

TERMS AND CONDITIONS FOR USE WITH PURCHASE ORDERS  
FOR SUPPLIES, PARTS, AND EQUIPMENT

1. ACCEPTANCE AND CHANGES

A. Seller's acceptance of this order ("Order") is subject to, and limited by, these terms and conditions. Upon its acceptance by Seller, this Order shall be the entire agreement between the Buyer and Seller for the purchase and sale of the goods specified herein (the "Agreement"). No revision of, or addition to, this Order or any of its terms or conditions shall be effective (whether or not in Seller's acknowledgment or other form) unless agreed to in writing by Buyer.

B. SELLER MUST NOTIFY BUYER, IN WRITING, BY E-MAIL, OVERNIGHT LETTER OR FACSIMILE TRANSMISSION, OF ANY TERMS AND CONDITIONS ON BUYER'S ORDER THAT DO NOT AGREE WITH SELLER'S TERMS AND CONDITIONS. SELLER'S ACKNOWLEDGMENT IS NOT AN ACCEPTABLE NOTIFICATION OF DISAGREEMENT WITH BUYER'S TERMS AND CONDITIONS.

C. Shipment of any of the goods covered by this Order shall constitute acceptance of all terms and conditions hereof, whether or not Seller has acknowledged this Order.

2. DELIVERY; EXPEDITING

A. The dates of delivery specified herein shall be of the essence of the Agreement. Buyer reserves the right to cancel the Agreement and place an order elsewhere if deliveries are not made as specified, unless shipment is excused under Article 12 below.

B. Seller shall report promptly to Buyer in writing all information on delivery status reasonably requested by Buyer. Such reports shall not relieve Seller of its delivery obligations hereunder.

C. If any delay in shipment threatens to delay completion of Buyer's project, (i) Buyer may require Seller to ship, at Seller's expense, by any means more rapid than those specified herein, unless shipment is excused under Article 12 below, and (ii) Seller shall furnish Buyer a list of suppliers or subcontractors with whom Buyer shall be authorized to communicate to expedite performance

3. INSPECTION; REJECTION

A. Buyer's acceptance of all goods covered by this Agreement is subject to the inspection and approval of an authorized representative of Buyer. Approval or inspection by Buyer shall not relieve Seller of its warranty and indemnity obligations hereunder. Buyer may reject all goods not approved by its authorized representative.

B. Anything rejected that has been paid for by Buyer may be returned and charged back to Seller. In case of rejection or charge back, Seller will reimburse the Buyer for all its inspection and handling costs.

4. EXCESS QUANTITIES OR SHORTAGES

Buyer assumes no obligation for goods shipped in excess of the amount specified in this Order. Any or all of such excess may be returned at Seller's expense. If the quantity of bulk goods invoiced by Seller exceeds the quantity received by Buyer by more than one half of 1%, the full amount of shortage shall be deducted from Seller's invoice.

5. CASH DISCOUNTS

Discounts for prompt payment shall be calculated from the later of the date of Buyer's receipt of an accurate invoice in accordance

with the terms hereof, or the date of delivery to destination of all of the goods covered by this Agreement.

6. WARRANTY

A. Seller warrants that all goods purchased under this Agreement will conform to the specifications, drawings, samples or descriptions furnished by Buyer and/or Seller. Seller shall reimburse Buyer for all loss, cost, damage, or expense arising from failure of such goods to meet specifications.

B. Seller warrants that every item of equipment purchased under this Agreement is of established commercial operability. Further, Seller warrants that any equipment purchased under this Agreement shall be free of defects, in material and workmanship for a period ending one year from date of successful start up, or eighteen (18) months from date of complete shipment, whichever comes sooner.

C. Seller warrants that all chemical substances purchased under this Agreement are on the list of chemical substances published by the administrator of the Environmental Protection Agency pursuant to the Toxic Substances Control Act (P L 94 469) and that Seller has informed Buyer of all restrictions under the Act which may limit the manufacture or use of any such chemical substance.

D. Seller warrants that all chemical and petroleum substances purchased under this Agreement are packaged, marked and documented in accordance with the provisions of the Hazard Communication standard published by the Occupational Safety and Health Administration at Title 29 Code of Federal Regulations 1910.1200. Seller also warrants that a Material Safety Data Sheet has been provided on or before the first shipment of a hazardous chemical or petroleum substance as defined and regulated in the above standard.

7. INDEMNITY; LIMITATION

A. Seller shall indemnify and save harmless Buyer, its successors, assigns, customers, and users from all loss, cost, damage, and expense, including attorney's fees, arising from any claim of death or injury to persons, or damage to property, arising out of, or attributable to any item of goods supplied hereunder, except where such loss, cost, damage or expense results solely from the negligence of Buyer.

