

## PURCHASE ORDER TERMS AND CONDITIONS

**1. ACCEPTANCE:** Purchase Order Terms and Conditions Control. This Purchase Order constitutes Purchaser's offer to Seller and becomes a binding contract on the terms set forth herein when it is accepted by Seller upon the first to occur; (a) acknowledgment or by the commencement of performance hereof; (b) by Seller signing and returning to Purchaser the accepted/signed copy of the Purchase Order; or (c) Seller's shipment of any of the articles or materials hereafter referred to as the, "Goods". No revisions to the Purchase Order shall be valid unless in writing and signed by an authorized representative of Purchaser and no conditions stated by Seller in accepting or acknowledging the Purchase Order shall be binding upon Purchaser if in conflict with, inconsistent with, or in addition to the terms and conditions contained herein, unless expressly accepted in writing by Purchaser. In the event of conflict of terms of Seller's contract proposal and the Purchase Order, the terms of the Purchase Order shall govern. In the event the Purchaser does not receive a signed acknowledgement / acceptance of the Purchase Order within three (3) days after issuance to the Seller, Purchaser reserves the right to cancel the Purchase Order without any obligation to the Seller. Seller's acceptance of the Purchase Order is limited to acceptance of the express terms of the Seller's contract proposal contained herein. Any proposal by the Seller for additional or different terms to the Purchase Order or any attempt by Seller to vary the terms hereof is objected and rejected by the Purchaser. In the event of a conflict between any of the requirements of the Purchase Order, the more stringent requirement shall control as determined in the sole and absolute discretion of the Purchaser.

**2. ENTIRE AGREEMENT:** The Purchase Order forms the entire understanding between the Purchaser and Seller and supersedes all prior representations or agreements, whether written or oral. The Seller warrants it has not relied upon any verbal representation of the Purchaser in entering the Purchase Order. Except as provided for elsewhere in the Purchase Order, no prior stipulation, agreement of understanding, verbal or written, of the parties or of their agents shall be valid or enforced unless embodied in the provisions of this Purchase Order. Further, this Purchase Order may not be modified except by a written agreement signed by both Purchaser and Seller. In the event of any conflict in any provision of this Purchase Order, the more stringent limitation or requirement shall govern and prevail. No oral agreements, representations, course of conduct or dealings, or usage of trade shall be relevant to supplement, explain, contradict or vary in any way, any provision contained herein or any express or implied warranties of the Seller. The Seller further warrants it has, prior to entering into the Purchase Order, carefully reviewed the Project Drawings and Specifications or Purchaser's requirements and all conditions of any type affecting or relating to all articles and all of the materials hereafter referred to as the "Goods" and is confident it can deliver all the Goods within the time period required by the Purchaser. The Seller waives any all claims for conditions that it should have or could have reasonably been aware of at the time the Purchase Order was issued.

**3. GENERAL WARRANTY AND REMEDIES:** Seller expressly warrants that all the Goods furnished under the Purchase Order are free and clear of all liens and encumbrances whatsoever and that Seller has a good and marketable title to same and Seller agrees to hold Purchaser free and harmless against any and all claimants to said Goods. Seller further warrants that all of the Goods furnished under the Purchase Order (a) will be free from defects in materials and workmanship, (b) will strictly conform to applicable specifications, drawings, samples or other descriptions given (c) shall be fit and sufficient for the purpose intended; (d) shall be merchantable in the trade as Goods strictly of the kind and quality required to be furnished by the Seller under the Purchase Order, (e) shall be new, unused (unless refurbished Goods are specifically ordered or approved by Purchaser) and of good quality and free from latent and patent defects in design, material, manufacture and workmanship, (f) shall be safe for use and comply with all federal, state and local laws and regulations, and (g) shall be fit for the particular purpose for which Purchaser intends to use the Goods. Unless stated otherwise in the Purchase Order or required by the applicable specifications, drawings, samples or other descriptions given, said express warranty shall remain in effect as to the Goods for a period of twelve (12) months after it is applied to a use for which it was designed or installed. The foregoing period and time shall be extended for such greater period of time as may be specified in Seller's standard warranty or service guaranty and as required by applicable drawing specifications, drawings, samples or other descriptions given. The aforesaid express warranty shall be in addition to any standard warranty or service guaranty given to Purchaser by Seller. All warranties shall be construed as conditions as well as warranties and shall not be deemed to be exclusive. Seller shall furnish to Purchaser three (3) copies of Seller's standard warranty and service guaranty applicable to the Goods covered by the Purchase Order and any other warranty required by the drawings, specifications, samples and other descriptions given for the Goods. All warranties and service guarantees shall run both to Purchaser and the Project Owner and/or Purchaser's Customers. If the Goods are determined by the Purchaser not to conform with Seller's warranties with respect thereto, the Seller shall promptly upon receipt of written or electronic notice of such nonconformity from Purchaser, and at no cost to Purchaser, repair the Goods so that they conform with the Purchase Order and the Seller's representations or replace them with conforming Goods. In lieu of such repair or replacement by Seller, the Purchaser may at its sole option and not in limitation of any other right or remedy it may have, require Seller to refund the full purchase price for any Goods for which a breach of warranty exists and remove the nonconforming Goods. Seller shall be liable for all amounts and damages incurred and sustained by Purchaser in connection with any breach of warranty, including but not limited to removal, shipping, receiving, storage and reinstallation costs and all other incidental and consequential damages. Seller's warranties and related obligations shall survive final payment and acceptance of the Goods, as well as the termination of the Purchase Order.

