Purchase Orders

1. Buyer’s Purchase Order (seller is manufacturer).

Terms of Purchase

* 1. Terms of Agreement. This offer expressly limits acceptance to the terms of this offer. Notification of objection is hereby given to any term in any response to this offer that does not exactly match the terms of this offer.
	2. Deliveries; Time of the Essence. The Buyer’s production schedules are based upon the agreement that the ordered materials will be delivered to the Buyer by the date specified on the face of the purchase order. Time is therefore of the essence of this Purchase Order. If deliveries are not made at the time agreed upon, the Buyer reserves the right to cancel or to purchase elsewhere, and hold Seller accountable therefor.
	3. Prices. Seller’s price shall not be higher than the price last quoted or last charged to the Buyer unless otherwise agreed in a writing signed by Buyer.
	4. Quantities. Shipments must equal exact amounts ordered unless otherwise agreed by the Buyer.
	5. Warranty. Seller warrants all materials or services delivered hereunder to be free from defect of material or workmanship and to conform strictly to the specifications, drawings, or sample specified or furnished by Buyer. This warranty shall survive any inspection, delivery, acceptance, or payment by the Buyer of the materials or services.
	6. Inspection and Rejection. Final inspection shall be on the Buyer’s premises unless otherwise agreed in writing. Materials rejected as not conforming to this Purchase Order, or as otherwise defective, shall be returned at Seller’s expense, including transportation and handling costs.
	7. Buyer’s Property. All material, including tools, furnished or specifically paid for by the Buyer shall be the Buyer’s property, shall be subject to removal at any time without additional cost upon demand by the Buyer, shall be used only in filling orders from the Buyer, shall be kept separate from other materials or tools, and shall be clearly identified as the property of the Buyer. Seller assumes all liability for loss or damage, with the exception of normal wear and tear, and agrees to supply detailed statements of inventory at monthly intervals or as otherwise agreed upon.
	8. Patents. Seller shall defend, at Seller’s expense, the Buyer, its distributors and dealers, and users of the Buyer’s products and indemnify them with respect to any and all claims that the products or materials furnished by the Seller under this Purchase Order infringe any U.S. patent, trademark, or copyright, and with respect to any and all suits, controversies, demands, and liabilities arising out of any such claim, provided that the foregoing shall not apply to any infringement resulting from Seller’s use of a patented invention required to comply with the written instructions or specifications of the Buyer if such patented invention is not normally utilized by the Seller.
	9. Taxes. Except as may be otherwise provided in this Purchase Order, the contract price includes all applicable federal, state, and local taxes in effect on the date of this Purchase Order. In case of new taxes or increased rates or the repeal of taxes or the reduction of rates, the contract price shall be adjusted accordingly.
	10. Assignment. Seller shall not delegate any duties, nor assign any rights or claims under this Purchase Order, or for breach thereof, without prior written consent of the Buyer, and any such attempted delegation or assignment shall be null and void.
	11. Setoffs and Counterclaims. All claims for moneys due or to become due from the Buyer shall be subject to deduction by the Buyer for any setoff or counterclaim arising out of this or any other of the Buyer’s Purchase Orders with Seller, whether such setoff or counterclaim arose before or after any such assignment by Seller.
	12. Changes. The Buyer shall have the right to make, from time to time and without notice to any sureties or assignees, changes as to packing, testing, destinations, specifications, designs, and delivery schedules (postponements only). Seller shall immediately notify the Buyer of any increases or decreases in costs caused by such changes and an equitable adjustment in prices or other terms hereof shall be agreed upon in a written amendment to this Purchase Order.
	13. Bankruptcy. In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Seller, the inability of Seller to meet its debts as they become due, or in the event of the appointment, with or without Seller’s consent, of an assignee for the benefit of creditors or of a receiver, then the Buyer shall be entitled, at its sole option, to cancel any unfilled part of this Purchase Order without any liability whatsoever.
	14. Governing Law. This Purchase Order and the acceptance of it shall be a contract made in the state shown in the Buyer’s address on the face of this Purchase Order and governed by the laws thereof.
