

**STANDARD PURCHASE TERMS AND CONDITIONS**  
**DEPARTMENT OF PURCHASING**  
**COUNTY OF ORANGE, TEXAS**

Seller and Buyer agree as follows:

1. **SELLER TO PACKAGE GOODS** Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently marked as follows: (a) Sellers name and address; (b) Consignee's name, address and purchase order or purchase release number and supply agreement number if applicable; (c) Container number and total number of containers, e.g. box 1 of 4 boxes; and (d) the number of the container bearing the packing slip. Seller shall bear cost of packaging unless otherwise provided. Goods shall be suitably packed to secure lowest transportation cost and to conform with requirements of common carriers and any applicable specifications. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
2. **SHIPMENT UNDER RESERVATION PROHIBITED** Seller is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of goods.
3. **TITLE & RISK OF LOSS** The title and risk of loss of the goods shall not pass to Buyer until Buyer actually receives and takes possession of the goods at the point or points of delivery.
4. **DELIVERY TERMS AND TRANSPORTATION CHARGES F.O.B. Destination Freight Prepaid** unless delivery terms are specified otherwise in bid. Buyer agrees to reimburse Seller for transportation costs in the amount specified in Seller's bid or actual costs, whichever is lower. If the quoted delivery terms do not include transportation costs, provided Buyer shall have the right to designate what method of transportation shall be used to ship the goods.
5. **NO REPLACEMENT OF DEFECTIVE TENDER** Every tender or delivery of goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. If a tender is made which does not fully conform, this shall constitute a breach and Seller shall not have the right to substitute a conforming tender, provided, where the time for performance has not yet expired, the Seller may seasonably notify Buyer of his intention to cure and may then make a conforming tender within the contract time but not afterward.
6. **PLACE OF DELIVERY** The place of delivery shall be that set forth in the block of the purchase order or purchase release entitled "Ship To." Any change thereto shall be effected by modification as provided for in Clause 20, "Modifications," hereof. The terms of this agreement are "no arrival, no sale."
7. **INVOICES & PAYMENTS**
  - a. Seller shall submit separate invoices, in duplicate, on each purchase order or purchase release after each delivery. Invoices shall indicate the purchase order or purchase release number and the supply agreement number if applicable. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading, and the freight waybill when applicable, should be attached to the invoice. Mail to: Auditing Department Accounts Payable, 123 S. 6<sup>th</sup> Street, Orange, Texas 77630. Payment shall not be due until the above instruments are submitted after delivery. Suppliers should keep the Auditing Department advised of any changes in your remittance addresses.
  - b. Buyer's obligation is payable only and solely from funds available for the purpose of this purchase. Lack of funds shall render this contract null and void to the extent funds are not available and any delivered but unpaid for goods will be returned to Seller by Buyer.
  - c. Do not include Federal excise, State or City Sales Tax. County shall furnish tax exemption certificate.
8. **GRATUITIES** The Buyer may, by written notice to the Seller, cancel this contract without liability to Seller if it is determined by Buyer that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Seller, or any agent or representative of the Seller, to any officer or employee of the County of Orange with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such a contract. In the event this contract is cancelled by Buyer pursuant to this provision, Buyer shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Seller in providing such gratuities.
9. **SPECIAL TOOLS & TEST EQUIPMENT** If the price stated on the face hereof includes the cost of any special tooling or special test equipment fabricated or required by Seller for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the Buyer and to the extent feasible shall be identified by the Seller as such.

10. WARRANTY-PRICE

- a. The price to be paid by the Buyer shall be that contained in Seller's bid which Seller warrants to be no higher than Seller's current prices on orders by other for products of the kind and specification covered by this agreement for similar quantities under similar or like conditions and methods of purchase. In the event Seller breaches this warranty, the prices of the items shall be reduced to the Seller's current prices on orders by others, or in the alternative, Buyer may cancel this contract without liability to Seller for breach or Seller's actual expense.
  - b. The Seller warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business. For breach or violation of this warranty the Buyer shall have the right in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.
11. **WARRANTY-PRODUCT** Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of the Buyer. Seller warrants that the goods furnished will conform to the specification, drawings, and description listed in the bid invitation, and to the samples furnished by Seller, if any. In the event of a conflict between the specifications, drawings, and descriptions, the specifications, shall govern.
12. **SAFETY WARRANTY** Seller warrants that the product sold to Buyer shall conform to the standards promulgated by the U.S. Department of labor under the Occupational Safety and Health Act of 1970. In the event the product does not conform to OSHA standards, Buyer may return the product for correction or replacement at the Seller's expense. In the event Seller fails to make the appropriate correction within a reasonable time, correction made by Buyer will be at Seller's expense.
13. **NO WARRANTY BY BUYER AGAINST INFRINGEMENTS** As part of this contract for sale Seller agrees to ascertain whether goods manufactured in accordance with the specifications attached to this agreement will give rise to the rightful claim of any third person by way of infringement or the like. Buyer makes no warranty that the production of goods according to the specification will not give rise to such claim and in no event shall Buyer be liable to Seller for indemnification in the event that seller is sued on the grounds of infringement or the like. If Seller is of the opinion that an infringement or the like will result, he will notify Buyer to this effect in writing within two weeks after the signing of this agreement. If Buyer does not receive notice and is subsequently held liable for the infringement or the like, Seller will save Buyer harmless. If Seller in good faith ascertains the production of the goods in accordance with the specifications will result in infringement or the like, this contract shall be null and void except that Buyer will pay Seller the reasonable cost of his search as to infringements.
14. **RIGHT OF INSPECTION** Buyer shall have the right to inspect the goods at delivery before accepting them.
15. **CANCELLATION** Buyer shall have the right to cancel for default all or any part of the undelivered part of this order if Seller breaches any of the terms hereof including warranties of Seller or if the Seller becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any other remedies which Buyer may have in law or equity.
16. **TERMINATION** The performance of work under this order may be terminated in whole or in part by the Buyer in accordance with this provision. Termination of work hereunder shall be effected by the delivery to the Seller of the "Notice of Termination" specifying the extent to which performance of work under the order is terminated and the date upon which such termination becomes effective. Such right of termination is in addition to and not in lieu of Buyer set forth in Clause 15, herein.
17. **FORCE MAJEURE** If, by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and full particulars of such Force Majeure in writing to the other party within a reasonable time after the occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, order of any kind of government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, or canals, or other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirements that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgement of the party having the difficulty.

18. **ASSIGNMENT-DELEGATION** No right or interest in this contract shall be assigned or delegation of any obligation made by Seller without the written permission of the Buyer. Any attempted assignment or delegation by Seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.
19. **WAIVER** No claim or right to arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party
20. **MODIFICATIONS** This contract can be modified or rescinded only by a writing signed by both of the parties or their duly authorized agents.
21. **INTERPRETATION-PAROLE EVIDENCE** This writing is intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this agreement shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in this agreement, the definition contained in the Code is to control.
22. **APPLICABLE LAW** This agreement shall be governed by the Uniform Commercial Code. Wherever the term "Uniform Commercial Code" is used, it shall be construed as meaning the Uniform Commercial Code as adopted in the State of Texas as effective and in force on the date of this agreement.
23. **ADVERTISING** Seller shall not advertise or publish, without Buyer's prior consent, the fact that Buyer has entered into this contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.
24. **RIGHT TO ASSURANCE** Whenever on party of this contract in good faith has reason to question the other party's intent to perform he may demand that the other party give written assurance of his intent to perform. In the evnt that a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.
25. **VENUE** Both parties agree that venue for any litigation arising from this contract shall be in Orange County, Texas.