

Purchase Order Terms and Conditions

1. **GOVERNING PROVISIONS.** Each shipment received by Buyer from Seller shall be deemed to be only an acceptance of such shipment based upon the terms and conditions contained in this Purchase Order Terms & Conditions and in the Purchase Order (the "Purchase Order Terms and Conditions" and the "Purchase Order" shall be collectively hereinafter defined as the "Order"), notwithstanding any terms and conditions that may be contained in any acknowledgment, invoice or other form of Seller (even though it be signed by Buyer) and notwithstanding Buyer's act of accepting or paying for any shipment or any similar act of Buyer. Buyer hereby rejects any different or additional terms and conditions proposed by Seller. If this order is sent to Seller in response to a quotation or an offer of Seller submitted to Buyer, the terms of the Order shall (i) supersede and control all provisions in the quotation or offer of Seller; (ii) be a rejection of such quotation or offer from Seller and (iii) constitutes an offer to Seller. Seller's shipment of any of the goods, or the like (the "Products") or performance of any of the services (the "Services") covered by this Purchase Order, or Seller's acceptance of any payment made by Buyer pursuant to this Purchase Order, shall constitute Seller's acceptance of this Purchase Order (including these Purchase Order Terms & Conditions), as fully as if Seller had accepted in writing. In the event of a conflict between the terms in the body of the Purchase Order and these Purchase Order Terms and Conditions, such terms in the body of the Purchase Order shall prevail. No oral modifications of the Order shall be binding on Buyer. Any modifications and alterations or superseding agreements to the terms contained in the Order must be reduced to writing and signed by Buyer.

2. **COMPLIANCE WITH LAWS.** If Seller is domiciled in a country other than the United States, Seller agrees to complete compliance with the United States laws that are cited in this paragraph 2 and all equivalent laws of Seller's country of domicile. Seller warrants that the Products shall be adequately contained, packaged, marked, labeled and registered in compliance with, and that the Products and Services shall conform to, the requirements of all applicable federal, state and local laws, regulations, rules and orders. In accordance with the foregoing provision, but not by way of limitation, it is specifically understood that Buyer is an Equal Opportunity Employer and Seller warrants that Seller complies with the Fair Labor Standard Act of 1938, as amended. Seller agrees that, if this is construed to be a subcontract within the meaning of the Rules and Regulations approved by the United States Secretary of Labor pursuant to Executive Order 11246, as amended, the Vietnam Era Veterans Readjustment Act of 1974, as amended, or the Rehabilitation Act of 1973, as amended, or of the regulations issued pursuant to Executive Order 11625, the provisions of the applicable regulations as well as the Equal Opportunity and Nondiscrimination provision of Section 202 of Executive Order 11246 shall be incorporated herein by reference and shall be binding upon Seller as part of this Order.

Seller warrants that all Products and Services meet or exceed the safety standards established and promulgated under the Occupational Safety and Health Act of 1970, and the regulations issued thereunder, as amended. Seller warrants that every chemical substance and/or mixture as defined under the Toxic Substance Control Act, as amended, contained in the Products or utilized in their manufacture or the Services, has been properly reported to the Environmental Protection Agency and properly handled and disposed of in accordance with the provisions of the Toxic Substance Control Act and the regulations issued pursuant thereto, and any other applicable Federal, State or

local laws, regulations and rules. Seller warrants that each shipment or other delivery of the Products covered by this Order, are as of the date of shipment or delivery, whichever is later, not adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, and the Medical Devices Act as amended (the "Act") and are not articles which may not, under the provisions of Section 405, 505 or 512 of the Act, be introduced into interstate commerce and are not adulterated or misbranded within the meaning of the food, drug or cosmetic laws of any state or municipality. The foregoing guarantee shall be a continuing guarantee and shall apply to each shipment. Seller shall defend, indemnify and save harmless Buyer from and against any claims, liabilities, expenses (including attorneys' fees) fines, penalties, damages and/or economic losses associated with the failure of Seller, the Products and/or the Services to comply with the requirements of this Paragraph 2.

