

# GENERAL PURCHASE ORDER PROVISIONS

- ACCEPTANCE - ENTIRE AGREEMENT MODIFICATION:** Acceptance of this order shall be limited to the terms and conditions contained herein, and incorporated herein by reference. This order shall be deemed accepted upon the return of the acknowledgment copy of this order or the commencement of performance of Seller. Buyer accepts any additional or inconsistent terms and conditions offered by Seller at any time and irrespective of Buyer's acceptance of or payment for Seller's items or services. To the extent there is any conflict or discrepancy between the terms and conditions of this order and change to or modification to this order shall be binding upon Buyer unless signed by the authorized representative of Buyer's procurement or purchasing office at Buyer's place of business issuing this order.
- PRICES, TAXES, INVOICES AND NEW MATERIAL:** Seller warrants that each price for items sold to Buyer under this order is no less favorable than that is extended during the term of this order to any other customer for the same or like items in equal or less quantities on similar terms and conditions. Unless otherwise provided on the face of this order, the prices appearing herein are no additional charge. All items will be delivered to Buyer in accordance with the terms and conditions, including but not limited to charges for packaging, crating, labeling, custom duties, storage, insurance, federal, state and local taxes. All invoices and/or advance shipping notices must reference the order number, Buyer's part number, quantity of pieces in the shipment, number of cartons or containers, Seller's name and the bill of lading number. Seller further warrants that none of the terms furnished under this order are Government or commercial surplus, used, remanufactured or reconditioned or of such age or so deteriorated as to impair the usefulness or safety thereof, unless otherwise specifically stated on the face of this order.
- MATERIAL, EQUIPMENT, TOOLS AND FACILITIES:** Unless otherwise stated in this order, Seller shall supply all material, equipment, tools, and facilities required to perform this order. Title to all property furnished to Seller by Buyer or specifically paid for by Buyer, or the cost of which is fully or substantially amortized in the price of the items purchased hereunder, including equipment, tools and molds and any replacements thereof or any materials affixed or attached thereto (all herein after collectively referred to as "Articles") shall be and remain in Buyer with the right of possession in Buyer, and Seller will use said Articles only in the performance of this order. All Articles will be clearly marked with the name of Buyer and each Article will also be marked according to an identification system (such as a numbering system) approved by the Buyer. Seller will provide Buyer with a written list of all Articles in Seller's possession describing each Article by type and in accordance with the identification system. All Articles while in Seller's custody or control and while in the custody or control of Seller's suppliers will be held at Seller's risk, will be kept insured by Seller at Seller's expense against loss and damage in an amount equal to the cost of replacement and will be subject to removal at Buyer's written request in which event Seller, at its expense, will prepare the Articles for shipment and will deliver them to Buyer in the same condition as originally received by Seller, reasonable wear and tear excepted. Seller will promptly notify Buyer of the location of Articles located in any place other than Seller's plant. Seller will maintain accountability and properly control records of Articles in accordance with sound industrial practice. Seller at its expense will maintain all Articles in good condition and repair or replace them to the extent necessary to performance of this order. Buyer does not warrant the accuracy of Articles which it furnishes and all items must be in strict accordance with the requirements of this order. Upon completion or termination of this order all items shall be retained by Seller at Seller's expense until disposition directions are received from Buyer. Seller will pay personal property taxes for Articles in its possession.
- DRAWINGS AND DATA:** All drawings, data, designs, engineering instructions, models, specifications, or other technical information written, oral or otherwise, supplied by or in behalf of Buyer or prepared by Seller specifically in connection with performance of this order (hereinafter designated "information") shall be and remain the property of Buyer. Seller shall not use or disclose such information except in the performance of orders for Buyer and upon Buyer's request such information and all copies thereof shall be returned to Buyer. Where such information is furnished to Seller's suppliers for procurement or supplied by Seller for use in the performance of Buyer's orders, Seller shall insert the substance of this provision in its orders.
