



TERMS AND CONDITIONS OF PURCHASE ORDERS

- 1. ACCEPTANCE:** This Purchase Order (herein "Order") shall not become binding until the accompanying acknowledgement copy of this Order has been dated, signed by the Seller and received by the Buyer. By accepting this Order, Seller agrees to all the terms and conditions stated in this Order and agrees to perform in accordance with this Order. This Order constitutes an offer to purchase, not an acceptance of any offer to sell, the goods and any services described herein which may be accepted only in accordance with its terms, without modification, addition, deletion or alteration.
- 2. CONSTRUCTION:** No terms or conditions other than those stated herein or specifically referred to in this Order as contained in a previous writing signed by the Buyer's authorized agent shall be binding on the Buyer. All terms and conditions shall be interpreted and governed by the laws of the State of Texas.
- 3. MODIFICATION OR AMENDMENT OF ORDER:** Buyer may at any time, by written change order, make changes in the drawings, designs or specifications applicable to the goods or services covered by this Order, the method or timing of shipment and packing and the place of delivery. If any such change shall affect the time for performance or cost of manufacturing such goods or of furnishing such services, Seller shall notify Buyer of any adjustment in the purchase price or delivery schedule or both within seven (7) days after receipt thereof; otherwise, the change order will be deemed to be accepted by Seller. No agreement or understanding to modify this Order shall be binding on the Buyer unless it is in writing and signed by the Buyer's authorized agent.
- 4. SHIPMENT:** Buyer's production schedules are based upon the agreement that the goods will be delivered, or the services rendered, to Buyer by the date(s) specified on this Order. Time is therefore of the essence with respect to this Order. Shipment must be effected in accordance with the shipping schedule stated on the Order, and if shipment is not made as specified, Buyer reserves the right to cancel the Order without penalty or to purchase elsewhere, and hold the Seller accountable therefor. All goods shall be properly packed, marked and shipped in accordance with the requirements of the common carrier or other carrier transporting such goods and of this Order and in a manner which will permit the securing of the lowest transportation rates. Seller shall route shipments in accordance with Buyer's instructions and shall reimburse the Buyer for all expenses incurred by Buyer as a result of improper packing, marking or routing. Seller shall be liable for excess charges for failure to ship and route the shipment the cheapest way or as instructed. The Seller shall notify Buyer promptly of any delays, actual or potential, including any actual or potential labor disputes which are delaying or threaten to delay the timely performance of this Order. Any understanding or statement, oral or written, which purports or allows a change of the shipment date(s) shall be made as a convenience to the Seller and shall not be construed as a waiver of the shipment date(s), unless this Order is appropriately amended. The Seller shall forward to the Buyer, with the invoice, the express receipt or bill of lading, signed by the carrier, evidencing the fact that shipment has been made. Any transportation charges paid by Seller with respect to which Seller is entitled to reimbursement shall be added to Seller's invoice as a separate item and the receipted freight bill shall be attached thereto. Unless otherwise provided in this Order, no charge shall be made by Seller for containers, crating, boxing, bundling, demurrage, drayage or shortage.

5. PACKING: Each packing slip, bill of lading and invoice shall bear the applicable purchase order number and the location of the plant or other destination to which goods are to be shipped. A numbered master packing slip shall accompany each shipment. If less than a carload is being shipped, the slip shall be included in one of the packages which shall be marked "Packing Slip Inside." In the case of a carload shipment, the slip shall be enclosed in an unsealed envelope and tacked near the door on the inside of the freight car. The original bill of lading shall be marked to the attention of the Shipping Manager at the destination or such other party as Buyer may designate.

6. DELEGATION; ASSIGNMENT: The Seller shall not delegate any duties, nor assign any rights or claims under this Order, or for breach thereof, without prior written consent of the Buyer, and any such attempted delegation or assignment shall be void.

