

# STANDARD PURCHASE ORDER - TERMS AND CONDITIONS



These Standard Terms and Conditions, set out below, shall apply to all purchases of Goods under purchase orders or other similar documents (hereafter each such purchase of Goods referred to, with the appropriate cover page, order form, or similar or other documentation, as a **"Purchase Order"**), unless otherwise agreed to in writing by Buyer, as follows:

**"Seller"** means: (i) the person selling the Goods directly to Buyer.

**"Goods"** includes equipment, materials, supplies and other goods to be provided by Seller to Buyer under this Purchase Order, whether or not specifically set out on the cover page, order form or other documentation (each and collectively **"cover page"**) which is part of this Purchase Order, as well as where applicable all specifications, instructions and installation, operating and maintenance manuals necessary for the installation, operation and maintenance of the Goods.

**"Delivery Point"** means the point at which Goods are to be delivered by Seller to Buyer, as shown in this Purchase Order or as otherwise agreed to by the parties in writing.

## 1. ACCEPTANCE

This Purchase Order is Buyer's offer to Seller, and acceptance is expressly limited to its terms and Buyer hereby objects to and rejects any different or additional terms in any response to this purchase order and, in addition, Buyer and Seller are not bound by prior dealings or trade usage. EXCEPT AS AGREED TO IN WRITING BY BUYER, IN THE EVENT OF A CONFLICT OR INCONSISTENCY BETWEEN ANY AGREEMENT SUBMITTED BY SELLER AND THE PROVISIONS HEREOF, THE PROVISIONS HEREOF SHALL GOVERN AND CONTROL AND SELLER ACKNOWLEDGES THAT UNIFORM COMMERCIAL CODE SECTION 2-207 OR THE APPLICABLE STATE LAW EQUIVALENT, SHALL NOT APPLY, AND SHALL NOT ALTER, ADD, CHANGE OR MODIFY THE PROVISIONS HEREOF. Each acceptance of a Purchase Order by Seller shall constitute the creation of a separate binding contract between Seller and Buyer, subject to the terms hereof. Any of the following acts by Seller shall constitute acceptance of a Purchase Order:

- (a) Seller signing and returning a copy of any cover sheet, order form or similar document which references these Standard Terms and Conditions;
- (b) Seller's shipment of all or any portion of the Goods covered by a Purchase Order; or
- (c) Seller's express written acknowledgment of these Standard Terms and Conditions.

## 2. WARRANTIES

- (a) Seller shall provide the Goods to the Buyer in accordance with the terms and conditions of this Purchase Order, in the event of any inconsistency between these Standard Terms and Conditions and the other terms and conditions of this Purchase Order, these Standard Terms and Conditions shall govern.
- (b) Seller represents and warrants that the Goods supplied hereunder (i) shall be of the kind and quality specified herein, free from fault in design, workmanship and material, (ii) shall be new and of good and merchantable quality, (iii) are suitable and fit for the purpose for which they shall be used, (iv) shall perform in accordance with the specifications and drawings, if any, provided by the Buyer or otherwise referred to, or incorporated, in the Purchase Order, (v) shall not constitute an infringement or contributory infringement of any patent or any copyright or trademark, or violation of any trade secret when sold or used for their ordinary intended purpose. All Goods provided under this Purchase Order shall be delivered free from all liens, encumbrances or other charges. All Goods shall at all times be subject to Buyer's inspection but neither Buyer's inspection nor failure to inspect shall relieve Seller of any obligations hereunder or constitute a waiver of any of Buyer's rights or warranties of Seller. If any Goods fail to conform with specifications or drawings or are otherwise defective, then: (i) Buyer may, in its sole discretion reject all or any portion of the non-conforming or defective Goods purchased under this Purchase Order, and they may be (A) held at Seller's risk or (B) returned upon notice, and at Seller's cost to Seller and Buyer shall be entitled to a refund in full, or (ii) at Buyer's option, Seller shall promptly repair or replace same at Seller's sole expense.



