



PURCHASE ORDER TERMS AND CONDITIONS

1. **ACCEPTANCE:** This requirements purchase order, together with the attachments and referenced documents, constitutes an offer by Buyer to Seller upon the terms and conditions stated herein and in the body of the order and shall become a binding contract upon acceptance either by acknowledgement or performance in whole or in part. Said offer is limited to said terms and conditions and supersedes all prior oral or written agreements and no deviation there from shall be acceptable. No modifications of terms and conditions of the contract resulting for the acceptance of the purchase order will be binding upon Buyer unless made in writing and signed by Buyer.
2. **DELIVERY:** Deliveries made against this purchase order shall be made only at the times and in the quantities specified in the schedules provided by Buyer. Buyer shall have no liabilities for payment of material delivered to Buyer in excess of the schedules provided. Any product container damaged upon arrival or packaged in an unsafe condition will not be accepted. Buyer reserves the right to cancel this order or reject materials upon default of Seller in time and rate of delivery. Seller is responsible for reasonable costs incurred by Buyer as a result of late deliveries. Buyer reserves the right to refuse at Seller's expense any delivery other than those identified with proper shipping authorization.
 - a. **On-Time Delivery Performance** will be measured against the date and quantities specified and Seller is expected to meet all deliveries 100% on-time.
3. **INVOICING, PAYMENT AND PRICE:** All invoices must show the Buyer's Purchase Order number. Unless otherwise stated in this Purchases Order, invoices for accepted goods and services will be paid within 45 days of receipt. Payment does not constitute acceptance of goods or services. The price stated in this Purchase Order shall not be increased unless specifically authorized in writing by issuance of a revised Purchase Order signed by Buyer. Seller warrants that the prices charged Buyer and stated in this Purchase Order are no higher than prices charged by Seller to others for similar goods or services in similar quantities and conditions.
4. **TAXES:** No sales, use, excise or other taxes, whether federal, state or local, shall be added to the purchase price unless otherwise stated in this Order.
5. **CHANGES:** Buyer shall have the right to make changes to this purchase order by a notice in writing to Seller. If such changes cause an increase or decrease in the amount due under the order or in the time required for its performance, claim for adjustment must be asserted by Seller in writing within 10 working days from the date of the change. Nothing contained with this clause shall relieve Seller from proceeding without delay in the performance of this purchase order as changed or from assuming financial responsibility as a result of non-performance. This purchase order contains all the agreements and conditions of these transactions and no agreement or other understanding in any way



modifying the conditions hereof will be binding upon Buyer unless made in writing as a change of purchase order and signed by Buyer. Without Buyer's prior written approval, Seller shall not change (a) any third party supplier to Seller of services, raw materials, or goods used by Seller in connection with its performance under this Order, or (b) the nature, type, or quality of any services, raw materials, or goods used by Seller or its suppliers in connection with this Order.

