

# ORDER TERMS AND CONDITIONS

1. **CONTRACT:** This Purchase Order constitutes an offer by Buyer to purchase the goods and/or services specified upon the terms and conditions and at the price(s) and with the delivery date(s) stated herein and is not an acceptance of any offer by Supplier. Supplier shall indicate its acceptance of this offer by verbal acceptance, by written acceptance on the face hereof or other written confirmation, by commencing work on this Purchase Order in any manner, or by delivering the goods or performing the services. This Purchase Order, together with the documents attached hereto or incorporated herein by reference, shall constitute the final and complete agreement of the parties and may not be modified or rescinded except by a written change order issued by Buyer. No terms stated by Supplier in its proposal or in accepting or acknowledging this Purchase Order shall be binding; and Supplier is hereby notified of Buyer's objection to and rejection of any additional or different terms in Supplier's quotation, acknowledgement, invoice or other forms. This Purchase Order expressly limits acceptance to the terms and conditions contained herein, and notice of objection to any different or additional terms in any response is hereby given. If this Purchase Order is construed as an acceptance of an offer, this acceptance is expressly conditioned upon the offerer's assent to any different or additional terms contained in this Purchase Order or any attachments or exhibits thereto. If this Purchase Order is construed as a confirmation of an existing non-written contract, the parties agree that this confirmation states the exclusive terms of such contract between the parties. The parties further agree that this Purchase Order, when used by the parties to place orders for goods or services in conjunction with or pursuant to a written contract, shall be construed to supplement the terms of such written contract to the extent that the terms of this Purchase Order are not inconsistent with such written contract. Regardless of its construction, this Purchase Order incorporates by reference all terms of the Uniform Commercial Code providing any protection to Buyer, including, but not limited to, all warranty protection (express or implied) and all of Buyer's remedies under the UCC.
2. **WARRANTY:** Supplier warrants title to goods, sold hereunder, to be free and clear of all liens, encumbrances and/or colorable claims, and that all goods and/or services shall be of merchantable quality, free from defects in material, design and workmanship, shall be fit for the particular purposes intended, and shall conform to all requirements of this Purchase Order for a period of at least two years from delivery, and any services shall be performed in a sound, professional and competent manner. Supplier warrants that the items described above comply with the Federal Food, Drug and Cosmetic Act, as amended. Supplier further warrants that items described are not articles, which cannot be legally transported or sold under the provisions of any federal, state or local law and are not misbranded within the meaning of any federal, state or local law, when bearing labels affixed by Supplier.
3. **PRODUCT UNIFORMITY:** Supplier shall not make any changes in the goods that may alter properties, impurities, specifications, dimensions, or any other characteristic of the goods.
4. **INDEMNITY:** To the fullest extent permitted by law, Supplier shall indemnify, defend and hold harmless Buyer and Buyer's Affiliates (Affiliates shall include, but not be limited to employees, representatives, officers, agents, subcontractors, directors, shareholders, owners, attorneys, insurers, predecessors, successors, assigns, and affiliated companies) from and against any and all claims and damages (including but not limited to all costs, expenses, fees, fines, debts, liabilities, penalties, charges, and removal and remediation costs) of any nature (including but not limited to special, punitive, incidental, and consequential) incurred by, asserted against or awarded against Buyer or Buyer's Affiliates to the extent such claims or damages arise, directly or indirectly, from, or are related in any way to, Supplier's or its subcontractors' performance of this Purchase Order. Supplier further agrees that protections provided by Supplier hereunder also include an agreement that Supplier will indemnify, defend and hold harmless Buyer for Buyer's and Buyer's Affiliates' active or passive negligence or strict liability, regardless of whether Buyer's and Buyer's Affiliates' active or passive negligence or strict liability is the sole, contributing, concurrent, proximate or producing cause of the claims or damages covered by this indemnity, defense, and hold harmless agreement. For goods or services provided at Buyer's Baytown facility, the previous sentence shall relate only to personal injury claims. Supplier expressly waives, for purposes of the indemnity, defense and hold harmless protections provided hereunder, any immunity that it would otherwise have under any applicable law from liability for such personal injury, sickness, disease or death claims related to any claim brought by Buyer or Buyer's affiliates under this indemnity, defense and hold harmless agreement. Supplier's waiver of immunity does not extend to direct claims or damages brought by, or on behalf of, or awarded to, Supplier's employees against Supplier, but such waiver is intended to include claims and damages brought by, or on behalf of, or awarded to, Supplier's or subcontractor's employees against Buyer or Buyer's affiliates. Supplier shall require all of its subcontractors and other entities acting on its behalf related to this Purchase Order, to enter into a valid agreement with Supplier to provide the exact same waiver of any immunity Supplier's subcontractors and other entities acting on Supplier's behalf may have under any applicable law from liability for such personal injury, sickness, disease or death related claims for indemnity, defense, or hold harmless protection brought by Buyer or Buyer's Affiliates to enforce the indemnity, defense, and hold harmless obligations hereunder. Buyer and Buyer's Affiliates retain the right to select the counsel, who shall be paid by Supplier to defend Buyer or Buyer's Affiliates. Supplier agrees to attempt in good faith to timely, amicably and fully settle all claims or damages asserted or awarded against Buyer or Buyer's Affiliates such that Buyer is fully protected from and against any subsequent claims and damages asserted by the same claimant. Buyer and Buyer's Affiliates retain the absolute power to settle or otherwise compromise any and all claims or damages, without affecting Buyer's or Buyer's Affiliates' right to seek indemnity, defense or hold harmless protection for any such settled claims or damages. Supplier's indemnity obligations as set forth herein shall not be limited by any limitation on the amount or type of damages, benefits or compensation payable by or for Supplier under Worker's Compensation Acts, Disability Benefit Acts or other employee benefit acts on account of claims against Buyer or Buyer's Affiliates by an employee of Supplier or anyone employed directly or indirectly by Supplier or anyone for whose acts Supplier may be liable. In no event shall Supplier's obligations hereunder be limited to the extent of any insurance available to or provided by Supplier. Supplier's duty to indemnify, defend and hold harmless Buyer and Buyer's Affiliates shall survive the termination and expiration of this Purchase Order. Buyer's and Buyer's Affiliates' rights to indemnity, defense and hold harmless protections are cumulative of, and are provided by Supplier without prejudice to, any other rights or remedies available to Buyer or Buyer's Affiliates.