3. PRICE AND DELIVERY. Seller shall be paid as specified under terms and at the prices stated in this Order. The price for Products (other than equipment) shall cover the net weight of the Products. No extra charge of any kind, including charges for boxing, packing or crating shall be allowed unless specifically agreed to in writing in advance by Buyer. Seller warrants that the prices, discounts, concessions, and terms for the Products sold to Buyer are not less favorable than those currently extended to any other customer for the same or like goods in equal or less quantities. In the event Seller reduces its price for such goods during the term of this Order, Seller agrees to reduce the price of the Products to Buyer correspondingly. At any time during the term of this Order that Buyer can purchase goods of a like quantity at a price or under terms which will result in a delivered cost to Buyer that is lower than the delivered cost of the Products from any other source, Buyer may notify Seller of such lower delivered cost and Seller shall, within seven (7) days after such notice, advise Buyer in writing whether or not Seller shall meet such price or such terms. If Seller fails to do so, Buyer may purchase the lower delivered cost goods, and the quantity of any purchase so made shall correspondingly reduce the purchase and sales obligations of Buyer and Seller hereunder, and shall be without liability whatsoever to the Buyer. Unless otherwise provided on this Order, delivery of the Products shall be made at Seller's expense to the location specified on the Order and shall not be deemed complete until the Products have actually been received and accepted by Buyer. Risk of loss and/or damage shall remain with Seller until receipt thereof by Buyer. Furthermore, all costs, risks of loss, and damages due to (i) holds or enforcement actions by the USDA or the FDA, and (ii) taxes and duties imposed upon the delivery of the Products, shall be the responsibility of Seller until receipt of the Products by Buyer. Seller agrees that Buyer may (but is not required to) accept delivery of fewer than all of the items ordered hereunder in the event Buyer accepts one or more of the partial deliveries. Seller agrees to present for payment a separate invoice for each delivery. Buyer is not obligated to pay for any quantity of items delivered in excess of that ordered if the purchase price of such excess items total, in the aggregate, less than \$100.00. Any extra items received may be returned by Buyer to Seller at Seller's expense, or Buyer may, at its election, retain and take title to such excess items without any obligation whatsoever to Seller for payment therefor if any such excess items that total, in the aggregate, less than \$100.00. Seller agrees that all prompt payment discount term days begin to accrue from the date of receipt of goods by Buyer.

4. INSPECTION AND ACCEPTANCE. All Products shall be received subject to Buyer's rights of inspection, testing, rejection, and revocation. All Products shall conform to the specification requirements in the Purchase Order and the [Specification Sheet]. Any

Buyer's signature on any shipping/receiving, acknowledgment or other like documents shall not constitute (i) acceptance of Products or Services, (ii) acceptance of any different terms or conditions, or (iii) an acknowledgement of the condition of Products, but shall only acknowledge the receipt of a shipment. Buyer may elect to have in-process inspection of the Products provided hereunder. Seller shall permit free and reasonable access to Seller's facilities to perform such surveillance activities. Without limiting any of Buyer's rights provided by law or by this Order, Seller shall, upon request of Buyer and at Seller's risk and expense, immediately replace any Products rightfully rejected by Buyer and immediately deliver such replacement Products to Buyer's facility. If the Product fails any of Buyer's tests, Seller agrees to reimburse Buyer for any and all costs of testing, and all costs to ship any backorders for products that go out of stock due to a rejection based on failure to meet Buyer's specifications. If after being requested by Buyer to replace any Products, the Seller fails to promptly correct such defective item within the delivery schedule: Buyer may, at its option: (i) by contract or otherwise replace such Product, and charge to Seller any additional costs incurred by Buyer that are in excess of the original costs of the rejected Products and any other incidental or consequential costs, (ii) without further notice terminate this Order for default, or (3) require an appropriate reduction in price. Payment for or use of Products prior to inspection shall not constitute acceptance thereof and shall be made without prejudice to any and all claims that Buyer may have against Seller.

