

ABC INDUSTRIES, INC.
TERMS AND CONDITIONS OF PURCHASE

1. ORDERS

(a) **Acceptance.** Notwithstanding any conflicting terms of any quotation, proposal, or acceptance of Seller, as to the goods and/or services which are the subject matter hereof (collectively, the "goods"), this Purchase Order (i) supersedes all prior communications and agreements between Buyer and Seller and represents their entire agreement; (ii) is revocable, in whole or in part, at any time prior to its acceptance by Seller; (iii) becomes a binding contract upon the terms and conditions set forth herein by Seller's acknowledgment or Seller's commencement of performance; and (iv) may not be amended except in writing signed by Buyer.

(b) **Changes.** Buyer may at any time, by written direction, and without notice to any sureties or assignees, make changes in the drawings, specifications, quantities, delivery schedules, methods of shipment, or packaging. Should any such change increase or reduce the cost of, or the time required for performance of, this Purchase Order, an equitable adjustment will be made in the contract price or delivery schedule; **provided, however,** that any requests for an increase in the contract price or an extension in delivery schedule must be made within ten (10) working days from the date of such written direction. Failure to agree upon an equitable adjustment shall not relieve the Seller from proceeding without delay in performance under the Purchase Order, as changed.

(c) **Termination.** Prior to shipment, Buyer may terminate this Purchase Order in whole or in part, without cause, liability, or expense. After shipment, Buyer may terminate this Purchase Order, in whole or in part, without cause, subject to any valid termination claim submitted by Seller to Buyer within sixty (60) days after the date of termination. Prior to or after shipment, Buyer may, in addition to any other right or remedy under this Purchase Order at law or in equity, terminate this Purchase Order, in whole or in part, with cause and without liability or expense, if (i) Seller fails to make any delivery in accordance with the agreed delivery date or schedule or otherwise fails to comply with any of the other instructions, terms, conditions, or warranties applicable to this Purchase Order; (ii) fails to make progress so as to endanger timely performance of this Purchase Order; (iii) in the event of any proceedings by or against Seller under bankruptcy or insolvency laws, or laws for the reorganization or rehabilitation of a debtor; or (iv) if a receiver or trustee is appointed or an assignment for the benefit of creditors is made. Any notice of termination shall be in writing. In the event of termination for cause, Buyer may acquire like goods elsewhere on such terms or in such manner as Buyer may deem appropriate, and Seller shall be liable to Buyer for any excess cost and all expenses incurred by Buyer in acquiring such alternative goods, and for any other loss, damage, and expense resulting to Buyer by reason of such termination for cause.

2. PACKING, SHIPMENT, AND DELIVERY

(a) **Inspection.** Buyer reserves the right to inspect all goods prior to shipment by Seller, and Seller shall permit access to Seller's facilities and all drawings, specifications, and other technical data applicable to the goods ordered at all reasonable hours for such purpose. Defective goods may be returned for credit or replacement at Seller's expense. Buyer's inspection, or its lack of inspection, shall not affect any express or implied warranties.

(b) **Drawings and Technical Data.** Seller shall, on or before delivery of any goods, supply any and all printed materials, such as catalogs, drawings, cuts, certified prints, characteristic curves, parts lists, service and technical manuals, and diagrams relating to such goods. The failure of Seller to deliver the foregoing printed materials required shall constitute a basis for nonpayment of the price of the goods until delivery is made. Seller shall furnish Buyer with accurate data defining the material and physical properties within each shipment. For special finishes such as Flame Retardants, Mildew Resistance, or Water Repellents, Seller shall furnish valid certification of content.

(c) **Packing and Shipping.** At Seller's expense, Seller shall: (i) ship only as specified herein and in strict conformity with governing law; (ii) pack and prepare all goods to meet carrier requirements and to safeguard against damage; and (iii) mark each package to show Purchase Order number and include a packing sheet in each package.

