

1. **Terms and Acceptance.** The purchase order becomes a contract (a) when a signed acknowledgment is received by Buyer, or (b) upon Seller's commencement of work on the goods subject to the purchase order or shipment of such goods, or (c) upon Seller providing the services contemplated by the purchase order, whichever first occurs. Any acceptance of the purchase order is limited to acceptance of the express terms contained in the purchase order. The purchase order, together with the documents attached hereto or incorporated by reference, constitute the entire agreement between the parties and may not be modified except by writing signed by the parties. No amendment, acknowledgement, delivery, sales order, or other document forwarded by Seller to Buyer before or after the date of the purchase order containing terms or conditions other than those contained herein shall be binding on Buyer unless agreed to and signed by Buyer. Buyer's acceptance of contradicting or additional terms and conditions or submission of an electronic signature, "clicking" an "I agree" icon, or other indication of assent to such additional or conflicting terms and conditions shall be without effect. Buyer shall have the right to make changes in the purchase order, including the goods/services to be furnished, date(s) of shipment or place(s) of delivery or the work to be performed. If any such change by Buyer results in an increase or decrease in the cost to Seller or in the time required for performance, an equitable adjustment shall be made and the purchase order shall be modified in writing accordingly, provided, however, that any claim by Seller for such an adjustment must be made in writing within five days after receipt of notice of the change.

2. **Quality and Specifications.** If Buyer provides specifications, the goods delivered and/or services rendered shall conform to the specifications. In the event quality is not specified in the purchase order, the goods delivered and/or services rendered hereunder must be of the best quality. Seller shall notify Buyer of any proposed changes to the production process or the materials used to manufacture the goods which may effect the agreed upon quality or specifications of the goods. Such notification shall be given with sufficient time to allow Buyer to evaluate the proposed change before the change is implemented. If Buyer objects to the proposed change and Buyer and Seller are not able to agree upon conditions for implementing a change but Seller nevertheless decides to implement the change, Buyer shall be entitled to cancel any outstanding order without incurring any payment obligation. Seller shall immediately notify Buyer of, and provide Buyer with all documents relating to (including the results of), any non-routine injury, investigation, inspection, or any other action by any governmental body or unit thereof, with respect to the manufacture, storage, or delivery of the goods, or components thereof, which pertains to product quality and/or safety. In addition, Seller will immediately notify Buyer in the event that it becomes aware or has reason to believe that there may be an issue of quality, safety, misbranding or adulteration relating to any goods. Seller shall undertake methods to ensure lot traceability within Seller's supply chain and shall maintain a quality management system that meets industry standards and government requirements.

3. **Packaging, Delivery, Risk of Loss and Taxes.** There will be no charge for packaging unless specified in the purchase order. Loss of or damage to any goods not packed in such a manner as to insure proper protection shall be borne by Seller. Each package of goods shipped must contain a memorandum showing shipper's name, contents of package, and the purchase order number. Time is of the essence with respect to each and every provision of the purchase order in which time is a factor. Risk of loss or damage shall be borne by Seller until the goods have been received and accepted by Buyer at the place of delivery in accordance with the terms of the purchase order. Except as otherwise specified in the purchase order or prohibited by statute, Seller shall pay any sales, use, excise or other tax which may be imposed upon any of the goods and services ordered hereunder or by reason to their sale or delivery.

4. **Warranty.** Seller warrants that any goods and/or services furnished hereunder will: (a) be free and clear of any liens or encumbrances; (b) conform to Buyer's specifications, drawings, plans or samples; (c) be merchantable and fit for the intended use of Buyer, Buyer's customers, and any other intended uses of such goods and/or services; (d) be free from defects in material, design and workmanship; and (e) be free from infringements of property rights of third parties, including without limitation any patent, trademark, copyright, or other intellectual property right or interest. In case of services, Seller warrants that such services shall be performed in a professional and workman like manner. Said warranties shall be in addition to any warranties of additional scope given to Buyer by Seller.

