remedy of Purchaser. Purchaser shall also be entitled to recover from the Seller

any monies paid by the Purchaser in respect of such returned Article(s) together with any additional expenditure reasonably incurred by the Purchaser in obtaining replacement Article(s). Where appropriate, Articles delivered shall be accompanied by Material Safety Data Sheets.

6. **INVOICING AND PAYMENT:** Payment terms for purchase of Articles by Purchaser shall be net forty-five (45) days from Purchaser receipt of each correct and properly delivered invoice. All invoices must include the Purchase Order number, name of the Purchaser representative listed on the face of the Purchase Order, and a description of the Articles. Shipping charges and taxes, or any other additional charges for which Purchaser has agreed to pay, and for which it has not furnished an exemption certificate, shall be itemized separately on each applicable invoice.

7. **WARRANTY:** Seller expressly warrants that all Articles furnished under the Purchase Order: (A) shall conform to all specifications, drawings, descriptions, samples, and standards set forth in or incorporated by reference into the Purchase Order, will be new, and will be free from defects in material and workmanship, latent or patent for a period of twenty four (24) months from installation; (B) shall be merchantable, and will be safe and appropriate for Purchaser's purpose. Any services shall be performed in a professional and workmanlike manner in compliance with all applicable industry standards, laws, rules, and regulations without limiting any requirement to comply with higher standards as required under the Purchase Order. Seller warrants that it has good and marketable title to the Articles and that all Articles are free from claims, including those of infringement or the like, liens, or encumbrances of any third party. Inspection, test, acceptance, or use of, or the payment for, the Articles furnished under the Purchase Order shall not affect the Seller's obligation under these warranties. Seller shall advise Purchaser in the event that any Article has experienced any failure in service or is the subject of any safety warning or recall. Seller's warranties shall run to Purchaser, its successors, assigns, customers, and users of products sold by Purchaser. Seller agrees to promptly replace Articles, or correct defects in any Articles, not conforming to the foregoing warranties or the requirements of the Purchase Order, at Purchaser's election, at no expense to Purchaser, when notified of such nonconformity by Purchaser. In the event of failure of Seller to correct defects in or replace nonconforming Articles promptly, Purchaser, after reasonable notice to Seller, may make such corrections or replace such Articles and charge Seller for the cost incurred by Purchaser in doing so. All repaired or replaced Articles will be warranted as set forth above for the remainder of the twenty four (24) month period applicable to the original Article, or for a period of six (6) months following the date of the completion of the repair or replacement to the satisfaction of Purchaser, whichever is longer. A breach of warranty shall be deemed to accrue not when the Articles are tendered, but when the actual breach is discovered.

8. **CHANGES / MODIFICATIONS:** The Purchaser may unilaterally by a Purchase Order amendment make changes within the general scope of the Purchase Order to the shipping or packaging instructions, technical requirements, delivery dates, the delivery venue, or the quantity/scope of Articles within the Purchase Order. The Seller shall comply with any and all of the above change(s) without delay and the parties shall subsequently agree to an equitable adjustment to the cost of the Articles.

9. **ACCESS:** Purchaser's representatives shall, at all reasonable times, have access to the Seller's work or place(s) of business in connection with the performance by the Seller of the Purchase Order. The Seller shall ensure the same access to the premises of its subcontractors if any.

10. **INSURANCE:** At all times during which the Purchase Order is in effect, Seller shall

maintain insurance coverage as set forth below with carriers reasonably acceptable to Purchaser and licensed to do business in the State of California. Seller will provide certificates of insurance coverage to Purchaser before commencing performance under the Purchase Order. Purchaser shall be named as an additional insured in all such policies, except Workers' Compensation and employer's liability, and each policy will provide that it may not be canceled or modified without providing Purchaser thirty (30) days prior written notice. All insurance policies shall provide for a waiver of subrogation against Purchaser. Workers' Compensation Insurance: For all employees of the Seller and any subcontractor who directly or indirectly provides Articles under this Purchase Order, Seller shall maintain Workers' Compensation Insurance as required by law. Coverage must include statutory coverage for states in which such employees are engaging in work and employer's liability protection of not less than \$2,000,000 per person, \$2,000,000 per occurrence. Commercial General Liability Insurance: Such insurance shall cover all operations by or on behalf of the Seller, and include coverage for bodily injury and property damage, premises and operations, products and completed operations, liability assumed by contract, property damage, and personal injury liability with minimum limits of liability of \$1,000,000 per occurrence \$2,000,000 aggregate. Comprehensive Automobile Liability Insurance: Seller shall maintain insurance covering all owned, hired, and non-owned vehicles with coverage limits not less than \$2,000,000 combined single limit, per occurrence and annual aggregate.

