

TERMS AND CONDITIONS OF PURCHASE

1. ACCEPTANCE - THE TERMS AND CONDITIONS HEREOF, WHEN COUPLED WITH THE MASTER AGREEMENT, IF ANY, BECOME THE EXCLUSIVE AND BINDING AGREEMENT BETWEEN THE PARTIES COVERING THE PURCHASE OF THE MATERIALS ORDERED HEREIN WHEN THIS ORDER IS ACCEPTED BY ACKNOWLEDGEMENT. THIS ORDER CAN BE ACCEPTED ONLY ON THESE TERMS AND CONDITIONS. ADDITIONAL OR DIFFERENT TERMS PROPOSED BY SELLER WILL NOT BE APPLICABLE UNLESS ACCEPTED IN WRITING BY THE BUYER.
2. PRICES - The acceptance of this order constitutes a warranty by Seller to Buyer that the prices to be charged for Materials ordered herein are not in excess of prices charged to other customers for similar quantities and delivery requirements.
3. INVOICES - Invoices shall be submitted in triplicate and shall contain the following information: purchase order number, item number, description of items, sizes, quantities, unit prices, and extended totals in addition to any other information specified elsewhere herein. Bill of Lading or express receipt shall accompany each invoice. In addition, the invoice must contain the following certification: "The Seller herein represents that the Materials covered hereby were produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended." Payment of invoice shall not constitute acceptance of Materials and shall be subject to adjustment for errors, shortages, defects in the supplies, or other failure of Seller to meet the requirements of the order. Buyer may at any time set off any amount owed by Buyer to Seller against any amount owed by Seller or any of its affiliated companies to Buyer.
4. CASH DISCOUNTS - Time in connection with any discount offered will be computed from (i) the scheduled delivery date (ii) the date of actual delivery or (iii) the date an acceptable invoice is received, whichever is later. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the Buyer's check.
5. OVERSHIPMENTS - Buyer will pay only for maximum quantities ordered. Overshipments will be held at Seller's risk and expense for a reasonable time awaiting shipping instructions. Seller shall be responsible for the risk of loss and cost of return shipping.
6. PACKING AND SHIPMENT - Unless otherwise specified, when the price of this order is based on the weight of the ordered Materials, such price is to cover net weight of Materials ordered only, and no charges will be allowed for boxing, crating, handling damage, carting, drayage, storage, or other packing requirements. Unless otherwise specified, all Materials shall be packed, packaged, labeled, marked, and otherwise prepared for shipment in a manner which is (i) in accordance with good commercial practice, (ii) acceptable to common carriers for shipment at the lowest rate for the particular Materials and in accordance with I.C.C. regulations, and (iii) adequate to insure safe arrival of the Materials at the named destination. Seller shall mark all containers with necessary lifting, handling, and shipping information and also purchase order numbers, date of shipment, and the names of the consignee and consignor. An itemized packaging sheet must accompany each shipment. No partial or complete delivery shall be made hereunder prior to the date or dates shown unless Buyer has given prior written consent.
7. DELIVERY - Unless otherwise specifically provided on the face of this order, the Materials called for hereunder shall be delivered on a F.O.B. destination basis. The Buyer reserves the right to cancel this order if shipment is not made by the date specified. The title and risk of loss of the Materials sold by Seller to Buyer hereunder shall pass from Seller to Buyer upon receipt and acceptance by Buyer or such other party specified as the receiving party in the order.
8. WARRANTY - (a) Seller warrants that all Materials delivered hereunder shall be free from defects in workmanship, material, and manufacture; shall comply with the requirements of this order, including any drawings or specifications incorporated herein or samples furnished by Seller, and, where design is Seller's responsibility, be free from defects in design. The foregoing warranties shall constitute conditions and are in addition to all other warranties, whether expressed or implied, and shall survive any delivery, inspection, acceptance, or payment to Buyer. (b) If any Materials delivered hereunder do not meet the warranties specified herein or otherwise applicable, Seller shall, at Buyer's option, (i) correct at no cost to Buyer any defective or nonconforming Materials by repair or replacement within 60 days; or (ii) accept the return of such defective or nonconforming Materials at its expense and risk of loss while in course of return transit, and reimburse Buyer for the order price thereof. The foregoing remedies are in addition to all other remedies at law or in equity or under this order and shall not be deemed to be exclusive. All warranties shall run to the Buyer, its successors and assigns, and to its customers, and users of its products. (c) Buyer's approval of the Seller's material or design shall not relieve Seller of the warranties set forth in this clause, nor shall a waiver by Buyer of any drawing or specification requirement for one or more of the items constitute a waiver of such requirements for the remaining items to be delivered hereunder.

