

## **TERMS OF PURCHASE**

1. **ACCEPTANCE:** Unless otherwise agreed in writing between Buyer and Supplier, this purchase order, together with any documents specifically adopted by reference including drawings, specifications and releases ("Purchase Order" or "PO"), constitutes the entire agreement between the parties concerning the purchase of parts, products or services specified and (a) supersedes any previous representations including those in Supplier's quotes or acknowledgements; (b) is an offer and Supplier's written acknowledgement, commencement of work on the parts, products or services specified, or shipment of them constitutes Supplier's acceptance; and (c) is expressly limited to these PO terms. Supplier's additional or different terms or any attempt by Supplier to vary any of the terms of this PO, is objected to and rejected and shall be deemed a material alteration. This PO shall be deemed accepted by Supplier without any additional or different terms unless agreed otherwise in writing by Buyer. Buyer and Supplier agree that this Agreement and any related documents be in English only.

2. **BUYER'S COMMITMENT:** Buyer will purchase parts, products or services at the price, and in the quantity on this PO, or if this is a blanket PO, at the quantity indicated in the firm period of a release. A release is a written document issued by Buyer's manufacturing location(s) stating the delivery dates and quantities needed.

3. **PRICE:** Supplier will provide the parts, products or services at the price in this PO or such other price as the parties agree in writing. Supplier warrants that the price for the parts, products or services including discounts and rebates, is no less favorable than those prices extended to any other customer of Supplier for the same or similar parts, products or services in similar quantities. If Supplier at any time reduces its price to other customers, for the same or similar parts, products or services in similar quantities, Supplier will also reduce its prices to Buyer by the same amount. Supplier warrants that its prices are complete, and that no additional charges of any type shall be added without Buyer's prior written consent including, but not limited to, charges for shipping, packaging, labeling, storage, cartage, insurance, taxes, brokerage fees, customs duties, and surcharges of any type. Cash discounts shall be computed from the date of receipt by Buyer of a final invoice or receipt of the parts, products or performance of services, whichever occurs later.

4. **DELIVERY:** Terms of delivery are as indicated in this PO or as otherwise agreed in writing by Buyer and Supplier. Supplier agrees that time is of the essence and is responsible for timely shipment of the parts or products to meet the quantities and delivery dates in releases and for performance of services by the dates agreed to. Buyer shall not be liable for material or labor commitments or production arrangements in excess of the amount or in advance of the time necessary to comply with this PO unless otherwise agreed in writing by Buyer. If Supplier fails to meet Buyer's releases, Buyer may, without limiting its other rights/remedies, expedite shipments and debit Supplier for any excess costs incurred. Buyer shall have the right but not the obligation to purchase parts for service purposes at the price in this PO for up to 10 years after the parts are no longer used in Buyer's production, or as otherwise agreed to by the parties.

**5. CHANGES:** Buyer may at any time by written notice to Supplier change the specifications (including part number), time or place of delivery or performance, method of transportation, or other requirements. The parties will negotiate an equitable adjustment in price and terms where Supplier's costs are materially affected, unless the change is necessary due to Supplier's non-conformance or breach.

**6. INSPECTION/TESTING:** Payment for parts, products or services, or inspection or testing specified or performed by Buyer does not constitute acceptance or relieve Supplier of its obligations. Buyer may inspect parts, products or services provided and reject any or all of them which are in Buyer's judgment defective or non-conforming. Rejected parts or products may be returned at Supplier's expense and, in addition to other rights, Buyer may charge Supplier all expenses relating to the inspection and return. Buyer may require Supplier to provide to Buyer's satisfaction, any services previously rendered in a non-conforming, negligent, or unworkmanlike manner and to pay to Buyer any related damages. Nothing contained in this PO relieves Supplier from its obligation of testing, inspection and quality control. Buyer retains all rights allowed by law in connection with this PO, including the applicable Statute of Limitations period, and such remedies shall be cumulative. Where Supplier's breach or stop shipment threatens a shutdown of Buyer's manufacturing facility, Supplier agrees that monetary damages will not be sufficient entitling Buyer to injunctive or other equitable relief in addition to all other remedies.

