

## PURCHASE ORDER TERMS & CONDITIONS

**1. Acknowledgement** - This purchase order (PO) constitutes an offer on the part of the Buyer (as defined in this PO) upon the terms and conditions and at the prices stated herein, and shall constitute a binding contract upon Seller (as defined in this PO), unless notification to the contrary is received in writing within five (5) business days of the Seller's receipt of PO and before the delivery of any Goods and/or Services by Seller to Buyer related to this PO. Except as expressly noted herein, Seller's acceptance of this PO is expressly limited to the terms and conditions hereof and Buyer hereby notifies Seller that it objects to any additional or different terms that may be contained in Seller's acceptance. No modification of the terms and conditions of this PO will be binding on the Buyer unless accepted by Buyer in writing. Except as expressly noted herein, the terms and conditions contained in this PO constitute the entire agreement between Buyer and Seller with respect to the Goods and/or Services (as set out in this PO) and supersede and take precedence over any and all previous verbal or written arrangements between Buyer and Seller regarding such Goods and/or Services.

**2. Price and Payment** - Seller agrees that the price(s) set forth in this PO is firm, and is not subject to increase. Unless otherwise provided in this PO, the price(s) or fee(s) herein stated include all costs, licensing, royalty or similar fees or charges, all applicable taxes (including customs duties) and charges for packing, transporting and the insuring of the Goods ordered and delivered to Buyer's specified destination. Buyer shall not be liable for any taxes with respect to this PO other than municipal, provincial, state or federal sales taxes levied on the Buyer which Seller is required by law to collect from Buyer. All such taxes and other charges shall be stated separately on Seller's invoice. Seller warrants that the prices charged for the Goods and Services covered by this PO are the lowest prices charged and on terms no less favorable than those accorded by Seller to any other customer for the same or like Goods and Services in equal or less quantities under similar circumstances. Payment due dates, including discount periods, will be computed from the date of receipt of all Goods and Services or the date of receipt of a correct invoice, whichever is later. A signed Proof of Delivery may be required for payment authorization. If Seller has not received payment as agreed, the Seller will notify the Buyer and the Buyer will pay promptly. With respect to Services provided, unless otherwise specified on this PO, Seller will bear all expenses in connection with the provision of the Services including but not limited to out of pocket and travel expenses, income and other taxes, and any and all costs of other benefits or statutory plans in respect of Seller and its employees and others who perform the Services on Seller's behalf.

**3. Quantities** - All Goods called for on this PO must be tendered in a single delivery and must not be delivered in installments unless otherwise specified herein.

**4. Changes** - Buyer may, by written notice, make changes to all or any part of this PO. If any such change causes an increase or decrease in the cost or time required for the performance hereunder, an equitable adjustment shall be made in the price or delivery schedule, or both. Any claim for adjustment by Seller shall be deemed waived unless asserted in writing ten (10) days from the receipt by Seller of the change. Changes shall not be binding on Buyer unless evidenced by writing signed by an authorized representative of Buyer.

**5. Time of Delivery** - Time of delivery is of the essence in this PO. If delivery dates cannot be met, Seller must inform Buyer immediately. Seller shall not be liable for damages arising out of either its failure to deliver or any delay in delivery occasioned by fires, war, acts of God, inability to obtain shipping space, delays of carriers, governmental acts and regulations, and other similar causes beyond Seller's control.

**6. Improper Delivery** - In addition to other remedies provided by law, Buyer reserves the right to refuse any Goods and to cancel all or any part of this PO if Seller fails to deliver all or any part of the Goods in accordance with the terms and conditions of this PO. Acceptance of any part of the PO shall not bind Buyer to accept any future shipments nor deprive it of the right to return the Goods already accepted.

**7. Risk of Loss** - Risk of loss shall not pass to Buyer until all Goods called for in this PO have been actually received and accepted by Buyer at the destination specified herein. Seller assumes full responsibility for packing, crating, marking, transportation, and liability for loss or damage in transit, notwithstanding any agreement by Buyer to pay freight, express or other transportation charges. Goods paid for by Buyer but held for future delivery by Seller in accordance with Buyer's instructions must be fully insured at Seller's expense.

