



## **1. ACCEPTANCE OF ORDER.**

This order is an offer to purchase upon the conditions and terms and at the prices stated herein and may be withdrawn at any time prior to actual receipt by Purchaser of Vendor's unconditional written acceptance hereof. No modification of or exceptions to any of the terms, conditions, or provisions of this order by Vendor shall be of any effect unless and until accepted in writing by Purchaser. Any delivery (complete or partial) by Vendor pursuant hereto, prior to actual receipt of Vendor's unconditional written acceptance, and prior to withdrawal by Purchaser, shall constitute Vendor's acceptance of this order in accordance with all terms, conditions and provisions thereof. The agreement formed hereby and the language herein shall be construed and enforced under the Uniform Commercial Code as in effect in the State of Purchaser's head office on the date hereof.

## **2. CHANGES IN ORDER.**

The Purchaser shall have the right to order changes from time to time in the performance required of Vendor under this order. In the event of any such change in this order, the prices or times of performance or both, shall be adjusted within reasonable and appropriate limits, provided however that Purchaser shall have no obligation to pay, and the right to refuse payment of any claim by Vendor for increase in price or time of performance which is not agreed to by Purchaser in writing within thirty calendar days after the date the change is ordered. No change shall be made by Vendor in the performance required by this order except as such change is specified in writing and signed by an authorized representative of Purchaser.

## **3. PERFORMANCE AND WAIVERS.**

Any waiver by Purchaser of strict performance with regard to any of the terms, conditions or revisions of this order shall not be deemed a waiver at Purchaser's right to insist upon strict performance of all portions of this order not waived, or strict performance thereafter, of provisions presently waived.

## **4. ASSIGNMENT.**

The contract resulting from the acceptance of this order, any and all moneys that may become due and owing to Vendor hereunder, or any other interest hereunder, shall not be assignable nor shall all or any substantial part of the performance required of Vendor hereunder be sub-contracted without prior written consent of Purchaser.

## **5. ACCEPTANCE OF SHIPMENTS AND INSPECTION.**

All material merchandise and work covered by this order is subject to inspection by Purchaser and may be rejected if not strictly in accordance with all terms, conditions and provisions herein contained or attached. Said inspection by or on behalf of Purchaser may be made at the convenience of the Purchaser and at such times and at such places as are deemed proper by Purchaser. Failure to inspect and/or reject the material, merchandise and work covered by this order shall not, under any circumstances, be deemed to be an acceptance thereof despite the fact that it shall have been in the possession of the Purchaser for a substantial period of time. Payment for shipments shall not constitute acceptance thereof and defective shipments or shipments not in accordance with this order will, at Purchaser's option, be held for Vendor's instructions at his risk, or will be returned to Vendor. Vendor will be responsible for transportation charges on returned shipments



both ways. Any prior payment made by Purchaser of such rejected material, merchandise or work shall be immediately refunded and the rejected material, merchandise or work shall not be replaced without an additional order from Purchaser. Inspection and tests may be made before delivery by Purchaser or Purchaser's customers at Vendors plant or elsewhere, but notwithstanding such inspection and tests, or inspection and tests made prior to the issuance of this order, the items covered by this order are subject to rejection upon final test, inspection and use. No charges will be allowed for containers, packing, crating, drayage, demurrage or storage unless such charges are specifically provided for in this order. Purchaser's count shall be accepted as final on all shipments.

## **6. WARRANTY.**

Vendor warrants all articles, material and work delivered hereunder to be free from any defect in labor, material, handling or fabrication. Vendor further warrants that he is aware of the intended use of all articles, materials and components thereof, supplied by him, and warrants that all such articles, materials and components thereof, delivered hereunder, are suitable, and in a suitable condition for such use. The warranties and guarantees herein are in addition to those otherwise provided or implied by law or customarily given by Vendor with respect to equipment, work, materials or services substantially similar to items covered by this order. Notwithstanding anything to the contrary herein or otherwise, Vendor hereby represents and warrants that all material, articles or work to be delivered hereunder shall be in compliance with and meet all requirements at any specifications attached hereto, referred to herein or supplied to vendor. It is hereby specifically understood and agreed that the compliance with such specifications as represented and warranted is of the essence to Purchaser.

All risk or loss of or damage to material, merchandise or work covered by this order or to third person or their property occurring prior to delivery to Purchaser shall be borne and be at the sole risk of the Vendor.

## **7. INDEMNITY.**

Vendor does hereby indemnify and save harmless the Purchaser, its successors, assigns, customers and agents from and against all claims, suits, damages, costs, losses and expenses resulting from or arising out of any negligence in the service performed or defect in the product purchased hereunder.

## **8. PATENTS.**

With respect to any thing, material, design, composition, or processing of Vendor's origin or practice, Vendor agrees to save Purchaser and those selling or using the same, harmless from any and all liability on account of claims of infringement of United States or foreign patents (except patents owned or controlled by Purchaser) arising out of the sale or use thereof; and with respect to any thing, material, or processing specified by Purchaser and not of Vendors origin or practice. Purchaser agrees to save Vendor harmless from any and all liability on account of claims of infringement of United States or foreign patents (except patents owned or controlled by Vendor), arising out of Vendor's making, using or selling the same for and to Purchaser that is of Purchasers origin or design.

