



QUAKER MFG. CORP. (QUAKER) PURCHASE ORDER TERMS AND CONDITIONS

ACCEPTANCE.

The purchase order constitutes an offer which can be accepted by Seller only under its exact Terms and Conditions (which shall include all terms and conditions of the purchase order and all of the attachments thereto, including this attachment) by (i) signing and returning the acknowledgement copy, (ii) commencing work on any products or services ordered, (iii) shipping any of the products or providing any of the services ordered, or (iv) by Seller's acknowledgement (by its acknowledgement form or otherwise) to Buyer. Any and all terms and conditions set forth in an acknowledgement, invoice or other communication from Seller that conflict with or are additional to the Terms and Conditions of this purchase order are objected to by Buyer and shall not be effective or binding on Buyer. When accepted, this purchase order shall be the sole and entire contract. None of the Terms and Conditions herein may be added to, modified, superseded or otherwise altered except by a written instrument signed by an authorized representative of Buyer.

PRICES AND EXTRA CHARGES.

Seller's prices shall not be (i) higher than the prices stated on the purchase order, and (ii) shall be lower if Seller's prices for products or services of like grade and quality are lower than the purchase order prices. Seller's prices, where no prices are stated, shall be (i) Seller's lowest prices for products or services of like grade and quality or (ii) the fair market prices of the products or services whichever are lower. In all events, Buyer shall receive the benefits of all price reductions by Seller. Buyer shall not be liable for any extra charges including but not limited to charges for drayage, freight, packing storage, taxes, tooling or tool maintenance unless specifically agreed to in writing.

QUANTITIES.

Unless otherwise agreed to in writing, the obligation of Buyer is limited to the specific quantities set forth in the purchase order. Seller warrants that all markings of weight or measurement shall be true and correct. Buyer may return over-shipments to Seller at Seller's expense.

SPECIFICATIONS.

"Specifications" describe the product or services to be furnished including, but not limited to descriptions of the dimensions, finish, functional characteristics, general quality, material, manufacturing methods, quality control procedures and tolerances of the products or services covered by this purchase order. Specifications are furnished in various forms including but not limited to blueprints, catalogs, designs, drawings, engineering instructions, quality control procedures and written specifications. If any specifications or instructions, in whatever form, supplied by Buyer appear to be in conflict with another specification or instruction or are insufficient or unclear, it shall be the duty of Seller to request clarification from Buyer. Buyer shall be the final judge of whether the products or services are nonconforming under the specifications and under this purchase order.

DELIVERY.

Time is of the essence of this purchase order. Products shall be delivered and services provided in accordance with the shipping and delivery instructions provided by Buyer. If Buyer has not provided packing or shipping instructions, Seller will pack and ship products in accordance with sound commercial practices. Unless otherwise specified all products shall be tendered in a single delivery. Title in products delivered will transfer upon receipt of the products by Buyer. Seller shall immediately notify Buyer whenever Seller has reason to believe that any scheduled delivery will be late. If products are not ready for delivery in time to meet Buyer's shipping schedule, Seller will be responsible for additional costs of any resulting expedited or other special transportation.

INSPECTION.

Seller shall employ adequate quality control procedures and comply with the quality procedures provided by Buyer. Buyer shall have the right to inspect and test all products and services and reject or revoke acceptance of nonconforming products and services either before shipment, upon delivery, or any time after delivery. Buyer's right of inspection and revocation of acceptance shall survive the acceptance of and the payment for the products or services and shall survive any resale by Buyer. Buyer is not required to inspect products delivered or services performed, and no inspection or failure to inspect will reduce or alter Seller's obligations under the contract. Seller shall be responsible for all rework charges relating to defective material including defective material shipped to Buyer's customers.

BILLING AND PAYMENT.