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- (c) The warranties in this Section 2 *Warranties* shall continue in full force and effect for a period of: (i) eighteen (18) months from the date of transfer of title to Goods, or (ii) twelve (12) months from the date of start-up of the Goods or start-up of the equipment into which the Goods are incorporated, whichever period ends last.
- (d) Where Goods are repaired or replaced under the above warranties, such Goods shall be warranted for a new period of: (i) eighteen (18) months from the date of completion of such repair or replacement, or (ii) twelve (12) months from the date of restart-up of the Goods or restart-up of the equipment into which the Goods are incorporated, whichever period ends last.
- (e) Buyer shall be entitled to the benefit of any of Seller's service warranties and guaranties customarily offered by Seller, in addition to those warranties set forth above.
- (f) Seller shall bear all costs for removal, repair, replacement and reinstallation of Goods under the above warranties.
- (g) To the fullest extent permitted by law Seller herewith assigns and transfers to Buyer all right to, and benefit from, any and all manufacturers' or suppliers' warranties (each and collectively "Manufacturer's Warranty") that apply or otherwise relate to any Goods provided under this Purchase Order. Seller shall fully cooperate with and assist Buyer in making any claim under any Manufacturer's Warranty. Any claim by Buyer under a Manufacturer's Warranty shall not: (i) prevent Buyer from (A) making a claim under any other warranty or (B) otherwise seeking to protect its rights; and (ii) limit or restrict Buyer's rights or remedies in law or at equity.
- (h) Acceptance of, or payment for, the Goods delivered under this Purchase Order shall not constitute a waiver by Buyer of any of the warranties of Seller, either express or implied, and shall not be deemed to alter or affect the obligations of Seller or rights of Buyer under any of such warranties, either express or implied, nor shall acceptance of, or payment for, any Goods constitute a waiver of any of Buyer's rights or remedies either contained herein, or in law or at equity.
- (i) All warranties and the benefits thereof will run to Buyer, its successors, assigns and customers.
- (j) To the extent the Goods will be sold into or distributed in the U.S., Seller warrants that its manufacturing facility (and any other facility that may be approved for use by Buyer for the manufacture, processing, packing or storage of product inputs or Goods) (the "Facility") is registered with the U.S. Food and Drug Administration as required by the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 and regulations promulgated thereunder (the "the Bioterrorism Act"). Seller will comply with all the recordkeeping requirements of the Bioterrorism Act applicable to "Non-Transporters" with respect to the Goods.
- (k) The warranties set forth or referred to herein are in addition to all rights and remedies Buyer may have in law or at equity.
- (l) Seller shall provide Buyer with not less than forty-five (45) days advance written notice of any changes in or to the Goods, including, without limitation, changes in or to the specifications, raw materials, packaging, manufacturing processes, manufacturing locations, analytical test methods, use of a new reagent or solvent, or any other change which results in an alteration to the physical or chemical characteristics of the Goods.

### 3. TITLE

- (a) Seller represents and warrants that Buyer shall receive clear and unencumbered title to the Goods supplied hereunder and that the Goods may be acquired, owned, held, used and disposed of by Buyer without infringing any patent, industrial design, copyright or trademark whether foreign or domestic.
- (b) Title to each item included in the Goods shall pass to Buyer on the earlier of: (i) payment for such item, or (ii) its delivery to the Delivery Point. *Notwithstanding the foregoing*, risk of loss for all Goods shall remain with the Seller and shall transfer to Buyer only when the Goods are under the care, custody, and control of Buyer at the Delivery Point.

### 4. CERTIFICATE OF ORIGIN

Where applicable:

- (a) Seller shall at Seller's cost, prepare and issue to Buyer, Certificate(s) of Origin for Goods sold pursuant to the North American Free Trade Agreement (NAFTA) and shall provide copies of the issued Certificate of Origin to the customs administration of Seller's and Buyer's home country upon request as well as provide all information requested by either customs administration in respect of the issued Certificate(s) of Origin. Seller shall maintain records in respect of the Certificate of Origin for five (5) years or such longer period as required by law. Seller shall otherwise comply with Seller's obligations under NAFTA.

