

TERMS AND AGREEMENT OF PURCHASE

(1) **ACCEPTANCE OF CONTRACT:** Buyer shall not be bound by this order until Seller executes and returns to buyer the acknowledgement copy of the order. Seller shall be bound by this order and its terms and conditions when it executes and returns the acknowledgment or when it delivers to buyer any of the items ordered, or renders for buyer any of the services ordered herein. No contract shall exist except as herein above provided.

(2) **MODIFICATION OF AGREEMENT:** This order contains all the agreements and conditions of these transactions, and no recourse of dealing or usage of trade shall be applicable unless expressly referred to in this order. None of the terms and conditions contained in this order may be added to, modified, superseded, or otherwise altered except by a written instrument signed by an authorized representative of Buyer and delivered by Buyer to Seller, and each shipment received by Buyer from Seller shall be deemed to be only upon the terms and conditions contained in this order except as they may be added to, modified, superseded, or altered notwithstanding any terms and conditions that may be contained in any acknowledgment, invoice, or other form of Seller and notwithstanding Buyer's act of accepting or paying for any shipment or similar act of buyer.

(3) **CHANGES:** The Buyer reserves the right at any time to make changes in any or one or more of the following: (a) the work to be performed or materials furnished; (b) methods of shipment or packing; (c) place of delivery; and (d) time of deliver.

If any such change causes an increase or decrease in the cost of or the time required for performance of this contract, an equitable adjustment shall be made in the contract price or delivery schedule or both. Any claim by Seller for adjustment under this clause shall be deemed waived unless submitted in writing within ten (10) days from receipt by Seller of the change. Price increases or time extensions for delivery shall not be binding on buyer unless evidenced by a Purchase Order Change Notice issued and signed by the Buyer.

(4) **PURCHASE ORDER NUMBERS:** Purchase order numbers must appear on all invoices, correspondence, and packing lists and container labels.

(5) **DELIVERY:** Time is of the essence in this contract, and if delivery of items or rendering of services is not completed by the time promised, the Buyer reserves the right without liability, in addition to its other rights and remedies, to terminate this contract by notice effective when received by Seller, as to stated items not yet shipped or services not yet rendered, and to purchase substitute items or services elsewhere and charge the Seller with any loss incurred. Any provisions herein for delivery of articles or the rendering of services by installment shall not be construed as making the obligations of Seller severable. Shipments sent C.O.D. without buyer's written consent will not be accepted and will be at Seller's risk.

When terms of delivery are F.O.B. Destination, all transportation charges shall be paid by the Seller. When the Buyer will be responsible for the transportation charges, all shipments shall be collect, using the carrier designated by the Buyer, or freight prepaid, showing the amount as a separate item on Seller's invoice.

(6) **AOS SHIPMENTS:** Any material received two weeks or more ahead of schedule is subject to return for full credit at Seller's expense.

(7) **INSPECTION:** Materials or equipment purchased hereunder are subject to inspection and approval at the Buyer's destination. Buyer reserves the right to reject and refuse acceptance of items that are not in accordance with instructions, specifications, drawings and date, or Seller's warranty (expressed or implied). Buyer will charge Seller for the cost of inspecting rejected merchandise. Items not accepted will be returned to Seller at Seller's expense. Payment for any article hereunder shall not be deemed an acceptance thereof.

(8) **ADVANCE MANUFACTURE AND SHIPMENTS:** Seller shall not manufacture in advance of Seller's normal flow time or deliver any material in advance of the schedule set forth in this order without Buyer's written permission. Buyer reserves the right to return shipping charges collect all material received at the Buyer's plant in advance of the schedule shown in this order. Seller may request Buyer's written consent to advance manufacture and/or delivery at time of returning acknowledgment of this order.

(9) **QUANTITY VARIATION:** Items for which Seller must establish production schedules may vary in quantity by an overrun of 5% of the stated order quantity but may not be less than the order quantity (i.e., plus 5% minus 0%).

(10) **CONTAINER REFUNDS:** Seller agrees to refund to Buyer an amount equal to the deposit price charged for any returned spools, reels, barrels, drums, or other types of containers upon their return by Buyer.

(11) **WARRANTY:** By accepting this order, Seller warrants that the articles are free from defects in material, workmanship, and fabrication, and that all merchandise shall be of the quality, quantity, size, description, and dimensions specified and shall be strictly in accordance with the Buyer's specifications, drawings, and approved sample, if any, suitable for the purpose designated. These warranties shall survive acceptance and payment, and shall run to Buyer, its successors, assigns, customers, and the user of its products and shall not be deemed to be exclusive. This warranty is in addition to any warranties of additional scope given by Buyer to Seller.

