

Purchase Order Terms and Conditions

1. APPLICABLE CONTRACT PROVISIONS

a. "Buyer" means the entity issuing the Order, and any affiliates, subsidiaries, successors or assigns thereof. "Seller" means the person, firm or company to whom the Order is addressed. "Materials" means all the products and/or services to be supplied by Seller under the Order. "Order" means the purchase order issued by Buyer for the supply of Materials, which may be an oral communication or a written or electronic document and may also include particular shipping instructions and/or other specifications required by Buyer for the Materials.

b. These terms and conditions, together with the Order, constitute an offer by Buyer to purchase the Materials from Seller pursuant to the terms and conditions described herein. This offer is not an acceptance or a confirmation of any previous offer or proposal from Seller, and this offer shall be deemed to be a rejection and counteroffer with respect to any previous offer or proposal from Seller. Acceptance of any shipment of the Materials shall not be construed as an acceptance of any such previous offer or proposal or an acceptance of any different or additional terms proposed by Seller.

c. This offer shall become an "Agreement" upon acceptance by Seller. Seller shall be deemed to have accepted this offer by commencement of performance called for in the Order, by delivery of the Materials to Buyer, by written acceptance or confirmation of this Agreement, or by any other act or communication constituting legal acceptance, whether or not any such acceptance or confirmation purports to state terms additional to or different from those stated herein. Buyer hereby expressly objects to and rejects any such additional or different provisions, and none of such provisions shall be deemed to be a part of this Agreement unless specifically agreed to in writing by Buyer.

d. Seller shall not advertise, publicly announce or provide to any other party information relating to the existence of this Agreement or use Buyer's name in any format for any promotion, publicity, marketing or advertising purpose, without Buyer's prior written consent. All information, drawings, material, goods, equipment, apparatus or documents disclosed or delivered to Seller by Buyer or arising from work or services done for Buyer, and also all knowledge of any business relationship between Seller and Buyer, shall be treated by Seller as confidential proprietary information of Buyer and shall not be disclosed or made available to others by Seller without prior written permission by an officer of Buyer. Seller also agrees not to use any of such information, drawings, material, goods, equipment, apparatus or documents for the manufacture or production of products or components for any other party or for Seller. Such obligation shall not apply to any information, material, goods, equipment or apparatus which Seller establishes (i) is already known to Seller at the time of its receipt from Buyer as shown by Seller's records, (ii) is or subsequently becomes available and accessible to the public through no fault of Seller, or (iii) is disclosed to Seller by a third party on a non-confidential basis.

2. SALE OF MATERIALS

a. Seller agrees to sell, transfer and deliver the Materials to Buyer for the purchase price set forth in the Order, subject to all of the covenants, terms and conditions hereof.

b. Buyer agrees to purchase the Materials, subject to all of the covenants, terms and conditions hereof, and to pay Seller the purchase price set forth in the Order. Typographical and other clerical errors in the Order are subject to correction. Buyer reserves the right at any time to modify the Order upon notice to Seller. Upon such notice, Buyer and Seller shall negotiate an equitable adjustment in price and/or time of performance. Buyer shall have the right to stop all or part of the work under the Order or cancel any future delivery of any Materials upon notice to Seller.

c. Seller agrees to obtain from Buyer a purchase order number for any and all purchase orders of goods and/or services. Seller further agrees it will clearly reference the purchase order number on the applicable invoice(s). Seller acknowledges that any invoice submitted to Buyer that does not clearly reference Buyer's corresponding purchase order number may be considered invalid by Buyer and may result in delayed payment.

3. PURCHASE PRICE AND TERMS OF PAYMENT

a. Materials shipped against this Agreement shall be invoiced at the price set forth in the Order. Unless otherwise specified on the Order, payment of the purchase price shall be due forty-five days after the later of Buyer's receipt of Seller's correct invoice for such shipment or the date on which the Materials are received by Buyer. Seller agrees that it will take no adverse action against Buyer for any invoices not paid resulting from Seller's failure to obtain or clearly reference purchase order numbers on the applicable invoices or accurately invoice Buyer.

b. The purchase price for the Materials shall include all taxes, customs duties, customs fees or other governmental charges due with respect to the Materials. Buyer shall, however, pay for any taxes that it is statutorily required to pay. Seller shall provide Buyer with documentation satisfactory to Buyer that establishes Buyer's statutory liability to pay such taxes. If Seller fails to provide such documentation, Buyer shall not be obligated to pay any such taxes.

c. Seller shall be responsible for all shipping and insurance costs, including without limitation, packing, crating, cartage and freight costs unless otherwise agreed upon or as listed on Purchase Order Document.

d. Buyer may set off any amount owing at any time from Seller to Buyer or any of its affiliates against any amount payable at any time by Buyer.