9. INSPECTION - (a) All Materials purchased hereunder shall be subject to inspection and test by Buyer to the extent practicable at all times and places, including the period of manufacture and, in any event, prior to final acceptance. If Buyer conducts an inspection or test on Seller's premises, Seller, without additional charge, shall provide all reasonable facilities and assistance for the safety and convenience of Buyer's inspectors. Notwithstanding any prior inspections or payments hereunder, all items shall be subject to final inspection and acceptance at Buyer's plant within a reasonable time after delivery. Seller waives rights of recovery or subrogation in the event of loss. No inspection or test shall relieve the Seller from responsibility for defects or other failure to meet the requirements for this order. (b) If inspection or test by the Buyer under this provision reveals that any Material is defective in material or workmanship, or otherwise not in conformity with the requirements of this order, Buyer shall have the right either to reject it, require its correction, or accept it with an adjustment in price.

10. CHANGES - Buyer may at any time, by a written order and without notice to sureties or assignees, suspend performance hereunder, increase or decrease the ordered quantities, or make changes within the general scope of this order in any one or more of the following: (i) applicable drawings, designs, or specifications; (ii) method of shipment or packing; and/or (iii) place of delivery. If any such change causes an increase or decrease in the cost of or the time required for performance of this order, an equitable adjustment shall be made in the order price or delivery schedule, or both, and the order shall be modified in writing accordingly. No claim by the Seller for adjustment hereunder shall be valid unless asserted within twenty (20) days from the date of receipt by the Seller of the notification of change; provided, however, that such period may be extended upon the written approval of the Buyer. However, nothing in this clause shall excuse the Seller from proceeding with the order as changed or amended.

11. TERMINATION FOR DEFAULT - (a) It is understood and agreed that time is of the essence under this order. Buyer may, by written notice, terminate this order in whole or in part, in its sole discretion, if the Seller fails (i) to make delivery of the Materials within the time specified herein or any extension thereof by written change order or amendment; or (ii) to replace or correct defective items in accordance with the provision of those clauses hereof entitled "WARRANTY" and "INSPECTION"; or (iii) to perform any of the other provisions of this order or so fail to make progress as to endanger performance in accordance with its terms. (b) In the event of termination pursuant to this clause, Buyer may procure, upon such terms and in such manner as Buyer may deem appropriate, products similar or substantially similar to those so terminated; and the Seller shall be liable to Buyer for any excess costs occasioned Buyer thereby; provided that the Seller shall continue the performance of this order to the extent not terminated. (c) If this order is terminated pursuant to paragraph 11(a), Buyer, in addition to any other rights provided herein, may require the Seller to transfer title and deliver to Buyer, in the manner and to the extent directed by Buyer, (i) any completed items and (ii) such partially completed items and materials, parts, tools, dies, jigs, fixtures, plans, drawing, information, and contract rights as the Seller has produced or acquired for the performance of the terminated part; and Seller shall, upon direction of Buyer, protect and preserve property, as listed in this paragraph, in the possession of Seller. Payment for completed Materials delivered to and accepted by Buyer shall be in an amount agreed upon by the Seller and Buyer (not to exceed the contract price); however, Seller's obligation hereunder to carry out Buyer's direction as to delivery, protection, and preservation shall not be contingent upon prior agreement as to such amount. (d) Failure of Buyer to enforce any right under this clause shall not be deemed a waiver of any right hereunder. The rights and remedies of Buyer under this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this order. Termination of an order in whole or in part does not affect the Buyer's right with respect to any Materials as to which the order is not terminated.