- (b) Seller shall defend, indemnify and save Buyer harmless from and against all liability, loss and cost incurred for additional duties, tariffs and penalties imposed by any customs administration, resulting from the Certificate(s) of Origin furnished with respect to Goods being found to be incomplete, false or otherwise invalid in whole or in part, or arising out of a breach by Seller of Section 4(a) *Certificate of Origin* above. Seller's indemnity herein shall extend to all costs and expenses, including attorney's fees, arising from any resulting redetermination or reassessment with respect to any of the Goods.

## 5. PACKAGING

Seller shall ensure all Goods are packaged in accordance with applicable law and regulations and in such a manner as to ensure the Goods are transported and delivered to Buyer without sustaining damage.

## 6. LABELING AND SHIPPING

- (a) Seller shall place or affix the number of this Purchase Order on all invoices, packing lists, packages, containers and related correspondence. Each shipment must be accompanied by all Safety Data Sheets or similar documentation, and a packing list showing the exact quantity and description of Goods shipped. Seller shall mark all containers with necessary lifting, handling, environmental, safety and shipping information.
- (b) Where Buyer is responsible for freight charges Seller shall ship the Goods by the most economical manner and route unless otherwise specified or directed by Buyer.
- (c) If Buyer specifies or directs Seller to ship the Goods in a specific manner or by a specific route and Seller fails to do so, Seller shall reimburse Buyer for any loss or extra expenses incurred by Buyer resulting from such failure.

## 7. PAYMENT TERMS

Unless otherwise agreed to in writing by Buyer in the Purchase Order, invoices shall be due and payable 45 days after the later of (i) receipt of the invoice by Buyer, or (ii) delivery of the Goods to Buyer.

## 8. DRAWINGS AND SPECIFICATIONS

Unless otherwise agreed to by the parties, all drawings, blueprints, specifications, dies, patterns and tools, whether supplied by Buyer or prepared or constructed by Seller as required for the completion of this Purchase Order, or for repair, replacement or re-performance pursuant to the warranty provisions hereunder, shall be the property of Buyer.

## 9. PRICE

- (a) All prices quoted by Seller shall be quoted in United States Dollars or converted to an equivalent United States Dollar value at the time of quote unless expressly waived by Buyer. Prices shall be as last quoted in writing by Seller to Buyer and shall not change without written agreement of Buyer, delivered prior to delivery of the Goods. Buyer may cancel any order without any resulting liability after receiving a price change notice. Charges for packing, packaging, freight/shipping and handling will not be allowed or paid by Buyer unless expressly included in Seller's price quote prior to Buyer's acceptance.
- (b) No increases in the price or other charges shown or referred to in the Purchase Order, including taxes or customs and excise duties, shall be payable by Buyer unless such increases are authorized by Buyer in writing.
- (c) No payment or acceptance of Goods by Buyer hereunder shall constitute a waiver with respect to any provisions of this Purchase Order, nor shall anything herein contained be construed to limit any warranties or conditions implied by law.
- (d) If any error is discovered in an invoice by Buyer, such error shall be adjusted within thirty (30) days from the date of discovery of such error, provided however, that there shall be no adjustment made for any error discovered by Seller more than twelve (12) months after receipt of an invoice by Buyer.
- (e) Unless otherwise specifically provided for in this Purchase Order, Seller assumes exclusive liability for and shall pay before delinquent, all sales, use, customs and excise, import, export (from country of origin), value added and other taxes, charges, duties, levies, imposts or contributions of any kind or with respect to or measured by the Goods supplied hereunder (Collectively "**Sales Taxes**"). **Seller shall indemnify, defend and hold harmless the Buyer Indemnified Parties, as defined herein, from any claims Causes of action, costs and expenses (including court costs and expenses and reasonable attorney's fees) arising out of Seller's failure to pay any Sales Taxes that are Seller's responsibility under this Section.**
- (f) Buyer shall furnish Seller any applicable, valid and effective tax exemption certificates and Seller shall collect



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Sales Taxes and other taxes only in accordance with those tax exemption certificates.

- (g) Any applicable Sales Taxes and other government charges shall be separately listed on Seller's invoice.
- (h) Early payment discounts shall run from the later of: (i) Buyer's receipt of Seller's invoice or (ii) delivery of the Goods.