7. WARRANTY AGAINST INFRINGEMENT: Seller warrants that the use or sale of the goods delivered hereunder, either alone or in combination with other goods will not infringe or contribute to the infringement of any United States or foreign claims of any patent, trademark or copyright covering such goods: and Seller agrees, at its sole expense, to defend and indemnify and hold Buyer harmless against all claims, demands, suits, controversies and proceedings against Buyer and anyone selling or leasing any of Buyer's products based on any such alleged patent, trademark or copyright infringement, and to pay all costs, expenses, judgments, damages and all incidental expenses, including, but not limited to, conversion of the infringing good, or purchase of patent, trademark or copyright license.

8. INSPECTION: Goods delivered (whether paid for or not) are subject to inspection, testing and approval by the Buyer before acceptance. Final inspection will be at the Buyer's facilities. Neither receipt of goods hereunder nor payment thereof shall be deemed as acceptance thereof by Buyer. Buyer shall have reasonable time to inspect all goods for apparent defects, and later reject same. Buyer will inspect same prior to incorporation or use by Buyer.

9. PRODUCT WARRANTIES: The Seller warrants that its goods will conform with applicable drawings, specifications, samples or other descriptions furnished or specified by the Buyer (if any) and will be free from defect under normal use and service. Goods not in accordance with descriptions given or defective goods, may be returned at Seller's expense, and Buyer shall have the option of returning such goods to Seller for a refund of the price charged, or replacement in kind, within one (1) year from the date when such goods are placed in operation, and of canceling any unshipped portion of the Order. Seller acknowledges that it has been apprised of the purpose for which the goods purchased hereunder are intended and Seller warrants the same to be fit therefore and of merchantable quality. The Buyer has the right to reject any and all goods upon the discovery of any nonconforming goods. The rejection of any part of the goods is not an implied acceptance of the remainder. The Buyer reserves the right, upon the rejection of nonconforming goods, to treat this contract as breached, or demand continued performance in whole or in part. The Seller agrees to indemnify the Buyer for all costs, judgments, damages, and expenses, including, but not limited to, freight charges, delay cost, labor and material charges for replacement of rejected goods, incurred by the Buyer as a result of the rejected goods. Buyer may retain any nonconforming goods, and make the necessary modifications thereto in order to make goods conforming, and deduct or bill Seller directly for the cost of such modification, including factory overhead at its standard rate, from the purchase price. The foregoing shall not be in limitation of any right which Buyer may have, at law or in equity, by reasons of any breach of warranty, express or implied. Seller also warrants that the goods purchased hereunder are free and clear of all liens and encumbrances whatever and that Seller has good and marketable title to same. The warranties set forth herein shall survive any inspection, testing, delivery, acceptance of, or payment by Buyer for the goods or services provided by Seller to Buyer pursuant to this Order.

10. INDEMNITY AND EMPLOYEE SAFETY: SELLER SHALL INDEMNIFY AND HOLD HARMLESS THE BUYER, ITS SUCCESSORS, ASSIGNS, CUSTOMERS AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS, SUITS, DAMAGES, COSTS, LOSSES, AND EXPENSES RESULTING FROM, OR ARISING OUT OF, ANY NEGLIGENCE IN THE SERVICE PERFORMED OR DEFECT IN THE GOODS PURCHASED HEREUNDER IF THIS ORDER REQUIRES ANY OF SELLER'S EMPLOYEES TO ENTER UPON BUYER'S PREMISES, SELLER SHALL REQUIRE SAME TO ABIDE BY THE SAFETY AND OTHER RULES AND REGULATIONS ESTABLISHED BY BUYER FOR ITS EMPLOYEES. SELLER AGREES TO INDEMNIFY AND HOLD HARMLESS THE BUYER AND ITS SUCCESSORS AND ASSIGNS, FROM ALL CLAIMS BY ANY PERSON FOR BODILY INJURY OR DEATH TO ANY OF SELLER'S EMPLOYEES OR REPRESENTATIVES SUSTAINED UPON BUYER'S PREMISES, REGARDLESS OF THE CAUSE OR CAUSES THEREOF INCLUDING NEGLIGENCE OF BUYER. IN ANY CASE WHERE IT IS NECESSARY FOR EMPLOYEES OR REPRESENTATIVES OF SELLER TO GO UPON THE PREMISES OF BUYER, SELLER AGREES TO ASSUME FULL RESPONSIBILITY FOR THE PROPER CONDUCT OF SUCH EMPLOYEES AND REPRESENTATIVES WHILE ON SAID PREMISES AND TO COMPLY WITH ALL APPLICABLE WORKER'S COMPENSATION LAWS, OTHER APPLICABLE GOVERNMENT REGULATIONS AND ORDINANCES AND ALL PLANT RULES AND REGULATIONS, PARTICULARLY AS TO SAFETY PRECAUTIONS AND FIRE HAZARDS. IF THIS ORDER REQUIRES SELLER TO FURNISH LABOR IN CONNECTION WITH THE ERECTION OR INSTALLATION FOR THE GOODS AT THE SITE. SELLER SHALL FURNISH BUYER WITH A CERTIFICATE, OR OTHER EVIDENCE SATISFACTORY TO BUYER, INDICATING THAT SUCH LABOR IS ADEQUATELY COVERED BY WORKER'S COMPENSATION INSURANCE AND EMPLOYER'S LIABILITY INSURANCE WITH LIMITS ACCEPTABLE TO BUYER.

