

GMP TERMS AND CONDITIONS

1. **ACCEPTANCE AND AMENDMENTS.** None of the terms or conditions contained in this order may be added to, modified, superseded or otherwise altered except by a written instrument signed by an officer of Buyer and delivered by Buyer to Seller. Each shipment received by Buyer from Seller shall be deemed to be only upon the terms and conditions contained in this order, except as they may be so added to, modified, superseded or otherwise altered in writing notwithstanding any terms or conditions that may be contained in any acknowledgment, invoice or other form used by Seller and notwithstanding Buyer's act of accepting or paying for any shipment or similar act of Buyer. All specifications, drawings and data submitted to Seller with this order are hereby incorporated herein and made a part hereof. Seller's commencement of any work subject to this purchase order, shipment of any items referenced herein, or acknowledgement of receipt of this order, whichever occurs first, shall be deemed acceptance of this purchase order.
2. **DELIVERY.** Time is of the essence of this contract, and if delivery of goods or rendering of services is not completed by the time specified, or if Seller breaches any of the terms hereof including, without limitation, the warranties of Seller, Buyer reserves the right to cancel all or any part of the undelivered portion of this order by notice effective when received by Seller as to stated goods not yet shipped or services not yet rendered. Any provisions herein for delivery of goods or the rendering of services by installments shall not be construed as making the obligations of Seller severable. Shipments sent C.O.D. without Buyer's written consent will not be accepted and will be at Seller's risk.
3. **WARRANTIES.** In addition to all warranties prescribed by law or given by Seller, Seller warrants that all goods purchased hereunder will be free from defects in material and workmanship, will conform to the description herein and Buyer's specifications and accepted samples; will be merchantable, and free from defects, and fit for purposes for which they are intended and to which they are normally put and the purposes for any special uses known by Seller to be contemplated by Buyer; and have been designed, produced, manufactured or performed in compliance with the requirements of and meet the standards of all applicable federal, state and local laws, regulations and ordinances, and in accordance with industry standards. Seller also warrants that, to the extent the goods are not manufactured pursuant to detailed specifications furnished by Buyer, they will be free from defects in design. Seller agrees that this warranty will survive acceptance of the goods and shall inure to the benefit of Buyer, its successors, assigns, customers and ultimate users of the goods. Seller also agrees that said warranties shall be in addition to any warranties of additional scope given to Buyer by Seller.
4. **COMPLIANCE WITH LAWS.** Goods consisting of tools, machinery, equipment and accessories, or parts thereof, will comply with all applicable federal, state or local governmental laws, regulations or orders (including occupational safety and health laws, regulations and orders) as to design, construction and performance at Buyer's place of use, and Seller will notify Buyer if goods ordered do not so comply; furthermore, it is agreed that the purchase price includes, and Seller agrees to furnish, all accessories, parts, and appliances required by any such law, regulation or order for use or operation at Buyer's place of use. In filing this order, Seller shall comply with all applicable federal, state and local laws and governmental regulations and orders. Seller specifically warrants (a) that all goods furnished hereunder will be produced and sold in compliance with all applicable requirements of the Fair Labor Standards Act, as amended, including Section 6, 7 and 12 of the regulations and orders issued under Section 14 thereof, and will certify such compliance on each invoice submitted in connection with this order, (b) that it will comply with all applicable Equal Employment Opportunity requirements including those set forth in Section 202 of Executive Order 111246, as amended, which requirements are incorporated herein by reference, and (c) that it will comply with all provisions of Section 503 of the Rehabilitation Act of 1973, as amended, and Section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974 and all regulations promulgated under these provisions.