4. SHIPMENT, DELIVERY AND ACCEPTANCE

a. Seller shall deliver the Materials F.O.B. to the place designated for shipment by Buyer in the Order. Seller shall follow any shipping instructions provided by Buyer and shall properly and carefully package the Materials for shipment. Any loss or damage, whenever occurring, which results from Seller's improper packaging or crating shall be borne by Seller. Notwithstanding anything in the foregoing to the contrary, title to and risk of loss of the Materials shall pass to Buyer only upon receipt of the same by Buyer, and any rightful rejection or revocation of any Materials by Buyer shall immediately shift the risk of loss of such Materials, wherever located, to Seller. Seller agrees that any contrary provisions of Sections 2-509 and 2-510 of the Uniform Commercial Code shall not apply to this Agreement.

b. All items shipped shall be properly identified with Buyer's purchase order number and any purchase order item number or other identification number shown. Seller accepts full responsibility for the completeness and accuracy of all transport and customs documentation ("Shipping Documents") provided to Buyer. Seller accepts any liabilities resulting from incomplete or inaccurate data on Shipping Documents or failure to comply with any import or export requirements.

c. Notwithstanding anything herein to the contrary, Buyer shall have a reasonable opportunity to inspect the Materials after the same have been delivered to Buyer's premises. Buyer shall not be deemed to have accepted any such Materials until the expiration of such reasonable time for inspection. The parties acknowledge and understand that Buyer may inspect any commercial lot of the Materials consisting of numerous units of the same product by inspecting only a reasonable sampling of such units and that Buyer may revoke acceptance of any other units of such commercial lot which Buyer at a later time discovers to be defective. Upon rejection or revocation of acceptance of any Materials, Seller promptly shall replace or correct, at Buyer's option, any unsatisfactory units at Seller's expense, including all shipping costs. Buyer's failure to inspect or reject Materials, or payment for Materials, shall not relieve Seller of any of its obligations hereunder or constitute a waiver of any of Buyer's rights hereunder.

5. WARRANTY PROVISIONS

a. Seller hereby warrants to Buyer that, in addition to any and all express and implied warranties provided under the Uniform Commercial Code, the Materials: (i) shall be provided in a competent, professional manner and in accordance with the highest standards and best practices of Seller's industry; (ii) shall be free from defects in materials and workmanship, and shall be merchantable and fit for their particular purpose; (iii) shall conform to and perform in accordance with all specifications, drawings, samples and other requirements referred to in the Order and provided by Seller; (iv) when shipped shall be free from all liens, security interests and encumbrances of any type whatsoever; and (v) shall be manufactured, produced, labeled, furnished and delivered to Buyer in full and complete compliance with all applicable laws and regulations. Seller agrees to cooperate with any audit conducted by Buyer or at Buyer's direction. Furthermore, as requested by Buyer, Seller agrees to execute and provide any and all information, documents and certifications reasonably required by Buyer pursuant to subsection (v) above, and use due diligence protocols, standards and procedures in its supply chain as are necessary to comply with its obligations herein.

6. EVENTS OF DEFAULT AND REMEDIES

a. Seller shall be deemed to be in default hereunder if it violates any of the terms hereof or fails timely to perform any of its covenants, duties or obligations hereunder, or if it performs or fails to perform any other act, whether pursuant to this Agreement or otherwise, which gives the buyer reasonable grounds to feel insecure with the respect to Seller's future performance hereunder.

b. Upon default by Seller hereunder, Buyer may exercise any or all of the following rights and remedies, in addition to such other rights and remedies as may be provided hereunder or under applicable law: (i) Reject or revoke acceptance of any or all of the Materials, whether or not such Materials are defective and whether or not the condition of delivery thereof otherwise relates to, pertains to, concerns or gives rise to such event of default; and/or (ii) Terminate this Agreement without any obligation whatsoever with respect to Materials not yet delivered to Buyer at the time of such termination. Buyer's decision to pursue any one such remedy shall not be deemed to be an election not to pursue any other remedy at the same time or at any other time.