- CHANGES:** Buyer may at anytime by a written order, without notice to the sureties if any, make changes in any one or more of the following: (i) drawings, designs or specifications, where the items to be furnished are to be specially manufactured for the Buyer in accordance therewith, (ii) method of shipment or packing, (iii) place or time of inspection, delivery or acceptance and (iv) the amount of any Buyer furnished property. If any such change cause an increase or decrease in the cost of or time required for performance of this order, an equitable adjustment shall be made in the price of delivery schedule or both. No claim by Seller for adjustment hereunder shall be allowed unless made in writing in an amount stated within twenty (20) days from the date notice of any such change is received by Seller. Where the cost of property rendered obsolete or excess as the result of a change is included in Seller's claim for adjustment, Buyer will have the right to take title thereto and prescribe the manner of disposition thereof. Nothing in this clause shall excuse Seller from proceeding with performance of this order as changed.
- STOP WORK ORDERS:** Buyer may at any time by written order stop all or any part of the work under this order for a period of ninety (90) days. At any time during such period Buyer may with respect to all or any part of the work covered by the stop work order, either cancel the stop work order or terminate the work in accordance with subparagraph A or B of the "Termination" clause of this order. To the extent the stop work order is canceled or expires, Seller shall resume work. If a stop work order has a material effect on cost or delivery, an adjustment shall be made in the price (excluding profit) or the delivery schedule or both provided, however, that no adjustment in price or delivery shall be made under this provision: (i) if the work would have been otherwise interrupted or delayed or (ii) for which an adjustment is available or excluded under any other provision of this order. No date for adjustment shall be allowed unless submitted to Buyer in writing in an amount stated within twenty (20) days after the work order is terminated or the stop work order expires, or is canceled, whichever first occurs.
- DELIVERIES AND SHIPMENTS:** Time is of the essence in making deliveries under this order. If delivery is to be in accordance with Buyer's written release, Seller shall not procure, fabricate, assemble or ship any item except to the extent authorized by Buyer in such written releases. Seller will at its expense ship by express or air shipment or by the most expeditious way if the delivery schedule is unduly delayed or (ii) for which an adjustment is available or excluded under any other provision of this order. No date for adjustment shall be allowed unless submitted to Buyer in writing in an amount stated within twenty (20) days after the work order is terminated or the stop work order expires, or is canceled, whichever first occurs. All items are to be suitably prepared for shipment and must be packed and shipped in accordance with the governing classifications and tariffs applicable thereto. All items shall be packaged in a manner sufficient to ensure arrival in an undamaged condition. Seller shall be responsible for costs or damage incurred by Buyer, directly or indirectly, not otherwise covered by insurance and reimbursed to Buyer, as a result of or caused by improper packaging. Items shipped in advance of Buyer's delivery schedule may be returned at Seller's expense. Seller shall advise in writing to Buyer at the time of delivery of any shipment of items to a carrier for transportation to a destination other than Buyer's place of business issuing this order. Seller shall be liable to Buyer for all damages, costs and expenses, including without limitation incidental and consequential damages, resulting from my failure by Seller to deliver items in compliance with specified delivery dates or schedules.
- INSPECTION AND QUALITY CONTROL:** Notwithstanding (i) payment, (ii) passage of title or (iii) prior inspection or test, all items are subject to final inspection and acceptance or rejection at destination stated herein. At all reasonable times during the period of Seller's performance hereunder, including the period of manufacture, Buyer and its customers may inspect and/or test the items to be furnished hereunder at the plants where the work is being performed, including those of the Seller's suppliers, and Seller shall provide, without additional charge, reasonable facilities and assistance for safe and convenient inspection and testing. All such inspections and tests shall be conducted in such a manner as not to unduly delay the work, Seller shall provide and maintain quality control and inspection systems acceptable to the Buyer. Seller shall comply with the provisions of Buyer's current quality manual. Seller will, if requested by Buyer, furnish a certificate indicating such compliance.
- WARRANTIES:** Seller warrants that: (a) all items and services furnished hereunder will conform to applicable specifications, instructions, drawings, data and samples; (b) all items and services furnished hereunder will be merchantable and will be of good material and workmanship and free from defects; (c) all items and services furnished hereunder will comply with all applicable industry standards and all statutes, rules and regulations, of any kind or nature, promulgated by any government or governmental agency in the United States, Japan and in countries in which Buyer has informed Seller the items furnished hereunder and/or the items into which such items are to be incorporated, are likely to be used; (d) Seller knows of Buyer's intended use and purpose for the items and services furnished hereunder; (e) the items and services furnished hereunder have been selected, designed, manufactured or assembled by Seller based on Buyer's intended use and will be fit and sufficient for the use and purpose intended by Buyer; (f) the items and services furnished hereunder will be free from all liens and encumbrances; and (g) the items and services furnished hereunder will be free from all patent, trademark, copyright, trade secret or other intellectual property right infringement or claims. As to each item, each of these warranties begins on the date of delivery and continues until the last to occur of the following: (i) the expiration of all warranties made by Buyer and Seller; (ii) the expiration of the longest time period during which Buyer's customer may be required, by contract or law, to replace or repair the item or Buyer's product incorporating the item if the item is defective or nonconforming to any warranties. These warranties will be in addition to all other warranties, expressed or implied, and will survive acceptance of and payment for any and all items and services furnished hereunder and will run to Buyer, its successors, assigns, customers, and users of its products.
