



TERMS AND CONDITION OF PURCHASE



- 1. APPLICABILITY OF TERMS AND CONDITIONS.** Any Purchase Order submitted by Innovent relating to the purchase of any goods from Seller (the Goods") shall constitute an offer by Innovent to purchase the Goods on the terms described in these Terms. Acceptance of the Purchase Order by the Seller shall constitute acceptance of these Terms as the only terms which apply to the purchase of the Goods or Services. These Terms shall apply to all subsequent Purchase Orders for the purchase of Goods by Innovent from Seller, regardless of whether the Terms are attached to the Purchase Order. This Purchase order is an offer to purchase Goods, and is made subject to these terms and conditions. No additional or different terms offered by Seller shall become a part of the agreement of sale between Innovent and Seller unless such terms have been expressly approved in writing by an authorized agent of Innovent. Seller's action in (a) acknowledging this Purchase Order; (b) commencing performance, or making shipment of Goods; or (c) performing services called for hereunder shall constitute an unqualified acceptance by Seller of the terms and conditions contained herein.
- 2. PURCHASE ORDER PROVISIONS.** The description, quantity, price and place of delivery of the Goods shall be as set forth in the Purchase Order. The description of any Goods shall also include any written specifications for such Goods which are referenced in the Purchase Order, and which provide detail regarding the Goods, including any plans, drawings, or data concerning any Goods.
- 3. PRICE.** The purchase price of the Goods or Services shall be set forth on the applicable Purchase Order, and shall, unless it is specifically stated otherwise, include charges for packaging, packing, shipping, carriage, insurance, storage and delivery of the Goods to the address set forth on the Purchase Order. An invoice shall accompany shipment of the Goods, or shall be sent promptly after delivery of the Goods or completion of the Services. Unless otherwise set forth on the Purchase Order, the terms of payment shall be net 45 days from the later of 1) the date on which the Goods were scheduled to be received by Innovent (or the date on which they were actually received, if later) or the Services were completed, or 2) the date on which the invoice was received by Innovent.
- 4. CONFORMANCE OF GOODS.** Any Goods purchased hereunder shall meet any and all written specifications for the Goods, and shall be suitable for the purposes intended by Innovent. Innovent will not accept substitutions, untimely deliveries, quantities other than those ordered by Innovent, Goods which fail to conform to Seller's warranties contained in Paragraph 6 hereof, or delivery of Goods to a location other than that specified in the Purchase Order. Goods which fail in any way to meet any of the requirements set forth in the foregoing sentences will be considered rejected. Innovent shall have a reasonable period of time after the Goods have been delivered to inspect them, before they are considered to have been accepted. In addition, Innovent may subsequently reject Goods that have previously been accepted, if within a reasonable time after delivery a latent defect becomes apparent. Time is of the essence in this order. Seller will immediately give written notice to Innovent of any actual or potential cause or event which threatens the timely delivery of the Goods hereunder. Unless otherwise provided, Seller will retain the risk of loss or damage in transit until the Goods are actually delivered to the delivery address designated by Innovent.
- 5. CHANGES:** Innovent will have the right to make changes at any time in the specification, delivery schedules (postponements only) and requirements relating to packaging or destination by giving Seller written notice of the change. If any such change causes any increase or decrease in the cost or the time required for performance, then the parties will make an equitable adjustment in the purchase price or delivery schedule. Seller waives all claims for adjustment under this clause unless Seller makes a claim in writing within three (3) business days after receipt by Seller of notice of such change. **Seller agrees to notify Innovent of any changes** Seller wishes to make (1) in the Goods and/or the process by which the Goods are made; (2) any changes of suppliers; and (3) any changes of manufacturing facility location. If such changes impact the form, fit or function of the Goods, Innovent's written approval is required prior to the implementation of the requested changes.