11. CANCELLATION ON ACCOUNT OF INSOLVENCY: In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against the Seller, the inability of the Seller to meet its debts as they become due, or in the event of the appointment, with or without the Seller's consent of an assignee for the benefit of creditors or of a receiver, then the Buyer shall be entitled, at its sole option, to cancel any unfulfilled part of this Order without any liability whatsoever.

12. FAIR LABOR STANDARDS ACT: By acceptance of this Order and by furnishing goods hereunder, Seller represents and warrants that all the goods herein specified will be and have been produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended and implementing rules and regulations and the Walsh Healy Public Contracts Act and all applicable federal and state labor standards laws and regulations. All goods furnished hereunder shall be accompanied by invoices containing written assurance that such goods were produced in compliance with such requirements.

13. COMPLIANCE WITH LAWS: In the performance of the work hereunder, the Seller warrants that the Seller shall comply at all times with all applicable state, federal and local laws, ordinances, rules and regulations that may be applicable to this Order, including Social Security and Worker's Compensation Laws, Fair Employment Practice Acts, Civil Rights Act of 1964 and implementing rules and regulations. The Seller hereby agrees to certify compliance with all laws, ordinances, rules and regulations on all invoices at Buyer's request, or where required.

14. OCCUPATIONAL SAFETY AND HEALTH: Seller warrants that the goods sold under this Order comply in all respects with the Occupational Safety and Health Act of 1970 and all applicable regulations, rulings, orders and standards promulgated thereunder and applicable state hazard communication laws: and Seller agrees to hold Buyer harmless from any and all liability, claims, civil fines and penalties, including reasonable costs and settlements which may arise out of the failure of the goods to meet such requirements.

15. EXCESS OR INCORRECT MATERIALS: Goods delivered in error, or in excess of the quantity (within published industry tolerances) called for by this Order may at Buyer's option, be returned at Seller's expense.

16. EXCISE TAX: Unless otherwise noted, Buyer represents that the sale of goods covered by this Order is exempt from Federal Manufacturer's Excise Tax. Buyer will pay any tax that may be due on the resale or use of such goods, unless such resale or lease is also exempt from the tax.

17. SALES AND USE TAX: To the extent that the Buyer has represented, for purposes of this Order, that the sale is not subject to the sales or use tax imposed by any state, the Seller agrees that it will not charge sales or use tax. If any of the goods sold are later determined to be subject to sales or use tax, the Buyer agrees to pay such tax.

18. NONDISCRIMINATION AND CERTIFICATION OF INTEGRATED FACILITIES: By acceptance of this Order, the Seller agrees to be bound by the appropriate provisions of Executive Order 11246, Section 202 as amended and implementing rules and regulations of the secretary of Labor, which are hereby incorporated by this reference. The seller further certifies that the Seller will file annual compliance reports that are required by law, and that the Seller does not, and will not, maintain or provide any segregated facilities at any of the Seller's establishments; and that if the Seller has not already done so, the Seller will develop, within one hundred twenty (120) days, a written Affirmative Action Compliance Program to be maintained at each of the Seller's establishments. The Seller agrees to obtain required certifications from all subcontractors, and retain such certifications in the Seller's file.

