



## Terms and Conditions of Purchase

THIS ORDER IS SUBJECT TO THE TERMS AND CONDITIONS OF PURCHASE APPEARING ON THE FRONT AND REVERSE SIDE HEREOF. ANY ADDITIONAL OR CONFLICTING TERMS AND CONDITIONS ARE OBJECTED TO.

1. Buyer's order number (including letters) and ordering location name must appear on all invoices, packing lists, shipping cartons and correspondence. A packing list must accompany all shipments.
2. Unless otherwise specified, Buyer's purchases are for resale and no sales or use taxes shall be charged. Seller is responsible for requesting any required certification from Buyer.
3. Use Buyer designated carrier only. Do not purchase transportation insurance unless requested. Freight over-payments or over-charges are subject to a handling charge and will be deducted from the invoice payment.
4. Render a separate invoice in duplicate for each order and shipment to the attention of Vendor Auditing Department MS80; PO BOX 6925 MS80; Cleveland, Ohio; 44101-2193.
5. A copy of the invoice marked "Duplicate" must be sent to the ordering location within five days of shipment for all merchandise delivered to our customers or to a destination other than the ordering location.

1. Acceptance of Contract. All orders for goods, materials or work to be performed ("goods") become a contract subject to the terms and conditions set forth herein when accepted by acknowledgment or commencement of performance by Seller and such terms and conditions constitute the entire agreement between the parties. No change in such terms and conditions shall be valid unless agreed to in writing by an authorized corporate officer of Buyer.

2. Delivery. Time is of the essence. Failure to deliver by the required delivery date specified in Buyer's order may result in substantial damages to Buyer due to commitments to its customers. In addition to its other remedies, Buyer may cancel an order in whole or in part without liability if delivery is not made within the time specified on the order.

3. Transportation and Packaging. Damage and/or loss resulting from improper packaging, preparation or loading shall be charged to Seller.

4. Title, Risk of Loss, Inspection, and Acceptance of the Goods. Regardless of F.O.B. terms of sale, title to and risk of loss shall pass and acceptance of the goods shall take place when such goods have been delivered to Buyer's specified destination and have passed Buyer's inspection and tests. In no event shall payment be deemed to constitute acceptance.

### 5. Prices.

(a) Buyer is liable only for the price indicated on this order. If the price is omitted from the order, Seller shall invoice at the price last quoted to Buyer or paid by Buyer for such goods in equal quantities.

(b) Seller warrants that the prices for the goods are not less favorable than those currently extended to any other customer for the same or like goods under conditions similar to those specified in Buyer's order. In the event Seller establishes or offers a lower price for the sale of such goods in such quantities, Seller agrees to reduce the prices hereof correspondingly.

(c) No additional charges of any kind will be allowed unless specifically agreed to in writing in advance by Buyer.

### 6. Warranties.

Buyer shall have the right to all Buyer's remedies and Seller's warranties to the fullest extent provided under the Uniform Commercial Code, including, but not limited to, warranties of merchantability and fitness, and such remedies and warranties shall survive inspection, tests, acceptance and payment.

7. Indemnification. Seller shall indemnify and hold Buyer harmless against all liability, cost and expense (including, without limitation, Buyer's costs of testing and inspection, court costs and reasonable attorney's fees) on account of claims or injuries to persons or damage to property based in whole or in part upon any act or omission of Seller, its agents, employees and subcontractors or as a consequence of any breach of Seller's warranties. Further, Seller agrees to indemnify and hold Buyer harmless against all liability, costs and expense (including, without limitation, Buyer's costs of testing and inspection, court costs and reasonable attorney's fees (incurred by Buyer in connection with or related to any recall, inspection, testing, replacement or correction of the goods or any part or equipment into which the goods are incorporated, which results from or is related to, in whole or in part, a defect or alleged defect in the goods.

Seller shall furnish Buyer with insurance certification from Seller's insurance carrier showing that Seller has comprehensive general liability insurance coverage, including products liability coverage, currently in force in an amount of not less than \$1,000,000 combined single limit bodily injury and property damage. Such certification shall also contain a vendor's endorsement showing Buyer as an additional insured vendor under Seller's insurance policies and shall provide for thirty (30) days prior written notice to Buyer from Seller's insurance carrier in the event of cancellation or termination of such coverage. The purchase of such insurance coverage or the furnishing of such certification shall not be deemed in lieu of Seller's liability hereunder, nor shall it in any way modify Seller's indemnification of Buyer.

8. Patent/Copyright. Except when Buyer supplies all drawings and specifications for the goods, Seller shall defend, protect and save Buyer, its successors, assigns, customers and users harmless from all claims, liability, costs or expense (including, without limitation, court costs and reasonable attorney's fees), whether in law or in equity, arising out of or existing because of the infringement or alleged infringement of any patent or copyright for or on account of the manufacture, sale or use of any goods furnished hereunder.