- 6. WARRANTY AND LIABILITY:** (a) Seller warrants that all Goods furnished hereunder will be free from defects in design, materials and workmanship, will conform to all written specifications which are referenced in the Purchase Order and thus are a part hereof, and will be of good quality and suitable for the purposes for which such Goods are to be used by Innovent. If the Goods supplied hereunder fail to meet any of the foregoing in one or more respects, Innovent shall be entitled at its option to either require Seller to repair or replace the Goods, or treat the Purchase Order as discharged and repay any part of the purchase price which has been paid by Innovent. (b) Seller will indemnify and defend Innovent and hold Innovent harmless from and against all losses, liabilities, damages, claims, demands, suits, actions, proceedings, subrogations and expenses, including court costs and reasonable attorneys fees, arising from (1) breach of any warranty, express or implied, given by Seller with respect to the sale of Goods, including the warranties set forth in Paragraph 6(a) above; (2) death or injury to any person or damage to any property resulting or alleged to have resulted from any defect in design (except to the extent that any such defect in design is caused by design specifications provided by Innovent), workmanship or materials or from any negligence or malfeasance or breach of warranty attributed to the Seller's design or manufacture of the Goods; (3) any claim that the manufacture, use, sale or resale of any Goods supplied hereunder infringes any patent, copyright, trade secret or other intellectual property right (except to the extent such infringement is caused directly and solely by specifications originated by Innovent); and (4) any business losses or damages incurred by Innovent as a result of any defect in the design or manufacture of any Goods by Seller, or any failure of the Goods and Services to meet any specification for such Goods, or of any breach of any obligation of Seller contained herein. Seller will, at Innovent's election and request, promptly assume full responsibility for any suit, action or proceeding which may be brought or threatened against Innovent and/or Seller.
- 7. INSPECTION:** Innovent, or an agent acting on its behalf, at its own cost and expense, may inspect and test the Goods at their place of manufacture, before they are shipped. If the Goods are determined to be defective or not in conformance with any specifications for such Products, and Seller is unable to satisfy Innovent that such defects can be corrected in time to meet the delivery date for the Goods, Innovent shall have the right to terminate this Purchase Order with no further obligation to Seller, and may recover any damages resulting there from. Innovent or its agents, at their own cost and expense, shall have the right to inspect the Goods at the time of delivery and/or completion. Innovent shall have the right to reject any sub-standard, non-conforming or defective Goods.
- 8. FORCE MAJEURE.** Neither Seller nor Innovent shall be liable to the other or deemed in breach of the Purchase Order by reason of any delay in performing or failing to perform any of its obligations under the Purchase Order, if the delay or failure is for any of the following reasons, and such reasons are beyond the reasonable control of the party failing to perform; acts of God, explosions, floods, fires, wars, terrorist acts, civil disturbances or insurrections, requirements imposed by governmental authorities, strikes, lockouts, and other labor-related actions, power failures and the unavailability for external reasons of any raw materials. Seller shall notify Innovent as soon as reasonably practicable of any force majeure event.
- 9. QUALIFICATIONS OF SELLER.** Seller represents that it possesses the expertise necessary to produce the Goods, and has the support capability to insure that the Goods meet Innovent's requirements.