5. **INSURANCE.** Seller agrees to carry the following minimum insurance, which shall be primary to any insurance maintained by Buyer: (i) Commercial General Liability, including Completed Operations and Product Liability Insurance and (ii) Blanket Contractual, with an endorsement naming Buyer as an additional insured with minimum limits of liability of \$2,000,000 each occurrence combined single limit. However, if Seller holds such a Blanket Contractual minimum limit of less than \$2,000,000, then Seller shall give Buyer notice of such lesser amount before delivery and Buyer may, in its sole discretion, waive such Blanket Contractual minimum limit of liability requirement. Not later than ten (10) days from the date of this Order but in any case prior to Seller's entering Buyer's property to perform Services, a certificate evidencing the above coverage and Worker's Compensation Statutory Liability Insurance for the location of the work specified in this agreement, shall be provided to Buyer (subject to Buyer's satisfaction) and said certificate shall provide that Buyer shall be given thirty (30) days advance notice in the event of cancellation or material modification of the coverage.

6. **TAXES AND GOVERNMENTAL CHARGES.** This Order shall not include Sales or Use taxes, nor shall such taxes be added to the purchase price if Buyer has indicated in the space provided for such purpose on this Order, that the purchase is exempt from such taxes. Seller agrees to pay any other taxes imposed by Federal, State, or local law upon the Products or Services sold to Buyer hereunder, unless: (i) otherwise agreed by written consent of Buyer, or (ii) such taxes are required by law to be paid or borne by Buyer. Seller shall, upon request of Buyer, inform Buyer whether the Products are imported or manufactured with imported materials and furnish Buyer with all documentation required for duty drawback for product or imported materials contained in the Product purchased by Buyer hereunder.

7. **INTELLECTUAL PROPERTY/PATENT INDEMNITY.** Seller agrees to defend, indemnify and hold harmless Buyer, its officers, agents, employees, successors, customers and users, from and against all actual or alleged liability, economic loss, damage, claim, demands or expense, (including attorneys' fees, other expenses for

investigation, handling litigation, and settlement or judgement amount) either at law or in equity associated with any actual or alleged infringement of any patent, copyright, trademark, mask work, trade secret, invention, design or any other intellectual property right, or any litigation based thereon, with respect to the Products or Services (or any part thereof) covered by this Order, and any such obligation shall survive acceptance of such Products or Services and payment therefore by Buyer.

8. SELLER INDEMNIFIES BUYER. Seller shall assume the sole responsibility for any and all damage or injury (including death) to any and all persons (including, but not limited to employees of Seller or Buyer) and to all property associated with the performance of its obligations under this Order or any act or omission of Seller, and shall defend, indemnify and save harmless Buyer from and against any and all actual or alleged claims, liabilities, expenses (including attorneys' fees, other expenses for investigation, handling litigation, and settlement or judgement amount), fines, penalties, damages and/or economic losses of whatsoever nature associated therewith, except for such claims, liabilities, etc., due solely and directly to Buyer's active negligence. Seller hereby releases and waives all rights of subrogation against Buyer possessed by Seller's insurers. Seller hereby represents that it is authorized by its insurers to grant such release and waiver. This indemnification shall be in addition to the warranty obligations of Seller.