5. **Inspection, Rejection and Remedies.** Notwithstanding Buyer's prior payment, Buyer shall have the right but not the obligation to inspect all shipments of goods and/or all services rendered hereunder within a reasonable time after receipt. Buyer may reject, in whole or in part, goods shipped or to be shipped and/or services rendered or to be rendered, if Seller fails to comply with any provision of the purchase order. In the event of rejection, Buyer may: either return the rejected portion of such goods and/or services to Seller at Seller's expense or hold the same for such disposal as Seller shall indicate, without invalidating the remainder of the purchase order; or Buyer may reject the entire shipment of such goods and/or services and cancel the purchase order for any undelivered balances of goods and/or unrendered services. Upon rejection, Buyer may demand replacement goods and/or services, or it may purchase like goods and/or obtain like services elsewhere and Seller will be responsible for any loss or damage (either direct or indirect) sustained by Buyer plus all expenses of collecting same (including attorney's fees and costs). Buyer shall not be obligated to pay for any goods shipped and/or services rendered which are rejected by it. All claims for moneys due or to become due from Buyer shall be subject to deduction or setoff by Buyer by reason of any counterclaims arising out of the purchase order or any other transaction with Seller. The rights and remedies of Buyer set forth herein shall be cumulative and shall be in addition to all other rights and remedies Buyer may have in law or equity.

6. **Termination/Damages.** Buyer reserves the right to terminate the purchase order or any part thereof without cause. In the event of such termination, Seller shall (i) immediately stop all work and take all steps to minimize the cost to Buyer, and (ii) be entitled to recover only its uncompensated actual direct costs incurred prior to the date of termination plus those actual direct costs incurred as a result of Buyer's termination, but in no event shall the total costs exceed the price(s) specified in the purchase order. Upon termination, any goods or inventory paid for by Buyer shall become the property of the Buyer. In no event, whether arising out of termination pursuant to this provision or otherwise, shall Buyer be liable for any indirect, special or consequential damages, or any lost profits, lost revenues, or loss of business reputation (in each case regardless of whether qualified as direct or consequential damages).

7. **Pricing.** Pricing is fixed and cannot be increased by Seller without the written consent of Buyer. Seller warrants that the prices charged Buyer will be as low as any prices charged by Seller to any other customer for goods/services of like grade and quality. Buyer shall receive the benefit of any price reduction or lower prices quoted or charged by Seller for goods/services of like grade and quality sold or quoted in similar or lesser quantities.

8. **Indemnity.** Seller shall indemnify, defend, and hold harmless Buyer, its affiliates, employees, agents and customers from and against any and all claims, liabilities, damages and

expenses (including attorney's fees and costs) (collectively "Claim(s)") of any nature, including any Claim related and/or incident to the failure of the goods or services to conform to any warranty, Seller's failure to comply with its obligations set forth in the purchase order, or any act or omission by Seller, its agents or employees, except when a Claim results from the sole negligence of the Buyer.

9. **Compliance with Applicable Laws and Regulations.** Seller agrees to comply with all applicable Federal, state and local laws, regulations and orders and shall, upon request, provide Buyer a certificate to such effect. Without limiting the generality of the foregoing, Seller shall comply with the Foreign Corrupt Practices Act, and any and all policies and regulations affecting equal employment opportunities and employment standards, all of which are incorporated herein by reference, including Executive Order No. 11246, the Rehabilitation Act of 1973, the Vietnam Era Veterans Readjustment Assistance Act of 1974, the Fair Labor Standards Act, the Occupational Health and Safety Act of 1970 and the American with Disabilities Act and any amendments thereto. Any clause required to be in a document of this type by any applicable law or administrative regulation shall be deemed incorporated herein by reference. If the purchase order is related to a government contract or subcontract, Seller shall comply with such other Federal and state laws, regulations and orders as may be required to comply with said contract or subcontract. Furthermore, Seller does hereby guarantee that, as of the date of shipment and/or delivery, the goods comprising each shipment and/or delivery hereafter made by Seller to, or on the order of Buyer, are on such date (1) not adulterated or misbranded within the meaning of Federal Food, Drug & Cosmetic Act, as amended; (2) not an article which may not under the provisions of Sections 404 or 505 of said Act, as amended, be introduced into interstate commerce; and (3) not adulterated or misbranded within the meaning of the pure food laws or ordinances (then in effect) of the state or city to which such goods are shipped by Seller, the provisions of which are identified or substantially the same as those found in the Federal Food, Drug & Cosmetic Act.