(d) **Delivery and Risk of Loss.** Buyer and its customers are dependent upon delivery of the goods on the required delivery date shown on the face hereof. Therefore, **time is of the essence.** Seller shall be responsible for all damages of any kind incurred by Buyer which are caused by any delay of Seller in making deliveries. Seller agrees to notify Buyer immediately if at any time it appears that Seller may not meet the delivery schedule. Such notification shall include the reasons for the delay, the steps being taken to remedy the delay, and the schedule Seller believes it will be able to meet. Buyer's receipt of notice shall not constitute approval of the delay or the proposed revised delivery schedule or a waiver of the delivery schedule in the Purchase Order. Any assistance furnished by Buyer to overcome delays shall not be regarded as waiving Buyer's remedies for default, including termination rights, if Seller fails to meet schedule. Identification of the goods under Section 2-501 of the Uniform Commercial Code shall occur at the moment Seller accepts this Purchase Order. Seller shall not be excused from performing its obligations hereunder if the goods identified are destroyed. Delivery shall not be deemed complete until the goods have been actually received by Buyer at destination. The risk of loss and damage in transit shall be upon Seller and shall not pass to buyer until received at Buyer's facility in the condition required by this Purchase Order. The cost of all return shipments shall be borne by Seller.

3. PRICING AND PAYMENT

(a) **Pricing.** If the price is not shown on the face of this Purchase Order, Seller will furnish the goods ordered at no higher prices than those at which such goods were last purchased, unless otherwise expressly authorized in writing by Buyer. Whether or not the price appears on the face of this Purchase Order, Seller agrees that the price of the goods is the lowest prevailing price to any purchaser of commodities of like grade and quality and that Buyer will be given the benefit of any price reductions prior to shipment. Buyer reserves the right to reject price increases during the life of this Purchase Order by canceling the remainder of this Purchase Order.

(b) **Taxes.** Except as otherwise specified herein or as prohibited by law, Seller shall pay all sales, use, excise, or other taxes or withholdings, federal, state, and local, that may be levied upon any of the goods or the parties hereto by reason of the sale, delivery, or use of the goods. All taxes of any nature which are billed to Buyer shall be specifically identified and separately stated. If any tax added to the price paid by Buyer is subsequently refunded to Seller, Seller shall promptly pay to Buyer the amount of such refund.

(c) **Payments and Discounts.** Payments shall be made upon the submission of proper invoices for goods delivered and accepted. With respect to any discount offered, time shall be computed from the date of delivery or from the date a correct invoice is received by Buyer, whichever occurs later. Payment is deemed to be made, for the purpose of earning the discount, on the date Buyer's check is mailed.

(d) **Quantity.** This Purchase Order must not be filled in greater quantities than shown without written approval of Buyer. Goods shipped in excess of the quantity specified in this Purchase Order will, at Buyer's option, be returned at Seller's expense.

(e) **Invoices; Statements.** Unless otherwise provided in this Purchase Order, no invoice shall be issued and no payment will be made prior to physical delivery of goods to Buyer. Individual invoices, in duplicate, showing this Purchase Order number, the description of goods, the number of cartons shipped, and the carrier and weight shall be issued for each shipment. One copy of each individual invoice must be plainly marked "ORIGINAL." Shipping charges and all applicable taxes or charges for which Buyer has agreed to pay and has not furnished an exemption certificate shall be itemized separately on Seller's invoices. Unless such charges are itemized, Buyer may take the applicable discount on the full amount of each invoice. Each invoice must be accompanied by: (i) the original bill of lading when shipment is made by freight or express; (ii) the delivery receipt when delivery is made by messenger or truck; and (iii) any receipted bill for transportation charges when such charges are added to invoice. Invoices, shipping notices, and bills of lading shall be mailed within 24 hours after shipment. Payment of an invoice shall not constitute acceptance of goods and shall be without prejudice to claims of Buyer.

(f) **Limitation of Buyer's Liability.** Seller agrees that in the event of breach by Buyer, Seller's recovery shall be limited to Seller's actual damages, which shall in no event exceed the purchase price.

