

## TERMS AND CONDITIONS

### SHIPPING AND BILLING

- A. All material shall be suitably packed, marked and shipped in accordance with the Buyer's instructions, or in the absence of such instructions, in accordance with the requirements of common carriers in a manner to secure lowest transportation costs, and no additional charge shall be made to the buyer therefore unless otherwise stated herein. Breakage and damage will be charged to the shipper.
- B. Unless otherwise stated herein, all shipments shall be F.O.B. destination and no charge shall be made by Seller for transportation or storage. Absent other instruction from Buyer, all goods shall be shipped freight prepaid. Orders shipped contrary to these instructions will not be accepted by the Buyer and will be returned to the Seller at Seller's expense.
- C. Packing slips must accompany each shipment and must include the purchase order number.
- D. No invoice will be considered overdue unless material is received by Buyer.
- E. Invoices and original bill of lading must be mailed promptly. Invoices subject to discount will start discount period on date of receipt by Buyer.

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1. **ACCEPTANCE:** This Order expressly limits acceptance to the terms stated herein. Any additional or different terms Proposed by the seller are objected to and rejected. The manufacture or delivery of goods or the performance of services described on the face hereof will constitute an acceptance by the seller of this Order and all of the terms and conditions contained herein. By manufacturing the goods or performing the services, seller waives any and all terms and conditions of its proposal, quotation, acknowledgement or other form which are inconsistent with the terms and conditions contained in this purchase Order.
2. **DELIVERY:** Where a delivery date is specified in this order TIME IS OF THE ESSENCE. In accepting this Order, seller agrees to perform and make deliveries as required hereby. Deliveries are to be made both in quantities and at times specified in schedules furnished by the Buyer and shall not be excused by seller's inability to obtain materials, supplies or labor from its usual sources. Buyer will have no liability for payment for material or goods delivered to the Buyer which are in excess of quantities specified in the delivery schedules.
3. **INSPECTION AND ACCEPTANCE:** All goods and services are received subject to Buyer's inspection and rejection. The Seller shall provide and maintain an inspection system covering the subject matter of this Order which is acceptable to the Buyer. Buyer source inspection shall not constitute a waiver of any of Buyer's rights. Defective or nonconforming goods shall be held for Seller's instruction and at Seller's risk. Payment shall not constitute an acceptance thereof nor will acceptance discharge Seller's responsibility hereunder.
4. **APPLICABLE LAW / ARBITRATION:** All matters regarding the construction, interpretation and performance of this Order shall be governed by the laws of the State of New York and any controversy that cannot be settled directly by the parties hereto shall be settled by arbitration in accordance with the rules then prevailing of the American Arbitration Association, and judgment upon the award rendered may be entered in any court having jurisdiction thereof. Queens County, NY shall be the venue and jurisdiction for the resolution of disputes hereunder.
5. **CHANGES:** Buyer shall have the right at any time, by written Order of authorized contracting official of Buyer, to make changes to this order including, but not limited to changes in drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation. If any such changes cause an increase or decrease in the cost or the time required for performance, an equitable adjustment shall be made and this Order shall be modified in writing accordingly provided that the Seller submits its claim for adjustment in writing within thirty (30) calendar days after receipt of the written change order. However, nothing in this paragraph shall excuse the Seller from proceeding with the purchase order as changed.
6. **TERMINATION FOR CONVENIENCE OF BUYER:** Buyer reserves the right to terminate this Order or any part of it for Buyer's sole convenience. In the event of such termination, Seller shall immediately stop all work hereunder and shall immediately cause any of its suppliers or subcontractors to cease such work, Seller shall not be paid for any work done after receipt of notice of termination, nor for any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided, nor shall Buyer be liable for any loss of profits on the Order or portion thereof so terminated or suspended, nor for any consequential or incidental loss or damage, nor for any suspension delay, termination or cancellation charges.
7. **TERMINATION FOR CAUSE:** Buyer may also terminate this Order or any part of it in the event of any default by the Seller, or if the Seller fails to comply with any of the terms and conditions of this Order. Late deliveries, deliveries of products which are defective or which do not conform in any respect to the requirements stated on this Order, or failure to provide Buyer, upon request, with adequate assurances of future performance, or in the event that the Seller becomes insolvent or there is filed by or against Seller a petition in bankruptcy, reorganization or other insolvency proceeding, shall all be causes permitting Buyer to terminate this Order for cause. In the event of termination for cause, Buyer shall not be liable to Seller for any amount, and Seller shall be liable to Purchaser for any and all

damages sustained by reason of the default which gave rise to termination. If it should be determined that Buyer has improperly terminated this Order for cause, such termination shall be deemed a termination for the convenience of Buyer.