## 10. TIMELY PERFORMANCE AND COVER

- (a) Seller understands and agrees that time is of the essence and Seller shall deliver all Goods in accordance with time schedules referred to on the cover page hereto or otherwise agreed to by the parties.
- (b) If it is reasonably anticipated that Seller may fail to deliver Goods within the above time periods, Seller shall promptly notify Buyer of any anticipated delay and forthwith take all steps necessary to expedite performance so as to prevent such failure. Any additional costs resulting from such steps including, but not limited to, the full cost of cover for Goods not timely delivered or completed shall be borne by Seller.

## 11. SUBCONTRACTORS

- (a) Seller may not subcontract any part of this Purchase Order without the prior written approval of Buyer and if granted such approval shall not operate to relieve Seller of any liability to Buyer under this Purchase Order.
- (b) Seller shall enter into written contracts with subcontractors that include provisions requiring them to perform in accordance with and subject to the terms and conditions of this Purchase Order.
- (c) Seller shall be fully responsible to Buyer for any and all acts and omissions of its employees, agents or subcontractors and their employees or agents of any tier.

## 12. INDEMNITIES

Seller shall defend, indemnify and save Buyer its members, shareholders, managers, directors, officers, employees, agents and affiliates (each and collectively "**Buyer Indemnified Parties**") harmless from and against any and all loss, liability or expense, including without limitation, all suits, actions, claims, demands, damages, costs, reasonable legal fees, and reasonable expenses and attorneys' fees, Buyer Indemnified Parties may suffer or incur by reason of, caused by, arising from, incident to, connected with, or growing out of:

- (a) any claim, suit or allegation, including, without limitation, any claim or suit for alleged infringement of any patent, industrial design, copyright or trademark, resulting from or arising in connection with the manufacture, sale, use or other disposition of any of the Goods;
- (b) any and all damage to or loss or destruction of any property, including without limitation, property of Buyer, Seller, or any employee, agent or subcontractor of Buyer or Seller, arising out of or in connection with any act, omission, default, breach of warranty, violation of law or any other act of omission by Seller or any employee, agent or subcontractor of Seller under this Purchase Order; or
- (c) bodily or personal injury to or death of any persons, including without limitation, any employees or agents of Buyer, Seller, or any subcontractor of Buyer or Seller, arising out of or in connection with any act, omission, default, breach of warranty, violation of law or any other act of omission by Seller or any employee, agent or subcontractor of Seller under this Purchase Order.

## 13. INSURANCE

- (a) Seller shall, at its own expense, obtain and maintain during the term of this Purchase Order, with insurers having an A.M. Best rating of A VII or better, the following minimum coverages which may be increased at Buyer's reasonable discretion:
  - (i) commercial general liability insurance (including contractual, products, and completed operations coverages) of not less than \$1,000,000 per occurrence covering bodily injury, death and property damage arising out of or relating to the acts or omissions of Seller in providing the Goods, which insurance shall include Buyer as an additional insured, provide a waiver of subrogation in the Buyer's favor and provide thirty (30) days notice of cancellation or material change;
  - (ii) insurance of not less than \$1,000,000 per occurrence and \$5,000,000 in the aggregate covering bodily injury, death and property damage arising out of the ownership or operation of a motor vehicle used or to be used in connection with the supply of Goods by Seller and which insurance shall include Buyer as an additional insured, provide a waiver of subrogation in the Buyer's favor and provide thirty (30) days'

- (iii) notice of cancellation or material change; and
- (iii) Seller shall furnish evidence of its and its permitted subcontractor's compliance with Worker's Compensation or similar legislation applicable at the site(s) where the Goods shall be delivered;
- (iv) product liability insurance of not less than \$1,000,000 per occurrence and \$5,000,000 in the aggregate covering bodily injury, death and property damage arising out of Supplier's provision of the Goods to Buyer and which insurance shall include Buyer as an additional insured, provide a waiver of subrogation in the Buyer's favor and provide thirty (30) days' notice of cancellation or material change.
- (b) Prior to commencing to provide any Goods hereunder, Supplier shall deliver to Buyer a broad form "vendors endorsement," ISO # 20-15-07-04 or equivalent thereto, in favor of Buyer and a certificate of insurance evidencing the above coverages or, if required by Buyer, certified copies of the above insurance policies and endorsements. The above insurances shall be primary to any other coverage in favor of the Buyer.
- (c) Seller shall ensure that its permitted subcontractors comply with the above insurance requirements and each permitted subcontractor shall provide Buyer with evidence of the above coverages and endorsements prior to delivering any Goods hereunder.

