

## **TERMS AND CONDITIONS**

**ACCEPTANCE** – Acceptance of this Purchase Order is expressly made conditional on assent to all terms and conditions herein. Additional terms shall not apply nor shall any term hereof be modified or rescinded except by a writing signed by Buyer. Full or partial delivery of goods or performance of services in accordance with this Purchase Order shall constitute acceptance by Seller of these provisions. Except as specifically stated herein, this Purchase Order supersedes all prior oral or written submissions of Seller and constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof. This Purchase Order is intended by the parties as a final expression of their agreement with respect to its terms and also as a complete and exclusive statement of such terms.

**PRICE** - If no price is set forth on the face hereof, the price shall be the lower of the price last charged by Seller for the same or similar goods for the lowest prevailing market price. Except as specifically provided on the face hereof, the price includes all Federal, State and local taxes.

**NONASSIGNABILITY** – Seller shall not assign any rights or delegate any duties under this Purchase Order or assign its rights to any monies due hereunder without the prior written consent of Buyer.

**CHANGES** – Buyer shall have the right from time to time by written notice to Seller to make changes in specifications, design, delivery schedules, testing, packing or destination. If any such change causes an increase or decrease in the cost of, or the time required for Seller's performance, an equitable adjustment shall be made in the contract price or delivery schedule, or both. Any increase in price or extension of time for delivery shall only be binding on Buyer if evidenced by a Change Order signed by Buyer. Any claim by Seller for adjustment under this clause shall be deemed waived unless made in writing within 10 days from receipt by Seller of Buyer's notice of change.

**DELIVERY** – All material shall be suitably packed, marked and shipped in accordance with the requirements of common carriers in a manner to secure lowest transportation cost. No charges will be allowed for packing, crating, freight, express or cartage unless specified on the face hereof. Deliveries are to be made both in quantities and at the time specified by Buyer in this Purchase Order. No variation in the quantity or time of delivery of any goods or services called for by this Purchase Order will be accepted unless such variation has been agreed to in writing by Buyer. As to any shipments which do not comply strictly with these terms, Buyer may at its option (i) refuse to accept such goods or services and terminate this Purchase Order (ii) return all or a part of such shipment to Seller at Seller's risk and expense, including freight (iii) cause Seller to expedite shipment of conforming goods with additional transportation and other charges necessitated thereby to be paid by Seller and (iv) in any case, charge Seller for Buyer's damages suffered through Seller's noncompliance.

**INSPECTION** – All goods and services shall be received subject to Buyer's inspection and tests. If any goods or services furnished hereunder are defective or otherwise not in conformity with the requirements of this Purchase Order, Buyer shall have the right, notwithstanding payment or any prior inspection or tests, to reject them, to require their correction or to require their replacement with conforming goods or services. Goods or services, which are rejected or required to be corrected, shall be removed, at Buyer's option, or corrected in place, by and at the expense and risk of the Seller. If Seller does not promptly replace or repair such rejected goods or services upon Buyer's request, Buyer may secure repair or replacement from any source, deducting the quantities thereof from the quantities specified herein, and charge Seller for all additional cost incurred, including freight, or Buyer may, at its option, terminate the contract between the parties because of the Seller's default.

**WARRANTIES** – Seller expressly warrants that all goods and services provided hereunder will conform to the specifications, drawings, samples or other descriptions furnished or specified by Buyer, will be merchantable, of good material and workmanship and free from defect and will be suitable, fit and sufficient for the purposes for which they

were purchased. This warranty shall survive inspection, acceptance, passage of title and payment by Buyer.

**PATENTS** – Seller shall indemnify Buyer and save Buyer harmless from and against any and all judgments, decrees, costs, including reasonable attorneys' fees and expenses resulting from any claim that the goods sold hereunder infringe any patent, and will defend, at Seller's expense any and all suits or actions at law which may be brought against Buyer for said claim of infringement. Buyer shall give Seller prompt notice in writing of the institution of any such suit or proceeding.

**CANCELLATION** – Buyer shall have the right to terminate this Purchase Order in whole or in part at any time by written notice to Seller. Such termination shall be without cost or obligation to Buyer (i) if it is a result of any breach by Seller or if Seller fails to make satisfactory progress hereunder or (ii) in the event of the happening of any of the following: insolvency of Seller; the filing by Seller of a voluntary petition of bankruptcy; the filing of an involuntary petition to have Seller declared bankrupt; the appointment of a receiver or trustee for Seller or the execution by Seller of any assignment for the benefit of creditors. If termination is for the convenience of Buyer, otherwise than as specified above, the Seller shall be entitled to an equitable adjustment for necessary and reasonable costs incurred prior to termination.

**INDEMNITY** – In the event Seller enters premises owned, leased or controlled by Buyer in the course of delivering goods or providing service hereunder, Seller agrees to indemnify and hold Buyer harmless against all liability, claims or demands for injuries to or death of any person or damage to or loss of any property caused by any act or omission of Seller, its employees or agents. Seller waives any claim it may have against Buyer by subrogation or otherwise with respect to injury to Seller's employees or agents or loss of or damage to its property. Seller agrees to carry public liability and workers compensation insurance to the statutory limits of the location of performance and to provide certificates to Buyer upon request. Seller acknowledges that hazardous chemicals may be present in Buyer's facility and assumes all risks associated therewith. Without waiving the foregoing, Seller agrees to follow all workplace rules of Buyer.

**COMPLIANCE WITH LAWS** – Seller certifies that all goods and services provided hereunder shall comply with all Federal, State and other laws, executive orders and regulations applying thereto including without limitation the Occupational Safety and Health Act of 1970 as amended, the Fair Labor Standards Act of 1938, as amended, the Civil Rights Act of 1964, as amended, Executive Order 11246 of September 24, 1995 as amended, and the rules, regulations and relevant orders of the Secretary of Labor and the Equal Employment Opportunity Commission. Seller further certifies that all chemical substances furnished hereunder fully comply with the Toxic Substances Control Act and the regulations thereunder; are properly labeled in compliance with all appropriate laws and regulations with respect to transportation, workplace hazards and "right-to-know" standards and, except as stated in writing delivered to Buyer, do not contain any substance which would cause disposal to be regulated by the Resource Conservation and Recovery Act. Seller shall, at or prior to the initial delivery, hereunder and as otherwise requested by Buyer, provide Buyer with appropriate Material Safety Data Sheets and other notice and reports required by law or regulation.

**APPLICABLE LAW** – This Purchase Order shall be subject to and construed according to the laws of the state from which this Purchase Order was Issued.

**RIGHTS CUMULATIVE** – The rights and remedies reserved to Buyer in this Purchase Order shall be cumulative and in addition to any other or further rights and remedies available at law or in equity. No waiver of a breach of any provision of this Purchase Order shall constitute a waiver of any other breach or waiver of such provision.

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