- DEFECTIVE OR NONCONFORMING ITEMS / BREACH OF WARRANTY:** In the event of Seller delivery of defective or nonconforming items or Seller's breach of warranty, Buyer may at its election and in addition to any other rights or remedies it may have at law or equity or under this order, recover from Seller any costs of removing such items from property, equipment or products in which such items have been incorporated and any additional costs of reinstallation, reinspection and retesting and (a) return the items at Seller's risk and expense and recover from Seller the price paid therefor and, if elected by Buyer, purchase or manufacture similar items and recover from Seller the costs and expenses thereof, (b) accept or retain the items and equitably reduce their price or; (c) require Seller, at Seller's expense, to promptly replace or correct the items and pending redelivery repay Buyer any amount theretofore paid for such items. Seller shall be promptly to replace or correct such items as directed by Buyer. Buyer may repair them or have them repaired at Seller's expense or purchase or manufacture similar items and recover from Seller the costs and expenses thereof. Seller shall further be liable to Buyer for all consequential and incidental damages, including lost profits, incurred by Buyer as a result of the Seller's breach of warranties or delivery of defective or nonconforming items.
- TERMINATION:**
  - Buyer may terminate this order in whole or in part at any time by written or telegraphic notice stating the extent and effective date of such termination or in part and Seller will to the extent directed by Buyer (i) stop work under this order and place no further orders hereunder, (ii) terminate other outstanding orders which relate to work terminated by such notice, and (iii) protect property in Seller's possession in which Buyer has or may acquire an interest. Seller will submit to Buyer its written claim, if any, as soon as possible, but in any event not later than thirty (30) days from the effective of termination. Otherwise, such claim shall be waived. Seller hereby gives Buyer the right to audit and inspect its books, records and other documents relating to its termination claim if the parties cannot agree within a reasonable time upon the amount of fair compensation for such termination. Buyer's liability to Seller will be limited to making prompt payment of the following amounts only, without duplication (i) the contract price, not previously paid for items delivered or performed and accepted by Buyer, or completed in accordance with the provisions of this order and Buyer's releases prior to the effective date of termination and (ii) the actual raw material costs paid or irrevocably incurred by Seller in accordance to Buyer's releases, prior to termination, for raw materials purchased by Seller exclusively for the purpose of completing Buyer's order, which remain in Seller's possession after Seller's receipt of the notice of termination, and can not be returned to Seller's supplier for reimbursement or used by Seller for any other purpose. Seller may, with Buyer's written consent, retain at an agreed price or sell at an approved price any completed item, or raw material inventory, and will credit or pay the amount so agreed or received as Buyer directs, with appropriate adjustment for delivery cost savings. Seller will, if directed by Buyer, transfer title to and make delivery of any such items not so retained or sold.
  - Buyer reserves the right to terminate this order in whole or, from time to time, in part for default (i) if Seller fails to perform in accordance with any of the requirements of this order or to make progress so as to endanger performance; (ii) Seller breacher or defaults under any other agreement existing between Buyer and Seller; or (iii) if Seller becomes insolvent or suspends any of its operations or if any petition is filed or proceeding commenced by or against Seller under any state or federal law relating to bankruptcy, arrangement, reorganization, receivership or assignment for the benefit of creditors. Buyer shall have no liability for such termination. Payment for completed items delivered and accepted by Buyer can be set off against any damages to Buyer. Buyer may require Seller to transfer title and deliver to Buyer any or all property produced or procured by Seller for performance of the work terminated and Seller shall be credited with the reasonable value thereof not to exceed Seller's cost. Seller will be liable for damages caused by or resulting from its default including but not limited to excess costs of procurement. Buyer shall, in addition, have all other rights provided by law arising from Seller's default. If, after a default termination, it is determined that Seller's work was not in default, the termination shall be considered to have been made pursuant to subparagraph A of this clause.
