

## PURCHASE ORDER TERMS AND CONDITIONS

**1. Intermittent Work Contract.** This purchase order is issued pursuant to, and is subject to, that certain Intermittent Work Contract between Buyer and Seller dated:

\_\_\_\_\_ (“IWC”).

In the event of any conflict between the terms and conditions of the IWC and those of this purchase order, or where this purchase order is silent as to any issue, the terms and conditions of the IWC shall control. In the event that no IWC has been executed between Buyer and Seller, the terms and conditions of this purchase order shall control.

**2. Acceptance - Agreement.** This purchase order must be accepted in writing by Seller. If for any reason Seller should fail to accept it in writing, any conduct by Seller which recognizes the existence of a contract pertaining to the subject matter hereof shall constitute acceptance by Seller of this purchase order and all of its terms and conditions. Any terms proposed in Seller's acceptance of Buyer's offer which add to, vary from, or conflict with the terms herein are hereby objected to. Any such proposed terms shall be void, and the terms herein and in any documents referred to on the date hereof shall constitute the complete and exclusive statement of the terms and conditions of the contract between the parties, and may hereafter be modified only by written instrument executed by the authorized representatives of both parties. If this purchase order has been issued by Buyer in response to an offer from Seller, and if any of the terms herein are additional to or different from any terms of such offer, then the issuance of this purchase order by Buyer shall constitute an acceptance of such offer subject to the express conditions that Seller assent to such additional and different terms herein, and acknowledge that this purchase order and any documents referred to on the face hereof constitute the entire agreement between Buyer and Seller with respect to the subject matter hereof and the subject matter of such offer. Seller shall be deemed to have so assented and acknowledged unless Seller notifies Buyer to the contrary in writing within ten (10) days of receipt of this purchase order.

**3. Termination for Convenience.** Buyer may at any time terminate this purchase order in whole or in part for Buyer's convenience upon written notice to Seller, in which event Seller shall be entitled to reasonable termination charges consisting of a percentage of the purchase order price reflecting the percentage of the goods or services furnished by Seller prior to such termination, plus actual direct costs resulting from such termination.

**4. Termination for Cause.** Buyer may also terminate this purchase order in whole or in part for cause in the event Seller fails to comply with any of the terms and conditions of this purchase order. Late deliveries, deliveries of goods or services which are defective or which do not conform to this purchase order, and failure to provide Buyer, upon request, of reasonable assurances of future performance shall, among other things, all be causes allowing Buyer to terminate this purchase order for cause. 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 for cause.

**5. Warranty.** Seller expressly warrants that all goods or services furnished under this purchase order shall conform to all applicable and appropriate specifications and standards, will be new unless otherwise agreed upon by the parties, 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, labels, or advertisements for such goods or services, and that all goods will be adequately contained, packaged, marked, and labeled. Seller warrants that all goods or services furnished hereunder will be merchantable, and will be safe 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 all goods or services furnished hereunder will conform in all respects to samples. Inspection, test, acceptance, or use of goods or services furnished hereunder shall not affect 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, customers, and users of goods sold by Buyer.

Seller agrees to replace or correct defects in any goods or services not conforming to the foregoing warranty promptly, without expense to Buyer, when notified of such nonconformity 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 costs incurred by Buyer in doing so.

**6. Price Warranty.** Seller warrants that the price(s) for the goods or services sold to Buyer hereunder are not less favorable than those currently extended to any other customer for the same or similar goods or services in similar quantities. In the event Seller reduces its price(s) for such goods or services during the term of this purchase order, Seller agrees to reduce the prices hereof correspondingly. Seller warrants that price(s) shown on this purchase order shall be complete, and no additional charges of any type shall be added without Buyer's express written consent. Such additional charges include, but are not limited to, shipping, packaging, labeling, custom duties, tariffs, taxes, storage, insurance, boxing, and crating.

**7. Force Majeure.** Buyer may delay delivery or acceptance hereunder for causes beyond its control. Seller shall hold the goods or delay performance of services hereunder at the direction of Buyer, and shall deliver the goods or resume performance of services when the cause effecting the delay has been removed. Buyer may elect to reimburse Seller only for Seller's direct additional costs in holding the goods or delaying performance of services. Causes beyond Buyer's control shall include, but are not limited to, government action or failure of the government to act where such action is required, strike or other labor trouble, fire, acts of God, war, terrorism, insurrection, riot, or unusually severe weather.