- 6. SHIPPING AND BILLING:** Seller agrees (a) to properly pack, mark and ship goods in accordance with the requirements of Buyer and involved carriers in a manner to secure lowest transportation cost; (b) to route shipments in accordance with instructions from Buyer's as indicated on the Purchase Order or as directed by the Buyer's Traffic Department; (c) to make no charge for handling, packaging, storage, transportation, drayage of goods unless otherwise stated in this purchase order and (d) to promptly forward the original bill of lading or other shipping documentation for each shipment in accordance with Buyer's instructions. Seller will include on bills of lading or other shipping receipts correct classification identification of the goods shipped in accordance with Buyer's instructions and carrier's requirements.
- 7. PREMIUM SHIPMENTS:** If Seller's acts or omissions result in Seller's failure to meet Buyer's delivery requirements and Buyer requires a more expeditious method of transportation for the goods than originally specified by Buyer, Seller shall at Buyer's option (a) promptly reimburse Buyer the difference in cost between the more expeditious method and the original method, (b) allow Buyer to reduce its payment against invoices equal to the amount of the difference in cost or (c) ship the goods as expeditiously as possible at Seller's expense and invoice Buyer for only the amount of the normal shipment. Seller shall notify Buyer of all premium shipments made at its expense.
- 8. RIGHT OF INSPECTION / REJECT:** All material or services delivered against this purchase order must conform to the latest specifications of the drawing or purchase order, unless otherwise specified. Buyer reserves the right to test and inspect material within a reasonable period of time at Seller's, Subcontractor's or Buyer's facility. Payment for goods or services shall not constitute acceptance thereof. Buyer, in addition to any other rights which it may have under warranties or otherwise, shall have the right to:
 - a. Reject and return at the Seller's expense defective materials and receive full credit for such returned goods. Removal of defective material from Buyer's facility must be completed within 2 workdays of notice of rejection, unless otherwise agreed to.
 - b. Request replacement of any such material without additional cost to Buyer.
 - c. Retain and use material with an equitable reduction in purchase price.
 - d. Require Seller to perform sort or rework at Buyer's, Subcontractor's or Customer's facility or reimburse Buyer for expenses resulting from sorting or rework performed on Seller's behalf.
 - e. Require reimbursement from Seller for all reasonable costs incurred by Buyer as a result of defective goods.



- 9. BUYER'S PROPERTY:** Unless otherwise agreed to in writing, all layouts, models, tools, gauges, designs, sketches, drawings, blueprints, dies, specifications, engineering data, technical proprietary information, or property shall remain the property of Buyer and Seller agrees to keep all property confidential. Such items, where practical, shall be plainly marked or identified as to ownership. Seller at its own expense shall furnish, keep in good condition, and replace when necessary all tools, jigs, dies, gauges, fixtures, molds and patterns necessary for the production of the goods. The cost of changes to the "tools" necessary to make design and specification changes authorized by Buyer shall be paid for by Buyer. Seller shall provide weekly time lines to Buyer on the status of all tool design and build. Seller shall insure all "tools" with full fire and replacement value coverage. All new "tools" or modifications to "tools" paid for by Buyer shall be made in accordance with the latest revision of Buyer's Machine Build, Checking Fixture, or Tooling Standards. Seller grants Buyer an irrevocable option to take possession of and title to "tools" owned by Buyer or that are special for the production of goods upon payment to the Seller of the book value of "tools" less any amounts previously paid unless such tools are used to produce goods that are standard stock for Seller. All "tools" are to be laid out and must comply to the latest revision of the drawing. Layout results are to be provided to Buyer. Seller shall return property to Buyer, upon request, in the same condition as originally received, reasonable wear and tear excepted. Seller shall not use property except in filling Buyer's orders. Any special tooling for which the full cost or a substantial portion of the cost is included in the purchase price of this purchase order shall upon completion of this purchase order become the property of Buyer and Seller shall return or dispose of said property as directed in writing by Buyer.
- 10. COMPLIANCE WITH LAWS:** Seller agrees that neither Seller nor any of the persons furnishing materials or performing services by this purchase order are employees of Buyer within the meaning or application of any Federal or State Unemployment Insurance Law or other Social Security Law, any Compensation Industrial Accident law or Industrial or Labor law. Seller hereby agrees at its own expense to comply with such laws and to assume all liabilities or obligations imposed by any one or more of such laws with respect to this purchase order. Seller represents that all goods or services supplied will comply with all Federal, State, and Municipal laws, rules and regulations that may be applicable to this purchase order. Seller agrees that all employees utilized by it or its suppliers are covered by the applicable Federal and State labor laws. Seller shall supply a copy of all Material Safety Data Sheets (MSDS) applicable to the materials purchased. Additionally, if requested by Buyer, Seller shall promptly furnish to Buyer, in such form and detail as Buyer may direct: (a) a list of all ingredients contained in goods; (b) the amount of all ingredients; and (c) information concerning any changes in or addition to such ingredients.
- 11. INDEMNITY:** Seller shall be liable for and shall protect, defend, indemnify and save Buyer, its officers, directors, agents and employees, harmless against any and all claims, losses, demands, damages, actions or causes of action, and any and all related costs and expenses of every kind and character, including attorney's fees, suffered by Buyer, its officers, directors, agents and employees, or the person or property of any other person or