  - To the extent this order is not terminated pursuant to subparagraph A or B above, Seller shall continue performance.
- FORCE MAJEURE:** In the event of fire, accidents, government acts, strikes or other labor disputes, Acts of God, war, riots and other civil disturbances, or any other conditions beyond either party's reasonable control which prevent manufacture, transportation, delivery, acceptance, or Buyer's prompt utilization of the items or services covered by this order the effect of which may, without any liability for such termination, manufacture, transportation, acceptance, or utilization by written notice effective when received by the other party, until such event and the consequences of such event of force majeure shall have terminated. Said notice of an event of force majeure shall contain the reason for any delay which the notifying party considers to be an event of force majeure under the privileges of this paragraph. An event of force majeure shall not include events within the total or partial control of the party giving notice including, but not limited to, poor business judgement or estimates, materials or labor shortages, or unanticipated engineering or technical difficulties.
- NOTICE OF LABOR DISPUTES:** Whenever Seller has knowledge that any actual or potential labor disputes is delaying or threatens to delay the timely performance of this order, Seller shall immediately give notice thereof, including all relevant information with respect thereto, to Buyer. Seller agrees to insert the substance of this clause, including the foregoing sentence in any purchase order or subcontract hereunder.
- PATENT, TRADEMARK, COPYRIGHT AND INTELLECTUAL PROPERTY INDEMNIFICATION:** Seller shall indemnify and hold harmless Buyer, its successors, assigns, affiliated business entities, customers and users of its products, and Buyer's officers, directors, shareholders, employees, and agents, from and against all costs, losses, expenses, damages, claims, suits, judgments or any liability whatsoever, including attorney's fees, resulting from any claim that the manufacture, use, sale or resale of any items or services supplied under this order infringe any patent, copyright, trademark, trade secret right or other intellectual property rights; and Seller, when notified of any such claim, shall at Buyer's sole option either defend any such action or claim of infringement at its own expense through legal counsel approved by Buyer, or reimburse Buyer on a monthly basis or at any interval as Buyer shall determine, for all expenses and other costs, including attorneys fees incurred by Buyer in defending such action or claim.
- INDEMNIFICATION AND INSURANCE:** Seller will indemnify and save harmless Buyer, its employees, agents and invitees from and against all liability demands, claims, loss, cost, damage and expense by reason or on account of property damage, death and personal injury of whatsoever nature or kind arising out of, as a result, or in connection with the performance of this order or manufacture, use, sale or resale of any items or services supplied under this order, which is occasioned by the actions or omissions of Seller or its suppliers. Seller will maintain and carry liability insurance which includes but is not limited to employer's liability, workman's compensation, general liability, public liability, property damage liability, product liability, completed operations liability and contractual liability in amounts set forth in this purchase order with carriers approved by Buyer; and if no amounts are so set forth, then in amounts acceptable to and approved by Buyer but in no event shall such amount be less than minimum statutory requirements, if any, Seller will, if requested by Buyer, furnish certificates of insurance indicating the foregoing coverage.
- COMPLIANCE WITH LAWS:** Seller shall comply with all federal, state and local laws, executive orders, and regulations applicable to the performance of this order and to the manufacture, provision and sale of any items or services supplied under this order, including but not limited to the Occupational Safety and Health Act of 1970, as amended ("OSHA"), Toxic Substances Control Act as amended ("TSCA"), Resource Conservation and Recovery Act of 1976, as amended ("RCRA"), Fair Labor Standards Act of 1938, as amended ("FLSA") and the National Traffic and Motor Vehicle Act of 1966 as amended ("NTMVSA"). The Seller warrants that (i) all items sold or furnished under this order will conform to and comply with OSHA standards and regulations and all applicable Federal Motor Vehicle Safety Standards issued under the NTMVSA, (ii) such items will conform to all applicable Federal Motor Vehicle Safety Standards issued hereunder and (iii) for each chemical product or product containing a chemical substance, purchased under this Order, Seller will furnish Buyer a Material Safety Data Sheet ("MSDS") in conformance with OSHA, state and local requirements, unless a current MSDS has previously been submitted by Seller to Buyer. Seller further warrants that all chemical substances delivered under this order will conform to and comply with the TSCA and regulations issued hereunder. Seller agrees to include on all invoices: "We hereby certify that these goods were produced in compliance with all applicable requirements of order of the United States Department of Labor issued under Section 14 thereof (29 U.S.C. 206, 207, 212, and 214)". Seller agrees to indemnify and hold Buyer and its customers harmless for any loss, damage or expenses, including attorney fees, sustained because of Seller's non-compliance with any applicable law.