	15. Valuation of Express and Air Freight Shipments. Seller shall value shipments made by express and air freight in accordance with the following schedule: A shipment weighing [*applicable weight, e.g.,* 100] pounds or more shall be valued at $[*amount, e.g.,* 1.00] per pound. A shipment weighing less than [*applicable weight, e.g.,* 100] pounds shall be valued at $[*amount, e.g.,* 100]. The Buyer’s insurance covers any higher valuations. If Seller values any shipment at a higher valuation than here specified, then the Buyer shall have the right to bill Seller for any extra insurance charges resulting from such higher valuation. SPECIAL NOTE: Applicable only to shipments made F.O.B. shipping point.
	16. Traffic Routing. Any losses accruing from deviation from the Buyer’s routing instructions will be charged to Seller’s account.
	17. Proof of Shipment. Seller shall forward to the Buyer, with the invoice, the express receipt or bill of lading, signed by the carrier, evidencing the fact that shipment has been made.
	18. Supplementary Information. Any specifications, drawings, notes, instructions, engineering notices, or technical data referred to in this Purchase Order shall be deemed to be incorporated herein by reference as if fully set forth. In case of any discrepancies or questions, Seller shall refer to the Buyer for decision or instructions or for interpretation.
	19. Title to Drawings and Specifications. The Buyer shall at all times have title to all drawings and specifications furnished by the Buyer to Seller and intended for use in connection with this Purchase Order. Seller shall use such drawings and specifications only in connection with this Purchase Order, and shall not disclose such drawings and specifications to any person, firm, or corporation other than the Buyer’s or Seller’s employees, subcontractors, or government inspectors. Upon the Buyer’s request or upon completion of this Purchase Order, Seller shall promptly return all drawings and specifications to the Buyer.
	20. Merger; Negation of Course of Dealing, Trade Usage. This instrument is intended by the parties to be a final, exclusive, complete, and fully integrated expression of their agreement and its terms. ***NO COURSE OF PRIOR DEALINGS BETWEEN THE PARTIES AND NO USAGE OF THE TRADE SHALL BE RELEVANT TO SUPPLEMENT OR EXPLAIN ANY TERM USED HEREIN***.
	21. Incorporation of Laws. This document shall be deemed to include the implied warranties or merchantability and fitness for a particular purpose, and all of the buyer’s remedies under the Uniform Commercial Code, including that allowing for the recovery of consequential damages.
1. Purchase Order (Terms of seller’s acknowledgment ineffective, time of delivery of the essence).
	1. Terms of Agreement. This offer expressly limits acceptance to the terms of this offer. Notification of objection is hereby given to any term in any response to this offer that does not exactly match the terms of this offer.
	2. Inspection, Warranty. Goods delivered (whether paid for or not) are subject to inspection, testing, and approval by Buyer before acceptance. Seller expressly warrants that all articles, materials, and work will conform to the applicable drawings, specifications, samples, or other descriptions given in all respects, and that the goods delivered hereunder will be of good quality, material, and workmanship, merchantable and free from defects. This warranty shall survive any inspection, delivery, acceptance, or payment by Buyer of the goods or services.
	3. Nonconforming Goods. All goods not fully up to standard and not in compliance with the specifications hereof, or shipped contrary to instructions, or in excess of the quantities herein provided, or substituted for goods described, or not shipped in containers conforming to Buyer’s specifications (or, in the absence of such specifications, in recognized standard containers), or allegedly violating any statute, ordinance, or administrative order, rule, or regulation, may be rejected by Buyer and returned or held at Seller’s expense and risk. Buyer may charge to Seller all expense of inspecting unpacking, examining, repacking, storing, and reshipping any goods rejected as aforesaid. The remedies hereinabove afforded to Buyer shall not be exclusive, but Buyer may hold Seller liable for any and all damages arising from any breach or default hereinabove set forth.