**8. Transportation** - Transportation charges shall be fully prepaid by Seller unless otherwise specified by Buyer. Shipments shall be made by the lowest cost reliable means of transportation available unless otherwise authorized by Buyer. Any additional charges due to the use of unauthorized premium transportation must be borne by Seller. Buyer's PO Number must appear on all related waybills, invoices and cartons.

**9. Import** - If importing Goods into any other country, Seller will be responsible for all legal, regulatory and administrative requirements associated with any importation and the payment of all associated duties, taxes and fees.

**10. Inspection and Rejection** - All Goods and/or Services delivered to Buyer shall be subject to Buyer's inspection before acceptance or payment. Expenses incurred by Buyer in such inspection of the Goods and/or Services may be recovered from Seller if all or part of the Goods and/or Services are non-conforming and are rejected by Buyer. All rejected Goods and/or Services will be held at Seller's risk and expense subject to Seller's prompt advice of disposition. If, in Buyer's judgement, additional work or rework on non-conforming Goods and/or Services is required to make such Goods and/or Services acceptable to Buyer, Seller agrees that Buyer may perform such work at Seller's expense and that the performance of such work shall in no way invalidate Seller's warranty of quality on the Goods. Seller agrees that Buyer has the right to inspect Seller's facility, the materials used in the Goods' manufacture and the finished Goods. With respect to Services, Seller agrees that Buyer has the right to inspect the means and manner in which Seller delivers the Services. Such inspections conducted at any time prior to Seller's delivery of any or all of the Services ordered by Buyer, or within a reasonable time after delivery, will not constitute acceptance of the Services by Buyer.

**11. Warranty** - Seller warrants for one (1) year from the date of acceptance (unless otherwise specified in the PO) that the Goods furnished hereunder will be in full conformity with their quality, size, dimensions, and other specifications, perform as specified or otherwise represented by Seller; be merchantable and fit and sufficient for the use intended by Buyer, and be free from defects in material, workmanship, manufacture and design. This express warranty shall not be deemed waived by reason of the acceptance of the Goods or payment thereof by Buyer. For Services, Seller represents and warrants that all Services covered by this PO will not violate the provisions of any other agreement by which Seller is bound; will be performed in a professional and workmanlike manner and in accordance with any applicable professional standards for the Services and in accordance with any specifications contained in the PO; and will not infringe any existing patent, trade mark, copyright, trade secret or other intellectual property right recognized in Canada or the United States. These representations and warranties will survive acceptance of payment for the applicable Goods or Services and will enure to the benefit of Buyer, its successors, assigns, customers and with respect to Goods, the end user of the Goods and will not be deemed to be exclusive. These warranties are in addition to any warranties of the Goods or Services given by Seller to Buyer either expressed, implied, or by operation of law.

**12. Hazardous/Toxic Goods Labeling, Warnings & Instructions** - Prior to the supply and shipment of any hazardous Goods to Buyer, Seller agrees, where necessary, to mark the hazardous Goods with the Workplace Hazardous Material Information System (WHMIS) symbol(s) and display the name of the hazardous material in the jurisdiction's official language(s). Transport and other documents must include a declaration of the hazard and the name of the hazardous material in the jurisdiction's official language(s). Hazardous

Goods must be accompanied by emergency information in the jurisdiction's official language(s) in the form of written instructions, labels or markings. Seller will observe the requirements of Canadian, US and international laws, regulations and agreements relating to the packing, labeling and carriage of hazardous Goods. All information known, held by or reasonably available to Seller regarding any potential hazards known or believed to exist in the transport, handling or use of the hazardous Goods will be promptly communicated to Buyer.

