

# TERMS AND CONDITIONS OF PURCHASE

**ACCEPTANCE:** This order becomes a binding contract, subject to the terms and conditions hereof, when accepted by acknowledgement and/or commencement of performance thereon. No change, modification or revision shall be valid unless in writing and signed by a representative of Purchaser's Purchasing Department. In case of any conflicts between the terms and conditions on the face of this order and the terms and conditions set forth below, the terms on the face of the order shall control.

**DELIVERIES:** Delivery according to schedule is a major condition of this order. No deviation from delivery schedules in this order shall be allowed without the written authorization of Purchaser. Overshipments regardless of cause may not be accepted except as provided on the face of this order. In all cases of overshipment, the excess may not be accepted and such excess may be returned at Seller's expense. Likewise, when undershipments result in excess handling costs, such costs may be charged to Seller.

**PRICES:** Seller represents that the price or prices specified in this order do not exceed Seller's current selling prices for the same or substantially similar items whether to the Government or to any other purchaser, taking into account the quantity under consideration.

**INVOICES:** Seller's invoices and original bills of lading or express receipts shall be mailed no later than the day after each shipment is made and must be as of the date of mailing. Individual invoices shall be issued for shipments applying against each purchase order. Purchaser reserves the right to take advantage of cash discounts in cases where delayed receipt of invoices caused by Seller's failure to comply with invoicing instructions causes delay in order processing.

**EXTRAS:** No charges of any kind, including charges for boxing or cartage will be allowed unless specifically agreed to by Purchaser in writing.

**ASSIGNMENTS AND SUBCONTRACTING:** This order and any payments to be made hereunder may not be assigned or transferred without prior written approval by Purchaser. No invoices may be rendered by others than the named Seller without the written permission of the Purchaser. All claims for moneys due to become due from the Purchaser shall be subject to deduction by the Purchaser for any setoff or counter claim arising out of this or any other of the Purchaser's orders with the Seller, whether such setoff or counterclaim arose before or after such assignment by the Seller.

**CHANGES:** Purchaser shall have the right to make changes in drawings, specifications or instructions for work, in methods of shipment and packaging in schedules and the place of delivery as to any material and/or work covered by this order, and Seller agrees to comply with such change notices. Subject change notices will be in writing and signed by a duly authorized representative of the Purchaser. If such changes result in a decrease or increase in the Seller's cost or in the time for performance, an adjustment in the price and time for performance will be made by the parties in writing. Unless Seller presents to the Purchaser an itemized statement of claim against the Purchaser within twenty (20) days after receipt of notice of such change, the Seller shall be conclusively deemed to have waived all claims against the Purchaser with respect thereto.

**SAMPLES:** If samples are requested by this order, Seller shall not forward quantity shipments until Purchaser has approved in writing Seller's samples processed or fabricated by means of the tooling and process methods to be used in such quantity production.

**INSPECTION:** Seller shall maintain an inspection system satisfactory to Purchaser covering all manufacturing equipment, materials and supplies all of which shall be subject to inspection and testing by Purchaser at all times and places during or after manufacture. All supplies will be subject to final inspection and acceptance at destination, notwithstanding inspection and/or testing of the source by Purchaser. Any rejected supplies returned to Seller shall be at Seller's expense and no replacements of such defective supplies shall be made unless specified by Purchaser. Purchaser reserves the right to reject all defective supplies and return same to Seller for full reimbursement or at Purchaser's option for replacement or correction, in either of which events Purchaser shall be entitled to reimbursement for all expenses incurred by Purchaser for transportation, handling, boxing and packing and for materials in connection therewith. If Seller fails to promptly replace and correct rejected supplies to Purchaser's satisfaction, Purchaser may purchase or otherwise replace or correct such supplies and Seller shall be liable to Purchaser for any excess costs incurred thereby.

**DISCLOSURE AND USE OF TRADE SECRETS AND CONFIDENTIAL DATA, ETC. ASSIGNMENT OF**

**PROPRIETARY RIGHTS:** Seller agrees to protect and keep confidential trade secrets and other confidential data disclosed to Seller and identified in writing as being confidential and Seller further agrees to protect the same against disclosure to unauthorized persons. In addition, Seller agrees not to use directly or indirectly any such confidential information of trade secrets for its own benefit or for the benefit of any other person firm or corporation.