9. WARRANTY. Seller warrants good and clear title to all Products. Seller warrants that the Products are new, merchantable, safe, fit for intended use, free from defects in workmanship and materials and conform to any specifications, drawings, samples, or other descriptions referenced herein or applicable thereto. Seller further warrants that all Services shall be performed in accordance with the highest standards, in a workmanlike manner, free from defects in workmanship and materials and in conformance with all specifications, plans, or drawings referenced herein or applicable thereto. Products or Services found to be defective in material or workmanship or nonconforming with specifications within eighteen (18) months from the date of shipment (or performance) or twelve (12) months from the date of putting same into service or incorporation into Buyer's products, whichever date occurs first, shall, at Buyer's option and at Seller's expense: (i) be promptly corrected or repaired in place by Seller, (ii) be replaced at Buyer's facilities by Seller, or (iii) be returned to Seller at Seller's expense (including transportation and handling costs) for repair, replacement or full refund. Repair or replacement shall be initiated immediately and shall be pursued diligently and continuously, utilizing Seller's best efforts in order to minimize the impact on Buyer's operations. If Seller refuses or fails to correct or replace promptly the Products or Services, Buyer may by contract or otherwise correct or replace such Product or Services with similar products or services and charge Seller any additional costs accrued to replace such Product or Services and any other incidental or consequential costs occasioned to Buyer thereby. All warranties shall survive any inspection, delivery, resale, incorporation into Buyer's products, use or acceptance of Products or Services, or payment therefore by Buyer. Seller agrees that all warranties and indemnities applicable to Products provided hereunder shall automatically inure to the benefit of, and be directly enforceable by a third party purchasing or receiving such Products from Buyer. Any costs, expenses or damages incurred by Buyer associated directly or indirectly with a breach of these warranties shall be borne by Seller and may be offset against any monies owing to Seller hereunder or otherwise without liability whatsoever to the Buyer.

10. LIEN WAIVERS. Seller shall, at its sole cost and expense, obtain from all its subcontractors and materialmen waivers and releases of all liens which may be imposed by them against the premises of Buyer or the improvements thereon, associated with any Products or Services performed hereunder, and Seller shall defend, indemnify and hold harmless Buyer with respect thereto.

11. CANCELLATION AND LATE ORDERS. Time of delivery and performance and quantities specified in this Purchase Order are of the essence. Failure of Seller to perform on the dates and in the quantities specified shall constitute a material breach of this agreement. In addition to all its other legal remedies, Buyer reserves the right to cancel all or any part of the undelivered or unperformed portion of this Order if Seller does not make deliveries or perform as specified, or if Seller breaches any of the terms hereof. In the event of such cancellation, Seller shall be liable to Buyer for any excess cost or procurement cost as well as incidental, economic and consequential damages or loss sustained as a result thereof. All orders are due at Buyer's specified location by the due date specified in the order. Seller agrees that for late orders which cause backorders of Buyer's Products, in addition to any other damages entitled to Buyer by law, Seller will pay Buyer's actual extra costs incurred to ship backorders.

12. ASSIGNMENT AND SUBCONTRACTING. This Order or any right or obligation associated therewith may not be assigned or transferred by Seller, voluntarily or involuntarily or by operation of law, nor shall a subcontract be made with, nor other delegation of duties made to, any other party for the furnishing of any of the completed or substantially completed Products or Services without Buyer's prior written consent thereto, which consent may be withheld in Buyer's sole discretion. Any purported assignment, transfer or subcontract absent such consent shall be void. Furthermore, any such consent given shall not be deemed to waive or prejudice Buyer's right to recoupment and/or setoff of claims arising out of this or any other transaction with Seller, its divisions, affiliates, or subsidiaries, or to settle or adjust matters with Seller without notice to assignees.

13. SECRECY. Seller agrees not to make any use of writings, data, designs, drawings, specifications or any other information furnished to it by Buyer or observed or developed by Seller associated with this Order and to not disclose any of the foregoing to third parties, except as required in the performance of this Order and then only after first obtaining a written agreement from such third parties to be bound by similar secrecy and use restrictions. Upon completion, cancellation or termination of this Order, Seller shall return to Buyer all of the foregoing, including all copies, extracts or derivatives of tangible materials containing any such information made by Seller or third parties employed by Seller. Buyer shall at all times have title to all drawings, specifications, writings or other documents prepared or furnished by Seller hereunder. All Products produced for Buyer hereunder which are subject to or may be copyrighted under the Federal Copyright Act shall be deemed to be "works made for hire" and title to and ownership of such Products shall at all times be in Buyer. In return for the valuable consideration listed above, receipt of which is hereby acknowledged, the Seller acknowledges and agrees that the Seller does not retain any patent, copyright, common law right or intellectual property right under any United States, foreign country, or International law to any drawing, product, or work, and Seller does not retain any rights to reproduce, publish, sell or otherwise utilize the work in any form or medium whatsoever. These obligations shall continue to be applicable both during and after the termination of the Purchase Order and shall

terminate only from the moment and to the extent such data and information are or become generally available to the public through no fault of the Buyer or its employees.