	4. Price. Prices recorded in this order are not subject to increase. No additional amounts shall be chargeable to Buyer because of taxes or excises, presently or hereafter levied on Seller. If Seller’s quoted prices for the goods covered by this order are reduced (whether in the form of a price reduction, close-out, rebate, allowances, or additional discounts offered to anyone) at time of any shipment, Seller agrees that the price to Buyer for such goods will be reduced accordingly, and that Buyer will be billed at such reduced prices. If price is not recorded on the face of this order, price shall be that of last previous order given by Buyer to Seller, subject to the provisions of this paragraph. If price includes taxes or excises, and if such taxes or excises or any part thereof are hereafter refunded to Seller, Seller shall immediately pay Buyer the amount of such refund. Seller certifies that the prices herein are not higher than prices being charged to other organizations purchasing identical goods in smaller quantities at this particular time and do not discriminate against purchaser.

The price herein specified is warranted against any decline that may be made by other sellers of the goods covered by this order. If at any time during the term of this agreement a price shall be offered by such competing sellers which is lower than the price Seller may agree to, the Seller shall notify the Buyer forthwith and allow the Buyer to buy a three months’ supply of the goods elsewhere and such quantity shall be deducted from the unshipped portion due the Buyer under the terms of this agreement.

* 1. Price Discrimination. Seller represents that the prices, terms of purchase, and any allowances available shall be in full compliance with the Robinson Patman Act.
	2. Payment. Terms of payment are as previously arranged, or if specified in this order, then as so specified in this order. Drafts will not be honored under any circumstances.
	3. Delivery Time of Essence. Buyer’s schedules are based upon the agreement that the goods will be delivered to Buyer by the dates specified on the face of the purchase order. Time is therefore of the essence and if goods are not delivered within the time specified hereon, Buyer may reject such goods and cancel order. The acceptance of later or defective deliveries shall not be deemed a waiver by Buyer of its right to cancel this order, or to refuse to accept further deliveries.
	4. Packing. Each package shall be numbered and labeled with Buyer’s order number, stock number, contents, and weight, shall contain an itemized packing slip and shall be properly prepaid for shipment so as to secure lowest transportation and insurance rates and to meet carrier’s requirements unless otherwise specified. No charges will be allowed Seller for packing, breaking, freight, express, or cartage unless stated herein.
	5. Warranty Against Infringement. Seller warrants that the sale or use of goods of Seller’s design or Seller’s patents covered by this order either alone, or in combination with other materials, will not infringe or contribute to the infringement of any patents or trademarks or copyrights either in the U.S.A. or foreign countries. Seller shall defend every suit which shall be brought against Buyer or any party selling or using Buyer’s products for any alleged infringements of any patents, trademarks or copyrights, by reason of the sale or use of said materials either alone, or in combination with other materials, and to pay all expenses and fees of counsel which shall be incurred in and about defending every such suit and all costs, damages, and profits recoverable in every such suit.
	6. Trademark. If the goods specified within this order are peculiar to Buyer’s design or if the goods bear Buyer’s Trademark or identifying mark they shall not bear Trademark or other designation of the manufacturer or Seller, and similar goods shall not be sold or otherwise disposed of to anyone other than Buyer without the written consent of Buyer. The title to any and all drawings and blueprints, jigs, dies, patterns, tools, etc., used in connection with this order shall at all times vest in Buyer and shall upon completion of deliveries hereunder or upon termination of the agreement pursuant to which this order is issued, be delivered to Buyer upon request and Seller assumes all liability for loss thereof or for Seller’s failure to return such property to Buyer.
	7. Compliance with Law. The performance of any work pursuant to this order is and shall be subject in all respects to and in compliance with all laws, rules, regulations, and ordinances, proclamations, demands, directives, executive orders, or other requirements of the municipal, state, and federal governments and all subdivisions thereof which now govern or may hereafter govern the manufacture, sale, or delivery of the parts, supplies, and goods, contemplated by this order, including, but not limited to the provisions of the Fair Labor Standards Act, the Walsh Healy Act, the Federal Food, Drug, and Cosmetics Act, and any other applicable laws.