11. **TERMINATION:** A) Purchaser may terminate the Purchase Order, in whole or in part, for its convenience at any time upon notice to Seller. Upon receipt of such notice, Seller shall, as directed by Purchaser, stop work and the placement of further orders or subcontracts, terminate work under orders and subcontracts outstanding, and take any necessary action to protect property in Seller's possession in which Purchaser has or may acquire an interest. Seller shall be entitled to reasonable termination costs (not including lost profits or revenue), which shall not exceed the percentage of the Purchase Order price reflecting the percentage of the work performed prior to the receipt of the notice of termination plus actual direct economic costs resulting from termination, provided that claims for payment due to termination are asserted within ten (10) days from the date of receipt of notice of such termination. B) Purchaser may cancel and terminate this Purchase Order for cause in the event of: (i) the commencement of any proceeding under applicable bankruptcy or insolvency laws, federal, state, or foreign, by or against Seller; (ii) Seller becoming insolvent; (iii) Seller making any assignment for the benefit of creditors; (iv) a writ of attachment of execution being levied on any property of Seller and not being released or satisfied within 10 days therefrom; (v) a receiver being appointed in any proceeding or action to which Seller is a party; and (vi) the failure by Seller to produce and deliver acceptable Articles in accordance with the delivery schedule set forth in this Purchase Order, or to comply with any other obligation under this Purchase Order. In the event of termination for cause, in addition to any other right or remedy available to Purchaser, Purchaser may produce, purchase, or otherwise acquire Articles elsewhere on such terms and in such manner as Purchaser may deem appropriate, and Seller shall be liable to Purchaser for any excess cost and other expenses incurred by Purchaser in connection therewith. C) Purchaser reserves the right to require the Seller to suspend deliveries or performance of Articles in the event of any strike, lockout, fire, accident, or stoppage of Purchaser's business or work, or other event beyond the control of Purchaser which prevents or hinders the use of the Articles, and payment therefor shall be postponed until such time as deliveries or performance may be resumed.

12. **INDEMNITIES:** Seller shall defend (by counsel satisfactory to Purchaser), indemnify, and hold harmless Purchaser and its parents, subsidiaries, affiliates, and related companies (and

each of their officers, directors, employees, agents, customers, and other vendors) from and against any and all claims, demands, suits, proceedings, costs, liabilities, expenses, royalties, profits, judgments, fines, or penalties, including interest, court costs, and attorneys' fees, which, in whole or in part, arise out of or are in connection with any of the following: (a) any actual or alleged failure of Seller, or the Articles delivered under the Purchase Order, to comply with any applicable federal, state, or local laws, orders, rules, standards, or regulations; (b) any actual or alleged manufacturing or design defects (including, without limitation, latent defects) in the Articles including, without limitation, liabilities sounding in the nature of tort or product liability; (c) any actual or alleged infringement or violation of any patent or registered design, copyright, trademark, tradename, license, or other proprietary right of any third party relating to the sale, manufacture, or use of the Articles; (d) any actual or alleged breach of Seller's warranties or other breach by Seller hereunder; (e) acts or omissions of Seller (or its officers, directors, employees, agents, or subcontractors) in the performance of services under this Purchase Order; or (f) Workers' Compensation, Unemployment Compensation, or Unemployment Disability Compensation claims (or claims under similar laws or obligations) of employees of Seller, its agents, or its subcontractors. Purchaser may be represented by and actively participate through its own counsel in any such suit, claim, demand, or proceeding if it so desires, and the cost of such representation shall be paid by Seller.

