

## **Terms & Conditions**

The buyer ("Buyer") identified on the purchase order attached to these Terms and Conditions, or any document referred to or incorporated by the purchase order (collectively, the "Order") agrees to purchase, and the seller ("Seller") identified on the Order agrees to sell, the goods, materials, equipment, and machinery ("Goods") described in the Order, subject to the following Terms and Conditions.

Unless the Order expressly provides otherwise, it is limited to these Terms and Conditions. Buyer hereby objects to any additional or different terms proposed by Seller in any quotation, acknowledgment or other document. Any such proposed terms shall be void. No waiver by the Buyer of any breach of these Terms or Conditions by the Seller shall be considered a waiver of any subsequent breach of the same or any other provision. If any provision of these Terms and Conditions is held by any court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and Conditions and the remainder of the provision in question shall not be affected. These Terms and Conditions, the Order, and any other documents specifically incorporated herein constitute the sole and entire agreement between the parties on this subject. All prior representations or arrangements on this subject matter are superseded by these Terms and Conditions.

**1. Acceptance and Modifications.** The Order, whether or not issued with reference to a quotation or proposal of Seller, shall constitute an offer. Acceptance by Seller is expressly limited to these Terms and Conditions and may be evidenced by Acknowledgment of the Order or by commencement of performance. No changes or modifications to this Order shall be valid unless confirmed in writing by an authorized Officer.

**2. Packing and Cartage.** No charge for packing or cartage will be allowed except as expressly stated in the Order.

**3. Shipment.** Delivery of the goods shall be at Buyer's place of business or such other shipping destination specified in the Order. Seller shall have the risk of loss for all Goods shipped under this Order until receipt of delivery and acceptance of the Goods by Buyer. The Goods shall be marked for shipment in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition. If the Goods are not shipped in accordance with Buyer's directions and the instructions set out in this Order, Seller shall pay to Buyer any damages or expenses suffered by Buyer.

**4. Duty Drawback Rights.** This Order includes all related customs duty and import drawback rights (including rights developed by substitution and rights which may be acquired from seller's suppliers),

if any, which Seller can transfer or assign to Buyer. Seller agrees to inform Buyer of the existence of any such rights and upon request to supply such documents as may be required to obtain such drawback.

**5. Payment.** Unless otherwise stated on the face of this Order, net invoices for Goods will be paid 30 days from the date of the receipt of the invoice or the date of the Buyer's acceptance of the Goods, whichever is later, provided that Buyer does not otherwise contest the amount of such invoice in good faith. The Buyer may set off against the net invoice any sums owed to the Buyer by the Seller.

**6. Intellectual Property.** Any specification and/or drawing supplied by the Buyer to the Seller, or parts specifically produced by the Seller for the Buyer, in connection with the Order, together with the copyright, design rights or any other intellectual property rights in the specification and/or drawing shall be the exclusive property of the Buyer, or party designated by the Buyer, and the Seller assigns with full title guarantee to the Buyer all such copyright, patent rights and other intellectual property for no further consideration, subject only to the payment of the net invoice. The Seller shall not disclose to any third party or use any such specification and /or drawing except to the extent that it is, or becomes public knowledge through no fault of the Seller, or as required for the purpose of filling the Order.

**7. Excess Goods.** Except for customary quantity variations recognized by trade practice, Goods delivered by Seller in excess of those specified in the Order will not be accepted, and such Goods will be held at Seller's sole risk. Buyer may, at its sole option, return such Goods at Seller's sole risk and expense.

**8. Fabrication and Material Commitments.** Unless otherwise authorized in writing by the Buyer, Seller shall not make commitments to purchase materials for the production of Goods nor fabricate Goods in advance of an Order issued for such goods, unless reasonably required by Seller to meet delivery deadlines.

**9. Termination.** Buyer may terminate the Order for its convenience, in whole or in part, by written notice sent by U.S. Mail, facsimile, or electronic mail at any time. If the Order is terminated for convenience, any claim of Seller shall be settled on the basis of reasonable costs it has incurred in the performance of this order for labor and materials, which are not usable, by Seller for making other goods it manufactures. Materials for which Seller is reimbursed shall become the property of the Buyer.

**10. Delays.** Seller agrees that it will complete the delivery of the Goods in accordance with the times specified in the Order.

**11. Quality and Warranty.** Seller expressly warrants that all the Goods covered by this Order will conform to specifications, drawings, samples, or other description furnished or expressly adopted by

the Buyer, and will be of good material and workmanship, and free from defects, including defect in design (if Seller's design) and, if custom-designed by Seller for the application Buyer specified, be comparable in quality to similar custom goods sold for similar applications, and if the Goods are not produced to Buyer's specifications, Seller further warrants that they will be merchantable and fit and sufficient for the purpose intended. Seller also warrants that its processes will be in statistical control and the Goods will comply with all then current industry safety standards, including labeling requirements and adequate warnings as required. All warranties contained herein shall survive notwithstanding any inspection, test, and acceptance by the Buyer.