5. **INFRINGEMENT:** Supplier warrants that the use or sale of goods and/or services shall not infringe any patent claims, trademarks or other intellectual property rights. Supplier shall indemnify and hold harmless Buyer from all expenses, including attorneys' fees, claims and liabilities arising out of a breach of such warranty.
6. **REJECTION AND REVOCATION OF ACCEPTANCE:** Buyer shall have a reasonable opportunity to inspect goods and reject them if they fail to conform to the requirements of this Purchase Order, and to revoke its acceptance of them where appropriate. With regard to goods that are rejected or for which acceptance has been revoked, Buyer, at its option and at the expense and risk of Supplier, may return such goods to Supplier or store them until Supplier provides instructions for disposal. Payment for goods without reasonable opportunity to inspect the same shall not constitute acceptance.
7. **SHIPMENT:** Supplier's performance shall be in strict conformance with the delivery and other time provisions specified in this Purchase Order. Time is of the essence. If Supplier fails to perform according to the terms of this order within the required time, Buyer may cancel this Purchase Order and purchase the goods and/or services elsewhere, and hold Supplier liable for any costs or damages incurred. Supplier shall forward notice of shipment of goods to Buyer within twenty-four hours, and such notice is an express condition to Buyer's duties under this Purchase Order. The original Bill of Lading must accompany the invoice and be mailed in accordance with the instructions on the face of this Purchase Order. Complete packing lists must accompany each shipment. Separate invoices are required for each Purchase Order and for each shipment when partial deliveries are made.
8. **TAXES:** Any applicable federal, state or local taxes related to the manufacture of goods sold herein are included in the Purchase Order price and shall be paid by Supplier.
9. **FORCE MAJEURE:** No liability shall result from delay in performance, or non-performance, caused only by circumstances beyond the reasonable control and without the fault or negligence of the party affected, including Acts of God, fire, flood, war, Government action, accident, or labor trouble or shortage. Supplier will not be excused if it is unable to acquire any material necessary for manufacturing the goods and/or providing the services identified in this Purchase Order from its usual sources at usual terms, as long as such materials and/or services are reasonably available for purchase by Supplier. The curing of any delay in performance or non-performance as a result of the causes described in the foregoing sentence shall be prosecuted with due diligence by the affected party and shall include reasonable updates as to the status of such condition and its expected impact on the ability to perform under this Purchase Order. At Buyer's option, quantities so affected by the causes described in the first sentence of this paragraph may be eliminated from this Purchase Order without liability, but this Purchase Order shall remain otherwise unaffected.
10. **CONFIDENTIALITY/DOCUMENTS:** All drawings, plans, specifications or other documents, data or information furnished by Buyer to Supplier, orally or in writing, shall be treated as confidential by Supplier. Supplier shall not make any commercial use thereof except in performance of this Purchase Order. Supplier shall not disclose same to anyone before or after performance of this Purchase Order without having obtained the written consent of Buyer. All such drawings, plans, specifications or other documents, data or information shall be returned to Buyer upon request. Any documents, including but not limited to drawings and plans, received from Supplier shall become Buyer's property and all rights to such materials, including the copyright, shall belong to Buyer.