The above obligations are accepted upon the understanding Seller would not be liable for the disclosure or use of Purchaser's confidential information or trade secrets which are already in the public domain, or which hereafter are placed in the public domain by any party other than Seller, or which are disclosed to Seller by any other person firm or corporation. Seller agrees to return or destroy all data or otherwise dispose of same as requested by Purchaser at the termination of this agreement or any other contract which may be entered into at a future date or in the event that no contract is consummated, at the termination of negotiations between our companies. Any data destroyed at Purchaser's request will be confirmed in writing by Seller to Purchaser or his duly authorized representative.

Seller agrees to assign and hereby does assign to Purchaser the entire right, title and interest for the entire world, in and to all works of authorship, designs, models, drawings, photographs, design inventions, processes, and other inventions made or conceived by the Seller in the course of the services rendered herein through the services contracted for or with the use of materials or facilities of Seller. Seller agrees to promptly disclose to Purchaser all designs, models, photographs, drawings, design inventions, processes, and other inventions made or conceived by the Seller in the course of the performance of this purchase order. Seller agrees to sign, execute, and acknowledge or cause to be signed, executed and acknowledged, without cost, any and all documents and to perform such acts as may be necessary, useful or convenient for the purpose of securing to Purchaser or its nominees, patent, trademark, copyright, or other proprietary protection throughout the world upon all such designs, models, drawings, photographs, design inventions, processes, and other inventions title to which Purchaser shall have acquired in accordance with the provisions of this purchase order.

**USE OF DESIGNS, DATA, ETC.:** Seller agrees that it will keep confidential the features of any equipment, tools, gauges, patterns, designs, drawings, engineering data or other technical or proprietary information furnished by the

Purchaser and use such items only in the production of items under this order or orders from Purchaser and not otherwise, unless Purchaser's written consent is first obtained. Upon completion or termination of this order Seller shall return all such items to Purchaser or make such other disposition thereof as may be directed or approved by Purchaser.

**DIES MOLDS, TOOLS AND PATTERNS.** If the price to be paid is stated on the face of this order to include special dies, molds, tools and patterns used in the manufacturing of such articles then such tools etc shall be and become the property of the Purchaser. Such property, while in Seller's custody or control shall be maintained in good condition at Seller's expense and shall be held at Seller's risk. No dies, molds, tools, patterns or drawings supplied to Seller by or otherwise belonging to Purchaser shall be used in the production, manufacture or design of any articles other than those called for by this order, except with the written consent of Purchaser nor shall articles furnished to Purchaser's patterns, specifications, drawings, dies, molds or tools be furnished or quoted to any other person or concern. Such property shall be subject to removal at Purchaser's written request, in which event Seller shall prepare such property for shipment and shall redeliver same to Purchaser in the same condition as originally received by Seller, reasonable wear and tear excepted.

**WARRANTIES:** By accepting this offer, Seller warrants that all items delivered under this order will be free from defects in material and workmanship (including damage due to unsatisfactory packaging by Seller), that all items delivered will be strictly in accordance with Purchaser's specifications, drawings, and approved samples, if any, and suitable for the intended purposes. The warranties of Seller shall not be deemed to be exclusive, and together with any service warranties and guarantees, if any, shall survive acceptance and payment, and shall run to Purchaser, its successors, assigns, customers and the users of the products.

**CONFIDENTIAL:** Seller shall not without first obtaining Purchaser's written consent, disseminate the fact that Seller has furnished or has contracted to furnish Purchaser the items covered hereby, nor except as is necessary for the performance of this order shall Seller disclose any of the details connected with this order to third parties.

**INVALIDITY, WAIVERS, REMEDIES:** The invalidity in whole or in part of any condition of this purchase order shall not effect the validity of other conditions. The remedies herein reserved shall be cumulative, and additional to any other remedies in law or in equity. No waiver of a breach of any provision of this purchase order shall constitute a waiver of any other breach, or of such provision.