13. **LAW:** The Purchase Order shall be governed by the laws of the State of California without regard to its choice or conflicts of law rules. Any dispute shall be settled by binding arbitration in the Los Angeles, California U.S.A. metropolitan area conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

14. **LIMITATION OF PURCHASER'S LIABILITY; STATUTE OF LIMITATIONS:** PURCHASER'S LIABILITY TO SELLER ARISING OUT OF OR IN CONNECTION WITH THIS PURCHASE ORDER, REGARDLESS OF THE FORM OF THE CAUSE OR ACTION, WHETHER IN CONTRACT, TORT, INCLUDING NEGLIGENCE, STATUTE, OR OTHERWISE, SHALL IN NO EVENT INCLUDE INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES EVEN IF PURCHASER IS INFORMED OF THE POSSIBILITY OF SAME. PURCHASER SHALL NOT BE LIABLE FOR PENALTIES OF ANY KIND OR DESCRIPTION. ANY ACTION AGAINST PURCHASER, REGARDLESS OF FORM, ARISING OUT OF OR IN CONNECTION WITH THIS PURCHASE ORDER MUST BE COMMENCED BY SELLER, AND THE COMPLAINT SERVED UPON THE PURCHASER, WITHIN ONE YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.

15. **MISCELLANEOUS: A) ENTIRE AGREEMENT; AMENDMENT:** The Purchase Order, together with any documents or special terms and conditions referred to on the face hereof, or written amendments signed by Purchaser thereto, constitutes the complete, final and exclusive agreement between the parties with respect to the subject matter herein. All prior or contemporaneous agreements, understandings, and proposals, oral or written, between the parties relating to this subject are null and void and superseded by this Purchase Order. This Purchase Order may be modified or amended only by a writing signed by a duly authorized representative of both parties, except as stated in paragraph 8 above. **B) REMEDIES:** No remedy conferred by any of the specific provisions of the Purchase Order is intended to be exclusive of any other remedy, and each remedy shall be cumulative, may be exercised separately or concurrently, and is in addition to every other remedy given hereunder or now or hereafter existing at law, in equity, by statute or otherwise. **SELLER MAY NOT NEGATE, EXCLUDE, LIMIT, OR**

MODIFY ANY WARRANTY OR REMEDY OTHERWISE AVAILABLE TO PURCHASER. ANY ATTEMPT BY SELLER TO DO SO IS INEFFECTIVE, SHALL BE CONSIDERED AS AN ATTEMPT MATERIALLY TO ALTER THE TERMS OF THE PURCHASE ORDER, AND SHALL NOT IN ANY WAY BIND PURCHASER. C)

WAIVER; SEVERABILITY: No right or obligation of a party shall be waived and no breach excused unless the waiver or consent is in writing and signed by a duly authorized representative of the party claimed to have waived or consented. Any provision of the Purchase Order prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remaining provisions of the Purchase Order. **D) ASSIGNMENT:** Seller shall neither delegate its

performance nor assign any rights or claims under the Purchase Order without the prior written consent of Purchaser, which may be granted or withheld in Purchaser's sole discretion. Any attempted delegation or assignment without Purchaser's prior written consent shall be void.

E) CONTINUING OBLIGATIONS: Each party's rights and obligations under paragraphs 7, 12, 14, and 15b shall survive cancellation or termination of the Purchase Order. **F)**

CONFIDENTIAL INFORMATION: Seller shall not disclose information concerning Purchaser or Purchaser's business obtained by Seller in performing this Purchase Order to any other person, firm, or entity. **G) INDEPENDENT CONTRACTOR:** Seller, Seller's employees, agents, contractors and subcontractors shall in all respects and at all times be independent contractors hereunder and not employees, partners, agents or joint venturers of or with Purchaser for any purpose. **H) ETHICAL STANDARDS:** Seller agrees that with respect to its role as a supplier to Purchaser, including any interaction with any employee of Purchaser, it shall not: i) give or offer to give any gift or benefit to such employee; (ii) solicit or accept any services, equipment or commitment, or confidential or proprietary information or data from such employee unless same is (a) required under a contract between Purchaser and Seller, (b) made pursuant to a written disclosure agreement between Purchaser and Seller, or (c) specifically authorized in writing by Purchaser's management; (iii) solicit or accept favoritism from such employee; (iv) use any information it receives in connection with its business dealings with Purchaser to sell, purchase or trade any stock, security or derivative thereof of Purchaser or Purchaser's parent or affiliated companies; (v) enter into any outside business relationship with such employee without full disclosure to, and prior approval of, Purchaser's management. "Employee" includes members of an employee's immediate family and household, "gift or benefit" includes money, goods, services, discounts, favors and the like in any form, but excludes low value advertising items such as pens, pencils and calendars, "favoritism" means partiality in promoting the interest of Seller over that of other suppliers.