5. **RISK OF LOSS AND INSPECTION.** Risk of loss or damage to goods shall be on Seller until the goods have been delivered to and accepted by Buyer, notwithstanding any other terms contained herein. All goods will be received by Buyer subject to its right of inspection and rejection. Buyer shall be allowed a reasonable period of time to inspect the goods and to notify Seller of any nonconformance with the terms and conditions of this order. Buyer may reject goods or require Seller, at Seller's cost, to correct defects in goods which do not conform to the terms and conditions of this order or which are shipped contrary to instructions, or not on prescribed shipping dates, or not in containers suitable for the commodity carried. Goods so rejected may be returned to Seller, or held by Buyer, at Seller's risk and expense, and, in either event, the cost of transportation, shipping, unpacking, examining, repacking, reshipping and like expenses shall be charged to the Seller. No payment for items in this order or inspection of same shall constitute acceptance of defective work or improper materials nor constitute waiver of any other condition of this order, and is without prejudice to any claims Buyer may have against Seller. Buyer reserves the right to repair defective goods and charge Seller actual labor costs plus factory overhead, when Seller is behind in deliveries, or when it can be done at less cost than by returning material or articles to Seller for repair or replacement.
6. **PACKING.** No charge will be made to Buyer for cartons, wrapping, packing, boxes, crating, delivery, drayage, or other costs unless authority for such charge is expressly incorporated in this order. If transportation charges are not allowed by Seller, Seller shall prepay and charge on invoice. Transportation agency (railroad, motor truck, etc.) and route used must result in lowest rate possible consistent with service rendered, except when otherwise specified by Buyer, and penalties or increased charges due to failure to do so will be paid by Seller or Seller shall reimburse Buyer for any such excess charges paid by Buyer. Shipping instructions are part of this contract.
7. **INDEMNIFICATION AND INSURANCE.** To the fullest extent permitted by law, Seller shall indemnify and hold harmless Buyer, its successors, assigns, employees, agents, customers and users of its products, from and against all claims, losses, penalties, damages (including incidental and consequential damages including, but not limited to all claims of Buyer's customers) costs and expenses or liability (including reasonable attorneys and paralegals' fees), judgment or settlement for claims, arising out of (a) any alleged or actual infringement or contributory infringement of any letters, patent or trade secrets by reason of use, sale or lease of any goods purchased hereunder, excepting unpatented staple articles of commerce and goods purchased thereunder, and unpatented staple articles of commerce and goods manufactured in accordance with Buyer's design, or (b) any alleged or actual defects in the goods, breach by Seller of any of the warranties contained herein, or Seller's failure to deliver on time or in a timely manner the goods purchased hereunder, or (c) any alleged or actual failure of the goods to include necessary safety features or otherwise conform to the requirements of any federal, state or local health or safety law, standard, regulation or ordinance, when used in a manner and for a purpose intended by Seller, or (d) any bodily injury, sickness, disease or death or damage to or destruction of property (including loss of use thereof) caused by, arising out of, resulting from or occurring in connection with work or material provided by Seller, its subcontractors or suppliers or their agents or employees, whether or not caused in part by the active or passive negligence or other fault of a party indemnified hereunder; provided, however, Seller's duty hereunder shall not arise if such injury, sickness, disease, death, damage or destruction is caused by the sole negligence of a party indemnified hereunder. Seller's obligation hereunder shall not be limited by the provision of any workmen's compensation or similar act or other employee benefit acts. Seller shall, at its own expense, if so requested by Buyer, defend all claims, proceedings or suits against Buyer, its successors, assigns, employees, customers and users of its products, in which any of the aforesaid claims are alleged, provided Seller is duly notified of such claims, proceedings or suits against Buyer, its successors, assigns, employees, customers and users of its products, in which any of the aforesaid claims are alleged, provided Seller is duly notified of such claims, proceedings or suits. It is expressly understood and agreed that the foregoing provisions relating to indemnity shall survive any termination of the agreement between the parties, but this shall not be construed to mean that Seller's liability does not survive as to other provisions of the agreement between the parties. Seller agrees to procure and maintain, at its own expense, product liability and other appropriate insurance including (a) Commercial General Liability Coverage; (b) Completed Operations and General Product Liability Coverage; (c) Broad Form Contractual Liability Coverage. Each policy enumerated in (a), (b) or (c) above must be for a minimum of \$1,000,000.00 per occurrence and \$5,000,000.00 in the aggregate; (d) Automobile Liability: \$250,000.00 each person, \$500,000.00 each occurrence and property damage, \$100,000.00 each occurrence; (e) Umbrella liability \$1,000,000.00; (f) Employer's Liability \$500,000.00. All of the foregoing shall be with insurance carriers that have an A.M. Best "A" rating or better. It is further agreed and understood that all provisions relating to the purchase of insurance are in addition to and not in lieu of any other obligations contained within this order or by operation of law that may be found to be due and owing by and between the parties. Seller agrees to furnish evidence of said insurance satisfactory to Buyer as Buyer may request from time to time. All policies of insurance procured or maintained hereunder (a) shall provide that coverage thereunder shall not be terminated without thirty (30) days' written notice to Buyer, and (b) shall apply separately to each insured against whom claim is made or suit is brought and shall contain no provision which excludes coverage under a claim made by one insured under the policy against another insured under the same policy.
