

PURCHASE ORDER TERMS AND CONDITIONS

1. Review Of Purchase Order. Seller acknowledges that it has reviewed the terms and conditions of this Purchase Order.
2. Title Of Goods. Immediately prior to the transfer of ownership to Buyer of any and all goods purchased hereunder, Seller shall have good and marketable title to such goods, free and clear of all pledges, liens, security interests, claims and other restrictions or encumbrances or charges of any kind.
3. Price. The price payable to Seller for completing this Purchase Order is a fixed price. All charges for packing, boxing, crating and shipping are deemed to be included therein, and no additional charges of any kind, including, without limitation, charges for boxing, packing, cartage, additional quantity, insurance of any kind upon safe delivery of any shipment or other charges or expenses will be allowed unless specifically agreed to in writing in advance by Buyer. Except as may be otherwise provided in this Purchase Order, the price includes all applicable federal, state and local taxes occasioned by this Purchase Order.
4. Delivery of Goods. Firm delivery requirements will be issued by Buyer. Failure to comply with the delivery requirements may be deemed a material breach of this Purchase Order by Seller. Time is therefore of the essence regarding this Purchase Order. If Seller defaults in delivery of goods, Buyer may cancel this Purchase Order, purchase similar goods and materials from any other person and hold Seller accountable for any damages. Delivery will be F.O.B. at a time and place directed by Buyer. Goods purchased hereunder must be shipped complete and in the proper sequence. All materials delivered shall have attached identification. If applicable, Seller shall furnish to Buyer copies of the instructions, operation and maintenance manuals. These manuals shall include drawings of all equipment. Any and all samples, test reports, certificates of compliance, warranties, guarantees, or the like, in connection with the goods purchased hereunder shall be furnished at no additional cost. Seller shall be strictly liable for any excess shipping charges incurred and also for any damage or loss sustained in transit, storage, delivery or otherwise as a consequence of improper packing, boxing, crating or shipping on Seller's part. Buyer shall not be liable for any delays, suspensions, or cost escalations. If delivery hereunder is made by the vehicles or conveyances of Seller or its carrier, Seller shall be responsible for any injury or damage to persons or property resulting from the operation of said vehicles while on the premises of Buyer, the site of delivery, or trucking to or from said site.
5. Termination. This Purchase Order may be terminated at any time by Buyer without cause, and Seller shall be entitled to payment only for the goods delivered and accepted by Buyer pro-rated to the total price and in no case to profit on undelivered goods.
6. Indemnification. To the fullest extent permitted by law, Seller agrees to indemnify, hold harmless and defend, at Seller's cost, Buyer, its officers, directors, employees, agents, representatives, affiliates, parents and subsidiaries and any person using or selling Buyer's products from and against any and all liability for loss, damage, attorneys' fees or expense which such person or entity may suffer or be held liable for reason of (a) any breach by Seller of any representations, warranties or covenants of Seller pursuant to this Purchase Order, (b) injury (including, without limitation, death) to any person (including, without limitation, Seller's employees), (c) damage to any property arising out of or in any manner connected with the delivery of the goods whether or not due, in whole or in part, to any act, omission, negligence or strict liability of Buyer, or any of Buyer's representatives, employees or subcontractors, whether known or unknown to Buyer and/or Seller or (d) negligence, recklessness, strict liability or intentional misconduct on the part of Seller or its affiliates, officers, directors, employees, agents, representatives, parents or subsidiaries.
7. Warranties; Guarantees. Seller hereby warrants, and each such warranty shall survive delivery by Seller and payment therefor by Buyer, that the goods purchased hereunder shall be in full conformity with Buyer's specifications, drawings and instructions, free from defects, patent or latent, and are merchantable and suitable for their intended use. Seller further guarantees that any machinery, equipment, devices, etc., purchased hereunder will strictly comply with all applicable safety requirements and standards. Furthermore, any warranty or guarantee supplied to Seller by a third party, including, without limitation, any supplier of Seller, in connection with the goods, in whole or part, purchased hereunder shall transfer to Buyer to the fullest extent permitted or be held by Seller in Buyer's benefit.