**7. WARRANTIES:** Supplier warrants that from the time of delivery and continuing for the Warranty Period (defined below) all parts, products and services (a) shall conform to specifications, Buyer's Restricted Materials List, samples, models, drawings, descriptions and standards; (b) are packaged, marked and labeled properly and according to Buyer's instructions; (c) are new, merchantable, fit for intended purposes, safe and free from defect in materials, assembly, workmanship and design; (d) shall be manufactured, sold and delivered in compliance with all relevant codes, laws and regulations; (e) shall be performed by Supplier in a competent, workmanlike manner and in accordance with industry standards; and (f) Buyer shall receive title to the parts and products that is free and clear of any liens, encumbrances and any actual or claimed infringement or misappropriation of any intellectual property or trade secrets. Warranty Period means the longer of: (i) 18 months from the date of first use of the products or acceptance of products or services, whichever is later; or (ii) if parts are used in Buyer's finished product, 18 months from the date of incorporation into Buyer's finished product or the time period of warranty Buyer gives to third parties, whichever is later. None of the remedies available to Buyer for breach of warranties may be limited except to the extent agreed by Buyer in writing. In addition, Supplier warrants that antidumping and countervailing duties do not apply to parts or products that are (1) sold to Buyer before the publication date of an antidumping or countervailing duty order applicable to the parts or products and (2) exported to Buyer before the publication date of a final antidumping determination, and Supplier agrees to reimburse Buyer for all antidumping or countervailing duties paid on U.S. imports of parts or products covered by this warranty, provided that apart from this warranty Supplier shall not be required, directly or indirectly, to reimburse Buyer any antidumping or countervailing duties. Any quality improvement, goal or target is not in lieu of and does not limit or modify this warranty or Buyer's remedies, rights or damages. All warranties shall survive inspection, testing, acceptance of parts, products or services by Buyer, and expiration or

termination of this PO. Supplier agrees to conform to Buyer's quality requirements as amended from time to time, which are hereby incorporated herein.

**8. INDEMNIFICATION:** Supplier agrees at its own expense to protect, defend, hold harmless and indemnify Buyer and Buyer's successors, assigns, agents and customers from and against any claims, damages, losses, costs and expenses (including attorneys' fees and settlement amounts) arising out of or resulting in any way from any (a) actual or alleged infringement or misappropriation of any intellectual property or trade secrets by reason of the manufacture, use or sale of any parts, products or services; (b) actual or alleged death of or injury to any person, damage to property, or any other damage or loss suffered, including economic loss, costs of rework or recall, that are alleged to result from or result from any (i) defective or non-conforming parts, products or services or breach of warranty, contract, negligence or intentional misconduct, including Buyer's failure to warn due to Supplier's parts or products; or (ii) actual or alleged violation by Supplier of any law, statute, administrative order, rule or regulation.

**9. INSURANCE:** Supplier agrees to obtain and maintain, at its expense, commercial general liability insurance coverage providing coverage for Buyer on a worldwide basis and naming Buyer as an additional insured, and insuring against liability for any injury, damage or loss arising out of an alleged defect or deficiency of Supplier's parts, products or services, including coverage for products-completed operations hazard, regardless of the theory of liability or causation alleged in the underlying lawsuit or claim. Such insurance shall be primary to and not in excess of or contributory with other insurance available to Buyer and provide coverage in an amount equal to the full amount maintained by Supplier in the normal course of Supplier's business (including excess and umbrella liability coverage), but in no event shall such combined coverage be in an amount less than \$5,000,000 per occurrence, unless agreed to by buyer for a lesser amount. Supplier shall provide Buyer with a certificate of insurance evidencing this coverage or policy annually or upon request.

**10. CONSUMER PRODUCT SAFETY:** Supplier shall notify Buyer immediately if any parts, products or services provided under this PO (a) fail to comply with any applicable consumer product safety rule; (b) contain a defect which could create a risk of injury to the public and/or obligate Buyer under any law or regulation to warn the public of such defect; or (c) contain or were manufactured with a chemical (i) known or specified in any law or regulation to be harmful or injurious to human health or reproduction or the environment; or (ii) which creates an obligation under any law or regulation for Supplier or Buyer to label the parts or products or warn that Supplier's parts or products contain or were manufactured with such chemicals. Should Supplier's parts or products be the subject of a recall, or results in a product recall, Supplier shall reimburse Buyer for all associated costs and expenses.

**11. ENVIRONMENTAL PROTECTION:** Supplier shall label any parts or products supplied to Buyer as required by 40 CFR Part 82 (or similar federal/state laws or regulations) if they contain or were manufactured with any chemical defined as a "controlled substance."

