

**PURCHASE ORDER TERMS AND CONDITIONS**

1. **Acceptance.** This Purchase Order ("Purchase Order") is an offer to Seller by Purchaser and does not constitute an acceptance of any offer to sell or proposal made by Seller. Any reference to any offer to sell or proposal made by the Seller is solely for the purpose of incorporating the description and specifications of Goods and services contained in such offer to sell or proposal to the extent that such description and specifications do not conflict with the description and specifications contained in the Purchase Order. Seller's written acceptance, commencement of any work under this Purchase Order, or any other conduct by the Seller which recognizes that the existence of a contract with respect to the subject matter of this Purchase Order shall constitute Seller's acceptance of this Purchase Order, including these terms and conditions. Any terms and conditions proposed by Seller are not part of the agreement unless specifically accepted by Purchaser in writing.

2. **Shipping.** Seller shall properly pack and mark all Goods which are the subject matter of this Purchase Order ("Goods") in accordance with the requirements of Purchaser and carrier. Seller shall bear all costs of packing and marking unless otherwise stated in this Purchase Order. Seller shall reimburse Purchaser for all expenses incurred by Purchaser as a result for improper packing or marking and for the return of rejected Goods. All shipments must be accompanied by packing slips showing Purchase Order numbers, and copies of all packing slips must be attached to Seller's invoice. All Goods are sold FOB Seller's Facility and risk of loss shall pass to Purchaser upon delivery to Carrier, as specified on the face of this Purchase Order. Seller shall obtain a straight bill of lading from the carrier and shall include on each packing slip and bill of lading this Purchase Order number and destination Facility. Seller shall not combine multiple purchase orders in one carton; each purchase order must be packed separately. Seller shall obtain the signature (first and last name) of the authorized representative of Purchaser on all receiving documents.

3. **Invoices and Payment.** Seller shall render invoices in duplicate. Invoices shall include the purchase order number and destination and other information sufficient to enable Purchaser to easily identify the Goods. Separate invoices are required for each individual delivery. If time for payment is not otherwise stated on this Purchase Order, the payment date shall be 5 days following Purchaser's receipt of proper invoice. Time for payment shall not begin until correct and complete invoices are received and Seller's cash discount privileges to Purchaser shall be extended until such time as payment is due. Purchaser may withhold payment pending receipt of evidence, in such form and detail as Purchaser may direct, of absence of any liens, encumbrances or claims on the Goods or services under the Purchase Order. Purchaser may at any time set off any amount owed by Purchaser to Seller against any amount owned by Seller or any of its affiliated companies.

4. **Time.** Delivery shall be made at time specified. If no delivery date is specified or otherwise provided for, delivery shall be made within a reasonable time. Time is of essence. Neither party shall be liable for a failure to perform that arises from causes or events beyond its reasonable control and without its fault or negligence; provided: (i) the delayed party shall give prompt notice of such delay and (ii) during the period Seller is delayed, Purchaser may purchase Goods from other sources and reduce the quantities set forth in this Purchase Order.

5. **Inspection and Audit.** Purchaser, at its option, may reject or retain or correct Goods that fail to meet the specifications of the Purchase Order. If Purchaser rejects Goods, it shall hold them for a reasonable period for pick up by Seller or return them, at Seller's cost. If Purchaser corrects non-conforming Goods, it shall consult with Seller on the method of correction. Seller shall reimburse Purchaser for reasonable expenses resulting from rejection or correction of the Goods. The fact that Purchaser may have inspected, tested or failed to inspect or test any Goods shall not affect any right of Purchaser under this Purchase Order. Nothing in this Purchase Order shall relieve Seller from any obligation to inspect or test the Goods. If Seller is to be paid other than on a lump sum basis, Purchaser shall have the right at reasonable times and upon reasonable notice to audit such of Seller's records as are reasonably necessary to verify the amounts due Seller, and Seller shall make such books and records available to Purchaser or its designees and to provide copies of same to Purchaser or its designees upon request.

6. **Changes.** (a) Changes to this Purchase Order or to the specifications of the Goods, and payment of extra charges therefor shall be permitted only when authorized by Purchaser in a writing signed by Purchaser; (b) Purchaser at any time in writing may change the design or specifications of the Goods or other matters affecting the scope of Seller's work, or the method of marking and packing. If any such change affects cost or time, Purchaser shall equitably adjust the price of delivery terms of this Purchase Order after receipt of documentation in such form and detail as Purchaser may direct. Any changes to this Purchase Order shall be made in accordance with paragraph 16.

