

TERMS AND CONDITIONS OF PURCHASE

1. **NO MODIFICATION.** The purchase of goods or services hereunder is expressly conditioned upon Seller's assent to the terms and conditions contained or referred to herein. No terms or conditions which alter or modify in any way any provision hereof shall be binding unless expressly agreed to in a written instrument signed by Buyer's authorized representative. Buyer objects to any different or additional terms and hereby rejects any and all such terms, whether contained in previous or subsequent proposals or communications from Seller. Any shipment or delivery by Seller of goods or provision of services purchased hereunder constitutes acceptance of these terms and conditions.

2. **WARRANTIES.** Seller expressly agrees and warrants that all goods purchased by Buyer pursuant to this order (a) shall be merchantable, (b) if Seller has reason to know the particular purpose for which the goods are required and that Buyer is relying upon Seller's skill or judgment to select or furnish suitable goods, shall be fit for such purpose, and (c) shall conform to all specifications contained in, or incorporated by reference into, this order. Seller expressly agrees and warrants that all services purchased by Buyer pursuant to this order shall be performed in a good and workmanlike manner and in accordance with any specifications provided by Buyer and all applicable industry standards. Such warranties shall survive delivery and shall not be deemed waived either by reason of Buyer's acceptance of said goods or services or by payment therefor. Seller shall be liable to Buyer for any and all claims, including all incidental and consequential damages, resulting from a breach of any of said warranties.

3. **QUANTITIES.** The specific quantity ordered must be delivered in full and cannot be changed without Buyer's consent in writing. Any unauthorized quantity is subject to Buyer's rejection and return at Seller's expense and risk.

4. **PRICE.** If price is not stated in this order, it is agreed that the purchase price shall be the lower of (a) the last quoted or last invoiced price from Seller to Buyer, whichever is lower, or (b) the prevailing market price at the time of contracting or at the time of shipment, whichever is lower.

5. **EXTRA CHARGE.** No additional charges of any kind, including charges for boxing, packing, cartage or other extras, will be allowed unless specifically agreed to in writing in advance by Buyer.

6. **SHIPMENT.** If the goods are not shipped in accordance with Buyer's direction and the instructions set out in this order, Seller shall pay to Buyer any excess costs occasioned thereby.

7. **INSPECTION AND ACCEPTANCE.** All goods sold hereunder are subject to Buyer's right of inspection and rejection. Inspection shall occur at the place of delivery specified in the purchase order, if practicable; however, defects or nonconformities not reasonably detectable by Buyer's inspection upon delivery are not waived, and Buyer retains the right to reject goods with such defects or nonconformities or to revoke its acceptance of such goods upon discovery of such conditions. Defective goods or goods not in accordance with Buyer's specifications will be held for Seller's instruction, at Seller's risk, and, if Seller so directs, will be returned at Seller's expense. If inspection discloses that part of the goods received are not in accordance with Buyer's specifications, Buyer shall have the right to cancel any unshipped portion of the order. Payment for goods covered by this order prior to inspection shall not constitute acceptance thereof and is without prejudice to any and all claims that Buyer may have against Seller arising out of defects or nonconformities in the goods.

8. **SPECIFICATIONS.** If Buyer has provided Seller with written specifications for any goods or services purchased from Seller, such specifications are incorporated by reference herein, and failure of said goods or services to meet such specifications shall constitute a nonconformity with the order.

9. **TAXES.** Unless otherwise stated, the prices applicable to an order include all excise and similar taxes (other than sales and use taxes) applicable to the goods or services furnished hereunder or the materials used in the manufacture thereof. All such taxes and charges shall be shown separately on Seller's invoice.

10. **CANCELLATION FOR BREACH.** Buyer reserves the right to cancel all or any part of an order, without liability to Seller, if Seller (a) repudiates or breaches any of the terms of the order, including Seller's warranties, (b) fails to timely deliver goods or perform services as specified by Buyer, time being of the essence, or (c) fails to make progress so as to endanger timely and proper delivery of goods or performance of services.

11. **TERMINATION.** In addition to any other rights of Buyer to cancel or terminate an order, Buyer, at its sole option, may immediately terminate all or any part of an order, at any time and for any reason, by giving written notice to Seller. Upon such termination, Buyer shall pay to Seller (a) the order price for all goods or services which have been completed in accordance with the order and not previously paid for, and (b) the reasonable cost of work-in-process and raw materials incurred by Seller in furnishing the goods or services under the order, less (c) the reasonable cost of (i) any such goods or services used or sold by Seller with Buyer's written consent, and (ii) any damaged or destroyed goods. Buyer will make no payments for finished goods, work-in-process or raw materials manufactured or procured by Seller in amounts in excess of those authorized for delivery to Buyer nor for any undelivered goods which are in Seller's standard stock or which are readily marketable. Except as provided in this paragraph, Buyer shall not be liable for and shall not be required to make payments to Seller as the result of Buyer's termination of the order. Within sixty (60) days from the effective date of termination, Seller shall submit a comprehensive termination claim to Buyer, with supporting data attached, and shall thereafter promptly furnish such supplemental information as Buyer shall reasonably request. Buyer, or its agents, shall have the right to audit and examine all books, records, facilities, work, material, inventories and other items relating to any termination claim of Seller.

12. **ASSIGNMENT.** An order may not be assigned by Seller without Buyer's prior written consent.

13. **REMEDIES.** No remedy herein provided shall be deemed exclusive of any other remedy allowed by law.

14. **APPLICABLE LAW.** Each order and the contract of purchase for the goods or services covered, hereby shall be governed by and construed in accordance with the laws of the State of Alabama.

15. **ARBITRATION.** At Buyer's sole option, any controversy or claim arising out of or relating to this order or the contract of purchase for the goods or services covered hereby shall be submitted by the parties hereto to arbitration in Birmingham, Alabama, in accordance with the rules of the American Arbitration Association. Judgment upon any award rendered in such proceedings may be entered in any court having jurisdiction thereof, and the parties hereto submit to the jurisdiction of all State and federal courts located in Birmingham, Alabama.

16. **COMPLIANCE WITH LAWS.** Seller agrees that in the performance of an order it will comply with, and it will assure that its suppliers comply with, all applicable federal, state, local or foreign laws, statutes, rules, regulations and orders, and the same are expressly incorporated in the order by this reference, and Seller shall indemnify and hold Buyer harmless from any loss, damage and/or expense, including attorney's fees, incurred by Buyer as the result of the noncompliance therewith.

17. **LITIGATION AND ATTORNEY'S FEES.** Unless Buyer elects arbitration pursuant to paragraph 15, any litigation concerning the purchase of goods or services hereunder shall be brought in the United States District Court for the Northern District of Alabama, or, if subject matter jurisdiction is lacking therein, in the Circuit Court of Jefferson County, Alabama, which court shall have exclusive jurisdiction over and venue for any such litigation. Seller and Buyer hereby expressly consent to the jurisdiction and venue of said Court. In any litigation or arbitration arising out of or based upon the purchase of goods or services hereunder, the prevailing party shall be entitled to recover its reasonable cost of litigation or arbitration, including its reasonable attorney's fees, from the nonprevailing party, not to exceed the amount allowed by any applicable statute.