## **9. DEFAULT.**



The Purchaser reserves the right to cancel this order in its entirety or in part, on account of defects in materials, workmanship or quality, or if the articles, materials or work are not shipped as specified herein or as specified in release authorization issued in connection herewith, or are not in accordance with blueprints, specifications, samples or instructions issued in connection herewith or if the Vendor fails to comply with or perform any of the terms and conditions, provisions, promises, or warranties of this order. In the event of such default, Vendor shall also be liable for all damages and costs of Purchaser resulting from such default, including, but not limited to, consequential damages regardless of any action taken or not taken by Purchaser to cancel this order entirely or in part. Further, the Purchaser shall have the unrestricted right to cancel and terminate this order, if at any time in the sole judgment of the Purchaser, the Vendor's financial or other business condition is such as to endanger Vendor's performance hereunder. The following shall constitute events of default: (a) Failure of the Vendor in any respect to use due diligence in proceeding with the performance of the work required or failure to perform any of the covenant hereunder or breach of any warranty contained herein or required hereby; (b) Failure of Vendor to pay when due, any charge for labor, material or services incurred in connection with this order.

#### **10. TOOLING OR MATERIAL ON CONSIGNMENT.**

Unless otherwise provided in this order, all tools, dies, fixtures, gauges, jigs, templates, patterns and similar items (hereinafter called equipment) and materials, used by the Vendor in the manufacture of or work on the items covered by this order, shall be furnished by and at the expense of the Vendor. In the event equipment or material is furnished by the Purchaser, or is furnished by Vendor and paid for by Purchaser, such equipment and material shall be Purchaser's sole property and for Purchaser's sole use, and subject to removal at any time at the option of the Purchaser. While in the possession of Vendor, all equipment and material belonging to Purchaser shall be maintained in first class condition, shall be clearly identified as Purchaser's property, and shall be kept separate and apart from equipment and material not belonging to Purchaser. Such equipment and material is to be disposed of only on Purchaser's written instructions and shall not be used for any production except that authorized by Purchaser. While in Vendor's possession, all such equipment and material belonging to Purchaser shall be deemed to be held by Vendor on consignment, but at Vendor's risk and Vendor agrees to pay for all such equipment and material which may be spoiled, damaged or not satisfactorily accounted for or lost. Further, all such equipment and materials of Purchaser shall be insured by Vendor for the full value under both fire and extended coverage while in the possession, custody or control of Vendor and while in transit from Vendor to Purchaser. Vendor agrees to produce certificates or other evidence of such insurance coverage upon written request by Purchaser. Further, should the performance of Vendor under this order relate to research and development or improvement of Purchaser's product, material or equipment, the resulting processes, formulas, designs or other developments and improvements will be the sole property of Purchaser and will not be used by Vendor for any production not specifically authorized in writing by the Purchaser. Vendor also agrees to treat as confidential all drawings, data, specification, information, equipment and material furnished by Purchaser, and to return the same to Purchaser on completion or termination of this order.

#### **11. FEDERAL AND STATE LAWS.**

The Vendor agrees to comply with all applicable Federal, State and Local Laws, and all rules, regulations, orders and requirements issued pursuant to such laws and to indemnify Purchaser against all liability for Vendor's failure to so comply. Any clause required to be included in a contract of this type by any applicable and valid Federal, State or local law or administrative rules or regulation or order having the effect of law shall be



determined to be incorporated herein.

## **12. TAXES.**

Purchaser will not pay Vendor any State or Local Sales, Use, or similar tax unless separately stated and itemized herein, or any Federal Excise Tax, unless included in the prices stated herein, and Vendor agrees that, except as otherwise provided herein, all such taxes, which, at the date of this order, Vendor is required by law to collect from Purchaser, are so included or separately stated and itemized herein. Vendor further agrees that the prices stated herein do not and the amounts invoiced hereunder will not, include any tax with respect to which exemption is available or indicated by Purchaser herein or otherwise, or any Federal Excise Tax with respect to which Purchaser has furnished an applicable exemption certificate.

If, after the date of this order, and prior to date of shipment, as to any taxes charged to Purchaser herein (whether separately stated and itemized or included in the prices stated herein) are increased, which Vendor is relieved in whole or in part of the burden of said taxes, the prices (or taxes if separately stated) shall be correspondingly reduced.

## **13. TERMINATION.**

Purchaser may at its option terminate this order in whole or in part by written notice to Vendor. Upon such notice, Vendor shall immediately stop work under this order, stop the placement of further orders or sub-contracts outstanding hereunder, and take all necessary action to stop cost commitments and to protect any property in Vendor's possession in which the Purchaser has or may acquire an interest. If the parties, through negotiation, are unable to agree within 6 months after date of termination notice upon the amount of fair compensation to the Vendor for such termination Purchaser will pay Vendor in full satisfaction of all its obligations the contract price for completed items. The payment shall not include any sum for profits anticipated by Vendor on the uncompleted portion of this order. In any event the total of payments shall not exceed the aggregate price specified in this order. Purchaser may at any time audit all elements of Vendor's termination costs.

## **14. EXCESS SHIPPING COSTS.**

Vendor agrees to assume all excess transportation costs as well as any additional damages to Purchaser caused by failure to comply with (a) Purchaser's routing instructions contained herein or issued separately or (b) Packing requirements of carrier Freight Classification and tariffs naming applicable rate on date of shipment. Purchaser will not be responsible for any material lost or damaged in transit when shipped by express.