**4. TAXES:** The Seller shall be responsible for all taxes, assessments and fees related to the Goods unless stated otherwise in the Purchase Order.

**5. CANCELLATION FOR INSOLVENCY:** In the event of any suspension of payment or the institution of any proceedings by or against either party, voluntary or involuntary, in bankruptcy or insolvency, or under any provision of the United States Bankruptcy Act, or for the appointment of a receiver or trustee or an assignee for the benefit of creditors of either party, or in the event of a breach of any of the terms hereof, including warranties of Seller, the Purchaser shall be entitled to cancel this Purchase Order forthwith, without liability for loss of anticipated profits.

**6. INTERPRETATION:** Wherever possible, each provision of the Purchase Order shall be interpreted in such a manner as to be effective and valid under the laws of the State of Michigan, but if any provision of the Purchase Order shall be prohibited or invalid under such law, said provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of the Purchase Order.

**7. INSPECTION.** All Goods ordered will be subject to final inspection, approval and acceptance at the delivery point by Purchaser. Seller shall perform all inspections and tests with respect to the Goods and as required by the Purchase Order, Project Specifications and normal trade practices. Notwithstanding any inspection, acceptance of the Goods shall be at the delivery point. Any inspection or test by the Purchaser shall not relieve Seller of any warranty obligation or liability with respect to the Goods, nor shall any such inspection or test or failure to inspect or test be interpreted as, or in any way imply, acceptance of the Goods. Purchaser reserves the right either to reject and hold, at Seller's sole expense subject to Seller's disposal, all Goods not conforming to the Purchase Order, Drawings, Specifications and Samples, or to return the Goods freight collect at Purchaser's discretion. No Goods returned, as defective shall be replaced without a written or electronic order from Purchaser. If any Goods fabricated by Seller from material furnished by Purchaser are rejected by Purchaser due to Seller's fault or failure to meet the requirements of the Purchase Order, Drawings, Specifications, and Samples required under the terms of this Purchase Order, Seller shall, at Purchaser's sole option, either replace such Goods at its own expense or pay Purchaser the replacement cost of the material used therein. Seller shall further reimburse Purchaser replacement costs of Purchaser's materials or tools damaged while in Seller's possession.

**8. REPRODUCTION RIGHTS:** Purchaser does not grant or convey to Seller by virtue of this Purchase Order any reproduction rights in or to the Goods called for hereunder or any right to use designs, drawings, or other information belonging to Purchaser or supplied by or on behalf of Purchaser for use in the performance of this Purchase Order for the production, manufacture or design of the Goods for anyone other than Purchaser.

**9. ASSIGNMENT:** Seller may not assign the Purchase Order, or sublet any part of this Purchase Order, without the prior written consent of Purchaser. Claims for monies due or to become due under this Purchase Order may be assigned by Seller, provided Seller shall supply Purchaser promptly with two (2) copies of any such assignment, and provided further that payment to an assignee of any claim under this Purchase Order shall be subject to sell-off or recoupment for any present or future claim or claims which Purchaser may have against Seller. With notice, the Purchaser may assign this Purchase Order and Seller shall agree to assignment.