**12. Inspection and Acceptance.** Inspection and testing of the Goods by Buyer may, at Buyer's option, be made at Seller's plant and/or point of destination. At the Buyer's option, the Buyer may inspect the Seller's inspection, quality, and reliability procedures as well as the data supporting the same. Acceptance of the Goods by Buyer shall not relieve Seller from any of its obligations and warranties hereunder, nor prejudice any claim, right, or privilege Buyer may have for defective or non-conforming Goods. In no event shall payment be deemed to constitute acceptance.

**13. Manufacturing Changes.** The Seller shall give the Buyer advance notice in writing of all specification, design, part number, and other identification changes, as well as major changes in process, procedure or changes in the location of the manufacturing plant or place of performance, made by the Seller applying to Goods covered by this Order.

**14. Defective Goods.** If any of the Goods fail to meet the warranties contained in paragraph 11, Seller, upon notice thereof from Buyer, shall promptly correct or replace the same at Seller's expense. If Seller shall fail to do so, Buyer may cancel this Order as to all such Goods, and in addition, may cancel the then remaining balance of this Order. After notice to Seller, all such Goods will be held at Seller's sole risk. Buyer may, at its option, return such Goods to Seller at Seller's sole risk and expense. Any payment for such Goods shall be refunded by Seller unless Seller promptly corrects or replaces the same at Seller's expense. If any field problem occurs as a result of a defect or nonconformity in the Goods provided under this Order that could threaten marketing of the end product or Buyer's reputation, pose a safety hazard, or cause any governmental agency to require a change in the end product, Buyer shall be entitled to recover from Seller all costs and expenses reasonably incurred by Buyer in taking such corrective action.

**15. Product Liability and Indemnity.** Except as expressly prohibited by law, Seller shall protect, defend, hold harmless and indemnify Buyer and Buyer's officers, directors, employees, agents, successors, and customers, in full from and against all claims, suits, allegations, judgments, actions, liabilities, losses, damages, costs, and expenses (the "Loss"), for injury, loss or damage of any kind claimed by a third party and/or awarded against or incurred or paid by the Buyer, and caused by or

arising from, or alleged to have been caused by or arise from Seller's negligence, or material breach of the Order as a result of or in connection with: (i) Breach of any warranty given by the Seller in relation to the Goods; (ii) Any claim that the Goods infringe, or their importation, use or resale, infringes, the patent, copyright, design right, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any specification supplied by the Buyer; (iii) Any claims made against the Buyer based upon, relating to, or arising out of any claimed defect or nonconformity in the Goods; (iv) Any alleged violation of any statute, ordinance, or administrative order, rule or regulation relating to the manufacture or sale of the Goods; and (v) Any act or omission of the Seller or its employees, agents or sub-contractors in supplying, delivering (including, but not limited to Seller's failure to comply with agreed upon delivery schedules in accordance with paragraph 10), and installing the Goods. This section shall survive termination, cancellation, or expiration of this agreement.

**16. Insurance Requirements.** Seller will maintain and provide proof of insurance coverage as required by Buyer.

**17. Consignment.** Machinery, equipment, tools, jigs, dies, patterns, drawings, specifications and samples furnished to Seller by Buyer on other than a charge basis shall be held by Seller as upon consignment, and upon the completion of this Order shall be returned to Buyer or otherwise satisfactorily accounted for, Seller, at its expense, shall insure all such items for the reasonable value thereof against loss or damage of any kind.

**18. Applicable Laws.** Seller, in the performance of this Order, shall comply with the provisions of the Fair Labor Standards Act of 1936, as amended, and all other applicable federal, state, and local laws, Executive Orders, regulations, rules and ordinances which are hereby incorporated by reference as appropriate. The Seller hereby certifies and commits itself to such compliance by acceptance of this Order and agrees, upon request, to furnish Buyer a certificate to such effect in such form as Buyer may from time to time require. The Order shall be governed by, and construed in accordance with the laws of Iowa, without regard to Iowa's rules concerning conflict of laws. It is also agreed that in any legal proceeding that involves a dispute, a judge rather than a jury will decide the dispute. The UN Convention on Contracts for the International Sale of Goods is hereby specifically excluded from this agreement.

**19. Packaging and Labeling Laws.** Seller shall package and label the goods and their containers in accordance with all applicable local, state, and federal packaging and labeling laws and regulations in effect in the place to which the goods are shipped or as specified otherwise by Buyer. In absence of laws regulating the labeling of hazardous substances, Seller shall label such substances or their

containers in accordance with WARNING LABELS. MANUAL, L-1, published by the Manufacturing Chemists Association, Washington, D.C.

**20. Special Tools.** Unless otherwise stated, all special tools, dies, jigs, patterns, machinery, and equipment needed by the Seller for the performance of this Order shall be obtained by Seller at its expense and shall be the property of Seller.

