

Terms and Conditions of Order

ACCEPTANCE – AGREEMENT. Seller's commencement of work or shipment of the goods subject to this order, whichever occurs first, shall be deemed an effective mode of acceptance of this order. Any acceptance of this order is limited to acceptance of the express terms contained on the face hereof, this Exhibit A and any additional exhibits of schedules furnished by Buyer. Any proposal for additional or different terms or any attempt by Seller to vary in any degree any of the terms of this offer in Seller's acceptance is hereby objected to and rejected, but such proposals shall not operate as a rejection of this offer unless such variances are in the terms of the description, quantity, price or delivery schedule of the goods or services, but shall be deemed a material alteration thereof, and this offer shall be deemed accepted by Seller without said additional or different terms. If this order shall be deemed an acceptance of a prior offer by Seller, such acceptance is limited to the express terms contained on the face hereof and the Exhibit A. Additional or different terms or any attempt by Seller to vary in any degree any of the terms of this order shall be deemed material and are objected to and rejected but this order shall not operate as a rejection of the Seller's offer unless it contains variances in the terms of the description, quantity, price or delivery schedule of the goods or services.

TERMINATION FOR CONVENIENCE. Buyer reserves the right to terminate this order or any part hereof for its sole convenience. In such event, Seller shall, and shall cause any of its suppliers or subcontractors to, immediately cease work pursuant to this order. Seller shall be paid a reasonable termination charge of a percentage of the order price reflecting the percentage of the work performed prior to the notice of termination, plus actual documented direct costs resulting from termination. Seller shall not be paid for any work done after receipt of notice of termination, nor for costs incurred by Seller's suppliers or subcontractors, which could reasonably have been avoided.

TERMINATION FOR CAUSE. Buyer may terminate all or any part of this order for cause and without penalty if Seller fails to comply with any of the terms and conditions of this order, or if Seller ceases to conduct its operations in the normal course of business (including as a result of its inability to meet its obligations as they mature), or if any proceeding under the bankruptcy or insolvency law is brought by or against Seller, or a receiver for Seller is appointed or applied for or an assignment for the benefit of creditors is made by Seller.

PROPRIETARY INFORMATION – CONFIDENTIALITY – ADVERTISING. Seller shall treat all information furnished by Buyer as confidential and shall not disclose any such information to any other person or entity, or use such information itself for any purpose other than performing this order. This paragraph shall apply to drawings, specifications, or other documents prepared by Seller for Buyer in connection with this order as well as information that may be provided orally by Buyer or observed by Seller at Buyer's facility. Seller shall not advertise or publish the fact that Buyer has contracted to purchase goods or services from Seller, nor shall any information relating to the order be disclosed without Buyer's written consent.

WARRANTY. Seller warrants that all goods and services furnished under this order: (a) conform to Buyer's manufacturing standards, specifications, drawings, samples or descriptions furnished by Buyer, including but not limited to all specifications attached as exhibits hereto; (b) will be new, merchantable, of good quality and workmanship, free from defects in material or workmanship for a period of twelve months or longer if specified in writing, and if Seller knows or has reason to know the particular purpose for which Buyer intends to use the goods or services, such goods or services shall be fit and sufficient for the intended use; (c) will conform to any statements made on the containers, labels or in advertisements for such goods and services; (d) will comply with all federal and state laws, regulations and ordinances pertaining to the manufacturing, packaging, labeling, sale and delivery of the goods and services; (e) will be of good title to and be free of all liens and encumbrances; (f) will not infringe any patent, copyright or other intellectual property rights of any third party; and (g) will have been produced, packaged, marked, labeled and will comply with all applicable governmental and regulatory requirements including, without limitations, the Food Additive Regulations of the Food and Drug Administration, Hazard Communications Standard (MSDS) of the Occupational Safety and Health Administration, the Ozone Depleting Chemical Restrictions of the United States Environmental Protection Agency, the CONEG Heavy Metal Restrictions and the California Proposition 65 Disclosure. Seller agrees to reimburse Buyer for any losses, costs, damages or expenses, including reasonable attorney's fees and expenses, arising from failure of the goods or services to meet such warranties. These warranties shall be in addition to all other warranties, express, implied or statutory, shall survive Buyer's payment, acceptance, inspection or failure to inspect the goods or services, and shall run to Buyer and its customers.

PRICE WARRANTY. Seller warrants that prices shown on this order are complete, and no additional charges including, without limitation, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing and crating shall be added without Buyer's written consent. Seller warrants that the net prices for goods and/or services sold to Buyer hereunder are not and will not be less favorable than the net prices Seller extends to any other customer for goods and/or services that are substantially the same in similar quantities and on similar terms. (In determining net prices extended to other customers, discounts, rebates, allowances, premiums, favorable payment terms and other benefits to the customers shall be taken into account.) If Seller reduces its prices to others for such goods or services during the term of this order, Seller will reduce the prices hereunder correspondingly as of the date of such reduction. Buyer's remedies for Seller's failure to reduce Buyer's prices when required by the foregoing shall include, without limitation, the rights to return the goods to Seller at Seller's expense, to purchase the goods or services or those that are substantially the same from another supplier thereof and reduce any quantities specified in this order, and to reduce payment to or obtain a credit from Seller to the extent its prices to Buyer are not as favorable than the net prices extended by Seller to any other customer. Buyer's representatives shall have the right to audit the relevant records of Seller at times and with advance notice that are reasonable to determine whether the requirements have been satisfied.

DISCOUNTS. Any discount terms provided herein shall date from the later of the date of delivery of goods at destination or the date of receipt of a complete and correct invoice by Buyer.

INDEMNIFICATION. Seller agrees to protect, defend, indemnify and hold harmless Buyer and its subsidiaries and affiliates, and their employees, agents, shareholders and directors, from and against all claims, actions, demands, liabilities, losses, cost and expense, including, without limitation, reasonable attorney's fees and expenses, arising out of: (a) any breach or violation by Seller of any its representatives, warranties, covenants or agreements set forth herein; or (b) any actual or alleged death or injury to any person, damage to any property or any other damage or loss by whomsoever suffered, claimed to result in whole or in part from the goods or services or any actual or alleged defect therein, whether latent or patent; (c) any act, activity or omission of Seller or any of its employees, representatives or agents including, but without limitation, activities on Buyer's premises and/or the use of any vehicle, equipment, fixture or material of Seller or Buyer; or (d) any claim resulting from any actual or alleged trademark, trade dress, patent or copyright infringement or trade secret misappropriation related to the goods or services sold hereunder. Buyer shall have the right to direct the conduct of any such defense. In addition, Buyer shall have the right to be represented by counsel of its own choosing in any action, at its own expense.

CHANGES. Buyer shall have the right at any time to make 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 their performance, an equitable adjustment shall be made and this contract shall be modified in writing accordingly. Seller agrees to accept any such changes subject to this paragraph.

INSPECTION/TESTING. Payment for the goods and/or services delivered hereunder shall not constitute acceptance thereof. Buyer shall have the right to inspect such goods and/or services and to reject any which are in Buyer's judgment defective or nonconforming. Goods rejected and goods supplied in excess of quantities called for herein may be returned to Seller at its expense and, in addition to Buyer's other rights, Buyer may charge Seller all expenses of unpacking, examining, repacking and reshipping such goods. In the event Buyer receives goods whose defects or nonconformity are not apparent on examination Buyer reserves the right to require replacement, as well as payment of damages. Nothing contained in this order shall relieve the Seller from the obligation of testing, inspection and quality control.