**12. TOOLING:** (a) If Supplier's obligation includes the design, manufacture, installation and/or make ready for use tools, dies, jigs, patterns, fixtures, style masters, molds and/or other like equipment ("Tooling"), or engage a third party to do so, Supplier shall, upon request and

completion of the design, supply construction drawings and specifications for Buyer's prior review and written approval prior to manufacturing the Tooling. Payment for the Tooling will not be made until Supplier has installed, tested and demonstrated to Buyer's satisfaction that the Tooling complies with all applicable specifications, and produces acceptable parts.

(b) In the event any Tooling or other property is furnished by Buyer at its expense or is furnished by Supplier and the cost is paid by Buyer, such Tooling and other property shall be and remain Buyer's sole property and used solely for Buyer's parts and shall be subject to removal at any time at Buyer's option. Buyer may inspect and inventory such Tooling or other property at any time. Upon Buyer's request, Supplier shall properly prepare Tooling and other property for shipment and deliver same to Buyer or other location specified by Buyer, or at Buyer's option, allow Buyer access to the Supplier's premises for the purposes of removing the Tooling and other property. The Tooling and other property shall be returned in the same condition as originally received by Supplier, reasonable wear and tear excepted. Supplier agrees to execute Buyer's standard tooling agreement upon Buyer's request and further agrees that Buyer may file any financing statement or other documents to protect Buyer's interest in the Tooling and other property. Supplier shall not include Buyer's Tooling or other property as any collateral, loan or pledge and waives all statutory and other liens.

**13. REMOVAL OF LABELS:** Supplier agrees not to sell or otherwise dispose of parts, products, or Tooling without Buyer's written consent and without first removing Buyer's identification or trademarks.

**14. INDEPENDENT CONTRACTOR:** Supplier and Buyer are independent contracting parties and nothing in this PO shall make either party the agent of the other nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.

**15. INTELLECTUAL PROPERTY:** All inventions, designs, drawings, technologies, improvements, processes, copyrights, trademarks or the like ("Intellectual Property") that Supplier creates or develops in connection with this PO for the benefit of Buyer shall be owned by Buyer. Supplier assigns to Buyer all right, title and interest in such Intellectual Property including as necessary, a perpetual, worldwide, non-exclusive, paid up, royalty free license to use the same. Supplier shall execute and deliver all documents required or requested by Buyer evidencing Buyer's ownership of the Intellectual Property.

**16. CONFIDENTIALITY AND NON USE:** Supplier shall not sell or otherwise provide to anyone other than Buyer any parts or products made in accordance with any drawings, designs or specifications that Buyer furnishes to Supplier or that include or are made based on Buyer's Intellectual Property. Supplier shall maintain the confidentiality of, and not disclose or permit to be used the parts, products, any designs of or specifications for them, any Tooling, Intellectual Property, or any information concerning Buyer's business, operations, or activities ("Confidential Information"), except to the extent necessary for Supplier to perform its obligations under this PO. Supplier agrees that breach of this paragraph would cause irreparable harm that entitles Buyer to injunctive or other equitable relief.

17. **SUPPLIER CODE OF CONDUCT:** Buyer's Supplier Code of Conduct, as it is updated from time to time ("*Code*"), is incorporated into this PO. The Code is posted on Buyer's Global Supplier at [www.smgmfg.com](http://www.smgmfg.com). Supplier should access the Code at least annually to ensure it has the current version. Supplier shall comply with the Code and shall notify Buyer of any violations. If Supplier violates the Code, Buyer may terminate this PO as provided for in the Termination provision.

18. **C-TPAT/NAFTA:** Supplier shall comply with all C-TPAT guidelines and supply Buyer with a NAFTA certificate of origin when and where required by law or regulation or pursuant to Buyer's request.

19. **FORCE MAJEURE:** Any delay or failure of either party to perform its obligations shall be excused if it is caused by an extraordinary event or occurrence beyond the control of the nonperforming party and without the nonperforming party's fault or negligence, such as acts of God, fires, floods, windstorms, explosions, natural disasters, wars and sabotage. Raw material or labor shortages are not force majeure events. Each party shall promptly notify the other of the reason for the delay and use its best efforts in curing such cause and shall take all reasonable actions to minimize the adverse impact of the delay on the other party.