**21. Assignment.** Neither party shall assign or transfer this Order or any interest therein or monies payable thereunder without the written consent of the other party, and any assignment made without such consent shall be null and void, except that Buyer may assign this Order and its interest therein to any affiliated corporation, or to any corporation succeeding to Buyer's business without the consent of the Seller.

**22. Price and Taxes.** Unless otherwise specified in the Order, the stated price is in United States currency and includes all duties, levies, freight charges, insurance charges, installation charges, and any other charges whatsoever in connection with the Goods. All sales, use, excise, and similar taxes applicable to the Goods furnished hereunder shall be separately identified on the face of this Order. Any such taxes not so identified shall be deemed to be included in the price.

**23. Remedies.** No remedy herein provided shall be deemed exclusive of any other remedy allowed by law.

**24. Confidentiality.** The Order and any material transmitted therewith may contain information proprietary to Buyer, its subsidiaries or affiliates and such information is not to be used by the recipient for any purpose other than the purpose for which it was transmitted. The information shall be maintained in confidence and not disclosed to third parties without the written consent of the sender. Seller will execute a Non-Disclosure Agreement as required by Buyer.

**25. Buyer's Property.** Buyer shall have sole ownership of all right, title and interest in any items, materials, or works of authorship produced by Supplier as a result of the Goods produced by Seller for Buyer hereunder. Seller hereby irrevocably assigns all copyrights in such items, materials or works of authorship to Buyer.

**26. Safety.** Any person(s) present performing work in Buyer's plant on behalf of Seller must comply with Buyer's regulations on workplace safety.

**27. Right to Audit Clause.** The Seller shall upon reasonable request and during reasonable business hours, make available for examination and reproduction by Buyer and its duly authorized agents, such books, records, and invoices of Seller as may be necessary to perform an audit of costs and other items relevant to the terms of this agreement. Such audits may be performed while this agreement is in effect or within one year after its termination.

**28. Independent Contractor.** Seller is an independent contractor. All individuals that Seller assigns to complete the Order are Seller's employees. Nothing in the Order, and no conduct, communication, trade practice or course of dealing shall be interpreted or deemed to create any partnership, joint venture, agency, or fiduciary relationship between the parties or their subsidiaries or affiliates.

**29. Cancellation and Limitation of Damages.** In addition to any other rights and remedies which it may have, Buyer may cancel the supply of the Goods or any part thereof because of Seller's failure to comply with any of the terms or conditions of the Order (including without limitation, for late delivery of Goods, delivery of Goods which are defective or which do not conform with this Order, or failure to provide Buyer, upon request, with reasonable assurances of future performance). In no event shall Buyer be responsible or liable for Seller's loss of actual or anticipated profits or loss of business nor for any other special, indirect or consequential damage arising out of or relating to this Order or from the performance, suspension, termination or breach thereof, whether based upon principles of equity, contract, tort (including but not limited to negligence) or otherwise.

## ADDENDUM FOR BLANKET PURCHASE ORDERS

Blanket Purchase Agreements and subsequent Blanket Releases issued to Seller from Buyer are subject to the Addendum as well as the previously defined Terms and Conditions, unless the Blanket Purchase Agreement or Blanket Release expressly provides otherwise.

Note: The Blanket Purchase Agreements and Blanket Releases are different order types than Standard Purchase Orders. The Addendum does not apply for Standard Purchase Orders, which are only governed by the Terms and Conditions previously defined.

Documents that define the specifics of the Addendum include:

- A. Blanket Purchase Agreement.** Defines the specifics of the Agreement between the Buyer and the Seller such as duration of the Blanket Purchase Agreement, Buyer's items and item descriptions covered in the Blanket Purchase Agreement, estimated quantity for the individual item(s) to be supplied by Seller, and pricing of items, which may include price breaks. Estimated quantity conveyed in the Agreement does not constitute an offer to buy or acceptance to sell. Note: The Agreement is required before subsequent Orders can be issued. (Addendum to Section 1 of the Terms and Conditions)
- B. Blanket Release.** A Blanket Release constitutes a Buyer's offer to buy and in turn the Seller's acceptance to sell. The Blanket Release specifies the quantities of each item at a specified unit price, to arrive at the Buyer's designated location by the date provided. The Blanket Release specifies the total value in United States currency for the item(s) on the individual Blanket Release and is used for invoicing. Note: The Blanket Release will reference the respective Blanket Purchase Agreement number as well as the sequential Blanket Release number. (Addendum to Sections 1, 3, 5, 8 of the Terms and Conditions)
- C. Planning and Shipping Schedules.** The Buyer may communicate planning and / or shipping schedules via website or written, facsimile, or electronic mail to the Seller. The Planning Schedule will communicate release and forecast information while the Shipping Schedule will communicate release information only. Release quantities have firm open orders with due dates, which have previously been communicated to the Seller. Forecast quantities are for planning purposes only and do not constitute an offer to buy or acceptance to sell. Note: These Schedules are independent of each other and may be used individually.