10. **Force Majeure.** If, by reason of any act of God, labor disruption, lack of facilities, lack of transportation, embargo, riots, act of public enemy, war, national emergency, terrorism, voluntary or involuntary compliance with any valid or invalid law, order, regulation, request, or recommendation of any government agency or authority, or any other cause whatsoever beyond the immediate and direct control of Buyer, Buyer shall be prevented, impaired, delayed or otherwise restricted in talking delivery of any goods and/or accepting any services hereunder, Buyer may, without liability, by written notice to Seller either (a) cancel the purchase order, in whole or in part, as to any undelivered goods and/or unrendered services or (b) suspend, in whole or in part, deliveries of goods and/or acceptance of the rendering of services by Seller for the period to the extent of such prevention, impairment, delay, or restriction. Seller assumes an absolute liability for performance hereunder, and shall have no right to claim any excuse for nonperformance by virtue of N.J.S.A. 12A:2-615 (or similar provision under any other state law), including without limitation, any excuse by virtue of crop failure or shortage of raw materials, which Buyer and Seller acknowledge are not unforeseen contingencies hereunder.

11. **Confidentiality/Ownership of Intellectual Property.** All information furnished by Buyer, orally or in writing, including specifications, formulas and plans shall be considered confidential and/or proprietary information. Seller shall not disclose or use such information for any purpose other than performance of the purchase order. Seller shall take all reasonable precautions to protect the confidentiality of such information, which precautions shall in no event be less than the precautions taken to protect its own proprietary and confidential information. Upon Buyer's request, Seller shall return such information to Buyer and destroy any work product containing or reflecting such confidential information. In the event that Buyer and Seller have entered into a confidentiality or non-disclosure agreement, and such agreement remains valid, then such agreement shall take precedence over this Section 11 and be incorporated herein by reference. Any intellectual property rights arising out of, or in connection with, Seller's performance hereunder shall be owned by Buyer.

12. **Applicable Law/Disputes. The purchase order shall be governed by and construed in accordance with the laws of the State of New Jersey.** The parties specifically exclude the provisions of the United Nations Convention on Contracts for the International Sale of Goods. For the purpose of resolving any controversy or claim between the parties, the parties agree to submit to the jurisdiction of the state courts of New Jersey unless the Buyer elects a different jurisdiction or if Buyer directs that any such controversy or claim shall be resolved by arbitration. If Buyer elects arbitration, the following conditions shall apply: the arbitration shall be administered by and resolved in accordance with the rules and procedure then obtaining of the New Jersey office of the American Arbitration Association; the arbitration shall be conducted by one arbitrator at a location in New Jersey selected by Buyer; the decision of the arbitrator shall be binding and conclusive on all parties involved; and judgment on the decision of the arbitrator may be entered in the highest court of any forum, federal or state, having jurisdiction. If Buyer is the prevailing party, Buyer shall be entitled to recover all expenses, including attorney's fees and costs.

13. **Insurance.** If requested by Buyer, Seller shall furnish certificates from insurance companies, satisfactory to Buyer evidencing that Seller is covered by insurance of the following kinds in at least the following amounts for at least the period during which work hereunder shall be performed:

<u>Kind of Insurance</u>	<u>Minimum Amount</u>
General Liability	\$2M combined single limit per occurrence
Contractual Liability	\$2M combined single limit per occurrence
Truck & Automobile Liability	\$1M combined single limit per occurrence
Product Liability	\$2M
Workers Compensation	As required by law

Each such policy shall contain a provision or endorsement that no cancellation or material change in coverage shall be made without giving Buyer at least the (10) days prior written notice thereof. Without limiting the generality of the foregoing, such insurance shall fully insure Buyer against all liability imposed by law and all liability assumed hereunder. All liability policies designated above shall name Buyer as an additional insured.

14. **Miscellaneous.** Whenever the word "including" is used herein, it shall mean "including but not limited to". Seller shall not assign its interest in the purchase order without Buyer's prior written consent. Obligations of Seller hereunder which are intended to survive and continue shall so survive and continue. Any provision of the purchase order prohibited by law or otherwise held invalid or unenforceable by a court of competent jurisdiction shall be ineffective only to the extent of such prohibition or invalidity; shall be deemed modified to the extent necessary to avoid such invalidity and still conform to the parties' intent hereunder, and shall not invalidate or otherwise render ineffective any other provision of the purchase order. Buyer's failure to require strict performance of any provision of the purchase order or failure to enforce any provision of the purchase order at any time, shall not be deemed a waiver of such provision, nor shall it affect, limit or waive Buyer's right thereafter to enforce and compel strict compliance with each and every provision of the purchase order.