	8. Indemnification by Seller. Seller will indemnify, hold harmless, and defend Buyer from all liability for loss, damage, or injury to person or property in any manner arising out of or incident to the performance of the contract.
	9. Taxes. Seller accepts liability for payment of all payroll and Social Security taxes and all other federal, state, or local taxes now or hereinafter imposed by any governmental authority.
	10. Conflicting Terms. If terms on this order do not appear on or agree with Seller’s invoice as rendered, Seller agrees that Buyer may change the invoice to conform to this order and make payment accordingly.
	11. Delegation, Assignment. Seller shall not delegate or assign any duties or claims under this order without Buyer’s prior written consent. Any such delegation or assignment attempted without Buyer’s previous written consent shall be null and void and shall effect, at buyer’s option, a cancellation of all of buyer’s obligation hereunder. All claims for moneys due or to become due from Buyer shall be subject to deduction by Buyer for any setoff or counterclaim arising out of this or any other of Buyer’s orders with Seller, whether such setoff or counterclaim arose before or after any such assignment by Seller.
	12. Modification. Buyer shall have the right to make, from time to time, and without notice to any sureties or assignees, changes as to packing, testing, destination, specifications, designs, and delivery schedule. Seller shall immediately notify Buyer of any increases or decreases in costs caused by such changes and an equitable adjustment of prices or other terms hereof shall be agreed upon in a written amendment to this order.
	13. Cancellation. Buyer reserves the right at any time and from time to time without cause, to cancel all or any part of the undelivered portion of this order by notice to Seller. In the event of such cancellation, Buyer shall not be liable to Seller for loss of anticipatory profits. The provisions of this paragraph shall not limit or affect Buyer’s right to terminate this purchase order for default of Seller.
	14. Waiver of Liens. Seller hereby waives and relinquishes all liens and claims statutory or otherwise which Seller now has or may hereafter have as a result of labor done and materials furnished by Seller or Buyer in performance of the within order.
	15. Default. Upon the happening of any one or more of the following events, Buyer shall forthwith have the unrestricted right to cancel and terminate the within contract without cost or liability to the Buyer: (1) Seller’s insolvency or inability to meet obligations as they become due; (2) filing of voluntary or involuntary petition of bankruptcy by or against Seller; (3) institution of legal proceedings against Seller by creditors or stockholders; (4) appointment of a receiver for Seller by any court of competent jurisdiction. The acceptance of goods or performance after the occurrence of any of the events above enumerated shall not affect the right of the Buyer to cancel its additional obligations.
	16. Trade Name. Unless authorized by Buyer in writing, Buyer’s name, trade name, or the name or trade name of any of Buyer’s subsidiaries or affiliates, shall not be used in Seller’s advertising.
	17. Merger; Negation of Course of Dealing, Trade Usage. This instrument is intended by the parties to be a final, exclusive, complete, and fully integrated expression of their agreement and its terms. ***NO COURSE OF PRIOR DEALINGS BETWEEN THE PARTIES AND NO USAGE OF THE TRADE SHALL BE RELEVANT TO SUPPLEMENT OR EXPLAIN ANY TERM USED HEREIN***.
	18. Incorporation of Laws. This document shall be deemed to include the implied warranties or merchantability and fitness for a particular purpose, all of the buyer’s remedies under the Uniform Commercial Code, including that allowing for the recovery of consequential damages.
1. Purchase Order (Labor and Materials, Construction Contract).

Terms of Purchase

* 1. Cash Discount. All purchases are subject to a cash discount and will be paid on the [*day, e.g.,* 10th] of the month following date of bill. All bills received after the [*day, e.g.,* 25th] of the month will be subject to the cash discount but will be paid on the 10th of the second month following.