(12) **PROPERTY FURNISHED TO SELLER BY BUYER:** Unless otherwise agreed in writing all special dies, molds, patterns, jigs, fixtures, and any other property furnished to the Seller by the Buyer, or specifically paid for by the Buyer for use in the performance of this contract, shall be and remain the property of the Buyer, shall be subject to removal upon the Buyer's instruction, shall be used

only in filling orders from the Buyer; shall be held at the Seller's risk, and shall be kept insured by the Seller at the Seller's expense while in its custody or control in an amount equal to the replacement cost thereof with loss payable to the Buyer. Copies of policies or certificates of such insurance will be furnished to Buyer on demand. Seller's invoices for special tools, dies, jigs, fixtures, molds, patterns, and the like shown as a separate item on the face of this order will not be paid by Buyer until production quantities or samples are received from Seller and are accepted by Buyer.

(13) **PATENT INDEMNITY BY SELLER:** Seller agrees to defend and hold Buyer, its customers, and those for whom TRC may act as agent harmless from all loss or damage by reason of any and all actions or proceedings charging infringement of any patent, trademark, copyright, or any third party property right by reason of sale or use of any items furnished hereunder; except items for which Buyer furnished complete specifications.

(14) **RIGHTS IN DATA:** Buyer retains ownership of all proprietary data disclosed to Seller by Buyer in connection with this purchase order. Seller shall not disclose proprietary data to others, except where prior to disclosure to Seller by Buyer (a) proprietary data is already known to the general public, or (b) Seller had prior knowledge of proprietary data. For the purpose of this paragraph, "proprietary data" means all design, engineering, and technical information (whether patentable or not), and other information concerning Buyer's trade secrets; such other information includes but is not limited to, secrets of manufacture contained in Buyer's manufacturing methods or processes, treatments and chemical composition, plant layout and tooling, to the extent that such other information is not disclosed by inspection or analysis of the goods covered by this purchase order.

(15) **PRICE:** Buyer shall not be billed at prices higher than stated on this purchase order unless authorized by a Purchase Order Change Notice issued and signed by Buyer. Seller represents that the price charged for the items or services covered by this order is the lowest price charged by the Seller to buyers of a class similar to Buyer under conditions similar to those specified in this order and that prices comply with applicable government regulations in effect at time of quotation, sale, or delivery. Seller agrees that any price reduction made in merchandise covered by this order subsequent to the placement of this order will be applicable to this order.

(16) **DISCOUNTS:** All cash discounts are taken starting with receipt of invoice or receipt of merchandise, whichever is later.

(17) **NOTICE OF LABOR DISPUTES:** Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay its timely performance under this Purchase Order, Seller will immediately give written notice thereof to Buyer.

(18) **COMPLIANCE WITH LAWS:** In accepting this order, Seller represents that it has and will continue during the performance of this order to comply with the provision of all federal, state, and local laws and regulations from which liability may accrue to Buyer from any violation thereof. By acceptance hereof, Seller certifies compliance with the "Fair Labor Standards Act" of 1938, as amended in the performance of this order, and that the goods sold hereunder will comply with the Occupational Safety and Health Act of 1970, and with the regulations and standards issued pursuant thereto.

(19) **TERMINATION:** Buyer may, at any time, terminate this order in whole or in part by written or telegraphic notice or verbal notice confirmed in writing. If this order is terminated for convenience, any claim of Seller shall be settled on the basis of reasonable costs it has incurred in the performance of this order. If, however, termination is occasioned by Seller's breach of any condition hereof, including breach of warranty, or by Seller's delay, except due to conditions beyond the Seller's control and with Seller's fault or negligence, Seller shall not be entitled to any costs, and Buyer shall have against Seller all remedies provided by law and equity.

(20) **RESALE CERTIFICATION:** If this order is marked "Resale", the Buyer certifies that the property purchased hereunder is purchased for purposes of resale.

(21) **SET-OFF:** Buyer shall have the right at any time to set-off any amount owing by Seller to Buyer or any of its affiliated companies against any amount due and owing to Seller on this order.

(22) **ASSIGNMENT AND SUBCONTRACTS:** Seller will not assign or transfer this order nor subcontract the furnishing of any completed or substantially completed article(s) without prior written approval of Buyer.

(23) **TAXES:** Except as otherwise provided herein and unless prohibited by statute, the Seller agrees to pay any federal, state, or local sales/use tax, transportation tax or other excise tax that may be imposed upon the articles ordered hereunder or by reason of their sale/use or delivery.

(24) **EQUAL OPPORTUNITY:** The provisions of Executive Order 11246, the Rehabilitation Act of 1973 (PL 93-112) and the Vietnam-era Veterans' Readjustment Act of 1974 (PL 93-508) are incorporated by reference.

SELLER WARRANTS THAT IN THE PERFORMANCE OF THIS ORDER, IT HAS COMPLIED WITH THE CONSUMER PRODUCT ACT AND O.S.H.A. REGULATIONS.