7. **Termination.** In addition to any other rights of Purchaser to cancel or terminate this Purchase Order, Purchaser may terminate its obligations in whole or in part, at any time for any reason, by written notice of termination to the Seller. Purchaser shall have such right of termination notwithstanding the existence of an excusable delay under Section 4. Upon any such termination Purchaser's obligation to Seller shall be: (i) the Purchase Order price for finished and completed services that conform to the requirements of this Purchase Order, (ii) Seller's actual costs of work-in-process and parts and materials that Seller produced or acquired hereunder and transfers to Purchaser, (iii) Seller's actual costs of immediately terminating subcontracts and settling claims of subcontractors, and (iv) Seller's actual costs of protecting Purchaser's property that is in Seller's possession. Purchaser 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 or schedules nor any undelivered Goods which are in Seller's standard stock or are readily marketable. Purchaser's obligations upon termination shall not exceed those Purchaser would have had to Seller in the absence of termination. Seller shall furnish to Purchaser, within one month after the date of termination, Seller's termination claim, which shall consist exclusively of the items of Purchaser's obligation to Seller under the preceding subsection. Purchaser may audit Seller's records before or subsequent to payment to verify Seller's termination claim. Purchaser shall have no obligation to Seller if Purchaser terminates its purchase obligation because of default by Seller under Section 9.

8. **Warranty.** Seller warrants that all Goods and services covered by this Purchase Order will: (a) conform to the specifications, drawings, written instructions, samples, or descriptions furnished to or by Purchaser. Seller acknowledges that Seller knows of Purchaser's intended use and expressly warrants that all Goods covered by this Purchase Order which may have been selected, designed, manufactured or assembled by Seller, based upon Purchaser's stated use, will be fit and sufficient for the particular purposes intended by Purchaser. Seller shall immediately notify Purchaser of any errors in specifications or drawings provided by Purchaser which are patent or which are otherwise known to or should have been discovered by Seller.

9. **Breach.** The following shall constitute events of default by Seller: (a) Seller's failure to timely perform services or deliver confirming Goods as specified by Purchaser; (b) Seller's other failure to perform, observe or comply with, or repudiation of, any material provisions of this Purchase Order, including Seller's warranties; (c) Seller's failure to make progress so as to endanger timely and proper completion of services or delivery of Goods; (d) Seller's insolvency or the filing of a voluntary or involuntary petition of bankruptcy by or against Seller, or the appointment of a receiver or trustee for Seller, or the execution of an assignment for the benefit of Seller's creditors, provided that such petition, appointment or assignment is not vacated or nullified within fifteen (15) days of such event; provided, that the Seller may correct a failure or breach described in (c) above within ten (10) days or such shorter commercially reasonable period specified by Purchaser after receipt of notice from Purchaser specifying such failure or breach.

10. **Purchaser's Remedies.** Upon the occurrence of an event of default by Seller, Purchaser shall: (a) have all rights and remedies afforded by Article 2 of the Michigan Uniform Commercial Code; (b) be entitled to reduce quantities under this Purchase Order to the extent Purchaser rejects Goods as nonconforming; (c) have the right to cancel all or any part of this Purchase Order, without liability to Seller; (d) be entitled to collect from Seller all of its damages, costs and expenses associated with Seller's breach, including incidental and consequential damages, court costs and attorney's fees. All rights and remedies reserved to Purchaser under this Purchase Order are

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**Not Intended for Use**

cumulative in addition to all other or further remedies provided in law or equity and in addition to all remedies provide for in the Supply Agreement. Purchaser's payment for or acceptance of any Goods under this Purchase Order shall not discharge Seller from its obligations. Nonconforming Goods shall not be replaced without Purchaser's written permission. Nonconforming Goods will be held by Purchaser for disposition in accordance with Seller's instructions at Seller's risk. Seller's failure to provide written instructions within ten (10) days, or such shorter period as may be commercially reasonable under the circumstances, after notice of nonconformity, shall entitle Purchaser, at Purchaser's option, to charge Seller for storage and handling, or to dispose of the Goods, without liability to Seller. Payment for nonconforming Goods shall not constitute an acceptance of such Goods, limit or impair Purchaser's right to assert any legal or equitable remedy, or relieve Seller's responsibility for latent defects.

11. **Security Interest.** Seller hereby grants to Purchaser a security interest in all materials, work-in-process and finished Goods to the extent of Purchaser's payments therefor, including advances made hereafter, and Seller agrees that Seller's interest in such collateral is subordinated to Purchaser's security interest. In the event of default by Seller, Purchaser shall have all rights of a secured party under the Michigan Uniform Commercial Code. Seller authorizes Purchaser as Seller's attorney-in-fact to sign in Seller's name and make filings of all financing statements necessary to perfect such security interest and to protect Purchaser's ownership of its property.