corporation, on account of personal injury, or death, or damage to property, occurring, growing out of, incidental to, or resulting directly or indirectly, in whole or in part, from the performance by Seller hereunder or from any actual or alleged defect, latent or patent, in the items and/or services covered by this purchase order, including actual or alleged improper construction or design of the items covered by this purchase order or the failure of said items to comply with Seller's express warranties hereunder or with any of Seller's implied warranties, and whether such loss, damage, injury or liability is contributed to by the negligence of Buyer, or its officers, directors, agents or employees, or from other causes whatsoever, except that Seller shall have no liability for damages or costs incident thereto caused by the sole negligence of Buyer.

- 12. PATENTS:** Seller shall indemnify Buyer and its customers against and hold it harmless from all demands, claims, suits, liabilities, damages, judgments, costs and expenses including attorney fees, resulting from any alleged infringement of any United States or foreign patent with respect to the material or services supplied under this purchase order. Any and all discoveries, inventions and designs, in connection with this purchase order, of any items as to which Buyer furnishes the specifications, shall be promptly disclosed to Buyer and shall become the property of Buyer. Seller and its employees shall upon request, execute all papers necessary to assign such discoveries, inventions and designs to Buyer and to cause at Buyer's expense patent applications to be filed thereon in favor of Buyer. The decision as to whether to file patent applications and to prosecute same shall be made solely by Buyer.
- 13. WARRANTY:** Seller expressly warrants that all the items and/or services covered by this purchase order shall conform to the specifications, drawings, samples or other descriptions furnished to or specified by Buyer; will be merchantable; will be of good material and workmanship; will be free from any defects and will be satisfactory and safe for consumer use. Seller expressly warrants that any items furnished under this purchase order shall be fit and sufficient for the purpose intended by Buyer. Seller shall reimburse Buyer for any labor and materials, including overhead, incurred by Buyer as a result of any items or services covered by the purchase order which do not conform to these express warranties.
- 14. SUPPLIER QUALITY AND DEVELOPMENT PROGRAMS:** Seller agrees to participate in Buyer's supplier quality and development programs as detailed in the Buyer "Supplier Manual."
- 15. VERIFICATION OF GOODS / SERVICES:** Buyer, Buyer's customer, or authorized representative shall be afforded the right to visit Seller's facility during reasonable business hours to review Seller's process and any of Buyer's property.
- 16. DESIGNED ITEMS:** Buyer reserves the right to review design prior to build for any items where design has been subcontracted. CAD, design or print files shall accompany the delivery of designed items.