**13. Infringement** - Seller agrees to indemnify, defend, and hold harmless Buyer from and against any action, claim, demand, liability, loss, or expense (including counsel fees and expenses) involving a claim (i) that any of Goods or Services provided hereunder infringes, in whole or part, any patent, copyright, trademark, trade secret or other intellectual property right of any third party or (ii) for damages to persons or property caused by the acts or omissions of Seller's personnel or agents. If such action of infringement is sustained, then, at Buyer's request, Seller shall provide or purchase at its expense a license or other suitable substitute necessary to enable Buyer to possess and use said Goods, device, process or composition in quiet enjoyment and in perpetuity, provided always that this indemnity will not apply to any infringement which is due to Seller having followed a design or instruction furnished or given by Buyer. This indemnity is conditional on Buyer giving Seller prompt notice in writing of any claims being made or actions threatened or brought against Buyer and on Buyer permitting Seller, at Seller's own expense, to conduct any litigation that may ensue and all negotiations for a settlement of the claims or actions, subject to Buyer's consent.

**14. Buyer's Property** - Seller agrees that all drawings, art work, negatives, data, specifications, tools, dies, equipment or material furnished to Seller by Buyer or specifically paid for by Buyer and any replacement thereof shall be and remain the personal property of Buyer. Seller will not use Buyer Property for any other purpose than as requested by Buyer or as specified in the PO. Such property, wherever practical, shall be plainly marked or otherwise adequately identified by Seller as "Property of the Buyer" and safely stored and kept insured by Seller at Seller's expense in an amount equal to replacement cost with loss payable to Buyer and shall be subject to removal within a reasonable time period at Buyer's written request and without making or retaining any copies. Seller shall prepare such property for shipment and shall redeliver to Buyer in the same condition as originally received by Seller, reasonable wear and tear excepted.

**15. Advertising** - Seller will not, without first obtaining the written consent of Buyer, in any manner, advertise or publish the fact that Seller has contracted to furnish Buyer with any Goods and/or Services, or use any trademarks or trade names of Buyer in Seller's advertising or promotional materials.

**16. Independent Contractor** - The relationship between Buyer and Seller, or any employee of Seller, will at all times during the provision of any Goods or Services by Seller under this Agreement be that of an independent contractor, not an employee of the Buyer. No employment relationship is created by this PO.

**17. Termination for Convenience** - Buyer may terminate this PO in whole or in part at any time and for any reason upon written notice to Seller. Upon receipt of such notice, Seller shall stop work immediately and terminate all orders and subcontracts to the extent that they relate to the terminated work. There shall be no charges for terminating the PO with respect to standard Goods for which there are alternate customers. Buyer, in addition to any other right it may have, will have the right to return to Seller all or any part of any shipment of Goods received, at Seller's expense. Any claim for termination charges for non-standard Goods must be submitted to Buyer in writing within ten (10) days after receipt of the termination notice. Seller's claim may include (i) the cost of unique work in process and (ii) the cost of paying claims to Seller's vendors for work directly allocable to Goods terminated. Buyer shall not be responsible for any commitments made by Seller in advance of those necessary to comply with the schedules set forth in this PO. In no event shall such claim exceed the total line item order price for the Goods or Services terminated. Upon payment of Seller's claim, Buyer

shall be entitled to all Goods, materials, and work in process paid for. In no event shall Seller be entitled to, nor shall Buyer be liable for, incidental or consequential damages, costs of preparing claims, costs of tooling or equipment, or any other expenses or damages arising out of this PO or with respect to the terminated Goods or Services.

**18. Termination for Default** - Buyer may, at its sole option, cancel this PO in whole or in part without any further liability or responsibility hereunder in the event Seller:

(i) becomes insolvent or bankrupt,

(ii) fails to make timely delivery, or

(iii) breaches any other term and condition of this PO. Seller shall continue to supply any portion of this PO not cancelled. In the event of such cancellation, at Buyer's request, Seller will transfer title to and deliver to Buyer:

(a) any completed Goods and

(b) any partially completed items and all unique materials and tooling. Prices for partially completed Goods and unique materials and tooling accepted shall be negotiated; however, such prices shall not exceed the order price per type of Goods and/or Services.