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

**9. Independent Contractor.** In the event that Seller's obligations hereunder require or contemplate performance of services by Seller's employees or agents, or persons under contract to Seller, to be done on Buyer's property, or property of Buyer's customers, Seller agrees that all such services shall be done as an independent contractor and that the persons doing such services shall not be considered employees of Buyer.

**10. Insurance.** Seller shall maintain all necessary insurance coverage, including public liability and worker's compensation insurance.

**11. Indemnification.** Seller shall defend, indemnify and hold harmless Buyer against all damages, claims or liabilities, and expenses (including attorney's fees), arising out or resulting in any way from the goods or services purchased hereunder, or from any act or omission of Seller, its agents, employees or subcontractors. This indemnification shall be in addition to the warranty obligations of Seller.

**12. Changes.** Buyer shall have the right at any time to make changes to drawings, designs, specifications, material, packaging, time and place of delivery and method of transportation of goods or services purchased hereunder. 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 purchase order shall be modified in writing accordingly. Seller agrees to accept any such changes made by Buyer pursuant to this paragraph.

**13. Inspection/Testing.** Payment for the goods or services delivered hereunder shall not constitute acceptance thereof. Buyer shall have the right to inspect such goods or services and to reject any or all of said goods or services which are in Buyer's judgment defective or nonconforming. For goods or services rejected, or supplied in excess of quantities called for herein, in addition to Buyer's other rights: (i) goods may be returned to Seller and Buyer may charge Seller all expenses of unpacking, examining, repacking, and reshipping; (ii) Buyer may request reperformance of services at Seller's expense. In the event Buyer receives goods or services whose defects or nonconformity is not apparent on examination, Buyer reserves the right to require replacement or reperformance, as well as payment of damages. Nothing contained in this purchase order shall in any way relieve Seller from the obligation of testing, inspection, and quality control of Seller's goods or services.

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

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

**16. Shipment.** If in order to comply with Buyer's required delivery date it becomes necessary for Seller to ship by a more expensive method than specified in this purchase order, any increased transportation costs resulting therefrom shall be paid for by Seller, unless the necessity for such rerouting or expedited handling has been directly caused by Buyer.

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

**18. Waiver.** Buyer's failure to insist on performance of any of the terms or conditions 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.

**19. Limitation on Buyer's Liability.** In no event shall Buyer be liable for any anticipated profits or for any 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 purchase order, or from the performance or breach thereof shall in no case exceed the price allocable to the goods or services, or unit thereof which gives rise to the claim. Buyer shall not be liable for penalties of any kind. Any action resulting from any breach on the part of Buyer as to the goods or services furnished hereunder must be commenced within one (1) year after the cause of action has accrued.

**20. Governing Law and Jurisdiction.** This purchase order shall be governed by and interpreted in accordance with the laws of the state of Ohio, without giving effect to applicable conflicts of laws. The exclusive jurisdiction for any dispute brought in connection with this purchase order shall be, in Buyer's sole and absolute discretion, either the state or federal courts in or for Belmont County, Ohio, or the location where goods will be delivered or services performed ("Chosen Courts"). Seller (a) waives any objection to venue in any such action or proceedings in the Chosen Courts, (b) irrevocably submits to the jurisdiction of the Chosen Courts, (c) waives any objection that the Chosen Courts are an inconvenient forum or do not have jurisdiction over any party, and (d) agrees that service of process shall be effective if written notice is given by Buyer or as may be required by the Chosen Courts.

**21. Equal Employment Opportunity.** Unless otherwise exempt, Seller shall comply with the requirements of Executive Order 11246, the Equal Employment Opportunity Clause, Certification of Nonsegregated Facilities, Section 503 of the Rehabilitation Act of 1974, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, and Executive Order 11625 (entitled National Program for Minority Business Enterprises), as may be amended or superseded, and all applicable rules and regulations promulgated thereunder, specifically incorporating by reference the provisions of 41 CFR Sections 60-1.4, 60-1.8(b), 60-741.4, 60-250.4, and 1-1310.2, respectively.

**22. Terms of Payment.** Invoices offering an acceptable cash discount will be paid according to discount terms as agreed to by the parties. If the shipping date of goods or date of completion of services is later than the invoice date, the later date will be used as the invoice date.

**23. Conflicts of Interest.** Seller hereby acknowledges that it has disclosed to Buyer the names of all officers, partners, owners or employees of Seller (a) who are responsible for the negotiation, procurement, performance, supervision, or administration of this purchase order, and (b) who are related to salaried employees of Buyer, or any parent, subsidiary, or affiliate of Buyer thereof by blood, marriage, or adoption (except relationships more remote than first cousin).

*[Remainder intentionally left blank.]*