4. WARRANTIES AND INDEMNITIES

(a) **Warranties.** All warranties of Seller, implied or at law, are incorporated herein by reference and shall include, and are hereby supplemented by, the following express warranties: (i) the goods comply with any and all specifications, drawings, samples, or other descriptions furnished by Buyer; (ii) the goods are merchantable, of good material and workmanship, free from defects, suitable for their intended purpose, and in compliance with law; and (iii) the manufacture and sale by Seller of the goods, the use, resale, installation, and intended use of the goods by Buyer, and disclosures by Seller to Buyer hereunder do not infringe upon or violate the legal or equitable rights of any person or entity arising out of or in any license or franchise, or out of any patent, trademark, trade name, trade secret, copyright, or other proprietary right (collectively, "Proprietary Rights"). Such warranties, together with any service warranties or guarantees, shall run in favor of Buyer and its successors and assigns, including, without limitation, all customers and subsequent owners of the goods or end products of which the goods become part.

(b) **Inspection and Rejection.** Notwithstanding any earlier inspection, all items ordered will be subject to final inspection and approval at destination. If any of the items are found at any time to be defective in design, material, or workmanship, unsuitable for intended purposes, or otherwise not in conformity with the requirements of this Purchase Order or Seller's warranties, Buyer shall have the right to reject future shipments and reject and return, at Seller's risk and expense, or to hold the goods delivered for Seller's instructions at Seller's risk and expense. Buyer reserves the right to charge to the Seller any cost of inspection and tests when goods rendered for final inspection and acceptance do not comply with the requirements of this Purchase Order.

(c) **Remedies.** The remedies expressly provided for in these conditions shall be in addition to any other remedies which Buyer may have under the Uniform Commercial Code or other applicable laws.

(d) **Indemnity.** Seller hereby indemnifies and holds harmless Buyer and its successors, assigns, properties, and customers from and against any claims, liabilities, losses, damages, liens, injury to persons (including agent and employees of Buyer), damage to property, judgments, costs, and expenses, including, without limitation, costs, expenses, and attorneys' fees, arising out of or relating to this Purchase Order, or the goods furnished hereunder, the performance of work pursuant hereto, the breach of any warranty or covenant herein (including, without limitation, the failure to comply with applicable law), or any claim or litigation based thereon, including, without limitation, claims or liabilities arising out of or in connection with any actual or alleged infringement of any Proprietary Right, whether or not the negligence of Buyer or Buyer's customer was a contributing cause; and Seller, if requested to do so, shall defend, at its own expense, any such litigation.

(e) **Setoff.** Buyer shall be entitled at all times to set off any amount owing from Seller to Buyer against any amount payable hereunder by Buyer whether or not arising under this Purchase Order.

(f) **Mechanic's Liens.** If Seller performs work on the premises of Buyer or one of its customers, Seller shall, at its expense: (i) keep the premises and work free and clear of all mechanic's liens, and furnish Buyer proper affidavits and/or waivers certifying thereto; (ii) perform the work at Seller's risk and replace all work damaged or destroyed by fire, force, or violence of the elements or any other cause whatsoever; (iii) comply with all federal, state, and local safety laws and codes while on Buyer's premises and all safety rules and regulations established by Buyer; and (iv) maintain public liability, property damage, and employee's liability and worker's compensation insurance as will protect Buyer from risk.

(g) **Liability for Damage to Buyer's Property.** Whenever Seller shall, by virtue hereof, have in its possession property of Buyer, Seller shall be responsible for its safe return to Buyer.

5. LEGAL COMPLIANCE AND GOVERNING LAW

(a) **Legal Compliance.** Seller warrants that the goods furnished hereunder will comply with all applicable federal and state laws and executive orders (and with regulations, orders, and standards thereunder), including but not limited to, Fair Labor Standards Act, the Equal Opportunity Act, the Occupational Safety and Health Act of 1970, the Civil Rights Act of 1964, the Resource Conservation and Recovery Act of 1976, the Federal Water Pollution Act, the Toxic Substances Control Act, the Clean Air Act, and U.S. Department of Transportation regulations, each as amended, to the extent of their applicability. Seller shall give Buyer all certificates, notices, and reports required or needed in such connection and to label all goods furnished hereunder as required by such applicable legislation, regulations, orders, or standards.

