



Pomfret Center, CT 06259

**PURCHASE ORDER
TERMS AND CONDITIONS**

1. ACCEPTANCE:

- a. Acceptance of this purchase order including all of the terms and conditions hereof, shall occur upon the happening of any of the following events; (i) receipt by Buyer of order acknowledgement from seller, (ii) receipt by Buyer of notification from Seller that Seller has commenced performance hereunder or that Seller will deliver goods substantially in accordance with the terms of this purchase order.
- b. Acceptance of this purchase order is expressly limited to the terms and conditions hereof, and any terms proposed by Seller, either in Seller's quotation or acceptance forms, or elsewhere, which are different from or add to these terms are hereby rejected.
- c. When accepted, these terms will be the only terms of the contract and will contain the entire understanding of the parties and are intended as a final and complete expression of their agreement and shall not be modified except in writing.

- 2. TIME OF COMPLETION:** Time is of the essence. Buyer may refuse to accept all or any part of the goods which are not received by the time specified, or if no declaration of delivery is made, within reasonable time.

3. WARRANTIES:

- a. Seller warrants that the goods conform in all respects with the descriptions and specifications set forth herein and in any catalog, manual or brochure of Seller merchantable and are fit for the purpose for which goods are intended and that Seller has good title to the goods Seller warrants that the goods conform in all respects to any models, samples, drawings, or other writings presented to Buyer in connection with such goods.
- b. Seller warrants the goods to be free from any defects in workmanship or material.
- c. Seller warrants that the goods comply with the Occupational Safety and Health Act of 1970 and the regulations issued pursuant thereto.
- d. These warranties shall not in any way limit the warranties which Buyer may have by operation of the law.
- e. Seller warrants and represents that it has and will in the future comply with all applicable federal, state and local laws, rules and regulations, including the Fair Labor Standards Act of 1938, as amended, and the Walsh-Healy Act, and unless this purchase order is exempt in accordance with the rules and regulations issued under Executive Order No. 11248 of September 24, 1965 Seller will comply with the non-discriminational/equal opportunity clause set forth in Section 202 of Executive Order No. 11246.

- 4. AUTHORITY OF SELLER'S AGENTS AND EMPLOYEES:** Seller shall be bound by any representation or undertaking made by any of its agents or employees with respect to the specifications, quality, packaging, price or conditions of delivery of the goods, and by accepting this purchase order Seller hereby ratifies any such representation or undertaking made by any of its agents or employees.

5. PACKAGING:

- a. Seller shall package the goods in a manner reasonably designed fully to protect the goods from loss or injury and to permit the goods to be shipped by the most economical method of motor transportation. Such packaging shall conform fully with any packaging conditions specified herein.
- b. No charges allowed for cartage or packing.

6. INSPECTION:

- a. Notwithstanding that full or partial payment for the goods has been made prior to delivery, that the goods have been inspected at Seller's plant or that the quality or condition of the goods has been otherwise certified to Buyer. Buyer may inspect the goods prior to acceptance, may reject its acceptance of any goods which do not comply with the specifications set forth or with any models, diagrams, samples or more detailed specifications heretofore furnished to Buyer, and may return any such nonconforming goods.
- b. Such inspection may include any measurement, testing or examination of the goods which leaves possible the return of the goods to Seller in substantially the condition which they were delivered to Buyer (other than packaging).
- c. Buyer's inspection, discovery of any breach of warranty, failure to make an inspection or failure to discover any breach of warranty shall not waive any of Buyer's rights or remedies with respect to any breach of warranty by Seller whatsoever.

- 7. UNAVOIDABLE DELAYS:** Seller shall not be liable for delays in the production or delivery of goods where such delays are beyond Seller's control only if Seller as soon as it becomes aware of such delays informs Buyer in writing

of the existence of such delays and the cause thereof. When Buyer is informed of such delays, it shall have the option to rescind this order in its entirety or in part only, or to accept performance at such later date as Seller may have specified in its notice. If Buyer rescinds that order as to only a part of the performance due hereunder, the contract price shall be adjusted to compensate Seller for its partial performance on a basis which is consistent with the basis used in determining the original contract price. If Buyer elects to receive goods which have been unavoidably delayed in delivery, it may direct Seller to ship the goods by a more expeditious method of shipment than that provided for herein, and, in such event Seller shall bear all the additional expense attributable to such method of shipment.