B. Seller shall indemnify and save harmless Buyer, its successors, assigns, customers, and users from all loss, cost, damage and expense arising from any claim for infringement of any patent, trademark, or copyright, including any claim for infringement in the manufacture, sale or use of any item of goods supplied hereunder. Seller shall, at its own expense, defend all actions or suits alleging such infringement.

C. Notwithstanding paragraphs 7A and 7B above, neither party will be liable to the other for lost profits, consequential, special, incidental, or punitive damages, however arising out of or related to this Agreement regardless of the basis of the claim.

8. CANCELLATION

A. The Agreement may be cancelled with or without cause by Buyer in whole or in part on the following terms and conditions. As used herein, the word "cause" shall mean Seller's failure to deliver goods as specified herein, Seller's failure to deliver goods on time, Seller's failure to comply with any of these terms and conditions, Seller's insolvency, or the commencement of voluntary or involuntary bankruptcy proceedings by or against Seller.

B. Buyer shall notify Seller, in writing by e-mail, facsimile transmission or overnight delivery, of Buyer's intention to cancel, the reasons, the effective date, and the extent thereof.

C. Immediately upon receiving notice of cancellation, Seller shall cease all work under this Agreement and shall take all possible steps to cancel all orders which Seller may have placed for the purchase of materials and supplies to be used by Seller in the manufacture of goods covered by this Agreement. Failure of Seller to use due diligence in canceling such orders shall deprive Seller of the benefits of paragraph 8F below as they may apply to such orders.

D. If Buyer elects to take possession of any of the goods, Seller shall be reimbursed as follows:

1. Buyer shall pay Seller at the rates set forth in this Agreement for those finished goods covered by this Agreement which have been delivered to Buyer, or are in Seller's possession and have not been paid for when Seller receives notice of cancellation.

2. Buyer shall pay Seller for those goods covered by this Agreement which are in process of manufacture on receipt of notice of cancellation. The price for such goods in process shall be the cost thereof to Seller at cancellation as determined by accepted accounting practices, exclusive of fees for overhead and profit.

E. If Buyer elects not to take possession of any goods, Seller shall not be reimbursed, or if goods have been previously delivered to Buyer, Buyer may return same, at its option, to Seller, freight collect, and Seller shall refund, in full, any payments made thereon.

F. If Buyer cancels without cause, Buyer shall pay Seller for those raw materials in Seller's possession or covered by uncancellable orders placed by Seller to the extent (a) that such raw materials have been ordered specially by Seller in reliance on this Agreement, and (b) that such raw materials are useful solely in the manufacture of the goods covered by this Agreement. The price of such materials shall be Seller's actual cost plus handling charges as determined by accepted accounting practices, exclusive of fees for overhead and profit.

G. All goods paid for by Buyer under either of the foregoing paragraphs D.1 or D.2 shall thereupon become Buyer's property, and Seller shall deliver them to Buyer in accordance with Buyer's instructions.

H. As a condition precedent to payment by Buyer of cancellation costs herein, Seller shall execute and deliver all documents and papers and take all action required to effectuate the above as directed by Buyer and to provide proof that Seller has no liens or claims against Buyer or its property.

I. In no event shall Buyer pay Seller cancellation costs in excess of the price for all of the goods set forth in this Agreement.

J. Upon any cancellation of the Agreement, all of the terms and conditions of the Agreement shall remain in full force and effect as to all goods delivered thereunder to Buyer prior to or in connection with such cancellation.

## 9. ASSIGNMENT

Performance hereunder may not be assigned or subcontracted by Seller without the written consent of Buyer.

## 10. LIENS AND ENCUMBRANCES

Seller shall deliver the goods to be supplied hereunder free of all liens or encumbrances. Buyer may withhold payment pending receipt of evidence, satisfactory to Buyer, of the absence of such liens or encumbrances.

## 11. BUYER'S DESIGN

Buyer shall be deemed to own any design furnished by Buyer for equipment to be made pursuant to this Agreement. Seller may not use, or furnish to others, the design (or any part thereof) without Buyer's prior written consent.

## 12. EXCUSE OF PERFORMANCE

Neither Buyer nor Seller shall be liable for a failure to perform which is caused by fire, labor dispute, or accident at its works, or by any other contingency that is beyond its control. Such failure shall be excused only to the extent of, and during the pendency of, such interference.

## 13. GOVERNING LAW

Pennsylvania law shall govern the validity and interpretation of this Order, Seller's acceptance, and the Agreement.

## 14. COMPLIANCE WITH LAWS.

A. Seller warrants that it has complied and shall comply with all governmental laws, regulations and orders covering the production, sale, packaging and delivery of the goods under this Agreement from which, because of non compliance by the Seller, liability may accrue to Buyer

B. Seller warrants that all goods covered by this Agreement have been produced in compliance with the requirements of the Fair Labor Standard Act of 1938, as amended, and Executive Order 11246 and the rules, regulations and relevant orders of the Secretary of Labor, if applicable. Section 202 of Executive Order 11246 is incorporated herein by specific reference.