	2. Compliance with Contracts and Rules. All labor, materials, and services shall be in strict accordance with the principal contract and the contract documents (which contract documents consist of plans, specifications, general conditions, special conditions, addenda to any and all of the foregoing, and the contract or subcontract of the Buyer with the owner or the general contractor), and shall be approved and accepted by all the parties having jurisdiction. Without in any way limiting any of the other provisions of this order, you shall, to the extent applicable to your labor, materials, and services herein, comply with and be bound by and liable for all the obligations of every kind and description undertaken by the Buyer under its contract or subcontract. You shall comply with and be bound by all regulations, rules, interpretations, decisions, orders, and directions of federal, state, and municipal governments and agencies, and subdivisions thereof, and of the owner and of the general contractor, and of all others authorized by the aforementioned principal contract and contract documents.
	3. Approval. If the principal contract or contract documents require the supplier of the labor, material, and services which are the subject of this order to be approved, then this order is conditioned upon the receipt of such approval from the proper authorities.
	4. Assignment. This order or any part thereof shall not be assigned, or performance hereunder delegated, or sublet without first obtaining the Buyer’s written approval.
	5. Drawings. All drawings, prints, samples, tests, and reports, if and as required, shall be supplied by you without charge. Shop drawings shall be numbered, dated, and titled to show the name of the manufacturer or firm producing the drawing, the name of the Buyer, the name of the job, and a brief description in the title box of the drawing.
	6. Delivery. The price includes delivery of all materials F.O.B. job, freight and cartage prepaid, store door delivery, and at job locations the Buyer will indicate, unless order specifies otherwise.
	7. Release of Materials. No materials shall be released or work started until you are notified by the Buyer, unless this order specifies otherwise. You shall advise the Buyer immediately as to the time required to make shipment after material is released.
	8. Work at Site. When this order includes installation, or work at site:
		1. All work, whether on or off site, shall be done in strict accordance with union regulations.
		2. The proper type of labor shall be employed to the end that there shall be no strikes, stoppages, or slowdowns.
		3. Certificates of insurance satisfactory to the Buyer must be furnished before work may be started.
		4. You shall comply with all requirements relating to job procedures, formalities, payrolls, etc. Full details may be obtained at the job.
		5. You assume full liability for all taxes, including but not limited to sales, use, property, social security, unemployment, disability, income, withholding, etc., now or hereafter imposed by federal, state, or municipal governments, or any subdivision thereof.
	9. Patents. You guarantee control of all patented devices, processes, materials, and equipment, used in performing or filling this order, and you shall defend and indemnify the Buyer, the general contractor, and the owner against all suits, damages, and claims arising from the use of same at any time, and shall pay all costs, expenses, and judgments in connection therewith.
	10. Proof of Payment. You shall furnish affidavits and instruments certifying that payment has been made for all labor, materials, and services furnished in the performance or filling of this order, releases and indemnities as required at the time for payment, and written guarantees with respect to the labor, materials, and services supplied by you. These documents shall be in such form and substance as may be required by or from the Buyer.
	11. Status. The Buyer shall have in relation to you the same rights and immunities as the owner and the general contractor have as to it, and you shall have the same duties and be subject to the same restrictions in relation to the Buyer as it has to the owner and general contractor.
	12. Claims. All claims, extras, or damages asserted by you under this order shall be subject to all the conditions and restrictions governing the assertion by the Buyer of any claims, extras, or damages, against the owner, the general contractor, or others. The handling of all disputes between you and the Buyer, including the types of claim which may be asserted, the furnishing of all notices, statements, proofs, and other documents and data required, and the forum and method for determining such disputes shall be controlled by those provisions of the principal contract or subcontract which governs disputes between the Buyer and the owner, the general contractor, or others. In no event shall the Buyer be required to pay to you more than the total it has received from the owner, the general contractor, or others because of your claims, extras, or damages, less a reasonable amount for the Buyer’s overhead and profit and its expenses in recovering the total. Any claim made by you which in turn is made by the Buyer against the owner, the general contractor, or others shall not be deemed to be an admission by the Buyer of the validity of the claim, and it shall not be used against the Buyer in any manner or proceeding.
	13. Modification or Termination. This order shall be subject to termination or variation under the conditions provided for under the contract or subcontract of the Buyer. This order may be modified only by the Buyer’s formal written change order and it may be terminated only by writing signed by the Buyer.