



Document: Terms and Conditions (Purchase Orders)
Revision: Rev A
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1. **General.** This purchase order is an offer by Buyer for the purchase of the goods specified above ("Goods") from Seller in accordance with and subject to these terms and conditions (the "Terms"; together with the terms and conditions on the face of the purchase order, the "Order"). The Buyer and Seller identified above are referenced together as the "Parties" and each, a "Party". These Terms shall control over any inconsistent, additional or different terms or conditions that appear on any quotation, acknowledgement, invoice, work order, warranty, scope of work, proposal, or other communication otherwise received from the Seller, regardless of the order or timing by which such terms or conditions are submitted. Any additional or different provisions contained in such documents (including any click wrap terms) that purport to alter or vary any of the terms and conditions of this Order are hereby explicitly rejected, objected to, and superseded by, and shall not become part of this Order. Under no circumstance shall any provision(s) supplied by the Seller that purport to add or differ from the terms contained in this Order be treated as a counteroffer, and any attempts by Seller to deem its acceptance of this Order conditional or contingent upon Buyer's acceptance of terms and conditions other than those contained in this Order shall be disregarded. These Terms apply to any repaired or replacement Goods provided by Seller hereunder. No change to this Order is binding upon Buyer unless it is in writing, specifically states that it amends this Order and is signed by an authorized representative of Buyer.
2. **Acceptance and Rejection of Purchase Orders.** Seller shall confirm to Buyer the receipt of each Order issued hereunder (each, a "Confirmation") within two (2) Business Days following Seller's receipt thereof by Notice via facsimile or email. A "Business Day" means any day except Saturday, Sunday or any other day on which commercial banks located in Tennessee are authorized or required by law to be closed for business. Each Confirmation must reference Buyer's Purchase Order number, confirm acceptance of the Purchase Order or, solely if permitted under this section, advise Buyer of Seller's rejection of such Purchase Order, the date of acceptance or rejection, and the basis for rejection, if applicable. If Seller fails to issue a Confirmation within the time set forth in the first sentence of this section, or otherwise commences performance under such Purchase Order, Seller will be deemed to have accepted the Purchase Order. Buyer may withdraw any Purchase Order prior to Seller's acceptance (or deemed acceptance) thereof. Buyer may, on Notice to Seller, request changes to a Purchase Order. On or before the second (2nd) Business Day after receiving the request, Seller shall submit to Buyer its good faith description of the impact of such changes on the Terms. Buyer may then submit an amended purchase order reflecting all Buyer-accepted changes.
3. **Quantity, Shipment, Delivery, and Inspection.**
 - 3.1 **Quantity.** Seller shall deliver the quantity of Goods specified in the Purchase Order. Buyer may reject all overages or shortages, which overages and shortages shall be deemed nonconforming. Any rejected Goods shall be returned to Seller at Seller's sole risk and expense. Buyer shall have no obligation to keep, preserve, or pay (in whole or in part) for any such nonconforming Goods. If Buyer does not reject the Goods and instead accepts the delivery of Goods at a reduced quantity, the Price (defined below) shall be adjusted on a pro-rata basis. If the Buyer does not reject the Goods and instead accepts delivery of the Goods at an increased quantity, there shall be no adjustment to the Price.
 - 3.2 **Shipment and Delivery.** Seller shall deliver the Goods in the quantities and on the date(s) specified in this Order or as otherwise agreed in writing by the parties (the "Delivery Date"). If no delivery date is specified above, Seller shall deliver the Goods within seven (7) days of Seller's receipt of the Order. Timely delivery of the Goods is of the essence. If Seller fails to deliver the Goods in full on the Delivery Date, Buyer may terminate the Order immediately by providing written notice to Seller and Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller's failure to deliver the Goods on the Delivery Date. All Goods shall be delivered to the address specified in this Order (the "Delivery Location") during Buyer's normal business hours or as otherwise instructed by Buyer. Delivery shall be made Delivery Duty Paid to the Delivery Location in accordance with the most up-to-date requirements set forth by Incoterms. Seller shall give written notice of shipment to Buyer when the Goods are delivered to a carrier for transportation. Seller shall provide Buyer all shipping documents, including the commercial invoice, packing list, and any other documents necessary to release the Goods to Buyer within one (1) Business Day after Seller delivers the Goods to the transportation carrier. The Order number must appear on all shipping documents, shipping labels, invoices, correspondence, and any other documents pertaining to the Order. Title passes to Buyer upon delivery of the Goods to the Delivery Location. Seller bears all risk of loss or damage to the Goods until delivery of the Goods to the Delivery Location and acceptance of the Goods by the Buyer. All goods shall be packed for shipment according to Buyer's instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition. Seller must provide Buyer prior written notice if it requires Buyer to return any packaging material. Any return of such packaging material shall be made at Seller's expense.
 - 3.3 **Inspection and Rejection of Nonconforming Goods.** The Buyer has the right to inspect the Goods on or after the Delivery Date. Buyer, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If Buyer rejects any portion of the Goods, Buyer has the right, effective upon written notice to Seller, to: (a) rescind the Order in its entirety; (b) accept the Goods at a reasonably reduced price; (c) reject the Goods and require replacement of the rejected Goods, (d) reject a portion of the Goods and accept a portion of the Goods at a reduced price, or (e) correct, rework, and/or repair the Goods with all costs associated therewith to be charged to and paid by Seller. If Buyer requires replacement of the Goods, Seller shall, at its expense, promptly, and in no more than five (5) Business Days, replace the nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Goods. If Seller fails to timely deliver replacement Goods, Buyer may replace them with goods from a third party and charge Seller the cost thereof and terminate this Order for cause pursuant to Section 9. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller's obligations under the Order, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions. If Buyer elects to accept nonconforming, require replacement, or correct, rework and/or repair nonconforming Goods in accordance with (b), (c), (d), or (e) of this section, the terms of this Agreement shall apply to all such replacements and the replacement Goods shall have the same warranties as set forth in this Agreement from the date the Goods are accepted. Buyer shall have no obligation to pay Seller until Goods are adequately remedied.