**EXCUSABLE DELAYS:** Neither party shall be liable in damages for delay in delivery due to any causes beyond the control or without its fault or negligence, including without limitations, acts of God or of the public enemy, acts of the government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather. If the failure to perform is caused by the default of a subcontractor, if such default arises out of causes beyond the control of both the Seller and its subcontractor, and without the fault or negligence of either of them, the Seller shall not be liable for any excess cost or for failure to perform unless supplies and services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Seller to meet the required schedule. Seller will notify Purchaser in writing of such causes within 10 days after Seller first learns of same.

**RISK OF LOSS:** Seller assumes (1) all risks of loss or damages to all supplies until the delivery thereof as herein provided, and (2) all risks of loss or damage to any supplies or part thereof, rejected by Purchaser or as to which Purchaser has revoked its acceptance from the time of such rejection or revocation.

**NOTICE OF LABOR DISPUTE:** Whenever any actual or potential labor dispute is delaying or threatens to delay the timely performance of this order, Seller shall immediately give notice thereof, including all relevant information with respect thereto, to Purchaser.

**INFRINGEMENT:** Seller agrees to indemnify Purchaser and/or its customers and users of its product against liability, including costs and expenses, on account of any infringement or alleged infringement of any patents or copyright in the manufacture, use, sale or disposition of any supplies called for hereunder.

**COMPLIANCE WITH LAWS:**

(a) Seller agrees to comply with all applicable Federal, State and local laws and executive orders and regulations issued pursuant thereto. Seller will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, veteran status or physical/mental handicap. Equal Employment Opportunity. The Equal Employment Opportunity Clause in Section 202, Para. 1 through 7 of Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973 and Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, relative to equal employment opportunity and the implementing Rules and Regulations of the OFCCP are incorporated herein by specific reference.

(b) All hazardous material shipped against this Purchase Order must be classified, packed, marked, labeled and in proper condition for carriage by motor or air according to current DOT and IATA Restricted Article Regulations.

(c) If the products covered by this order are "Medical Devices" within the purview of the Federal Food, Drug and Cosmetic Act, Seller agrees to permit Purchaser to enter and inspect, during normal business hours, the establishment(s) in which any of said products are manufactured, processed, packed or held in order to determine whether such manufacturing, processing, packing or holding conforms with current Good Manufacturing Practices as that term is defined in the Act.

(d) The Supplier represents and warrants that it complies, and will at all times comply, fully with: (a) all Law governing trans-border sales, re-sales, shipments and transfers of goods or services, including U.S. and other applicable export control and anti-boycott laws; and (b) all Law relating to the Products and Services, including without limitation any obligation on the Supplier to ensure that all regulatory and legal requirements are met such as Regulation No 1907/2006 of the European Parliament and the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals ("REACH"); the Restriction of the Use of Certain Hazardous Substances ("RoHS") in Electrical and Electronic Equipment (EEE) Directive (2011/65/EU); and the US Dodd Frank Act Conflict Minerals Rule ("Conflict Minerals").

(e) The Seller shall inform Company, on request, of the presence and percentage (%) of any substance on the BD Materials of Concern List "BD MOC" contained in the Goods.

(g) The Supplier has read and agrees to comply with the BD Expectations for Suppliers publication as posted on the internet at [http://www.bd.com/sustainability/supplier\\_expectations.asp](http://www.bd.com/sustainability/supplier_expectations.asp). In addition to the foregoing, BD encourages Supplier to maintain a legal/ethics hotline and consider obtaining third party certifications of its ethics program.

**ADDITIONAL CONDITIONS APPLICABLE IF THIS ORDER IS PLACED UNDER A GOVERNMENT CONTRACT:**

Each of the below listed clauses, as set forth in the Federal Acquisition Regulation in effect on the date of this order, is incorporated herein by reference. If such clauses (or any other version of the clause) are contained in a Purchaser prime contract or subcontract, the clauses apply to Seller as though Seller was prime contractor, and in such manner as will enable Purchaser to meet its obligations arising out of the applicable Government contract.