7. COMPLIANCE WITH LAWS

a. Seller agrees to indemnify and hold Buyer harmless from and against any and all liabilities, costs, losses or expenses, including reasonable attorneys' fees, incurred or suffered by Buyer as a result of or in connection with Seller's breach of any of its obligations hereunder.

b. Seller represents and warrants that the goods and/or services were not manufactured or performed and are not being sold or priced in violation of any federal, state, or local law, executive order, or administrative ruling. Without limiting the generality of the foregoing, Seller represents and warrants that it complies with the following provisions of federal law which are hereby incorporated by reference into this Purchase Order: (1) the Federal Food and Drug and Cosmetic Act, as amended, and all applicable regulations and Executive orders issued there under; (2) the Civil Rights Act of 1964, as amended, and all applicable regulations and Executive orders issued there under; (3) the Fair Standards Act, as amended and all applicable regulations and Executive orders issued there under; (4) FAR [48 CFR] 52.222-26 and 41 CFR 60-1.4 relating to Equal opportunity; (5) FAR 52.222-35 and 41 CFR 60-250-5 relating to Affirmative Action for Disabled Veterans and Vietnam Veterans; (6) FAR 52.222-36 and 41 CFR 60-741.5, relating to Workers with Disabilities; and (7) FAR 52.222-41, relating to the Service Contract Act, as amended.

c. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Minnesota, without reference to any conflicts of law principles. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Seller hereby consents to the exclusive jurisdiction and venue of the Federal and state courts located in the state of Minnesota as the exclusive forum for the resolution of disputes.

8. RIGHT OF ENTRY/ACCESS

In order to assess Seller's performance under and compliance with the Agreement, including but not limited to Seller's compliance with respect to pricing, specifications, warranties and certifications, Buyer and/or their designated representative(s) shall have the right upon reasonable notice to Seller to access and audit Seller's facilities, books, records, goods and services related to the Agreement and Materials. The costs of any such audit will be paid by Buyer, unless the audit reveals any nonconformance by Seller, in which case Seller will promptly reimburse Buyer for the reasonable costs of the audit. The seller also grants the right of access by the organization's customer and regulatory authorities to any applicable areas of the facilities and to applicable documented information, at any level of the supply chain

9. QUALITY CLAUSES

Unless otherwise modified or deleted by reference on the purchase order, this attachment and all clauses apply to all purchase orders for suppliers of subcontract product packaging and/or order fulfillment operations. Should seller disagree with or is incapable of performing to any of these terms and conditions, seller shall notify the buyer immediately, prior to accepting the purchase order and performing services or delivering materials.

A) Quality Program: Unless otherwise agreed upon, the seller shall maintain a documented quality program. If seller has a documented quality program per AS9100, ISO 9001, or other industry based quality program, the seller shall apply this quality program to the materials / services specified on this purchase order. If seller does not have a documented quality program, seller's Best Commercial Practices shall be used to assure adequate control of quality throughout the performance of this Purchase Order.

B) Seller Calibration System: Seller, and/or seller's sub-contractor (s), will maintain and apply a documented gage calibration system per ISO 17025, ISO Guide 25, ANSI/NCSL Z540-1 or ISO 10012-1 to this purchase order. Standards traceable to National Institute of Standards and Technology (or other physical constants) shall be used

C) Inspection: The seller is responsible for verifying compliance to all requirements on this order. BUYER reserves the right to inspect all services delivered under this order. Evidence of any non-compliance shall be cause for rejection. Any rejection, may be returned to the seller at their expense for reprocessing or replacement as directed by the buyer.

D) Nonconforming Material/Service: Seller shall promptly notify buyer if they know, or suspect they may have delivered, or become aware of a fact any time after delivery, of nonconforming goods and/or services to buyer, including services provided by their sub-tier suppliers (See Clause L below) that significantly affected the services/materials provided by seller. "Significant" is defined as a condition, which could potentially make a previously accepted product/service into non-conforming product/service and/or acceptance criteria. Notifications shall be made in writing with 2 working days upon discovery of the discrepancy to the attention of the buyer's Quality Department.

E) Material Review Board Authority: Buyer retains material Review Board (MRB) Authority. Any seller requesting to deliver discrepant material or services must submit a buyer Supplier Material Review Request stating the deviation, root cause, and corrective action to buyer Quality Department for approval prior to shipment.

F) Certification (And Test Reports): Where specified, a legible and reproducible certification and test report is required. Payment for services received will not be made until all required certifications and test reports have been accepted.

G) Notification of Changes: Seller anticipating or experiencing any change in location, name, product, processes or specification, change in quality/calibration program status, shall notify the buyer in writing as soon as one or more of these situations has or will be occurring. For any change that could affect performance of the Materials, Seller shall complete any reasonable qualification processes of Buyer and address Buyer's concerns about the change.

H) Document Revisions: Seller to verify conformance to latest revision of all buyer controlled standards and documents noted on Purchase Order. If revision is not specified on documents or Purchase Order, then the latest revision applies.

I) Samples / Retains: Unless otherwise specified, Seller shall return all samples used in the performance of packaging services back to the Buyer.