4. **Pricing and Payment.** The price of the Goods is the price stated in the Order (the "Price"). If no price is included in the Order, the Price shall be the price set out in Seller's published price list in force as of the date of the Order. Unless otherwise specified in the Order, the Price includes all packaging, transportation costs to the Delivery Location, insurance, customs duties and fees and applicable taxes, including, but not limited to, all sales, use or excise taxes. No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Buyer. Seller shall submit invoices on a monthly basis and no more than sixty (60) days after Goods are delivered. Seller shall not request and waives the right to payment for invoices submitted more than sixty (60) days after Goods are delivered. As a condition precedent to the payment of any monies otherwise due hereunder, Seller must properly perform all obligations set forth in the Agreement and performance must not be disputed by Buyer. All invoices must contain the Purchase Order number. Properly submitted and undisputed invoices for Goods shall be paid within forty-five (45) days from the date of Buyer's receipt and approval of an invoice. Buyer reserves the right to make payment to Seller electronically (via wire transfer, EFT or ACH). All claims for monies due or to become due from Buyer shall be subject to set off, counterclaim, or deduction by Buyer arising out of this or any other agreement between Buyer and Seller.
5. **Intellectual Property Rights.** Seller shall, at its expense, defend, indemnify and hold harmless Buyer and any Indemnitee (defined below) against any and all Losses (defined below) arising out of or in connection with any claim that Buyer's or Indemnitee's use or possession of the Goods infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Seller enter into any settlement without Buyer's prior written consent.
6. **Confidentiality.** All non-public, confidential or proprietary information of the Buyer, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the Order is confidential, solely for the use of performing the Order and may not be disclosed or copied unless authorized by Buyer in writing. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) known to the Seller at the time of disclosure; or (c) rightfully obtained by the Seller on a non-confidential basis from a third party.
7. **Representations and Warranties.** Buyer warrants to Seller that: (a) the execution of the Purchase Order, and Buyer's performance Seller expressly represents and warrants to Buyer that all Goods will: (a) be free from any defects in workmanship, material and design; (b) conform to applicable specifications and other requirements specified by Buyer; (c) be fit for their intended purpose and operate as intended; (d) be merchantable; (e) be free and clear of all liens, security interests or other encumbrances; and (f) not infringe or misappropriate any third party's patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by Buyer. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the Goods with the foregoing warranties. Within five (5) Business Days of written notice of Seller's default on any warranty, Seller will promptly replace or repair the defective or nonconforming Goods, as requested and/or necessary, in Buyer's sole discretion, at the Seller's sole cost and expense. If Seller is unable to cure its default within five (5) Business Days, then Buyer will, in addition to other remedies available hereunder, including but not limited to Buyer's right to cancel all or the remainder of the Order and seek reimbursement of all related costs, be entitled to a full and prompt refund in respect of such nonconforming Goods and Seller shall be liable to Buyer for all costs (including but not limited to the costs of repairing or re-procuring the Goods, as well as all attorney's fees, expert and professional fees, and court and arbitration costs), losses, damages, penalties, and expenses incurred by Buyer and/or related to Seller's breach of the Order and/or any warranty. Buyer shall have no obligation to make any further payment to Seller until Goods are adequately remedied.
8. **Indemnification.** Seller shall defend, indemnify, and hold harmless Buyer, its members, officers, directors, employees, shareholders, agents, and authorized representatives (the "Indemnitees"), against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "Losses") arising out of or occurring in connection with the products purchased from Seller or Seller's negligence, willful misconduct or breach of the Terms. Further, and notwithstanding anything to the contrary herein, Buyer may defend any indemnified claim with counsel of its own choosing and without Seller's participation if: (i) the indemnified claim is one for which the Buyer gave Seller notice, and Seller fails to assume the defense or refuses to defend the indemnified claim in accordance with this Article 8; (ii) the indemnified claim seeks only an injunction or other equitable relief against Buyer; or (iii) Buyer reasonably believes: (a) there are one or more legal or equitable defenses available to it that are different from or in addition to those available to Seller and counsel for Seller could not adequately represent the interest of Buyer because such interest could be in conflict with those of Seller; or (b) such action or proceeding involves, or could have a material effect on, any matter beyond the scope of Seller's indemnification or defense obligations hereunder. Seller shall: (i) reimburse Buyer promptly and periodically for the reasonable costs properly incurred in defending against the indemnified claim (including attorneys' fees and expenses) and enforcing the indemnity granted in this Article 8; and (ii) remain responsible to Buyer for all losses and expenses indemnified under this section. Seller shall give prompt written notice