20. **TERMINATION:** (a) Buyer may immediately terminate this PO or any order or release for cause in the event of any default by Supplier. Defaults include, but are not limited to: (i) late delivery; (ii) delivery of parts/products/services that are defective or that do not conform to this PO; (iii) failure upon request to provide Buyer with reasonable assurances of future performance; (iv) if parts or products become subject to antidumping or countervailing duty order; or (v) failure to comply with Supplier Code of Conduct. Additionally, Buyer may cancel this PO in the event of Supplier's insolvency, filing of bankruptcy, assignment for creditors, appointment of a receiver, or inability of Supplier to pay debts as they mature or become due. In the event of Buyer's termination for cause, Buyer shall not be liable to Supplier for any amount, and Supplier shall be liable to Buyer for all damages sustained because of Supplier's breach or default.

(b) Buyer also may at any time for convenience terminate this PO or any order under it without cause by written notice to Supplier. In the event of such termination and upon notice by Buyer, Supplier shall immediately stop all work and cause its suppliers and subcontractors to stop work. Supplier shall be paid for work performed before the termination and shall submit its claim for such work within 30 days of the termination. Buyer reserves the right to verify Seller's claim by inspecting Supplier's records. Supplier shall not be paid for any work performed after the specified termination date, nor for any costs incurred by Supplier's suppliers or subcontractors which Supplier could reasonably have avoided. Buyer shall not, in any event, be liable for loss of profits or other cancellation charges.

21. **ASSIGNMENTS AND SUBCONTRACTING:** No right or obligation under this PO shall be assigned, transferred or subcontracted by Supplier without Buyer's prior written consent and without which will be void.

22. **SETOFF:** Supplier agrees that Buyer has the right to set off or recoup any indebtedness or obligations of Supplier to Buyer, or other claim which Buyer may have against Supplier under this

PO or other agreement. The terms "Buyer" and "Supplier" for purposes of this paragraph shall include their parent companies, subsidiaries and affiliates.

**23. LIMITATIONS OF DAMAGES:** Buyer will not be liable to Supplier for indirect, special, consequential, incidental, punitive or exemplary damages including, but not limited to, lost profits.

**24. APPLICABLE LAW:** This PO shall be governed and interpreted by the laws of the State of Tennessee, U.S.A., without regard to any conflicts of law provisions and excluding the United Nations Convention for the International Sale of Goods. All disputes shall be adjudicated exclusively in the state or federal courts in Tennessee, U.S.A. except if Supplier has no presence or location in the USA, disputes shall be resolved by arbitration by the International Chamber of Commerce ("ICC") in accordance with its Rules of Arbitration upon request of either party. Place of arbitration will be in Chicago, Illinois, USA with proceedings and all filings conducted in English. The arbitration award shall be final and binding, and judgment may be entered in any court of competent jurisdiction. Notwithstanding the foregoing, Buyer may at any time initiate proceedings with local courts and other relevant authorities in the country in which controversies, disputes or claims arise with respect to: (i) third party claims including personal injury, property damage or infringement of intellectual property; (ii) Supplier's improper usage or refusal to turn over Buyer's Tooling upon request; (iii) Supplier's failure to fulfill its supply obligations under this PO; or (iv) any act or failure to act by Supplier that would cause Buyer, in its opinion, irreparable harm. Nothing herein shall obviate Buyer's right to seek injunctive relief or a mandatory order in any court of competent jurisdiction.

**25. U.S. FEDERAL GOVERNMENT CONTRACTS:** If applicable, Buyer and Supplier shall abide by the requirements of 41 CFR Sections 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, national origin, gender identity or sexual orientation. 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, national origin, gender identity or sexual orientation, protected veteran status or disability. This PO may also be subject to the following: Executive Order 13496 and implementing regulations at 29 CFR Part 471, Appendix A to Subpart A.

**26. SURVIVAL:** The provisions of this PO which by their nature would extend beyond the termination, cancellation or expiration of this PO, including but not limited to, Warranty, Indemnity, Insurance and Confidentiality and Non-Use survive its termination, cancellation or expiration.

**27. ENTIRE AGREEMENT:** This PO, any related releases, consignment, and other documents incorporated into these terms by Buyer constitute the entire agreement regarding the identified parts, products or services between Buyer and Supplier, unless otherwise agreed in writing by Buyer.