### 9. Excess Quantities/Non-Conforming Goods/Substitutions.

Goods in excess of those specified, non-conforming goods or unauthorized substitutions shall not be accepted by Buyer and any such goods will be held at Seller's risk, and all transportation charges, both to and from the original destination, shall be paid by Seller.

## Terms and Conditions of Purchase

10. Manufacture and Material Commitments. Seller shall not make commitment for materials nor fabricate in advance of time necessary to permit shipment on delivery dates unless authorized in writing by the Buyer.

11. Cancellation. Buyer shall have the right by written notice to cancel, suspend or modify the goods and services to be furnished by Seller under Buyer's order. Buyer shall only be liable to Seller for the agreed upon price for goods accepted by Buyer and for Seller's costs for reasonable materials and actual work performed up to the time of cancellation for goods not otherwise usable or saleable by Seller, net of salvage value. Buyer shall not be liable for Seller's anticipatory profits and/or consequential damages.

12. Default. Buyer reserves the right, by written notice to cancel any order without liability to Buyer in the event of

- (i) insolvency of Seller,
- (ii) the filing of a voluntary Petition of Bankruptcy by Seller,
- (iii) the filing of an involuntary petition to have Seller declared Bankrupt,
- (iv) the appointment of a Receiver or Trustee for Seller, or
- (v) the execution by Seller of an Assignment for the Benefit of Creditors.

If Seller fails to perform, or breaches any of the terms, Buyer reserves the right immediately upon such failure of performance or breach, and without any liability to Buyer

(i) to cancel the order in whole or in part by written notice to Seller, or

(ii) after notifying Seller of such failure or breach and of Buyer's intent to exercise such right, to obtain the goods from another source, with any excess costs resulting therefrom chargeable to Seller. Seller shall be liable for Buyer's damages in connection with such breach or failure to perform including consequential damages reasonably foreseeable by Seller or of which Seller was apprised by Buyer, provided, however, the Seller shall not be responsible for delays or defaults occasioned by fires, Acts of God, wars or riots, but in the event of such occurrence, Buyer reserves the right to cancel the order without liability of any kind.

13. Setoff. Buyer shall be entitled at all times to setoff any amount owing from Seller to Buyer against any amount payable by Buyer pursuant to Buyer's order.

14. Compliance with Laws. Seller shall, in the performance of work under Buyer's order, fully comply with all applicable Federal, state and local laws and regulations (including, without limitation, the Walsh-Healey Act, 41 U.S.C.A. §§35-45, the Occupational Safety and Health Act of 1970, 29 U.S.C.A. §§651-678; The Fair Labor Standards Act of 1938, 29 U.S.C.A. §§201-219, as amended); and the matters set forth in paragraph 18 below, and shall indemnify and hold Buyer harmless from any liability cost or expense (including, without limitation, Buyer's court

costs and reasonable attorney's fees) resulting from Seller's failure of compliance. Seller agrees upon request to furnish Buyer with a certification of compliance with respect to any or all such laws and regulations in such form as Buyer may require.

15. Remedies. The remedies provided Buyer herein shall be cumulative and in addition to any other remedies provided by law or equity. A waiver of a breach of any provision hereunder shall not constitute a waiver of any other breach. The invalidity in whole or in part of any provision hereof shall not affect the validity of any other provision.

16. Applicable Law. The contract resulting from the acceptance of Buyer's order shall be governed by and construed according to the laws of the State of Ohio.

17. Equal Employment. The contract provisions set forth in Section 202 of Executive Order 11246 (equal opportunity), as amended, and the regulations promulgated thereunder (41 CFR Part 60-1), and the provisions, representations or agreements contained in Executive Order 11701 (employment of veterans), as amended, and the regulations promulgated thereunder (41 CFR Part 60-250 and 41 CFR Part 61-250) Executive Order 11758 (employment of the handicapped), as amended, and the regulations promulgated thereunder (41 CFR Part 60-741) and Executive Order 11625 (utilization of minority business enterprises) as amended, and the regulations promulgated thereunder (41 CFR Chapter 1-1-1310) to the extent same are applicable to Buyer's order, are incorporated by reference herein as if fully rewritten with respect thereto. Seller agrees, upon request, to furnish Buyer a certification of compliance with such Executive Orders in such form as Buyer may require.

18. Hazard Communication/Right-To-Know. Seller shall comply with all requirements of the OSHA Hazard Communication Standards (29 CFR Section 1910-1200) all state and local right-to-know laws, and all other Federal, state and local laws regulations relating to hazardous chemicals, including without limitation, the material safety data sheet and product labeling requirements.