#### 14. CONFIDENTIALITY

Seller shall not use or disclose to any third person any business information, business plans, data, designs, drawings, specifications or other information, (collectively, the "Confidential Information") belonging to or supplied by or on behalf of Buyer except in the performance of this Purchase Order. Upon completion of the Purchase Order or upon Buyer's earlier request, all Confidential Information, including any copies thereof, shall be returned to Buyer. Where Buyer's Confidential Information is furnished to Seller's subcontractors or suppliers in connection with the performance of this Purchase Order, Seller shall insert the substance of this provision in its orders and shall ensure compliance with such provision by its suppliers.

#### 15. TERMINATION

Buyer may, in its sole discretion, terminate this Purchase Order at any time, in whole or in part by written notice to Seller. Upon receipt of such notice, Seller shall immediately discontinue any efforts in respect of provision of Goods being performed in connection with this Purchase Order, except as directed by Buyer. Upon such termination, and subject to audit, Buyer shall reimburse Seller for Goods delivered actually provided to Buyer up to the effective date of termination. In no event shall Buyer be liable to Seller for lost or anticipated profits

#### 16. SET-OFF

- (a) Buyer shall be entitled at all times to set-off against any amount due or owing to Seller under this Purchase Order, such amounts that, in the opinion of Buyer, are sufficient to: (i) cover any account owing from Seller to Buyer or to any of its affiliated companies, or (ii) protect Buyer from any losses or expenses arising from defects or deficiencies in the Goods provided by Seller, or any other failures by Seller to comply with the requirements of this Purchase Order.
- (b) Buyer shall further have the right, but not the duty, to withhold any monies payable by it hereunder and apply same to the payment of: (i) any obligations of Seller to Buyer howsoever arising or (ii) any obligations of Seller to any other parties arising in connection with this Purchase Order.

#### 17. FORCE MAJEURE

Neither party shall be liable for delays or defaults due to acts of God, acts of terrorism, governmental authority or public enemy, war, fires, floods, epidemics, freight embargoes, or contingencies reasonably beyond its control. The party so affected shall use its good faith efforts to remediate such force Majeure as expeditiously as possible and, upon prompt written notice to the other party, shall be excused from making or taking deliveries hereunder to the extent of such prevention or restriction. Buyer may terminate this Purchase Order pursuant to Section 15 Termination herein in the event of such delay in performance.

#### 18. COMPLIANCE WITH LAWS AND POLICIES

Seller shall comply with all applicable laws, regulations, by-laws, permits, approvals or other lawful requirements imposed or issued by any Federal, State or local governments. Seller shall also comply with any business conduct policies and safety and security rules imposed by Buyer from time to time. Seller shall ensure that its employees, subcontractors and



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agents are made aware of and comply with the above laws, regulations, by-laws, permits, approvals, policies and rules and shall furnish Buyer with such evidence of compliance as Buyer may require from time to time.

## 19. GOVERNING LAW

This Purchase Order shall be deemed to be an agreement made in the State in which the Buyer's corporate head office is located and shall be construed in accordance with the laws of that State pertaining to the sale of Goods as applicable and without reference to that jurisdiction's choice or conflict of laws rules. Buyer and Seller expressly agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Purchase Order.

## 20. JURISDICTION AND VENUE

Each Party hereby irrevocably agrees, submits and consents to, and expressly waives any right to contest or object to, the exclusive jurisdiction and venue of the federal or state courts in the State in which the Buyer's corporate head office is located on any basis, including but not limited to, *forum non conveniens*.