Invoices and shipping documents, with appropriate supporting documentation and other information reasonably required by Buyer, shall be mailed postage prepaid to the address shown on the face of the purchase order. The purchase order number, part number and quantity must appear on all shipping documents, invoices and correspondence. Buyer may withhold payment until a correct and complete invoice or other required information is received and verified. All products delivered after the 25th of the month shall be billed at the first of the following month. The payment date and discount period will be calculated from the date the invoice is received by Buyer or the goods are received by Buyer, whichever is later, provided, however, that the payment date and discount period shall be calculated from the schedule date of delivery if the deliveries and invoicing are made ahead of schedule. Progress payments for construction work are subject to 10% retention until final acceptance of the construction work by Buyer. No payments for construction work shall be made or due without releases of mechanic's liens from all contractors, subcontractors and material men.

RETURNS.

Buyer shall have the right to return at Seller's expense any part or all of the nonconforming products. Buyer shall have the right to return at the expense of Seller any part or all of the conforming products if quantities tendered or delivered are different than on the purchase order or the products are not tendered or delivered as scheduled.

RISK OF LOSS.

The risk of loss for conforming goods shall be on Seller until the products are delivered to the destination specified in the purchase order regardless of whether Buyer or Seller is paying for the freight provided, however, that the Buyer shall assume the risk of loss for products while being transported on Buyer's vehicles. The risk of loss for nonconforming products shall be on Seller at all times.

TOOLING, MATERIALS AND DOCUMENTS, SECURITY INTEREST.

All tooling (including but not limited to dies, fixtures, gauges, patterns and tools), all written materials (including but not limited to blueprints, drawings and specifications) or other tangible items furnished by Buyer or paid for by Buyer either as a separate item or as part of the unit price shall be and remain the property of Buyer and will be delivered to Buyer at its request in good condition, ordinary wear and tear expected. Seller will indemnify and defend Buyer against claims or liens adverse to Buyer's or its customer's ownership of Buyer's tooling, materials or documents except those that result from the acts or omissions of Buyer or its customer. Seller shall be responsible for tool maintenance and shall not use Buyer's tooling, materials or documents to make products for anyone else. Risk of loss shall be Seller's. To the extent permitted by law, Seller waives any lien or similar right it may have with respect to Buyer's tooling, materials or documents. To protect Buyer's interest, Seller irrevocably authorizes Buyer or its designee to file such financing statement covering the foregoing described property of Buyer as Buyer may deem appropriate. All copyrightable materials are works made for hire and Buyer shall be identified as copyright owner thereon.

CHANGES.

Buyer may at any time make changes in the drawing specifications or approved samples of any products or services covered by this purchase order. If such changes result in an increase or decrease in the marginal costs of Seller, then an equitable adjustment shall be made in the price and this purchase order shall be modified accordingly. Buyer may at any time extend delivery dates due to force majeure (as defined in Cancellation for Cause) or for reasonable periods of time in the absence of force majeure without incurring any additional costs or expenses.

CANCELLATION FOR CAUSE.

Buyer may cancel this purchase order for "cause", in whole or in part, without any obligation or liability on the part of Buyer. "Cause" includes, without limitation, (i) Seller's breach of any provisions of this purchase order including, without limitation, the failure to deliver on time, delivery of nonconforming products or services or the breach by Seller of any warranties, (ii) Seller's insolvency or bankruptcy or (iii) any cause or condition beyond Buyer's control including, without limitation, acts of God, the public enemy, accidents, explosions, fires, other causalities, wars, riots, embargoes, epidemics, shortages, usually severe weather, governmental action, transportation difficulties, strikes, lockouts, other labor difficulties, the inability to obtain necessary materials and the failure of Buyer's suppliers to deliver or perform ("force majeure").

TERMINATION WITHOUT CAUSE.

Buyer may terminate this purchase order in whole or in part without cause. In the case of special order products and services made and provided primary in accordance with the specifications of Buyer, Buyer shall be liable only for marginal or variable costs and expenses (excluding, without limitation, any liability for fixed or period costs, selling, general administrative expenses, interest or profits) incurred by Seller prior to the date of termination, less full credit for direct materials or tooling reusable by Seller, and less the full scrap or salvage value for materials or tooling which cannot be reused by Seller. In the case of all other products or services (including but not limited to those products or services where Buyer's specifications are secondary or incidental), the Buyer shall be liable for the purchase order price only for the products shipped and not returned to Seller or services provided prior to the date of termination.