8. Rights And Remedies Reserved To Buyer. Buyer shall have the right to inspect and approve any of the goods so purchased both during the process of manufacture or performance, as the case may be, and in the completed stage, at either Seller's location, Buyer's location or in transit, with the right reserved to Buyer to reject the goods, in whole or in part, within a reasonable time following actual discovery of any patent or latent defect therein. In case of the purchase of any goods which may be found defective, whether used or unused, Buyer, at its option, may either return to Seller all or any part thereof for credit by Seller to Buyer or hold all or any part thereof at Seller's disposition and, in either such event, terminate the contract without further liability to Buyer. All goods so rejected, whether returned to Seller or held by Buyer at Seller's disposition, shall be credited by Seller to Buyer at the price or prices charged hereunder plus any expenses reasonably incurred by Buyer in the inspection, receipt, transportation, care or custody thereof. In the event that the credits to which Buyer is entitled as a consequence of such rejection exceed the sums owing by Buyer to Seller, then, Seller shall refund forthwith to Buyer all such excess credits. Seller, in addition to all other guarantees and warranties contained in this Purchase Order, as well as those imposed by law, and not in limitation of Buyer's other legal rights, warranties, and guarantees, warrants and guarantees that it shall perform at Buyer's request, for a minimum of three years after the date of final acceptance of goods purchased pursuant to this Purchase Order, any corrective work regarding such goods purchased that are discovered to be defective or not in compliance with Buyer's purchase requirements, applicable safety requirements or standards or applicable laws, rules or regulations, without cost and as directed by Buyer, except where such defect is due solely to Buyer's gross negligence in storage of such goods. Buyer may demand assurance by bond or otherwise, from Seller that it will abide by its guarantees and warranties. The remedies herein reserved to Buyer shall be cumulative and additional to any other remedies provided in law or equity, and no waiver by Buyer of a breach of any provision of this Purchase Order shall constitute a waiver of any other breach of any other provision hereof.
9. Intellectual Property. Seller warrants that the sale or use of the goods purchased hereunder will not infringe any patent, copyright, trademark or other intellectual property right, whether registered either in the United States or any foreign country or unregistered, and Seller hereby agrees to indemnify and save harmless and promptly and punctually to defend, at Seller's cost, Buyer, its affiliates and their respective employees, officers, directors, agents, representatives, parents, subsidiaries and affiliates, and any person selling or using Buyer's products from any losses, damages, claims, liabilities, charges, actions, suits, proceedings, fines, penalties, costs, expenses (including, without limitation, attorneys' fees and expenses), settlement amounts and other amounts, including, without limitation, costs and expenses and claims for profits, by reason of any actual or alleged infringement by Buyer or persons selling or using Buyer's products of any patent, copyright, trademark or other intellectual property right, whether registered either in the United States or any foreign country or unregistered, applicable to the use or sale of the goods purchased hereunder.
10. Supplier Information. If requested by Buyer, Seller shall furnish Buyer within 10 days complete information regarding sources of supply for all purchased materials required for its performance under this Purchase Order, including names and addresses of sources, responsible persons representing sources, and purchase order and shipping data provided, however, that Seller shall not be required hereunder to release information concerning prices or costs of such purchased materials.
11. Assignment. This Purchase Order, or any of Seller's rights or obligations created hereunder, may not be assigned or transferred, by operation of law or otherwise, by Seller without Buyer's prior written consent, which consent may be withheld in Buyer's sole discretion. If Seller attempts to assign or transfer this Purchase Order without the prior written consent of Buyer, such assignment or transfer shall be null and void and have no legal effect.
12. Amendment. Subject to applicable law, the terms and conditions of this Purchase Order may be amended, modified or supplemented only by written agreement of the parties hereto.
13. Rental Equipment. In the event this Purchase Order includes the leasing, renting or use of rental equipment, Seller and any person providing the rental equipment shall assume the responsibility for providing insurance in the amount of the full value of said equipment and shall hold Buyer harmless from any damage or loss to said equipment whether or not such damage or loss was caused in whole or in part by the negligence, strict liability or other actions or inactions of Buyer. Any conflict that may exist between the terms and conditions hereof and any additional lease, rental agreement or other document pertaining to the use of rental equipment shall be resolved in accordance with the terms and conditions of this Purchase Order.