to Buyer of any proposed settlement of an indemnified claim. Seller may not, without Buyer's prior written consent (which shall not be unreasonably withheld, conditioned, or delayed), settle or compromise any claim, or consent to the entry of any judgment, regarding which indemnification is being sought hereunder unless such settlement, compromise, or consent: (i) includes an unconditional release of the Buyer from all liability arising out of such claim; (ii) does not contain any admission or statement suggesting any wrongdoing or liability on behalf of Buyer; and (iii) does not contain any equitable order, judgment, or term (other than the fact of payment or the amount of such payment) that in any manner affects, restrains, or interferes with the business of Buyer. Seller shall not enter into any settlement without Seller's and the prior written consent of Buyer.

9. **Termination and Survival.** Buyer may terminate this Order, in whole or in part, at any time with or without cause for undelivered Goods on five (5) days' written notice to Seller. In addition to any remedies permitted under these Terms, Buyer may terminate this Order with immediate effect upon written notice to the Seller, either before or after the acceptance of the Goods, if Seller has not performed or complied with any of these Terms, in whole or in part. If the Seller becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, then the Buyer may terminate this Order upon written notice to Seller. If Buyer terminates the Order for any reason, Seller's sole and exclusive remedy is payment for the Goods received and accepted by Buyer prior to the termination. All provisions which are continuing in nature, including, but not limited to, this section, Section 6 (Confidentiality), Section 7 (Representations and Warranties), and Section 8 (Indemnification), will survive termination of this Order.

10. **Governing Law and Dispute Resolution.** The creation, interpretation, construction, and enforceability of this Order shall be governed solely by the laws of the State of Tennessee (USA) regardless of the principles of conflicts of laws applied by the State of Tennessee or any other jurisdiction. Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by binding arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The place of arbitration will be Nashville, Tennessee. If the total value of the dispute is less than \$500,000 the arbitration shall be conducted by a single arbitrator selected by the Parties or appointed by the AAA if the Parties are unable to agree. If the total value of the dispute is \$500,000 or greater, the arbitration shall be conducted by an arbitration panel consisting of three (3) independent and impartial arbitrators, in which case, each Party shall nominate one (1) arbitrator for confirmation by the AAA, and the nominated arbitrators shall mutually select and agree on the third arbitrator within thirty (30) Days after their confirmation by the AAA (as applicable). The arbitrator(s)' decision shall be final and binding on both Parties and may be enforced in any court having proper jurisdiction. In arriving at his or decision, the arbitrator(s) shall be guided and bound by the terms and conditions of this Order. The arbitrator(s) are not empowered to award damages in excess of compensatory damages consistent with this Order. Unless otherwise agreed in writing, Buyer shall continue its payment obligations for Services and amounts not in dispute, and Seller shall continue to diligently perform the Services and correct any Defects during the pendency of any dispute proceedings occurring under this Section 10.