- 17. TOOLS:** All tools, jigs, dies, fixtures, patterns and equipment furnished to Seller by Buyer to perform the contract, or for which Seller has been reimbursed by Buyer, shall remain the property of Buyer ("Buyer's Tools"). Seller agrees that Buyer has the right at any time, with or without reason, and without payment of any kind to retake possession of or request return of any of Buyer's Tools. Seller shall maintain property damage insurance on Buyer's Tools covering the period when Buyer's Tools are in the Seller's possession. Seller shall keep Buyer's Tools in reasonable repair. Seller shall return to Buyer all of Buyer's Tools immediately upon completing the manufacture of the goods. All shipping charges for Buyer's Tools shall be Buyer's responsibility. Risk of loss during shipment shall be on Buyer.
- 18. INTELLECTUAL PROPERTY RIGHTS:** Buyer owns all interest in and rights to all patents, copyrights, trade secrets, trade dress and any other intellectual property rights related to any goods or services provided by Seller or any information furnished by Buyer to Seller in any form, including software, tools, jigs, documents, drawings, sketches, recordings and any other tangible or intangible personal property (collectively the "IP Rights"). Seller has no license to use any IP Rights of Buyer except as necessary to provide the goods or services under this Agreement. That license is non-exclusive and revocable at any time by written notice from Buyer. Seller assigns to Buyer all IP Rights in any goods or services developed by Seller in connection with Seller's work under this Agreement. Seller will take all reasonable precautions to prevent any unauthorized use of Buyer's IP Rights. Seller will return to Buyer on demand all property relating to any IP Rights. At Buyer's request and expense, Seller will take all steps to assist Buyer in maintaining the validity and enforceability of Buyer's IP Rights.
- 19. ASSIGNMENT:** Seller may not delegate its duties nor assign its obligations herein without the prior written consent of Buyer.
- 20. NO WAIVER OF CONDITIONS:** Failure of Buyer to insist upon strict performances of any of the terms and conditions of this purchase order shall not constitute a waiver of such terms and conditions of a waiver of any default.
- 21. TERMINATION FOR CAUSE:** Buyer, at its option, may terminate this purchase order without any obligation to Seller, upon (a) the filing of a voluntary or involuntary petition under insolvency law or a petition for the appointment of a receiver, or an assignment for the benefit of creditors; (b) the occurrence of any act or omission by Seller that constitutes a material, including breach of warranty, of this purchase order and the failure by Seller to remedy such breach within 10 days after written notice of breach is given to Seller; the failure by Seller to perform services or deliver goods as specified by Buyer; (d) the failure by Seller to make progress so as to endanger timely and proper completion of services or delivery of goods if Seller does not correct such failure or breach with 10 days (or shorter period if commercially reasonable); or (e) the dissolution of Seller. Upon termination of this purchase order pursuant to the foregoing sentence, Seller shall, at Seller's expense, promptly return to Buyer all of the Buyer tools and any drawings, specifications or other technical information pertaining to this purchase order. Termination of this purchase order



shall not affect any liabilities which have arisen prior to termination or may arise after termination based on a transaction made prior to termination, nor any obligations which are, from the context hereof, intended to survive termination of this purchase order.

22. TERMINATION AT WILL: In addition to the foregoing, Buyer may at its option terminate all or part of this purchase order, at any time, for any reason, or for no reason by giving written notice to Seller. Upon receipt of the notice of termination Seller will promptly terminate all work under this purchase order. Buyer's obligation to Seller under this section shall be the following amounts without duplication: (a) the order price for all goods or services under this purchase order which have been completed in accordance with this purchase order and not previously paid for; and (b) the actual cost of work-in-progress and raw materials incurred by Seller in furnishing the goods or services under this purchase order, less, the reasonable value or cost (whichever is higher) of any goods or materials used or sold by Seller with Buyer's written consent, and the cost of any damaged or destroyed goods or material. Buyer will make no payments for finished goods, work-in-process or raw materials, fabricated or procured by Seller in amounts in excess of those authorized in delivery releases, nor for any undelivered goods which are in Seller's standard stock or which are readily marketable. Except as provided in this paragraph, Buyer shall not be liable for and shall not be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest of claims, product development and engineering costs, facilities and equipment rearrangements costs or rentals, unamortized depreciation costs, and general and administrative burden charged from termination of this purchase order.

23. CAUSES BEYOND BUYER'S CONTROL: This purchase order is subject to modifications or cancellation by Buyer in the event of fires, accidents, strikes, labor disputes, government acts, or any other conditions beyond Buyer's control. In such an event, Buyer shall have no obligation or liability.

24. INSURANCE: "Seller agrees to furnish to Buyer promptly upon request a certificate from its insurance brokers or agent showing that it carries adequate Workers' Compensation, and Comprehensive General Liability insurance coverage, including Contractual Liability insurance applicable to this Order. The certificate must show the amount of coverage, policy number, and date of expiration and must require the broker or agent to give Buyer thirty (30) days prior written notice of any lapse or cancellation of any policy. Buyer shall also be shown as an Additional Insured on the Comprehensive General Liability policy reflected on the certificate of insurance if services are to be performed on Buyer's premises. If Seller is self-insured for Workers Compensation coverage, it will, if requested by Buyer, provide the applicable state certificate establishing such status to Buyer. Seller hereby waives all mechanics' liens and claims and agrees that none shall be filed or maintained against Buyer's premises on account of any Supplies and shall cause all its subcontractors, material, men and suppliers (and subcontractors of such parties) to provide similar waivers and agreements in form satisfactory to Buyer."]