19. BUYER'S PROPERTY: Whenever Seller shall by virtue hereof have in its possession property of Buyer, Seller shall be deemed an insurer thereof and shall be responsible for its safe return to Buyer. Unless otherwise provided in this Order or any other written agreement between Buyer and Seller, all supplies, materials, facilities, tools, jigs, dies, fixtures, drawings, patterns and equipment furnished to Seller by Buyer to perform this Order shall remain the property of Buyer, and Seller shall bear the risk of loss of and damage to such property, normal wear and tear excepted. Such property shall at all times be properly housed and maintained by Seller, shall be deemed personal property, shall not be commingled with the property of Seller or with that of a third person, shall not be moved from Seller's premises without Buyer's prior written approval, and shall, upon request of Buyer, be immediately delivered to Buyer by Seller f.o.b. cars or trucks at Seller's plant, properly stacked and marked in accordance with the requirements of the carrier selected by Buyer to transport such property or shall, upon request of Buyer, be immediately delivered to Buyer by Seller at any location designated by Buyer, in which event Buyer shall pay to Seller the cost of delivering such property to such location. Buyer shall have the right to enter onto Seller's premises at all reasonable times to inspect such property and Seller's records with respect thereto.

20. TERMINATION: (a) Performance of work under this Order may be terminated by Buyer at its option, in whole or in part, at any time by delivery, or by mailing, of forty-eight (48) hours' advance written notice of termination to Seller. Upon receipt of notice of termination, Seller shall, unless otherwise directed by Buyer, (1) terminate all work under this Order; (2) terminate all orders and subcontracts relating to the performance of the work terminated by the notice of termination; (3) settle all claims arising out of such termination of orders and contracts; (4) transfer title and deliver to the Buyer all completed work which conforms, in quality, to the requirements of this Order and does not exceed, in quantity, the amount authorized for production by Buyer, and conform to the requirements of the Order and which cannot reasonably be used by Seller in producing supplies for itself or for its other customers; (5) take all action necessary to protect property in Seller's possession in which Buyer has or may acquire an interest; and (6) submit to Buyer promptly, and not later than three (3) months from the effective date of termination (one (1) month in the case of partial termination) its termination claim, provided, however, that in the

event of the failure of Seller to submit its termination claim within such period. Buyer may determine, notwithstanding the provisions of subparagraph (b) hereof, on the basis of the information available to it, the amount, if any, to be paid to Seller with respect to the termination, and such determination shall be final. (b) Upon termination by the Buyer under this Section, Buyer shall pay to seller as Seller's exclusive remedy the following amounts without duplication (1) the purchase order price for all goods or services which have been completed and delivered to Buyer in accordance with this Order and not previously paid for; (2) the actual costs incurred by Seller in accordance with this Order to the extent such costs are reasonable in amount and are properly allocable or apportionable under generally accepted accounting practices to the terminated portion of this Order, including the actual cost of work in process and materials delivered to Buyer in accordance with subparagraph (a) of the Section and including the actual cost of discharging normal liabilities which are so allocable or apportionable; and (3) the reasonable costs incurred by Seller in protecting property in its possession in which Buyer has or may acquire an interest. Payments made under this subparagraph (b), exclusive of payments made under subdivision (3) hereof, shall not exceed the aggregate price specified in this Order, less payments otherwise made or to be made. (c) The provisions of this Section shall not apply if this Order is terminated by Buyer for the default of Seller as provided in the Order. Notwithstanding any other provision of this Section, if the goods covered by this Order constitute standard stock merchandise. Buyer, at its option, may cancel at any time any unshipped portion of this Order without further obligation hereunder, except to make payment, subject to other applicable terms hereof for the goods actually shipped prior to such cancellation.

21. REMEDIES: Except as otherwise provided herein, the remedies reserved herein shall be cumulative and additional to any other or further remedies provided in law or equity. No waiver of breach or delay in the enforcement of any provision of this Order shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions thereof.