SELLER'S EXCLUSIVE AND SOLE REMEDY.

Notwithstanding any breach of this purchase order by Buyer, it is expressly agreed that Seller's remedy and the liability of Buyer (whether for special order products and services or all other

products and services) as set forth in "Termination without Cause" represents the exclusive and sole remedy of Seller under this purchase order.

MODIFICATION, RESCISSION AND WAIVER.

This purchase order is intended by the parties hereto as the final expression of their agreement and it is the complete and exclusive statement of the terms and conditions thereof. No modification or rescission of this purchase order by Buyer or any waiver of rights under this purchase order by Buyer shall be binding unless it is in writing and signed by Buyer.

WARRANTIES.

Seller represents and warrants that Seller has special skills and that Buyer is relying on the skill and judgment of Seller to select and furnish suitable products or services. Seller also warrants that it has and will transfer to Buyer ownership and good title to products delivered and services provided, free of all liens, encumbrances and right of third parties (except for those created by Buyer). All written or oral statements of Seller as to functions, quality, suitability and use of the products or services are warranties of Seller. Seller represents and warrants that all products (including packaging) and services (including construction work) provided under this purchase order shall (i) fully and strictly conform to the specifications, (ii) be free of defects, (iii) be of good material and workmanship and (iv) are merchantable and for the general and particular purposes for which they are required. If any products or services are nonconforming, Seller shall if Buyer requests, promptly and without charge, repair or replace the products or provide replacement services. Seller shall be liable for all direct, incidental and consequential damages resulting from nonconforming products or services or breach of any other warranties or provisions of this purchase order.

INTELLECTUAL PROPERTY AND OTHER INTANGIBLE RIGHTS.

Seller represents and warrants that the products or services under the purchase order do not infringe, or contribute to or induce infringement, of any United States or foreign letter patent, trademarks, copyrights or similar intellectual property rights (the "Intellectual Property Rights") and do not breach any employment agreements, restrictive covenants, or contracts or infringe any other rights (the "Intangible Rights"). Seller will indemnify and defend Buyer and its customers against claims, liabilities, losses, damages, costs and expenses, including reasonable legal fees, arising out of the actual or alleged infringement, or contribution to induce infringement, of any Intellectual Property Rights or Intangible Rights. If a claim under this section results or is likely to result, in an injunction or other order that would prevent Seller from supplying or Buyer from using products for their intended purpose. Seller will at its option and expense (i) secure a license for the use of the product, or (ii) modify the products so that they become non-infringing, so long as the modification does not materially alter the operation or performance of the products.

COMPLIANCE WITH LAWS.

In connection with the performance of work under this purchase order within the United States, the Equal Opportunity clause as set forth in §202 of Executive Order 11246, as amended §503 of the Rehabilitation Act of 1973, as amended, and §402 of the Vietnam Era Veterans Readjustment Act of 1974, as amended, are incorporated by reference.

Seller represents and warrants that all products or services to be provided under this purchase order within the United States shall strictly comply with all federal, state, local and where applicable, foreign laws, rules, regulations and ordinances, including but not limited to the Fair Labor Standards Act of 1938, the Federal Hazardous Substances Act, the Consumer Products Safety Act, the Occupational Safety and Health Act of 1970, the Civil Rights Acts, Executive Orders 11246 and 11375, all environmental protection laws, the Motor Vehicle Safety Act, the

Toxic Substances and Control Act and the Americans with Disabilities Act of 1990 (all of the foregoing including amendments thereto are the "laws") and all rules, regulations and ordinances issued pursuant to the laws.

RECORDS.

Seller shall grant access to Buyer for the purpose of copying during business hours all records of seller relating to the products or services to be provided under this purchase order.

TRADE SECRETS AND CONFIDENTIAL INFORMATION.