**10. CONFIDENTIAL:** The Seller shall not disclose any details connected with the Purchase Order to any third party except as may be required by law or to insure performance or as specified herein this Purchase Order without first obtaining the written consent of the Purchaser.

**11. TOOLS AND MATERIALS:** Title to and the right of immediate possession of all tooling, designs, patterns, drawings and materials furnished by Purchaser to Seller for use hereunder shall be and remain in Purchaser's ownership in all stages of manufacturing or production of Goods. When the cost of dies and tools or negatives and plates involved in the manufacture or production of Goods covered by this Purchase Order are included in the price per unit, then such dies and tools or negatives and plates become, if requested by the Purchaser, the property of the Purchaser upon completion of the Purchase Order. Any dies and tools or negatives and plates otherwise paid for by the Purchaser shall forthwith become its property.

**12. PAYMENT:** Payment for Goods on the Purchase Order shall not constitute an acceptance thereof, but all Goods shall be received and paid for shall be subject to Purchaser's directions, inspection and rejection. Payment shall be made as stated in this Purchase Order, less customary cash discount, unless otherwise specifically arranged for and as stated on this Purchase Order or in the event that Goods has not been received, the Purchaser reserves the right to withhold payment until Goods has been received and inspected and does not waive the right to deduct the cash discount. When invoices subject to discount are not mailed on date of shipment, discount period will begin on the date they are received in Purchaser's office. Purchaser's count of Goods will be accepted, as final on all shipments not accompanied by packing list. Payment shall be paid only for Goods that are specifically named in the Purchase Order. No additional costs for items or services will be paid by the Purchaser without its prior written consent. Payments pursuant to this Purchase Order shall be made no later than forty-five (45) days after the Purchaser's receipt of a proper invoice from the Seller. Notwithstanding anything to the contrary herein, Seller agrees the Owner's or Purchaser's Customer payment to the Purchaser for the Goods is a condition precedent to the Purchaser's payment to the Seller, it being agreed and understood the Seller is relying solely on the credit worthiness of the Owner or Purchaser's Customer in selling the Goods to the Purchaser. Charges for the late payment of invoices are prohibited. In the event the Owner or Purchaser's Customer does not make payment to Purchaser for the Goods, the Seller waives all claims and liabilities against Purchaser arising from or related to the Goods. **SELLER'S PRICE IS FIRM:** The Total Purchase Order Amount set forth on the face of the Purchase Order is firm. Seller shall be responsible for all charges related to the Goods in excess of the Total Purchase Order amount but shall nonetheless deliver the Goods to the Purchaser.

**13. CHANGES:** Purchaser shall have the right at any time in its sole and absolute discretion, without invalidating or breaching the Purchase Order, to direct Seller by written notice to add to, reduce, suspend or otherwise change the scope of the Purchase Order and to make changes to the quantities, specifications, materials, packaging, time and place of delivery and method of transportation of the Goods (any such addition to, reduction, suspension or other change by Purchaser defined as a "Change"). In the event of a Change, the Total Purchase Order Amount shall be adjusted by the written agreement of the Purchaser and the Seller.

**14. TITLE OF RISK AND LOSS:** Seller warrants that it has the right to sell the Goods and the ability to deliver good title to all Goods. Title to the Goods shall pass to Purchaser upon the earlier of (a) the date Purchaser paid for the Goods; and (b) the date the Goods are received and accepted by the Purchaser. In addition to its other insurance obligations, Seller shall insure the full value of the Goods while in transit and in storage prior to the delivery of the Goods and acceptance of the Purchaser. Seller shall have retained the risk of loss with respect to the Goods (regardless of Purchaser's title thereto) until the Goods have been delivered to and accepted by the Purchaser at the delivery point specified in the Purchase Order. Seller shall promptly execute and provide Purchaser with any documentation necessary to transfer title to the Goods or evidence of Purchaser's title thereto.