**19. Non-assignment** - Assignment of this PO or any interest therein of any payment due or to become due thereunder without the written consent of the Buyer shall be void.

**20. Confidentiality** - "Confidentiality Information" shall mean any information of Buyer provided to or learned by Seller during its relationship with the Buyer that is not generally known to the public, including, but not limited to, computer code, characteristics of the Buyer's software, Buyer's computer systems architecture, the prices, terms and conditions of the Buyer's contracts with its customers, the identities, needs and requirements of the Buyer's customers, the Buyer's business plans and strategies (including technology and e-commerce plans and strategies) and financial information regarding the Buyer. Seller agrees that it shall only use the Confidential Information for performing its Services or providing the Goods under this PO and for no other purpose whatsoever, and shall not disclose any such Confidential Information to any third party. Upon Buyer's request, Seller agrees to immediately return all Confidential Information to Buyer without making or retaining any copies. Seller agrees that in the event of a threatened or actual disclosure or unpermitted use of any Confidential Information in violation of this PO, the Buyer would suffer irreparable harm and its remedy at law would be inadequate, and Seller hereby agrees that in such event an injunction restraining such use may be issued by any court of competent jurisdiction. The obligation of this provision shall survive any termination of the parties' relationship.

**21. Indemnification** - Seller agrees to defend, indemnify and hold Buyer harmless from and against any and all liabilities, obligations, costs and expenses for any nature whatsoever (including reasonable attorneys' fees and costs) which Buyer may be obligated to pay as a result of any and all claims, demands, action or judgments of any nature whatsoever, in favor of any person on account of personal injury or death, damages to property incident to or resulting directly from the performance by Seller hereunder or a breach of the confidentiality obligations set out above. Seller shall carry and maintain insurance coverage satisfactory to Buyer to cover the above, and upon Buyer's request, shall furnish Buyer with evidence of such insurance in a form satisfactory to Buyer.

**22. No Waiver** - A failure or delay of either party to this PO to enforce any of the provisions thereof, to exercise any option which is herein provided, or to require performance of any provision hereof shall in no way be construed to be a waiver of such provisions.

23. Severability - In the event any provision of this PO is adjudicated invalid or unenforceable, the adjudication shall not affect the other provisions of this PO, which shall remain in full force and effect.

24. **Governing Law** - A PO for Goods or Services within the United States will be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts including the Fair Labor Standards Act and all other applicable federal and state laws and regulations that govern the production of Goods for this PO. All other PO's, wherever the Goods and/or Services are provided, will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

25. **Order of Precedence** - The documents identified below shall govern this purchase and take precedence in the following order:

- (i) the face of the PO;
- (ii) the separate written contract on the subject matter between the parties;
- (iii) these PO terms and conditions; and
- (iv) any drawings, documents, requirements or specifications provided to Seller by Buyer or by Seller to Buyer.

26. **Government contracting obligations** - Buyer is a contractor with certain federal agencies in the U.S. Seller shall, to the extent they apply, 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, sexual orientation, gender identity, 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, sexual orientation, gender identity, or national origin, protected veteran status or disability. Seller also agrees that, to the extent they apply, it will comply with the obligations regarding the notice of employee rights under federal labor laws found at 29 CFR Part 471, Appendix A to Subpart A, and will likewise incorporate those obligations into all applicable subcontracts as required by 29 CFR Part 471. Seller will also comply with any applicable requirements regarding E-Verify. In addition to its status as federal contractor, Buyer also has contracts with various state and local governments. Pursuant to such contracts, Buyer may be required to comply with certain laws, regulations and Executive Orders relating to government contracting and to require each person or entity with whom it contracts to also comply with such laws, regulations, and Executive Orders. Seller agrees that, to the extent they apply, it will comply with all applicable government contracting laws and regulations.