14. MATERIAL SAFETY DATA SHEETS. If this Order covers the purchase of chemicals or raw materials, Seller shall furnish Buyer, prior to the first delivery, Seller's current [Material Safety Data Sheet] and other literature pertaining to the hazards associated with the Products and the precautions which should be observed with respect thereto. Seller shall promptly furnish Buyer copies of any revisions to any of the same issued by Seller during the term of this Order.

15. WAIVER. The failure of Buyer to insist in any instance upon strict performance by Seller of any provision of this Order shall not be construed as a continuing waiver of such item, or waiver of any other provision of this Order.

16. APPLICABLE LAW. This Order shall be governed by and construed in accordance with the laws applicable to Buyer's location set forth on this Order without reference to its conflicts of law principles. Buyer and Seller agree that Buyer's location set forth on this order shall be the proper jurisdiction and venue of any action to enforce this agreement, and both parties waive their rights to change venue. The prevailing party in any action to enforce this agreement shall be entitled to attorneys' fees and costs.

17. SUBSTANCE ABUSE. Seller certifies at all times while Seller's employees are on Buyer's premises, Seller shall be in compliance with the Drug Free Workplace Act of 1988, as it may be amended, (which shall be deemed to apply to all Services performed hereunder) and any governmental laws or regulations regarding substance abuse. Seller will take all action: (i) necessary to comply with such requirements, and (ii) which Buyer reasonably deems necessary to prevent substance abuse or their influence on Seller's employees while on Buyer's premises.

18. NON-COLLUSION. Seller warrants that Seller has not and will not, directly or indirectly, enter into any agreement, participate in a collusion or otherwise take any action in restraint of free or competitive bidding, including, but not limited to, any offer or promise of future employment or business opportunity by or for any contractor or subcontractor, or any personnel of Buyer or its contractors or subcontractors associated with this transaction.

19. ANTI-KICKBACK. This agreement shall be breached if Seller or Buyer has reasonable grounds to believe that a Buyer or Seller employee, subcontractor or subcontractor employee, directly or indirectly, solicited, accepted or attempted to accept any money, fee, gratuity, offer or promise of future employment or business opportunity, or thing of value of any kind for the purpose of improperly obtaining or rewarding favorable treatment in connection with a contract or subcontract associated with Buyer. Upon the occurrence of such a Breach, Buyer shall have the sole ability to terminate this agreement and collect any damages resulting from the favorable treatment.

20. TERMINATION FOR CONVENIENCE. The performance of the work under this Order may be terminated in whole or from time to time in part by Buyer whenever for any reason Buyer should determine that such termination is in its best interest. Termination of work hereunder shall be effected by delivery to Seller of a "Notice of Termination" specifying the extent to which performance of work under the contract is terminated and the date upon which such termination becomes effective. After receipt of the Notice of Termination, Seller shall cancel its outstanding commitments for the procurement of

materials, supplies, equipment and services, to the extent they relate to the performance of any work terminated by the notice. With respect to such canceled commitments, Seller agrees to: (i) settle all outstanding liabilities and all claims arising out of such cancellations of commitments with the approval or ratification of Buyer which approval or ratification shall be final for all purposes of this clause and (ii) assign to Buyer, in the manner, at the time, and to the extent directed by Buyer, all of the rights, title, and interests of Seller under the orders and subcontract so terminated, in which case Buyer shall have the right, in its discretion to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