8. **RISK OF LOSS:** The Seller shall retain the risk of loss of the goods covered by this order until the goods are actually delivered to the Buyer's specified destination and accepted by the Buyer regardless of F.O.B. point.
9. **NOTIFICATION OF CANCELLATION:** Buyer reserves the right to cancel this contract upon 30 days written notice to Seller prior to the effective date of each cancellation. Cancellation charges if any shall be negotiated at time of cancellation and in no event shall such charges be for any work done, expenses incurred or material purchased after the date of this notice of cancellation.
10. **NON-WAIVER OF CERTAIN BREACHES OF PERFORMANCE:** Except as may be otherwise agreed in writing by the parties; (i) Seller may not render any performance different from that required by the terms hereof, even where such performance is incidental to the principal purposes of, or performance under this contract, and (ii) where Seller delivers nonconforming goods prior to the time when delivery as required hereunder, such nonconforming goods shall constitute a material breach of this contract which Seller shall not be permitted to remedy through a subsequent delivery of conforming goods unless Buyer consents to such subsequent delivery.
11. **CHANGES:**
 - a. Buyer has the right by written order to Seller to make changes as to the goods. If such changes cause an increase or decrease in the purchase price, it shall be equitably adjusted by the parties in writing.
 - b. In the event of dispute following Buyer's order of a change pursuant to this paragraph, Buyer shall be permitted at its own expense to examine the books and records of Seller solely for the purpose of determining with Seller the amount required for an equitable adjustment.
12. **BREACH BY SELLER:** Each of the following events by way of example and not by way of limitation, shall constitute breach of contract; (i) breach of any warranty; (ii) non-delivery, (iii) late delivery; (iv) any definite expression, oral or written, by Seller that Seller is unwilling or unable to perform according to these terms, except as such unwillingness or inability is otherwise excused by the terms hereof; (v) any other act or omission of Seller contrary to the terms hereof.
13. **BUYER'S REMEDIES FOR BREACH:**
 - a. In addition to, and not in limitation of any remedies which Buyer may have under the terms hereof or by operation of law, Buyer may, at its option, excuse any breach hereof or may; (i) return nonconforming or late delivered goods to Seller at Seller's expense; (ii) charge Seller for the amount (including shipping and incidental charges, if such charges are not included in the purchase price) in excess of the contract price required to obtain goods in substitution for goods not delivered pursuant to this contract, goods rejected because of late or otherwise defective delivery, or goods rejected because of breach of warranty; (iii) rework the goods or repair so as to make the goods conform to the warranties and charge Seller for the expense thereof; (iv) use the goods for a purpose other than the purpose originally intended and charge Seller for the amount by which the purchase price exceeds the price of goods normally required for such alternate purpose; (v) charge Seller for the full amount of any monetary loss of Buyer caused as a result of such breach; (vi) have Seller repair or replace defective goods; (vii) if defective goods are repaired or replaced by Buyer or Seller, charge Seller for all costs and expenses of repairing or restoring non-defective work or goods disturbed as a consequence of repairing or replacing defective goods.
 - b. Buyer shall be entitled to exercise all of the remedies specified above or each of such remedies in part, provided Buyer shall not be permitted to recover more than once for any part of a performance called for by these terms. Even if it otherwise excuses a breach of this contract, Buyer shall be entitled to recover the damages specified in subparagraph (a) (v).
 - c. Without in any way limiting the remedies which Buyer may have for late delivery, Buyer upon written notice to Seller, may purchase goods in substitution for any goods not delivered within the time required hereby and may recover from Seller the amount by which the cost of replacement goods exceeds the purchase price.
14. **ASSIGNMENT:** Without the written consent of Buyer, Seller shall not; (i) assign, transfer or convey the right to receive any money to become due hereunder, or; (ii) contract for any third party to assume or perform any of Seller's duties hereunder.