- 25. INCONSISTENCIES – ADDITIONAL TERMS:** Any different, contradictory or additional terms or conditions contained in any documents submitted, or which may be submitted by Seller, or claimed by Seller to be oral, are hereby rejected and shall not be binding on Buyer, (unless in writing, signed by a duly authorized representative of Buyer and incorporated herein by specific reference). No acknowledgment or other form of the Seller will modify, supersede, add to or in any way vary or become a part of the terms of this purchase order, even if Purchaser accepts Seller's items and/or services. This purchase order (and the previous purchase order if this purchase order is a revision thereof) constitutes the entire agreement by and between Seller and Buyer.
- 26. EXECUTIVE FORUM – CONSENT TO JURISDICTION – APPLICABLE LAW:** The Seller agrees that no action or proceeding may be maintained by Seller against Buyer except either in the Circuit Court for Kent County, Michigan or in the United States District Court for the Western District of Michigan, and Seller hereby irrevocably waives any rights it may have to commence any action or proceeding against Buyer in any other court. Seller further hereby submits to the personal jurisdiction of the aforementioned courts with respect to any claims related to or arising out of this purchase order or any action or failure to act related thereto, and irrevocably waives any rights or defenses it may have to the commencement or continuation of an action against Seller in the aforementioned courts based on lack of personal jurisdiction or improper or inconvenient venue.
- 27. GRATUITIES:** Seller warrants that it has not offered or given and will not offer or give to any employee, agent or representative of Buyer any gratuity with a view toward securing any business from Buyer by influencing such person with respect to the terms, conditions or performance of any contract with or purchase order from Buyer. Any breach of this warranty shall be a material breach of each and every contract between Buyer and Seller.
- 28. CLAIMS ADJUSTMENT:** Buyer may, at any time and without notice, set off the amount of any claim of Buyer under this purchase order against any payment due Seller under this purchase order or otherwise.
- 29. SET OFF:** In addition to any right of setoff or recoupment provided by law, Buyer shall be entitled at any time to set off or recoup against sums payable by Buyer to Seller or any of its affiliates any amounts for which the Buyer determines in good faith the Seller or any of its affiliates is liable to it under any Order or other agreements with the Seller or any of its affiliates. The Buyer may do so without notice to the Seller.
- 30. PRICE ADJUSTMENTS:** In the event that Buyer's Customer files or has filed against it a petition in bankruptcy or insolvency and, in the course of such proceeding, Buyer permits a reduction in the price(s) paid to Buyer for products incorporating the Supplies, the price paid to Seller for the Supplies from and after the date of such reduction will be automatically adjusted proportionally by the same percentage as the price paid to Buyer by its Customer, and the Order will otherwise remain in effect without modification.



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- 31. PAYMENT UP NON-PAYMENT:** If Buyer's Customer directed, recommended, requested, suggested or otherwise identified Seller as a source of the Supplies: (a) Buyer will pay Seller for the Supplies only following and to the extent of Buyer's actual receipt of payment from that Customer for those goods in which the specific Supplies are incorporated; (b) within three business days of any change in price, specifications or other terms negotiated or proposed between Seller and the Customer, Seller will notify buyer in writing and will immediately adjust its invoices to reflect any price reduction, provided that no change will be binding on Buyer without Buyer's specific written consent.
- 32. ENTIRE AGREEMENT AND AMMENDMENT:** This Order contains all of the terms of the agreement between Seller and Buyer with regard to its subject matter and supersedes all prior oral or written representations, agreements, and other communications between Seller and Buyer. The contract evidenced by this Order may be amended only by a writing signed by Seller and an officer of Buyer.