8. **DISCOUNTS.** The cash discount period will date from the receipt of the goods or from the date of the invoice, whichever is later.
9. **VARIANCES.** Seller must furnish the entire quantity ordered hereunder and said quantity cannot be varied by Seller unless an officer of Buyer agrees in writing to accept a different quantity. Buyer reserves the right to reject any unauthorized quantities and to return same to Seller at Seller's risk and expense. Seller further agrees to indemnify Buyer for any expenses or losses incurred by Buyer as a result of Seller's failure to furnish the entire quantity ordered hereunder.
10. **CHANGES.** Buyer reserves the right at any time to make changes in the following: (a) specifications, drawings and data incorporated in this order where the goods to be furnished are to be specifically manufactured for Buyer; (b) methods of shipment or packing; (c) place of delivery; and (d) time of delivery. If any such change causes an increase or decrease in the cost of or the time required for performance of this contract, an equitable adjustment shall be made in the purchase price or delivery schedule, or both. Any claim by Seller for adjustment under this paragraph shall be deemed waived unless Buyer is notified in writing within ten (10) days from receipt by Seller of the change. Price increases or extensions of time for delivery shall not be binding on Buyer unless approved in writing by an officer of Buyer.
11. **PRICING.** Seller shall not fill this order at an increased price over last quotation without first notifying Buyer and obtaining written consent signed by an officer of Buyer. Seller will give Buyer the benefit of any price declines to actual time of shipment, or if Buyer permits shipment to be made before specified shipping date. Buyer shall have the benefit of any price declines to specified shipping date. If Seller accepts this order as a commission merchant, he shall obtain from the manufacturer, for Buyer's benefit, similar reductions or refunds with reference to manufacturer's prices in effect on actual or specified shipping date, as the case may be.
12. **TERMINATION.** Buyer may at any time with or without cause terminate this order in whole or in part by written, facsimile, or electronic mail (e-mail) notice to Seller. If this order is cancelled without cause, any claim of Seller (a) with respect to standard stock articles shall be limited to payment for articles actually shipped prior to such cancellation, and (b) with respect to articles manufactured to Buyer's specifications, shall be settled on the basis of reasonable costs Seller has incurred in the performance of this order, with the understanding that Buyer shall not be responsible for any labor or equipment costs unless specifically agreed to in writing by Buyer.
13. **CONFIDENTIAL INFORMATION.** All information furnished by Buyer to Seller is confidential and Seller shall not disclose any such information to any other person, or use such information for any purpose other than performing this contract, unless Seller obtains written permission from Buyer to do so. This paragraph shall apply, without limitation, to drawings, specifications, or other documents prepared by Seller for Buyer in connection with this order. Seller shall not advertise or publish the fact that Buyer has contracted to purchase goods from Seller, nor shall any information relating to the order be disclosed without Buyer's written permission. Unless otherwise agreed to in writing, no commercial, financial or technical information disclosed in any manner or at any time by Seller to Buyer shall be deemed secret or confidential and Seller shall have no rights against Buyer with respect thereto, except such rights as may exist under patent laws.