- CASH DISCOUNT PERIODS:** Cash Discount periods will be computed from either date of delivery and acceptance of the items ordered or the date of receipt of correct and proper invoices prepared in accordance with the terms of this order, whichever is later.
- DESIGN CHANGES:** During performance of this order, Seller shall not make any changes in the design of items to be furnished by Seller under this order without advance notification to and approval of the Buyer.
- ASSIGNMENT:** Any assignment of this order or the work to be performed, in whole or part, or of any other interest hereunder without Buyer's written consent, except an assignment confined solely to monies due to or become due hereunder shall be void. Any such assignment of monies shall be void to the extent that it attempts to impose upon Buyer obligations not assumed by Seller in this purchase order, or to preclude Buyer from dealing solely directly with Seller in all matters pertaining hereto, including the negotiation of amendments or settlements of amounts due, or to preclude Buyer from any right of setoff or recoupment otherwise available to Buyer without regard to whether such right of setoff or recoupment arises out of this or any other transaction. In the event of any such assignment of monies due to or become due, Seller will file, in addition to a written notice of assignment, a true copy of the instrument of assignment with Buyer.
- RIGHTS AND REMEDIES OF BUYER:** The rights and remedies of Buyer set forth herein shall be in addition to any other rights and remedies provided in law or equity and the failure or delay by Buyer to exercise any rights or remedies under this order shall not operate as a general waiver thereof.
- CHOICE OF LAW:** The construction, interpretation and performance hereof and all transactions hereunder shall be governed by the law of the state wherein Buyer's place of business issuing this order located.
- DISPUTES:** Except as otherwise specifically provided in this order any dispute concerning a question of fact and/or law arising under this order which is not disposed of by agreement of the parties shall be decided by a court of a competent jurisdiction having jurisdiction over the parties and the subject matter of such dispute. Seller shall proceed diligently with the performance of this order in accordance with the directions of the Buyer.
- SUBCONTRACTING:** Seller agrees not to subcontract for any complete or substantially complete materials, supplies and/or services called for by this order without the prior written approval of Buyer.
- EQUAL OPPORTUNITY / AFFIRMATIVE ACTION:** Unless otherwise exempt under rules and regulations of the Secretary of Labor, Seller shall comply with the provisions of the following laws and regulations set forth in the Executive Order of Federal Regulations reference, Equal Opportunity/41 CFR Part 60 1.4 / Affirmative Action for Disabled Veterans and Veterans to the Vietnam Era/41 CFR Part 60 250.4, and Affirmative Action for Handicapped Workers/41 CFR Part 60 741.4.
- RELEASE OF INFORMATION TO PUBLIC:** Seller shall not, without the prior consent of Buyer, make any release of information concerning this order (other than to Seller's employees and subcontractors which is required for the performance of their duties) nor use the name of Buyer in any advertising or publicity.
- SERVICE PARTS:** Whether or not a current purchase order is in effect, Seller will provide Buyer with items for use as service parts, in quantities requested by Buyer, for a period of fifteen (15) years after termination of Seller's supply of the items for Buyer's mass production or for such lesser period of time as Buyer shall require in writing. The Seller shall ensure that its subcontractors comply with this requirement.
- IDENTIFICATION OF COMPONENTS:** Seller will furnish Buyer in writing, upon request, with all information which Buyer is required to furnish to its suppliers in order to identify and identify components and materials incorporated into the items. Seller's purchase orders and contracts with its suppliers will include the same requirement and will also provide that this requirement be included in all purchase orders and contracts with all lower-tier suppliers, such that Seller will be able to obtain and provide to Buyer detailed information concerning every component and material incorporated in each item by Seller and all lower-tier suppliers.
- DEFINITION OF "ITEMS":** For purposes of these General Purchase Order Provisions, the term "items" shall mean all products, tangible and intangible (including software), to be provided by Seller to Buyer pursuant to this Order.