8. **TITLE AND RISK OF LOSS:** Title to goods purchased under this Order shall pass to the Buyer upon delivery of the goods to the F.O.B. point, unless otherwise specified herein. If the goods ordered call for additional services such, as installation and the like, or if the goods must meet operating specifications, then the risk of loss shall not pass to the Buyer until the services are performed or the good achieve the operating specifications.

9. **ASSIGNMENT:** Seller shall not assign any right or interest under this Order (except monies due or to become due) nor delegate any obligations under this Order without express written consent of the Buyer. Any such attempted assignment or delegation by the Seller shall be void and ineffective.

10. **INDEPENDENT CONTRACTOR / COMPLIANCE WITH LAWS:** All goods, work or services provided by the Seller or Seller's subcontractors pursuant to this Order shall be as an independent contractor and not as an agent of Buyer. All persons furnished by Seller are so furnished as Seller's employees or agents, and, in the performance of the requirements of this Order Seller shall give all stipulations, representations and certificates required by and be responsible for compliance with all executive orders, laws, rules and regulations Federal, State and local. Seller's acceptance of this Order and furnishing of goods or services hereunder shall constitute certification by Seller of such compliance as Buyer shall request. Seller agrees to indemnify and hold harmless and defend the Buyer against any claims or lawsuits arising out of Seller's failure to comply with any such laws, rules or regulations.

11. **EQUAL OPPORTUNITY:** Seller will not maintain segregated facilities or discriminate against any employees or applicants for employment because of age, race, color, religion, sex or national origin. Seller further agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their age, race, color, religion, sex or national origin. The Seller further represents and agrees that it does and will comply with all Equal Employment Opportunity Laws and Executive Orders and of the rules, regulations and relevant orders of the Secretary of Labor which are incorporated in every non-exempt contract between Seller and Buyer and Seller will obtain identical certifications from proposed subcontractors prior to award of subcontractors which are not exempt from the provisions of the Executive Order requiring the Equal Opportunity clause.

12. **INDEMNIFICATION AND INSURANCE:** If this Order covers the performance of labor or operation of a motor vehicle or use or transfer of goods or involves the presence of Seller's agents, servants, employees or representatives at premises owned, leased or controlled by Buyer, Seller agrees to defend and indemnify Buyer against all liabilities, claims and demands for injuries or damage to any person or property arising out of the performance of this Order and to defend and indemnify Buyer against all liabilities, claims, or demands for injuries to Seller's agents, servants, employees or representatives of every nature and description including those arising out of Buyer's negligence. Seller shall maintain at all times the following types of insurance and minimum coverage amounts: (1) Worker's Compensation and Employer's liability insurance and related insurance and/or bonds required by the law of the State in which the work is to be performed; (2) Comprehensive General Liability Insurance including contractual liability, product liability, and blanket contractual liability for both personal and property damage in the amount of \$500,000; (3) If the use of vehicles is required, Automobile liability with a combined single limit of \$300,000. Seller shall furnish upon Buyer's request evidence of required insurance coverages. At Buyer's request, Seller shall maintain greater coverage amounts and other types of insurance.

13. **FORCE MAJEURE:** Neither party shall be responsible for any delay or failure in performance of any part of this Order to the extent that such delay or failure is due to causes beyond the control and without the fault of negligence of the party whose performance is affected, including, but not limited to, acts of God, the public enemy or government. strikes, fires, floods, explosions, embargoes or unusually severe weather. If any such cause occurs the party, delayed or unable to perform shall give immediate notice to the other party. In the event that the Seller's performance is delayed for a period of ten (10) or more days, the Buyer may elect to cancel this Order at no cost to the Buyer other than for goods accepted and for which payment has not yet been received by Seller.

14. **NON-WAIVER:** The failure of either party to claim a breach of any term, right or condition of this Order or failure to enforce any of the provisions on one or more occasions, any course dealings of the parties, shall not be construed as a waiver of any terms, rights or conditions hereunder.

15. **SEVERABILITY:** In the event that one or more of the provisions contained in this Order shall for any reason be held to be enforceable in any respect under the laws of the jurisdiction governing this Order, such unenforceability shall not affect any other provisions of this Order, but this Order shall then be construed as if such unenforceable provision or provisions shall have never been present in this Order.

16. **ENTIRE AGREEMENT:** This Order constitutes the entire agreement of the parties and shall not be modified or rescinded except by a writing signed by duly authorized representatives of the parties.