## 21. WAIVER OF JURY TRIAL

SELLER IRREVOCABLY WAIVES ANY AND ALL RIGHT SELLER MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR CLAIM OF ANY NATURE RELATING TO THIS PURCHASE ORDER, ANY DOCUMENTS EXECUTED IN CONNECTION WITH THIS PURCHASE ORDER OR ANY TRANSACTION CONTEMPLATED IN THIS PURCHASE ORDER OR ANY OF SUCH DOCUMENTS. SELLER ACKNOWLEDGES THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.

## 22. RECOVERY OF COSTS

In any suite to enforce any Arbitration award or otherwise brought on this Purchase Order, upon the entry of a final non-appealable order of a court of competent jurisdiction, the prevailing party shall be entitled to recover its costs and expenses, including reasonable attorney's fees, from the other party.

## 23. BUYER'S RIGHTS

- (a) Seller agrees that any right, cause of action or remedy under the warranties or undertakings assumed or imposed upon Seller under this Purchase Order shall extend without exception to any company affiliated with Buyer on whose behalf this Purchase Order is issued by Buyer.
- (b) Except as specifically set forth herein, all rights and remedies provided in favor of Buyer hereunder are in addition to and without prejudice to any other rights and remedies to which Buyer may lawfully be entitled, including without limitation, under and by virtue of the provisions of any Federal, State or local law governing the sale of goods.
- (c) The failure of Buyer to insist upon strict performance by Seller of any of the terms and conditions of this Purchase Order shall not be deemed a waiver of any rights or remedies that Buyer may have at law or in equity in respect thereof and shall not be deemed a waiver of any subsequent default by Seller.

## 24. ENTIRE AGREEMENT AND CHANGES

- (a) This Purchase Order shall constitute the entire, final, complete, and exclusive agreement between Buyer and Seller and no terms or conditions, other than those stated herein, and no agreements or understandings, oral or written, in any way purporting to modify this Purchase Order, or customs or usages of trade shall be binding on Buyer unless documented by Buyer's written authorization.
- (b) Without limiting the generality of the foregoing, the quality, quantity and other specifications of the Goods to be supplied hereunder shall not be changed from those referred to on the cover page hereto or otherwise agreed to by Buyer and Seller without Buyer's written authorization thereof.

## 25. MISCELLANEOUS

- (a) The headings contained herein are provided for convenience only and are not to be considered when interpreting or construing this Purchase Order.
- (b) No right, title, estate or interest in this Purchase Order and no obligations or duty or liability of Seller shall be

- transferred, assigned, set over, conveyed, pledged, hypothecated or otherwise disposed of without the prior written consent of Buyer, which consent may be given or withheld in the sole discretion of Buyer.
- (c) Each notice, statement and invoice to be given pursuant to this Purchase Order shall be in writing and shall be sent by prepaid ordinary or registered mail, by facsimile transmission or by recognized courier to the addresses and facsimile numbers for Buyer and Seller noted on the cover page hereto. Notices, statements and invoices sent by mail or courier shall be deemed to have been received when actually received or refused, and those sent by facsimile transmission shall be deemed to have been received on the first business day following the day on which they were sent.
  - (d) Buyer or any person designated by Buyer may at any and all reasonable times for a period of twenty-four (24) months after completion of delivery of the Goods hereunder, have access to Seller's books and records relating to the reimbursable costs, if any, provided for under this Purchase Order, for the purpose of auditing and verifying such costs and Buyer may make copies of such books and records as reasonably required by Buyer in performing such audit. Seller shall promptly review and settle with Buyer all matters arising from such audit including the refunding of monies where applicable.
  - (e) If this and any other documents are transmitted by any means of electronic transmission, such transmission shall have the legal significance of a duly executed original delivered to Seller.
  - (f) Seller shall not use Buyer's names, logos, trade names, trademarks or copyrights or the fact that Seller is supplying Goods for Buyer in any press release, media statement, advertisement or other public communications or otherwise publicize this Purchase Order without the prior written consent of Buyer.
  - (g) The invalidity or unenforceability of any portion or provision of the Purchase Order shall in no way affect the validity or enforceability of any other portion or provision hereof. Any invalid or unenforceable portion or provision shall be severed from the Purchase Order and the balance of the Purchase Order shall be construed and enforced as if the Purchase Order did not contain such invalid or unenforceable portion or provision.



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