**15. INDEMNITY:** To the fullest extent permitted by applicable law, the Seller shall defend, hold harmless and indemnify the Purchaser, and any respective director, officer, employee, agent, successor and assign of the Purchaser, from and against any and all damages involving the following: (a) any actual or alleged infringements of any patent, trademark, copyright or other intellectual property right related to arising from the Goods, (b) any actual or alleged injury or death to any person, or damage to or destruction of property (including the loss of use thereof) or any other damage or loss by whomsoever suffered resulting from or arising out of or in connection to the Goods, whether or not such damage or loss is due to the negligence of any kind or character on the part of the Purchaser, (c) any actual or alleged failure of the Goods to comply with the Purchase Order, (d) any lien, claim or encumbrance (of any type) in which any person or entity seeks or claims an interest in the Goods which is in conflict with or otherwise impairs the Purchaser's sole and exclusive right to the Goods, and (e) any hazardous material or waste, toxic substance, pollution or contamination brought to the Project or point of delivery by the Seller. The foregoing indemnification obligations shall not be affected or limited by, in any way, any insurance required by the Seller. Seller will defend and indemnify Purchaser against all claims of patent, trademark or copyright infringement or all unfair competition arising out of the sale, cataloging, marketing, packaging, or advertisement of Goods furnished by Seller; and against all claims for damage to person or property resulting from defects in materials or workmanship, or from failure of Seller to comply with safety, inspection and labeling requirements of governmental agencies in force as applicable when goods are resold by Purchaser.

**16. TIME FOR PERFORMANCE:** Time is of the essence. Seller acknowledges and agrees the Purchaser's time period(s) for the delivery of the Goods are essential conditions to the Purchase Order. Accordingly, Purchaser reserves the right without liability, in addition to any other right it may have, to terminate this Purchase Order on notice to Seller as to Goods not accepted or delivered on time and to purchase substitute Goods elsewhere and charge the Seller for all loss incurred by Purchaser.

**17. TERMINATION:** If the Goods covered by this Purchase Order are standard stock merchandise, Purchaser at its sole option may cancel at any time any unshipped portion of the Goods order without further obligation hereunder except to make payment, subject to other application terms hereof, for the merchandise shipped prior to such cancellation. If this Purchase Order covers Goods manufactured or fabricated to the specifications of the Purchaser, or special specifications prepared by Seller for Purchaser, Purchaser may terminate such work under this Purchase Order in whole, or in part, at any time by written or electronic notice to Seller. Upon such termination in whole or in part of such Goods under this Purchase Order, Seller will stop work immediately, notify Seller's suppliers / subcontractors to stop work if applicable, and protect property in Seller's possession, in which the Purchaser has or may acquire an interest. Except where such termination is occasioned by a default or delay of Seller, other than one due to causes beyond Seller's control and without Seller's fault or negligence, Seller may claim reimbursement, on forms acceptable to Purchaser for Seller's actual costs incurred up to and including the date of termination which are properly allocable to or apportionable under recognized accounting practices to the terminated portion of the Purchase Order, including liabilities to Seller's suppliers / subcontractors which are so allocable and acceptable finished units at contract price not previously billed or paid for but excluding any charge for interest or any Goods which Seller may be able to divert to other orders. Seller may also claim a reasonable profit on the work actually completed by Seller prior to such termination, the rate of which shall not exceed the rate use in establishing the original Purchase Order price. The total of such claim shall not, however, exceed the canceled commitment value of this Purchase Order.

**18. TERMINATION FOR CAUSE:** When the Seller has not performed, or has unsatisfactorily performed under the Purchase Order, payment shall be withheld at the sole discretion of the Purchaser. Failure on the part of the Seller to fulfill contractual obligations of the Purchase Order shall be considered just cause for termination of the Purchase Order and the Seller is not entitled to recover any costs incurred by the Seller up to the date of termination, and Seller waives all claims for costs (including but not limited to lost profits). If Purchaser is required to procure Goods from an alternate source and the cost of those Goods exceeds the remaining balance of the Purchase Order, the additional costs incurred by the Purchaser shall be reimbursed by the Seller. Purchaser may, at its sole discretion, withhold any balance due and owing Seller to offset the additional costs incurred by Purchaser in procuring sufficient Goods to complete the work.

**19. TERMINATION FOR CONVENIENCE:** In addition to terms set forth above, the Purchaser may terminate this Purchase Order, in whole or in part, for convenience and without showing cause upon written or electronic notice to the Seller specifying the extent and the effective date of the termination. In connection with such termination, the Purchaser shall pay Seller as Seller's sole and exclusive remedy a termination payment comprised of any amounts due for Goods Purchaser accepted prior to the termination date and Seller's reasonable and necessary direct costs resulting from the termination which are substantiated by evidence satisfactory to the Purchaser. In no event, shall the Seller be entitled to any payment or profit for any Goods not accepted by Purchaser.