14. Insurance. (a) Seller shall maintain insurance coverage of at least the following amounts: (i) Commercial General Liability Insurance with a minimum Limit of Liability of \$1,000,000 each occurrence, \$1,000,000 Products/Completed Operations Aggregate Limit and \$2,000,000 General Aggregate Limit; (ii) Commercial Automobile Liability Insurance including Owned, Hired and Non-Owned Vehicles with a minimum limit of \$1,000,000 each accident; (iii) Workers' Compensation Insurance which provides Statutory Benefits and Employers Liability Insurance with limits of \$500,000 (each accident and each employee by disease) and (iv) any other insurance as may be required by law. (b) Seller shall provide its own Property Insurance on all materials that are part of this Purchase Order until such time as the materials are accepted by Buyer. In addition, Seller is required to provide its own Property Insurance for its own equipment, materials and tools that are used by Seller in connection with the delivery of such materials that are not part of this Purchase Order. (c) Seller waives all rights of recovery or subrogation against Buyer for damage caused by fire or other perils to the extent covered by insurance obtained pursuant to this Purchase Order, whether or not such damage was caused by the negligence, strict liability or other actions or inactions of Buyer or not.
15. Compliance with Laws. Seller shall in the fulfillment of this Purchase Order comply with all applicable federal, state and local laws, rules, orders and regulations.
16. Litigation. In the event of litigation between Buyer and Seller, if Buyer prevails, Seller will be liable for all awards or judgments as well as professional fees and costs including, without limitation attorneys' fees, incurred by Buyer. Seller also consents to join in any proceeding brought against Buyer by any party arising out of the work or any claim related thereto.
17. Confidentiality. Each party agrees that it will not use, other than for purposes of the business relationship, or reveal or make known to any person, firm or entity, other than such party's employees with a need to know, any Confidential Information (as defined herein) disclosed to it by the other in connection with this Purchase Order. "Confidential Information" includes, without limitation, information that relates to the financial status, business plan, product research and development plans, client relationships, supplier relationships, project or sales opportunities, proposal or bid strategies, or corporate strategies, and any other information that has been marked "Confidential" by the disclosing party, or if orally disclosed identified as confidential at the time of disclosure. Each party agrees to use at least the same degree of care to avoid disclosure or dissemination of the other party's Confidential Information, but in no event less than a reasonable degree of care. Notwithstanding anything to the contrary set forth herein, Confidential Information does not include and the obligations of this Purchase Order shall not apply to any information that (a) at the time of disclosure, is part of the public domain, (b) subsequent to the time of disclosure, becomes part of the public domain other than through breach of the receiving party, (c) is furnished to the receiving party by a third party who is in lawful possession of such information and who lawfully conveys that information or (d) is required to be disclosed by any applicable court order, state rule or regulation of any court of competent jurisdiction or federal rule or regulation of any court of competent jurisdiction.
18. Severability. Except for Section 2, any provision of this Purchase Order that are determined to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability in such jurisdiction, without rendering invalid or unenforceable the remaining provisions hereof or affecting the validity or enforceability of any of the provisions of this Purchase Order in any other jurisdiction.
19. Third Party Beneficiaries. Except as expressly stated herein, nothing in this Purchase Order is intended to confer benefits, rights or remedies unto any person, firm or entity other than the parties hereto or their permitted successors or assigns.
20. Conflict With A Master Agreement between the Parties. Any conflict that may exist between the terms and conditions hereof and the terms and conditions of any master supplier agreement between the parties hereto and pertaining to the sale of the goods purchased hereunder shall be resolved in accordance with the terms and conditions of such master supplier agreement.
21. Governing Law. This Purchase Order shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania (regardless of the laws that might otherwise govern under applicable Pennsylvania principles of conflicts of law) as to all matters, except where Pennsylvania law is preempted by federal law, in which event federal law shall govern.
22. Headings. The headings contained in this Purchase Order are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Purchase Order.