Continued next page



TERMS AND CONDITION OF PURCHASE



- 10. ASSIGNMENT.** This Purchase Order may not be assigned, and no performance, duty or other obligation of Seller may be delegated by Seller without the prior written consent of Innovent, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, either party may assign or otherwise transfer its rights and obligations under this Purchase Order to its subsidiaries, affiliates or successors in interest by merger, operation of law, assignment, purchase or otherwise, of all or a portion of its business.
- 11. NO WAIVER.** No modification or waiver of any provision hereof will be effective for any purpose unless such modification or waiver is specifically set forth in a writing signed by a procurement representative of the party to be charged with such modification or waiver. No waiver of any right or remedy in respect to any occurrence or event on one occasion will be deemed a waiver of such occurrence or event on any other occasion.
- 12. CANCELLATION BY INNOVENT.** The Purchase Order may be canceled by Innovent at any time prior to delivery of the Goods. In such event, Innovent shall be responsible for making payment to the Seller of the actual amounts paid by Seller for the cost of raw materials, component parts, and other supplies purchased by Seller specifically to fulfill the Purchase Order. Seller shall have no right to cancel the Purchase Order, and if it attempts to do so, Innovent shall have the right to sue for specific performance of Seller's obligations under the Purchase Order, in addition to seeking any damages which result from any such action by Innovent. In addition, Innovent may terminate the Purchase Order without any further liability to the Seller, if the Seller files a petition for reorganization or liquidation under the Federal Bankruptcy Code, or reaches a voluntary arrangement with its creditors, commences a liquidation proceeding, or ceases to do business, or takes action which is likely to lead to a cessation of doing business, or if a receiver is appointed to assume control of any assets of Seller.
- 13. SELLER NOTIFICATION OF NONCONFORMING PRODUCT OWNED BY INNOVENT.** When product is owned by Innovent, Seller must notify Innovent of nonconforming product and provide arrangements for Innovent's approval of Seller's nonconforming approval.
- 14. SUB-TIER FLOW DOWN REQUIREMENT.** Seller agrees to flow down to sub-tier suppliers the applicable requirements in the purchasing documents including customer requirements and key characteristics where required.
- 15. ON-TIME DELIVERY:** Innovent requires 100% quality parts and on-time delivery performance, based upon appropriate planning information. Innovent will not be obligated to accept substitutions, untimely deliveries, deliveries in quantities other than those ordered by Innovent or deliveries of Goods failing to conform to Seller's warranties contained in paragraph 6 hereof. Time is of the essence in this PO. Seller will immediately give written notice to Innovent of any actual or potential cause or event that threatens the timely performance of this PO. Unless otherwise provided on the front of this PO, Seller will retain the risk or loss or damage in transit until the Goods are actually delivered to Innovent's requested destination. Seller will mail an invoice to Innovent on the day following the date of shipment. The invoice will indicate the PO number, the quantities shipped, the part number or other description of each item shipped and the unit price of each item. With each shipment, Seller will include a carrier's freight bill, where applicable, and a packing slip showing the PO number, the quantity of each item shipped and the part number or other description.
- 16. BLANKET POs.** If this PO is identified by Innovent as a blanket PO, this PO will cover such portion of Innovent's requirements for the Goods as Innovent may elect to purchase from time to time from Seller. Unless otherwise expressly provided on the front of this PO, Innovent will be under no obligation to purchase Goods from Seller until an authorized representative of Innovent requests Seller to provide such Goods.
- 17. HAZARDOUS MATERIALS.** Seller and its agents will comply with all applicable U.S. and foreign laws and regulations relating to safety, environmental protection, transportation and labeling including, but not limited to, DOT hazardous materials regulations. Sellers of chemicals must supply current Material Safety Data Sheets and must label their products with appropriate warnings. In compliance with the Hazardous Communications Program (29 CFR 1910-1200), all chemicals must (1) be labeled with the identity of any hazard, (2) display appropriate warning and (3) contain the name and address of the manufacturer.
- 18. TOOLING.** All tooling paid for by Innovent will become the property of Innovent. Seller will stamp all such tooling with a designation that the tooling is the property of Innovent. While tooling is in Seller's possession, Seller will: (a) bear all risk of loss with respect to the tooling and maintain adequate insurance against all insurable risks of loss; and (b) maintain the tooling, at Seller's expense, in first rate condition, excluding replacement and repair of worn out tooling which shall be replaced at Innovent's expense. Seller will not co-mingle tools with the property of Seller or any third party and will not move the tooling from locations approved by Innovent without Innovent's written approval. Upon request from Innovent, Seller will deliver the tooling from time to time to Seller's place of business to verify compliance with the provisions of this agreement.
- 19. CUSTOMER FURNISHED MATERIAL.** In the event Innovent provides material to Seller to be incorporated by Seller into the Goods, Seller will compensate Innovent for any such material that is lost or damaged while in possession of the Seller or during the Seller's manufacturing process.
- 20. ENTIRE AGREEMENT.** The terms and conditions set forth herein, including all specifications drawings and other documents expressly referred to in the Purchase Order, contain the entire agreement of parties and supersede all prior negotiations, agreements, understanding or arrangements between the parties with respect to the subject matter hereof. This Purchase Order shall be construed under the laws of the state of Virginia, without regard to its choice of law statutes.