14. **ASSIGNMENTS.** This order may not be assigned or subcontracted by Seller, in whole or in part, without the prior written approval of an Officer of Buyer. If Seller assigns monies due and to become due under this order, Buyer shall be entitled to assert against the assignee thereof all rights, claims and defenses of every type (including without limitation, rights of setoff, recoupment and counterclaims), which Buyer could assert against Seller, whether acquired prior or subsequent to such assignment.
15. **SETOFFS AND COUNTERCLAIMS.** All claims for money due or to become due to Seller from Buyer shall be subject to deduction or setoff by Buyer by reason of any counterclaim arising out of this or any other transaction with Seller.
16. **DELAYS.** Buyer may delay delivery or acceptance occasioned by causes beyond its control. Seller shall hold such goods at the direction of Buyer and shall deliver them when the cause affecting the delay has been removed. Causes beyond Buyer's control shall include, without limitation, governmental regulation or action or failure of the government to act where such action is required, strike or other labor trouble, fires, unusually severe weather, pandemic or federal, state or local emergency. Buyer shall not be liable to Seller as a consequence of delays, hindrances, interference or similar events it being understood and agreed by Seller that its sole and exclusive remedy for delay, hindrances, interference or similar events shall be an extension of time for Seller's work.
17. **INDEPENDENT CONTRACTOR.** In the event that Seller's obligations hereunder require or contemplate performance of services by Seller's employees or persons under contract to Seller, to be done on Buyer's property, or on property of Buyer's customers. Seller agrees that all such work shall be done as an independent contractor and not as an employee, partner or joint venture of Buyer and that the persons doing such work shall not be considered employees of Buyer. Seller shall maintain all necessary insurance coverages, including public liability and workers' compensation insurance, and shall pay all payroll taxes and contributions payable under all applicable federal and state laws with respect to employment of persons in connection with work to be performed under this order. Seller shall indemnify and save harmless and defend Buyer from any and all claims or liabilities arising out of such work and for any payroll taxes or contributions claimed to be due.
18. **WAIVERS.** Buyer may waive performance of any condition, but waiver by Buyer of any condition with reference to any shipment shall not be construed as a waiver of that condition for subsequent shipments, or be construed as a waiver of any other requirements of this contract.
19. **BUYER'S REMEDIES.** All rights and remedies of Buyer herein stated are nonexclusive and in addition to other rights and remedies provided by law. This order shall constitute the entire agreement between the parties.
20. **EXCLUSION OF PRIOR COURSE OF DEALING.** No prior course of dealing or usage of trade not expressly recited in this contract shall be admissible to explain, modify or contradict this agreement in any way.
21. **GOVERNING LAW AND VENUE.** This contract formed pursuant to the terms, conditions and specifications herein and the obligations imposed upon the Seller and Buyer shall be deemed entered into, and shall be governed by and construed according to the laws of the State of Missouri. It is agreed and understood between the parties that the venue of any cause of action relating to or arising out of this contract shall lie in Federal or State Courts in St. Louis County, Missouri exclusively.
22. **EFFECT OF INVALIDITY OF ANY TERM.** In the event that any one or more of these terms or conditions is held invalid, illegal or enforceable, such provision or provisions shall be severed and the remaining terms and conditions shall remain binding and effective.
23. **SELLER'S REMEDIES.** Seller's sole remedy under any order shall at Buyer's sole option be the return of any good or materials, or alternatively, payment of the agreed amount specified herein or the prorated agreed amount for any goods or materials which Buyer has elected to retain. The Buyer shall not in any event be liable for the cost of labor expended on any items or for any loss of profit, punitive, special, direct, indirect, individual or consequential damages. Buyer's maximum liability shall be the amount explicitly agreed to in this purchase order.