(b) **Governing Law; Jurisdiction.** This Purchase Order and all of its terms and conditions shall be governed by and interpreted pursuant to the laws of the State of Indiana, United States of America; provided, however, that the United Nations Convention or Contracts for the International Sale of Goods shall have no application to this Purchase Order. Seller hereby consents that any and all disputes relating to this Purchase Order or any products and services of Seller purchased hereby shall be litigated exclusively within the federal courts of the Northern District of Indiana or in courts of the State of Indiana located within the Northern District of Indiana.

6. CONFIDENTIAL INFORMATION AND BUYER'S PROPERTY

(a) **Drawings, Specifications, and Technical Information.** Drawings, data, designs, inventions, and other technical illustrations supplied by Buyer or specifically prepared at Buyer's request shall remain Buyer's property and shall be held in confidence by Seller. Such information shall not be reproduced, used, or disclosed to others by Seller without Buyer's prior written consent, and shall be returned to Buyer, together with any copies, upon completion of this Purchase Order or upon demand. Any information which Seller may disclose to Buyer with respect to the design, manufacture, sale, or use of the items covered by this Purchase Order shall be deemed to have been disclosed as part of the consideration of this Purchase Order, and Seller shall not assert any claim (other than a claim for patent infringement) against Buyer by reason of Buyer's use thereof.

(b) **Advertising.** Seller shall not, without first obtaining the written consent of Buyer, advertise, publish, or disclose any of the facts of, or the details connected with, this Purchase Order to any third party, except as may be required to perform this Purchase Order.

(c) **Buyer's Property.** Buyer shall retain title to all property used by Seller but owned, furnished, charged to, or paid for by Buyer, and any replacement thereof. All such property shall be suitably identified and marked as Buyer's property and shall be used only to fill Buyer's Purchase Orders. Seller shall hold, maintain, and adequately insure such property at its risk and expense. Seller shall return any such property to Buyer upon demand in the original condition, consumables and reasonable wear-and-tear excepted.

(d) **Inventions.** Seller agrees to assign to Buyer the entire title and interest in all inventions, including all works capable of patent, trade secret, or copyright protection, made or first reduced to practice in the performance of this Purchase Order arising out of any engineering or development paid for by Buyer. Seller agrees not to disclose to others any information supplied by Buyer relative to this Purchase Order, and not to use such information in the supplying to others of similar goods.

7. PROVISIONS OF GENERAL APPLICATION

(a) **Assignment.** Neither this Purchase Order, nor any of the sums due or to become due, nor any other interest herein is assignable by Seller, voluntarily or involuntarily, nor shall any subcontract be made with, or other delegation of duties made to, any other party for the furnishing of any complete or substantially complete items, without Buyer's prior written consent, and any such attempted delegation or assignment shall be void without Buyer's prior written consent. Any such consent shall not be deemed as a waiver of Buyer's rights to recoupment or set-off of claims arising out of this or any other transaction with Seller, its affiliates, or subsidiaries, or to adjust matters with Seller without notice to the assignee.

(b) **Partial Invalidity.** If any provision of this Purchase Order conflicts with law, then such provision shall be deemed void to the extent of such conflict without invalidating the remaining provisions hereof.

(c) **Waiver.** The failure of Buyer to insist in any one or more instances upon the performance of any of the terms, covenants, or conditions of this Purchase Order, or to exercise any right hereunder shall not be construed as a waiver or relinquishment of the right to compel future performance of any such terms, covenants, or conditions or the future exercise of such right.

(d) **Survival.** All representations, warranties, covenants, and indemnities of the Seller shall survive delivery, inspection, and acceptance of, and payment for, the goods.