Seller shall submit its termination claim to Buyer within thirty (30) days after receipt of a Notice of Termination. Upon failure of Seller to submit its termination claim within the time allowed, Buyer may determine on the basis of information available to it the amount, if any, due to Seller by reason of the termination and shall thereupon pay to Seller the amount so determined. Seller and Buyer may agree upon the whole or any part of the amount of amounts to be paid Seller by reason of termination under this clause, which amount or amounts may include any reasonable cancellation charges thereby incurred by Seller and any reasonable loss upon outstanding commitments for personal services which Seller is unable to cancel; provided, however, that in connection with any outstanding commitments for personal services which Seller is unable to cancel, Seller shall have exercised reasonable diligence to divert such commitments to its other activities and operations. Any such agreement shall be embodied in an amendment to this purchase order and Seller shall be paid the agreed amount.

Notwithstanding any of the terms and conditions contained in this paragraph 20, Buyer shall be obligated to pay any amounts agreed to be paid to Seller for only those such costs incurred prior to the date of the Notice of Termination; provided, however, Buyer shall be entitled to the Products (if any) that Buyer paid for in connection with such costs incurred prior to the date of the Notice of Termination.

Seller agrees to transfer title and deliver to Buyer, in the manner, at the time, and to the extent directed by Buyer such information and items which, if this order has been completed would have been required to be furnished to Buyer including: (i) completed or partially completed products and information, and (ii) materials or equipment produced or in process or acquired in connection with the performance of the work terminated by the notice. Other than the above, any termination inventory resulting from the termination of this purchase order may, with written approval of Buyer, be sold or acquired by Seller under the conditions described by and at a price or prices approved by Buyer. The proceeds of any such disposition shall be applied in disposition of property arising from the termination. Seller agrees to take such action as may be necessary, or as Buyer may direct, for the protection and preservation of the property related to this order which is in the possession of Seller and in which Buyer has or may acquire an interest.

21. TERMINATION FOR DEFAULT. Buyer may by written notice of default to Seller, terminate the whole or any part of this order in any one of the following circumstances: (i) if Seller fails to make delivery of the items described herein or to perform the services described herein within the time specified; or (ii) if Seller fails to replace or correct defective items when required to do so in accordance with the provisions of those clauses hereof entitled "Warranty" and "Inspection and Acceptance"; or (iii) if Seller fails to perform any of the other provisions of this order, or so fails to make progress as to endanger performance of this order in accordance with its terms. In the event Buyer terminates this order in whole or in part as provided above, Buyer may procure, at terms and in such a manner as Buyer may deem appropriate, items or services similar to those terminated and Seller shall be liable to Buyer for any excess costs for such similar items

and services, provided that Seller shall continue with the performance of this Order to the extent not terminated under the provisions of this clause. If this Order is terminated as provided above, Buyer, in addition to any other right provided in this clause, may require Seller to transfer title and deliver to Buyer: (i) any completed items; and (ii) such partially completed items, materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and purchase order rights, (hereinafter called "manufacturing material") as Seller has specifically produced or specifically acquired for the performance of such part of this order as has been terminated; and Seller shall, upon direction of Buyer, protect and preserve property in possession of Seller in which Buyer has or may acquire an interest. Payment for completed items delivered to and accepted by Buyer shall be at the Purchase Order price. Payment for manufacturing materials delivered to and accepted by Buyer and payment for the protection and preservation of property shall be in an amount agreed upon by Seller and Buyer. Buyer may withhold from amounts otherwise due Seller for such completed items or manufacturing materials such sums as Buyer, in its sole discretion, determines to be necessary to protect Buyer against loss because of outstanding liens or claims of former lien holders. If after notice of termination in accordance with the provisions of this clause, it is determined for any reason that Seller was not in default under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the "Termination for Convenience" clause of this order. The rights and remedies of the Buyer provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this purchase order.

22. SEVERABILITY OF PROVISIONS. In the event one or more of the provisions hereof or in the Purchase Order is rendered unenforceable, wholly or in part by any arbitrator's or judge's decision, Seller expressly agrees that the remaining provisions contained in the Order shall continue in force.

Revised 10-30-2008