12. **Proprietary Rights.** Seller warrants that the Goods will not infringe or misappropriate any present or future patent, copyright, industrial design right, trade secret or other propriety right, and Seller shall indemnify, defend and hold Purchaser and its customers and users harmless from and against any claims of infringement or misappropriation and all costs and damages associated therewith. Seller's obligations shall apply even though Purchaser furnished all or any portion of the design. When Goods are made to Purchaser's plans and/or specifications, the plans and specifications shall be deemed Purchaser's and shall not be used by Seller for any purpose except the performance of this Purchase Order and shall not be disclosed to any other person without Purchaser's written permission. Seller shall not assert any claim with respect to technical information which Seller shall have disclosed or may hereafter disclose to Purchaser in connection with the Goods covered by this Purchase Order.

13. **Indemnification.** Seller may indemnify, defend and hold Purchaser harmless from all claims, damages and expenses (including attorney's fees) arising out of: (a) Seller's breach; (b) any defect in the Goods; (c) the design of the Goods (whether or not defective); (d) errors, omissions, negligence or other wrongful conduct of Seller or its agents or subcontractors; (e) personal injury; or (f) property damage. Purchaser shall have the right to select and retain counsel of its own choosing, all at the Seller's expense, and to participant in the defense.

14. **Insurance.** Seller shall at all times carry and maintain insurance coverage in reasonable amounts covering workers compensation, comprehensive general liability (including products/completed operations and blanket contractual liability), and automobile liability. Seller shall fully insure any and all property of Buyer which is in Seller's possession (including work-in-process for which Purchaser has paid, whether or not title has passed) against loss or damage to the extent of its insurable value, without deductible, at Seller's cost, and to designate Purchaser as the loss payee. Seller shall provide evidence of such coverage to Purchaser upon request. Seller shall provide Purchaser with not less than 30 days advance written notice of any threatened or proposed reduction or termination of insurance coverage by those person providing insurance to Seller.

15. **Entire Agreement.** Seller agrees that this Purchase Order, including any attachments, exhibits or supplements attached hereto, other matter incorporated herein by specific reference, constitutes the entire agreement between Seller and Purchaser with respect to the matter contained herein and supersedes all prior or contemporaneous oral or written discussions, understandings, representations and agreements. The agreement may be modified only by a writing signed by Purchaser. Acceptance of deliveries and/or payment by Purchaser shall not be deemed acceptance or approval of any modifications proposed by Seller.

16. **Severability.** If any clause in this Purchase Order should be determined by a court of competent jurisdiction to be invalid, the invalidity of such clause shall not affect the validity of the remainder of the Purchase Order.

17. **Assignment and Subcontracting.** Seller shall not assign this Purchase Order, or any part thereof, or subcontract any of its substantive duties hereunder, without Purchaser's written approval. Such approval shall not release Seller from any of obligations hereunder.

18. **Taxes.** Seller shall not include in its price nor otherwise charge to Purchaser any federal excise taxes or state or local sales or use taxes on the Goods of this Purchase Order. Purchaser is an exempt institution with respect to such taxes and intends to use or consume the Goods of this Purchase Order in its operations.

19. **Compliance.** Seller shall comply with all applicable federal, state, local and foreign laws, regulations, rules and orders and agrees that the production of all Goods and the performance of services under this Purchase Order shall comply with the requirements of the Fair Labor Act of 1938, as amended, and any regulations of orders issued thereunder. All invoices must verify compliance with all applicable laws in order to be eligible for payment.

20. **Governing Law; Venue.** This contract shall be constructed and enforced in accordance with Michigan law. Each party hereby submits to the jurisdiction of the State and Federal courts located in the State of Florida, over any action proceeding to enforce or defend any matter arising from or related to this Purchase Order, and Seller agrees not to institute and such legal action or proceeding in any other court.

21. **Special Warnings.** Prior to and with the shipment of Goods purchased hereunder, Seller shall furnish Purchaser any relevant warnings and notice in writing (including appropriate label on Goods, containers and packing) of any hazardous or dangerous material which is an ingredient or a part of any of the Goods, together with any special handling instructions as may be necessary to advise carriers, Purchaser and their respective employees of how to exercise that measure of care and precaution which will best prevent bodily injury or property damage in the handling, transportation, processing, use, disposal of the Goods, containers and packing shipped to Purchaser.

22. **Waiver.** The failure of either party at any time to require performance by the other party of any provision of this Purchase Order shall in no way affect the right to require performance at any time thereafter, nor shall the waiver of either party of breach of any provision of this Purchase Order constitute a waiver of any succeeding breach of the same of any other provision.

23. **Relationship of Parties.** Seller and Purchaser are independent contracting parties and neither party shall be the servant, employee, agent, partner or joint venturer of the other.

24. **Quality Assurance and Inspection.** Seller shall comply with all quality assurance procedures specified by Purchaser. Seller agrees that Purchaser shall have the right to enter Seller's facility at reasonable times to inspect the facility, Goods, materials, and any property of Purchaser covered by this Purchase Order and Seller's records relating thereto. Purchaser's inspection of Goods, whether during manufacture, prior to delivery, or within a reasonable time after delivery, shall not constitute acceptance of any work-in-process or finished Goods.