12. TERMINATION - (a) Buyer may terminate, for its convenience, work under this order, in whole or in part, at any time by written or telegraphic notice. Upon any such termination, Seller shall, to the extent and at the times specified by Buyer, stop all work on this order, place no work under orders outstanding hereunder, assign to Buyer all of Seller's interests under terminated subcontracts and orders, settle all claims thereunder after obtaining Buyer's approval, protect all property in which Buyer has or may acquire an interest, and transfer title and make delivery to Buyer of all articles, Materials, work in process, or other items held or acquired by Seller in connection with the terminated portion of this order. Seller shall proceed to comply with Buyer's directions respecting each of the foregoing without awaiting settlement or payment of its termination claim. (b) Within three (3) months from such termination, Seller may submit to Buyer its written claim for termination charges, in the form and with the certifications prescribed by Buyer. Failure to submit such claim within such time shall constitute a waiver of all claims and a release of all of Buyer's liability arising out of such termination. Seller shall not be able to recover any profit, even if, under recognized commercial accounting practices, it appears Seller would have sustained a loss on the order. (c) Payments made under paragraph 12(b) shall not exceed the aggregate price specified in this order, less payment otherwise made or to be made. There shall be excluded from any amounts payable to Seller under this Section 12 all amounts payable in respect to property lost, damaged, stolen or destroyed prior to delivery to Buyer. (d) The foregoing paragraphs (a) to (c), inclusive, shall be applicable only to a termination for Buyer's convenience and shall not affect or impair any rights of Buyer to terminate this order for Seller's default in the performance hereof. Termination of work does not affect Buyer's rights with respect to any Materials as to which the order is not terminated.

13. WAIVER - The failure of Buyer to enforce at any time any of the provisions of this order, to exercise any election or option provided herein, or to require at any time performance by the Seller of any of the provisions hereof shall in no way be construed to be a waiver of such provision, nor in any way to affect the validity of this order or any part thereof, or the right of Buyer thereafter to enforce each and every such provision.

14. SEVERABILITY - If any one or more of the terms or conditions of this order shall be for whatever reason held invalid, then such terms or conditions shall be deemed severable from the remaining terms or conditions contained herein and shall in no way affect the validity of the other conditions contained herein.

15. INSOLVENCY, LOSS OF PROFITS, DAMAGES - The insolvency or adjudication of bankruptcy, the filing of a voluntary petition of bankruptcy, or the making of an assignment for the benefit of creditors, by the Seller, shall be a material breach hereof. In no event shall Seller be entitled to anticipatory profits or to special or consequential damages.

16. SUBCONTRACTING - No subcontracting shall be made by the Seller with any other party for furnishing any of the completed or substantially completed articles, spare parts, or work herein contracted for without the prior written approval of the Buyer.

17. INDEMNIFICATION - (a) Seller agrees to defend and indemnify Buyer, its agents, customers, successors and assigns, against any loss, damage and liability, including costs and expenses, for actual or alleged infringement of any patent, copyright, trademark or other intellectual property right arising out of the use or sale by Buyer, its agents or customers, of the products; provided Buyer shall notify the Seller of any suit, claim or demand involving such infringement and shall permit Seller to defend against or settle the same. If any injunction is issued as the result of any such infringement, Seller agrees, at Buyer's option, to (i) refund to Buyer the amounts paid to Seller hereunder, or (ii) furnish Buyer with an acceptable and non-infringing substitute product. (b) Seller agrees to indemnify and save harmless the Buyer from and against any and all suits, claims, expense, costs and damages caused by or resulting from any alleged or claimed defect in any Materials, whether latent or patent, including allegedly improper construction and design, from the failure of Materials to comply with specifications, breach of any warranty from Seller to Buyer, or from performance, completion or use of the Work ordered herein, or the sale, distribution, use or recall of any of the Materials used to complete this Work or sold to Buyer for resale to others. (c) Seller further agrees that all Materials supplied will be free from liability of royalties, mechanics liens, or other encumbrances, and Seller agrees to indemnify and hold Buyer harmless from these liabilities. The obligations of this clause survive cancellation, termination or completion of this order.

18. BUYER'S PROTECTION IN CONNECTION WITH WORK DONE AT ITS PLANT - The Seller shall take such steps as may be reasonably necessary to prevent personal injury or property damage during any work hereunder that may be performed by any employees, agents or subcontractors of the Seller at the Buyer's plant, and the Seller shall indemnify and hold harmless the Buyer from and against all loss, liability, and damages arising from or caused directly or indirectly by any act or omission of such agents, employees, or subcontractors of the Seller, and Seller shall maintain such insurance against public liability and property damage, and such Employee's Liability and Compensation Insurance, as will protect the Buyer against the aforementioned risks and against any claims under any Workmen's Compensation and Occupational Disease Acts.