15. **INSOLVENCY OF SELLER:** If Seller makes an assignment for the benefit of creditors or admits in writing its inability to pay its debts as they become due, or files a voluntary petition in bankruptcy or is adjudicated as bankrupt or insolvent, or takes any other action which constitutes an admission of bankruptcy or insolvency, or if any trustee or receiver of Seller's assets or business is appointed or if any proceeding seeking a determination that Seller is bankrupt or insolvent or that receiver or trustee of Seller's property be appointed has not been dismissed within 60 days after the date on which such action was commenced, then this contract shall be cancelled as to any part hereof upon which performance has not been completed, unless Buyer within ten (10) days after learning of the occurrence of one of the above events, notified Seller in writing that Buyer elects to have this contract continue to the completion therefore.

16. **INDEMNITY:**

- a. Seller will defend, indemnify and hold harmless the Buyer, its successor's, assigns, subsidiaries, customers and those selling and using its products from and against all costs (including reasonable attorney's fees), damages and liabilities resulting from actual or alleged infringement of or interference with any letters, patent, trademark, copyright, trade secret, proprietary right, license or other right unless such claim for infringement or interference is based solely upon designs or specifications furnished to Seller by Buyer.
- b. Seller will, in the event of complaints, claims or legal actions alleging damage or injury resulting from the purchase, sale or use of the goods described herein indemnify, defend and hold Buyer harmless from any and all liabilities and costs, including reasonable attorney's fees, and will assume full responsibility and expense of investigation, litigation and settlement of any such complaints, claims or legal actions.

17. **PATENTS:** Seller will disclose and assign to Buyer, and assist Buyer in obtaining patents for any invention, improvement or discovery conceived or reduced to practice arising from designs, tools, patents, drawings or other information supplied by Buyer and developed for Buyer pursuant to this contract.

18. **USE OF BUYER'S DATA:** Seller shall not use or disclose any data, designs or other information belonging to or supplied by or on behalf of Buyer, except as it may otherwise be required to do by law.

19. **NON-DISCLOSURE OF INFORMATION:** Seller shall not without first obtaining the written consent of Buyer in any manner advertise or publish the fact that Seller has furnished or has contracted to furnish to Buyer the articles herein mentioned.

20. **PRICE:**

- a. The price includes, and Seller assumes and agrees to pay all federal, state and local taxes.
- b. This order is not to be filed at a price in excess of amount shown on face hereof, without obtaining Buyer's consent.
- c. If the amount to be paid for the materials, equipment, supplies, or services to be furnished under this order is on any basis other than a fixed price basis, or involves a fixed price that may be adjusted by an escalator clause, Seller shall keep adequate records and books of account showing the actual cost of all items of labor, material, equipment, supplies, services and other expenditures of whatever nature in connection with the performance of this order. The method of accounting employed by Seller must conform to good accounting practices. Buyer reserves the right to audit in such instances prior to payment.
- d. The payment date of invoices subject to a cash discount will be based on the date of invoice or the date of receipt of the material, whichever is later.
- e. Statement of account must be sent to Buyer's Accounting Department monthly for verification prior to payment and such statement should list all items unpaid.

21. **TOOLS, MOLDS, DIE, PATTERNS:** If prices are shown or charged for tools, dies, patterns or molds, they will become Buyer's property when such charges are paid and Seller shall so treat and care for them, and Seller shall not use such for any purpose other than satisfying Buyer's orders, and shall store and protect them at no charge to Buyer, and shall not dispose of them without Buyer's written permission.

22. **MISCELLANEOUS:**

- a. Buyer's count will be accepted as final and conclusive on all shipments not accompanied by packing ticket.
- b. Buyer shall not be responsible for any claims, whether for infringement or otherwise, made against Seller in connection with the production of goods pursuant to this contract.
- c. When drawing numbers are specified, change notice date and number on Seller's drawing must agree with this order.