11. **Limitation of Liability.** Nothing in this Order shall exclude or limit (a) Seller's liability under Sections 5, 6, 7, and/or 8 hereof, or (b) Seller's liability for fraud, personal injury or death caused by its negligence or willful misconduct. Buyer's maximum liability to the Seller shall not exceed the aggregate amount payable under this Order..

12. **Additional Provisions.**

12.1 **Notices.** Notices, reports, and other communication made with respect to this Order shall be given in writing in English, and shall be effective on delivery. Notices may be delivered (i) in person, (ii) by certified mail, postage prepaid, return receipt requested, (iii) by a commercial overnight courier that guarantees next day delivery and provides a receipt, or (iv) by email if receipt of the email is confirmed by the recipient, except that notice shall not be delivered by email if the notice relates to breach or termination of the Order. Notices shall be addressed: (i) with respect to Buyer, to Buyer's physical/email address set forth in the Purchase Order; and (ii) with respect to Seller, to Seller's physical/email address set forth in the Purchase Order, with a copy to Seller's counsel: Steven M. Henderson, Stites & Harbison PLLC 400 West Market Street, Suite 1800, Louisville, KY 40202, shenderson@stites.com. Each party shall notify the other of any changes to its address for notices.

12.2 **Insurance.** Buyer shall, at its own expense, maintain and carry in full force and effect, commercial general liability insurance (including product liability coverage) in commercially reasonable amounts, with financially sound and reputable insurers, and upon Seller's request, shall provide Seller with a certificate of insurance evidencing the insurance coverage specified in this section. The certificate of insurance shall name Seller as an additional insured. Buyer shall provide Seller with thirty (30) days' advance written notice in the event of a cancellation or material change in such insurance policy.

12.3 **Assignment.** Seller may not assign any of its rights or delegate any of its obligations under this Order without the prior written consent of Buyer. Buyer may assign any of its rights or delegate any of its obligations to any affiliate or to any person or entity acquiring all or substantially all of Buyer's assets. Any purported assignment or delegation in violation of this section is null and void. No assignment or delegation relieves the assigning or delegating Party of any of its obligations under this Order. This Order is binding on and inures to the benefit of the Parties and their respective permitted successors and permitted assigns.

12.4 **No Third-Party Beneficiaries.** This Order benefits solely the parties to this Order and their respective permitted successors and permitted assigns and nothing in this Order, express or implied, confers on any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Order.

12.5 **No Waiver.** Except as expressly stated herein, no waiver under this Order is effective unless it is in writing and signed by an authorized representative of the Party waiving its right. The parties agree that the failure of one party to require performance of any of the provisions herein shall not operate as a waiver of the right of such party to request strict performance of the same or like provisions, or any other provisions hereof, at a later time.

12.6 **Relationship of the Parties.** The relationship between Seller and Buyer is solely that of vendor and vendee, and they are independent contracting parties. Nothing in this Order creates any agency, joint venture, partnership or other form of joint enterprise, employment or fiduciary relationship between the Parties. Neither Party has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement or undertaking with any third party.

12.7 **Force Majeure.** No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Buyer to make payments to Seller hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Event(s)"): (a) acts of God; (b) flood, fire, earthquake, epidemics, pandemics, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) shortage of adequate power or transportation facilities; (i) shortage of adequate supply of material components for the Products; and (i) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within fourteen (14) days of the Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that Seller's failure or delay remains uncured for a period of ninety (90) consecutive days following written notice given by Buyer under this section, Buyer may thereafter terminate this Agreement upon thirty (30) days' written notice to Seller.

12.8 **Miscellaneous.** In carrying out this Order, the Parties shall comply with all federal, state or local laws and rules and regulations issued thereunder. If any term or provision of this Order is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Any headings used herein are for convenience in reference only and are not a part of this Order. The use of the masculine, feminine or neuter gender in this Order shall be deemed to include the others, and the use of the singular or plural shall be deemed to include the other, whenever the context so requires. This Order shall be construed fairly as to all parties, and it shall not be construed for or against any of the parties on the basis of the extent to which that party participated in drafting it. This Order, including and together with the Basic Purchase Order Terms and any exhibits or schedules attached and hereby incorporated into this Order, is intended by the parties to be a final and complete expression of their agreement and understanding with respect to its subject matter. The terms of this Order are contractual, and may not be changed, modified, altered, interlineated, or supplemented, nor may any covenant, representation, warranty, or other provisions hereof be waived, except by agreement in writing signed by the party against whom enforcement of the change, modification, alteration, interlineation, or supplementation is sought. The rights and remedies under this Order are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. The parties acknowledge to one another that no promise, inducement, or agreement not contained herein has been expressed or made to any of them in connection with this Order.