**20. DISPUTES:** All claims and disputes relating to this Purchase Order, including but not limited to claims for payment arising out of labor services, materials, supplies or equipment manufactured or delivered subject to this Purchase Order, shall be subject to private arbitration at the sole option of Purchaser in accordance with the Commercial Industry Rules published by the American Arbitration Association then in effect. Written notice of demand for arbitration may be filed with the other party to the Purchase Order at any time after a dispute has arisen. The Parties further agree that the arbitration shall be conducted in Wayne County, Michigan. The award rendered by the sole arbitrator shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. In the event Purchaser does not elect to arbitration, any claims or disputes shall be resolved by a court located in Wayne County, Michigan. Seller agrees to submit to the personal jurisdiction of the courts located within Wayne County, Michigan for the purpose of litigating all such claims or disputes.

**21. LIMITATION OF LIABILITY:** In no event shall Purchaser, or any respective director, officer, employee, agent, successor and assign of the Purchaser, be liable to Seller, or anyone claiming through or related to Seller, whether based on contract, tort, negligence, warranty, indemnity, strict liability, delay, error or omission, or otherwise, for any consequential, special, incidental, indirect, punitive, exemplary or multiple damage or damages arising from or in connection with loss of use or loss of revenue or profit, actual or anticipated, increased expense of manufacturing or operation, loss of use, or cost of capitals, and the Seller hereby releases Purchaser, and any respective director, officer, employee, agent, successor and assign of the Purchaser, from any such liability. Purchaser's total liability to the Seller shall not exceed the Total Purchase Order Amount. Any action resulting from any breach of the Purchaser must be commenced within one (1) year of the date of this Purchase Order or the Seller will have deemed to waive any such cause of action.

**22. RETENTION OF RECORDS:** The Seller shall retain and maintain all records and documents relating to this Purchase Order for three (3) years after final payment and shall make them available for inspection and audit by authorized representatives of the Purchaser.

**23. WAIVER:** Any failure of the Purchaser to, at any time, enforce or require strict compliance with and performance of the Seller of any of its obligations under the Purchase Order shall not constitute a waiver of the Purchaser of a breach of any such term or conditions or any other breaches, or the right of the Purchaser to avail itself of the remedies it may have for any such breach, and no waiver shall in any event be effective unless in writing and signed by the Purchaser.

**24. FORCE MAJEURE:** Purchaser shall not be liable for delaying delivery and/or acceptance of the Goods, for its failure to accept any Goods, or for its failure to perform hereunder or breach hereof due to strike, labor trouble, war, insurrection, civil commotion, acts of terrorism, the public enemy, fire, explosion, accident, flood, storm, act of any governmental authority, executive or administrative orders or other legal restrictions, riot, embargo, blockade, quarantine, wrecks or delay in transportation or any cause beyond the Purchaser's control (collectively "a Force Majeure Event"). Seller shall not be liable for a delay in the performance of one or more of its obligations under the Purchase Order due to a Force Majeure Event, but only to the extent and upon conditions that: (a) Seller's written notice to Purchaser of the event which seeks relief: (a) conspicuously indicates in the notice's subject heading "CLAIM FOR FORCE MAJEURE RELIEF"; (b) is a Force Majeure Event as set forth herein and above; and (c) is provided to Purchaser in writing not later than two (2) business days after the occurrence of the Force Majeure Event. Under no circumstances shall the Seller be entitled to, and specifically waives, any additional compensation or costs related to any Force Majeure Event, and the Seller's sole and exclusive remedy, provided notice was properly and timely provided, is an extension of time to provide the Goods.

**25. INSURANCE:** If insurance requirements are not specified in the Purchase Order, Seller represents that as of the date the Purchase Order, Seller maintains comprehensive general liability insurance in an amount not less than \$1,000,000 combined single limit, worker's compensation insurance as required by law and automobile liability insurance for all vehicles to be used by Seller in the performance of services or delivery of products under the Purchase Order. Upon request, Seller shall provide proof of such insurance coverages and naming Purchaser an additional insured.