(a) Inspection and Audit. Seller's books and records and its plant, or such parts thereof as may be engaged in the performance of this order, shall at all reasonable times be subject to inspection and audit by any authorized representative of the Government Department or Agency having cognizance over the prime contract under which this order is issued. Seller shall provide all reasonable facilities and assistance for the safety and convenience of Government representatives performing such functions.

(b) Gratuities 52.2033

(c) Covenant Against Contingent Fees 52.2035

(d) AntiKickback Procedures 52.2037

(e) Certification and Disclosure Regarding Payments to Influence 52.20311

Certain Federal Transactions

(f) Limitations on Payments to Influence Certain Federal Transactions 52.20312

(g) Security Requirements 52.2042

(h) New Material 52.2115

(j) Defense Priority and Allocation Requirements 52.21115

(j) Examination of Records by Comptroller General 52.2151

(k) Price Reduction for Defective Cost Or Pricing Data 52.21522

(l) Subcontract Cost or Pricing Data 52.21524

(m) Utilization of Small Business Concerns and Small Disadvantaged 52.2198

Business Concerns

(n) Utilization of WomenOwned Small Business 52.21914

(o) Notice to the Government of Labor Disputes 52.2221

(p) Contract Work Hours and Safety Standards Act Overtime Compensation 52.2224

(q) Certification of Non Segregated Facilities 52.22221

(r) Affirmative Action Compliance 52.22225

(s) Equal Opportunity 52.22235

(t) Affirmative Action for Special Disabled Vietnam Era Veterans 52.22235

(u) Affirmative Action for Handicapped Workers 52.22236

(v) Clean Air and Water 52.2232

(w) Drug Free Workplace 52.2236

(x) Buy American Act Supplies 52.2253

(y) Notice and Assistance Regarding Patent and Copyright Infringement 52.2272\*

Infringement...52.2272

(z) Filing of Patent Application Classified Subject Matter 52.22710

(aa) Rights in Data General 52.22714

(ab) Disputes 52.2331

(ac) Stop Work Order 52.24215

(ad) Inspection of Supplies 52.2462

(ae) Termination for Convenience of the Government (FixedPrice) 52.2492

(af) Default 52.2498

**INDEMNITY.** The Seller shall indemnify and hold the Purchaser harmless against all expense, claims, damages, demands or liabilities arising out of Seller's breach in the performance of this order. In furtherance of the foregoing indemnity and not in limitation thereof, seller agrees that:

(a) Purchaser shall be entitled to all incidental damages resulting from a breach by Seller, including, but not limited to all expenses reasonably incurred in inspection, receipt, transportation, and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses, or commissions incurred in effecting cover, and any other reasonable expense incident to a delay or breach by Seller.

(b) Purchaser shall also be entitled to consequential damages resulting from a breach by Seller for any loss resulting from general or particular requirements and needs of Purchaser of which Seller is aware at the time of executing this order, and which reasonably cannot be prevented by cover or otherwise, and damages sustained by Purchaser from any injury to person or property proximately resulting from any breach of warranty by Seller.

**INSURANCE:** The Seller (including contractors and all subcontractors, if any) shall maintain the following insurance with an insurance company or companies authorized to do business under the law of the state in which the work is to be done or materials furnished.

Workers Compensation Insurance covering its obligations under the applicable law or laws; Comprehensive General Liability Insurance (including Contractual and Completed Operations liability for the obligations assumed hereunder) with minimum combined single limit of \$ 500,000 per occurrence.

Certificates of said insurance shall be filed with Purchaser and shall provide for 30 days prior written notice of cancellation or of material change in said insurance. The liability insurance limits shall in no way be construed as a limit on the Purchaser's right of indemnity hereunder.

**TERMINATION:** In addition to its other rights hereunder, Purchaser reserves the right to cancel this order or any part thereof if Seller breaches any of the provisions of this order or if Seller becomes insolvent or the subject of any proceeding under the law relating to bankruptcy or the relief of debtors Purchaser reserves the right to terminate this order or any part thereof for the sole convenience of the Purchaser. If such termination is invoked, all costs incurred to date of termination will be reimbursed plus a reasonable profit on work performed.

**CONSTRUCTION:** This order shall be construed in accordance with the laws of the State of New Jersey.