Seller shall not disclose or use except to the extent required to fulfill this purchase order any confidential matters or trade secrets of Buyer.

ASSIGNMENT.

This purchase order may not be assigned or subcontracted in whole or in part by seller without the express written consent of Buyer. Seller shall not issue any press releases or originate any publicity in any form regarding this purchase order without prior written consent of Buyer.

GOVERNING LAW.

This purchase order including the provisions relating to the providing of services shall be governed by the laws of the State of Ohio without regard to any conflicts of law principles, and the federal and state courts of Mahoning County, Ohio or Columbiana County, Ohio were applicable and shall have exclusive jurisdiction and venue over disputes arising herefrom.

ERRORS AND OMISSIONS.

Errors or omissions including but not limited to stenographic and clerical errors are subject to correction at any time.

RIGHTS AND REMEDIES OF BUYER.

All rights and remedies of Buyer set forth in this purchase order shall be in addition to and not in lieu of any rights or remedies provided by law and all rights and remedies of whatever nature shall be cumulative and the past waiver of or failure to enforce any right or remedy shall not constitute the waiver of that or any other right or remedy.

SET-OFF.

Buyer and its affiliates shall have the right to set-off any amounts owed to any of them by Seller against any amounts owed to Seller by any of them.

WAIVER AND INDEMNITY.

Seller, its agents, representatives, contractors and employees waive any and all claims against Buyer for injuries, death, property damage or any other liability of any kind arising out of or related to providing the products or services (including "construction work" as defined below) under this purchase order. Seller shall indemnify, defend, protect and hold harmless Buyer from any and all actions, claims, costs, expenses, fees (including reasonable attorney fees as set forth in Cost of Litigation and Interest below) investigations, liabilities, losses or suits arising out of or related to the products or services (including construction work as defined below) provided under this purchase order but not limited to those which (i) involve any actual or alleged injuries, death, property damage or any other damage of any kind resulting in whole or in part from defective or allegedly defective products provided hereunder; (ii) involve any actual or alleged infringement of any Intellectual Property Rights or Intangible Rights by reason of the use or sale of any products or services hereunder, (iii) involve any actual or alleged violation of any law, regulation, rule or ordinance relating to the use or sale of any products or services provided

hereunder, (iv) involve any claims of Seller, its agents, representative contractors and employees relating to any actual or alleged injuries, death, property damage or any other damages of any kind sustained in providing the products or service provided hereunder, or (v) involve any actual or alleged injuries, death, property damage or any other damages of any kind resulting in whole or in part from the negligence of third parties or the negligence of Buyer excluding injuries, death, property damage or any other damage of any kind resulting solely from gross negligence or willful misconduct of Buyer.

“Construction Work” means the construction, alteration, or repair or maintenance of any building, structure or appurtenances thereto, including any moving, demolition and excavating connected therewith.

INSURANCE.

Seller agrees to obtain and maintain policies of insurance but not limited to policies providing public liability, product liability with a broad form vendor's endorsement naming Buyer, automobile liability and worker's compensation coverage in such amounts with such companies and containing such other provisions shall be satisfactory to Buyer relating to the products of services covered by this purchase order. Seller shall provide Buyer with certificates of insurance and all such policies and certificates shall provide that the coverage provided by such policies shall not be terminated or cancelled without at least thirty (30) days prior written notice to Buyer.

COST OF LITIGATION AND INTEREST.

Seller agrees to pay all costs, expenses and fees including but not limited to reasonable attorneys fees rendered in defending the underlying claim subject to indemnify under Waiver and Indemnity above and/or incurred by Buyer in establishing the right to indemnification, subrogation or contribution. If Buyer prevails in any litigation involving this purchase order, Seller agrees to pay all costs of Buyer in connection with such litigation including with limitation, reasonable attorney's fees plus interest at the rate of 1-1/2% per month, or the highest rate allowed by law, whichever is lower, on all amounts due or payable by Seller to Buyer from the date Buyer notifies Seller that Seller has breached this purchase order or the date such amounts become due or payable to Buyer, whichever is first.