19. INSURANCE; CLAIM OR LOSS WAIVER - Seller shall maintain all insurance required elsewhere in this order or other contracts or documents related hereto. To the extent there are no more specific requirements for insurance, Seller will maintain Commercial General Liability, including Contractual Liability and Completed Operations & Products Liability insurance, covering the subject of this order; and Automobile Liability insurance covering all vehicles it uses to carry out this order. Such insurance shall be for amounts, terms and conditions as are customary for businesses similar in type and size to Seller. Seller waives all right of recovery or subrogation with respect to damages, losses or claims, whether or not paid under any of the insurance it maintains.

20. ENVIRONMENTAL EXPOSURE - Seller agrees to indemnify and save harmless the Buyer from and against any and all suits, claims, expense, costs and damages, or costs or expenses of investigation, testing, monitoring, neutralizing, detoxifying, treating, containment, clean-up, remediation or disposal resulting from, arising from, or incurred by Buyer as a result of allegations that Seller's work or materials caused pollution or environmental injury or damage resulting in or causing personal or bodily injury to, illness of, disease of or death of persons, damage to, impairment of, destruction of or loss of use of property, land, soil, water or the atmosphere, and to defend Buyer, at Seller's own expense, against any and all suits and claims.

21. COMPLIANCE WITH LAWS - Seller warrants that all Materials called for herein shall be produced, labeled, transported or performed in compliance with all applicable federal and state laws, rules and regulations and Seller agrees to indemnify and hold Buyer harmless from any liabilities or losses resulting from Seller's failure to do so. Without limiting the foregoing, Seller agrees, through acceptance of this order, to comply with such laws, rules and regulations.

22. 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 or influencing such person with respect to the terms, conditions, or performance of any contract with, or order from, Buyer.
23. NON-DISCLOSURE OF CONFIDENTIAL MATTER - Materials purchased hereunder with the Buyer's specifications or drawings shall not be quoted for sale to others without the Buyer's written authorization. Such specifications, drawings, samples, or other data furnished by the Buyer shall be treated as confidential information by the Seller, shall remain Buyer's property, and shall be returned to it on request by Buyer. The obligations of this Section 23 survive cancellation, termination or completion of this order.
24. ASSIGNMENTS - No right or obligation under this order (including the right to receive monies due hereunder) shall be assigned by Seller without the prior written consent of Buyer, and any purported assignment without such consent shall be void. Buyer may assign this order at any time if Buyer considers such assignment necessary in connection with a sale of Buyer's assets or a transfer of its obligation.
25. BUYER-FURNISHED PROPERTY - All tools or other Materials furnished by the Buyer for use in the performance of this order shall remain the property of the Buyer, shall be used by the Seller in the performance of this order only, in accordance with the requirements of the order relating to such use, and shall be returned to the Buyer when requested upon the completion or termination of the order to the extent not previously delivered to the Buyer.
26. NOTICE OF LABOR DISPUTES - Whenever an actual or potential labor dispute is delaying or threatens to delay the timely performance of this order, Seller will immediately notify Buyer of such dispute and furnish all relevant details. Seller will include a provision identical to the above in each subcontract hereunder and, immediately upon receipt of any such notice, pass it on to the Buyer.
27. PATENT LICENSE - The Seller, as partial consideration for this order and without further cost to the Buyer, hereby grants, and/or agrees to obtain and provide, to Buyer an irrevocable, non-exclusive, royalty-free right and license to, and to have third parties on its or their behalf, make, use and sell (i) any and all inventions and discoveries made, conceived, or reduced to practice in connection with the performance of this order and (ii) products and services embodying, incorporating or produced or performed using any such inventions or discoveries.
28. TOOLING AND DOCUMENTS - All specifications, drawings, or other documents and data furnished by Buyer and all tools, dies, molds, jigs, fixtures, patterns, machinery, special test equipment, special taps and gauges which have been furnished, paid for, or charged against Buyer, or which have had their cost amortized shall be deemed Buyer's property and shall be treated as confidential information, and delivered in good condition, normal wear and tear excepted, by Seller to Buyer F.O.B. the Seller's plant immediately upon Buyer's request. Seller warrants that said items and information will not be used for work or for the production of any products or parts other than for Buyer without Buyer's written Permission.
29. APPLICABLE LAW - This order shall be governed by, subject to, and construed in accordance with the laws of the State of New York.