11. **GOVERNMENTAL LAWS:** Supplier shall comply with the Fair Labor Standards Act. Supplier shall not discriminate against any employee or applicant for employment because of age, race, color, creed, national origin or sex. Supplier shall comply with all applicable federal, state and local fair employment practices laws, to the extent applicable, the employee notice requirements under set forth in 29 CFR Part 471, Appendix A to Subpart A and any amendments thereto. Any clause required to be in a document of this type by any applicable law or administrative regulation having the effect of law shall be deemed to be incorporated herein. Supplier warrants that the goods and/or services shall comply with all applicable laws, standards and regulations, whether governmental or industrial, in effect on the date of delivery or known in the industry to become effective after such date, including but not limited to all regulations regarding conflict minerals. To the extent applicable, this contractor (Buyer) and subcontractor (Supplier) shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.
12. **ASSIGNMENT:** This Purchase Order shall not be assigned by Supplier without Buyer's prior written consent. Supplier shall not subcontract all or any part of its performance of this Purchase Order to any other party without Buyer's prior written consent. No assignment or subcontracting by Supplier, with or without Buyer's consent, shall relieve Seller of any obligations under this Purchase Order.
13. **APPLICABLE LAW AND VENUE:** This Purchase Order and all of the rights, duties and obligations of the parties here-to shall be construed, interpreted and controlled by the laws of the Commonwealth of Pennsylvania, and all claims arising out of or related to the parties' performance of their obligations hereunder, whether sounding in contract, tort or otherwise, shall be governed by the laws of the Commonwealth of Pennsylvania, including Pennsylvania's statutes of limitations, but not including its or any other state's choice of laws rules. Any dispute related to this Agreement shall be brought in a federal or state court located in Allegheny County, Pennsylvania. The applicability of the provisions of the United Nations Convention on Contracts for the International Sale of Goods is hereby expressly excluded from this Purchase Order.
14. **CHANGES:** Buyer may direct Supplier to make changes in the goods and/or services ordered including, without limitation, reasonable changes to quantities or delivery dates, or changes in the requirements of the drawings, specifications or instructions. Supplier shall promptly review such changes and within five (5) days inform Buyer of any change in Supplier's cost of performance or delay in delivery. Upon mutual agreement as to any price or delivery change, Buyer shall issue a written change order. In the event Supplier shall fail to comply with this procedure, Supplier shall be deemed to have waived all claims for increased cost or extension of time of performance.
15. **SUSPENSION OR TERMINATION:** Buyer, for its convenience, shall have the right to suspend or terminate Supplier's work hereunder, or any part thereof, including delivery, upon notice to Supplier. Supplier shall promptly comply with Buyer's instructions to minimize the cost to Buyer. In the event of suspension for convenience, Supplier shall be entitled to recover only its uncompensated actual direct costs resulting from any suspension. In the event of termination for convenience, Supplier shall be entitled to recover only its uncompensated actual direct costs incurred prior to the date of Buyer's termination, plus those actual direct costs arising from Buyer's termination, provided that in no event shall the total price paid by the Buyer exceed the price(s) specified in this Purchase Order. Any cost claimed by Supplier under this Article shall be subject to the audit and approval of Buyer. Upon termination, the goods shall become the property of Buyer in their then state of completion.
16. **WAIVER:** Buyer's waiver of any breach by Supplier of any of the provisions of this Purchase Order shall not constitute a waiver of any other breach of the same or any other provision. Buyer's rights and remedies under any provision of this Purchase Order shall be in addition to, and not in substitution or limitation of, any other rights or remedies available to Buyer under applicable law.
17. **LOST PROFIT:** In no event shall Buyer be responsible for any indirect or consequential damages including, but not limited to, Supplier's loss of actual or anticipated profits arising out of, or resulting from, this Purchase Order or from the performance, suspension, termination or breach hereof.
18. **HEADINGS AND SEVERABILITY:** Any headings preceding the several articles hereof are inserted solely for convenience of reference, shall not constitute a part of the Purchase Order and shall not otherwise affect the meanings, content, effect or construction of this Purchase Order. In the event that any provision contained herein is held to be invalid or unlawful, such provision shall be severable from the remaining provisions of this Purchase Order, which shall remain in full force and effect.
19. **PUBLICITY:** Supplier shall not, and shall require that its subcontractors and suppliers of any tier shall not, cause or permit to be released any publicity, advertisement, news release, public announcement, or denial or confirmation of same, in whatever form, regarding any aspect of this Purchase Order or the goods and/or services to which they pertain without Buyer's prior written approval.
20. **RESPONSIBILITY FOR PROPERTY:** Unless otherwise specified, upon delivery to Supplier, or manufacture or acquisition by Supplier, of any materials, parts, tooling, data or other property, title to which is held by Buyer, Supplier assumes the risk of and shall be responsible for any loss thereof or damage thereto. In accordance with the provisions of this Purchase Order, but in any event upon completion thereof, Supplier shall return such property to Buyer in the condition in which it was received, except for reasonable wear and tear, and except for such property as has been reasonably consumed in the performance of this Purchase Order.
21. Supplier agrees to provide a valid NAFTA Certificate (including product name, country of origin and harmonized tariff system number), or, in the alternative, a statement that the product does not qualify for NAFTA. In the case of imported products, Supplier agrees to provide a Certificate of Delivery.