J) Records: All records relating to the services and/or certification must be maintained by the seller for a period of at least ten (10) years after closure of this Purchase Order. These records shall be available for review by representatives of buyer and/or its customers and/or regulatory agencies at any reasonable time during the seller's normal working hours throughout the retention period. If requested, a copy of specific records will be sent to buyer at no additional cost. seller shall take reasonable measures to protect and prevent records from deteriorating and secure them from loss. Should seller plan to cease business operations, records shall be forwarded to seller, at no cost to the buyer, prior to closing of business.

K) Flow Down of Quality Clauses: Seller is required to flow down any applicable buyer's requirements to their supply chain, including all of the buyers Quality Clauses.

L) Obsolescence: When Supplier has knowledge that any material or hardware item to be provided in performance of this purchase order is obsolete, is marked for impending obsolescence, or has an established end of production date, Supplier shall immediately give initial notice thereof, including all relevant information with respect thereto, to Buyer. Such notice shall include, but not be limited to (1) complete details of which parts are affected; (2) date of obsolescence; (3) end of production date; (4) reason for obsolescence; (5) pricing and availability of last-time buy; and (6) Supplier's recommendation for replacement parts inclusive of known impacts to performance, pricing, availability, and lead time.

10. COUNTERFEIT PARTS

The seller shall plan, implement, and control processes, appropriate to the organization and the product, for the prevention of counterfeit or suspect counterfeit part use and their inclusion in product(s) delivered to the customer. NOTE: Counterfeit part prevention processes should consider: a) Training of appropriate persons in the awareness and prevention of counterfeit parts; b) Application of a parts obsolescence monitoring program; c) Controls for acquiring externally provided product from original or authorized manufacturers, authorized distributors, or other approved sources; d) Requirements for assuring traceability of parts and components to their original or authorized manufacturers; e) Verification and test methodologies to detect counterfeit parts; f) Monitoring of counterfeit parts reporting from external sources and g) Quarantine and reporting of suspect or detected counterfeit parts.

11. VENDOR RATINGS

All vendors are rated for on time deliveries, non-conforming product and their quality system. Any vendor wishing to know their rating can request it from the purchasing manager.

12. BUSINESS CONDUCT

The Buyer ensures that persons providing “Materials” under our control are aware of the importance of ethical behavior (note: ethical behavior is defined as acting in ways consistent with what persons typically think are good values – including honesty, fairness, equality, dignity and individual rights).

a. Compliance with Laws: Seller and the items shall comply with all applicable statutes and government rules, regulations and orders. Without acting as a limitation, Seller shall comply with (i) all applicable country laws relating to anti-corruption or anti-bribery, including, but not limited to, legislation implementing the Organization for Economic Co-operation and Development, Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the OECD Convention) or other anti-corruption / anti-bribery convention; and (ii) the requirements of the Foreign Corrupt Practices Act, as amended, regardless of whether Seller is within the jurisdiction of the United States, and Seller shall, neither directly nor indirectly, pay, offer, give, or promise to pay or give, any portion of monies or anything of value received from Buyer to a non-U.S. public or any person in violation of the FCPA and/or in violation of any applicable country laws relating to anti-corruption or anti-bribery.

b. Gratuities: Seller warrant that neither it nor any of its employees, agents, or representatives have offered or given, or will offer or give, any gratuities to Buyer’s employees, agents or representatives for the purpose of securing this Contract or securing favorable treatment under this Contract.

c. Code of Basic Working Conditions and Human Rights. Buyer is committed to providing a safe and secure working environment and the protection and advancement of basic human rights. Buyer strongly encourages Seller to adopt and enforce concepts that include conducting Seller’s operations in a manner that is fully compliant with all applicable laws and regulations pertaining to fair wages and treatment, freedom of association, personal privacy, workplace safety and environmental protection. Further, any material violation of law by the Seller relating to basic working conditions and human rights, including laws regarding slavery and human trafficking, of the country or countries in which Seller is performing work under this Contract may be considered a material breach of this Contract for which Buyer may elect to cancel any open orders between Buyer and Seller for cause in accordance with the “Events of Default and Remedies” Section. Seller shall include the substance of this clause, including flow-down requirement, in all subcontracts awarded by Seller for work under this Contract.

d. Environmental Health and Safety Performance: Seller acknowledges and accepts full and sole responsibility to maintain an environment, health and safety management system (EMS) appropriate for its business throughout the performance of this Contract. Buyer expects that Seller’s EMS will promote health and safety, environmental stewardship, and pollution prevention by appropriate source reduction strategies. Seller shall convey the requirement of this clause to its suppliers. Seller shall not deliver items that contain any asbestos mineral fibers.