

## **TERMS AND CONDITIONS OF PURCHASE (COMMERCIAL)**

1. **CONTRACT OF PURCHASE.** Subject to the terms and conditions stated herein (including all drawings, specifications and other documents attached to this offer or referred to in this offer). Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller, the goods or services described in this order. If for any reason Seller shall fail to return to the Buyer the signed acknowledgment copy of this order, any conduct by Seller which recognizes the existence of a contract pertaining to the subject matter hereof shall constitute unqualified acceptance by Seller of this order and all of its terms and conditions. The terms of this order shall constitute the complete and exclusive statement of the terms and conditions of the contract between the parties and may be modified only by written instrument executed by the authorized representatives of both parties. Any terms proposed by the Seller which add to, vary from, or conflict with the terms herein are hereby objected to. If this order has been issued by Buyer in response to Seller's offer and if any of the terms herein are additional to or different from the terms of such offer, then the issuance of this order by Buyer shall constitute an acceptance of such offer, subject to the express condition that this order constitutes the entire agreement between Buyer and Seller with respect to the subject matter hereof and the subject matter of such offer. Further, Seller shall be deemed to have so assented and acknowledged unless Seller notifies Buyer to the contrary in writing within seven (7) calendar days of receipt of this order. Any reference by Buyer to Seller's proposal is solely for the purpose of incorporating the description and specifications of the goods and services contained therein to the extent that such description and specifications do not conflict with the description and specifications on the face of this order.
2. **PRICE.** The price for the goods or services shall be the price as shown on this order. The Seller warrants that the agreed price is not less favorable than that currently extended to any other Buyer for the same or like goods in equal or lesser quantities.
3. **TAXES.** Unless exempt therefrom, all taxes which Seller is required by law to collect from Buyer are included in the price stated herein.
4. **INVOICES.** Unless otherwise agreed in writing, invoices are paid net thirty (30) days from date of receipt of the goods or completion of any required services, and not on the basis of Seller's invoice date. All invoices must contain the following information. Purchase order number, item number, description of items, sizes, quantities, unit prices. Payments of invoices shall not constitute acceptance of the goods and shall be subject to adjustment for shortages, defects and other failure of Seller to meet the requirements of this order. Buyer's tender of payment by check is sufficient, provided such check is honored, upon presentment by the "Payor Bank."
5. **DELIVERY.** Unless otherwise agreed in writing, the goods shall be delivered to Buyer assembled, completed, and ready for use, and the Buyer shall accept delivery of such goods or performance of any required services at the location designated on this order. The obligation by Seller to meet the delivery or performance date is of the essence in this order.

Delivery of goods or performance of any required services is not complete until goods or services have been actually received and accepted by Buyer.

6. EXCUSABLE DELAY. Seller shall not be deemed to be in default on account of delays in the delivery of goods or in the performance of services or any other act to be performed by Seller under this order due to any causes to the extent it is beyond Seller's control and not occasioned by Seller's fault or negligence, provided that promptly upon the occurrence of any event which may result in a delay in the delivery of goods or performance of services hereunder. Seller shall give notice thereof to Buyer which notice shall identify such occurrence and specify the period of delay which may be reasonably expected to result therefrom. In the event delivery of the goods or performance of services shall be delayed due to any cause beyond Seller's control and not occasioned by Seller's fault or negligence for a period of more than thirty (30) days after the end of the calendar month in which delivery is otherwise required hereunder. Buyer shall have the option to terminate this order upon written notice given to the Seller within five (5) business days after the expiration of such thirty (30) day period, and such termination shall discharge all obligations and liabilities of the parties hereunder with respect to undelivered goods, services, data or other items to be furnished hereunder.

7. WARRANTY. Seller expressly covenants and warrants that all goods and services covered by this order shall conform to the specifications, drawings, samples or other description upon which this order is based, shall be fit and sufficient for the purpose intended, merchantable, of good material and workmanship and free from defect, and that goods and services of Seller's design will be free from defect in design. Inspection, test, acceptance or use of the goods furnished hereunder shall not affect the Seller's obligation under this warranty, and such warranties shall survive inspection, test, acceptance and use. This warranty shall run to Buyer, its successors, assigns, and customers, and the users of its products. Seller agrees to replace or correct defects of any goods or services not conforming to the foregoing warranty promptly, without expense to Buyer, when notified of such nonconformity by Buyer. Buyer may at its option choose to correct any non-conforming delivered goods or services through repair, sort and/or rework. Seller shall reimburse Buyer for all reasonable expenses connected with such correction or Buyer may deduct such expenses from any payments due Seller.

8. QUALITY OF GOODS. All goods sold by Seller to Buyer pursuant to this order shall be new and conform to Buyer's quality standards and requirements set forth in any specifications, drawings, samples or other document upon which this order is based. Prior to delivery, Seller shall inspect and test the goods for quality in compliance with this order. The Seller shall keep records of all such quality inspections and tests and, if so requested by Buyer, supply Buyer with copies of such records. Buyer, without prejudice to any other rights or remedies, including the right to inspect goods after delivery, shall have the right at all times to inspect and test the goods during manufacture or processing or while stored under Seller's control. Seller shall not make any changes during the term of this order in the quality or in Seller's processes related to the goods without prior notification to and written acceptance of such changes by the Buyer. Any accepted changes shall become the controlling standard of quality for the remaining term of this order.

9. INDEMNIFICATION. Seller covenants and agrees at all times to protect, defend, hold harmless and indemnify Buyer, its parent and affiliated companies, and their respective directors, officers, employees, successors and assigns from and against any and all losses, costs and expenses, and from and against any and all claims for loss, damage or injury and from and against any suits, actions, or legal proceedings of any kind brought against Buyer, or such other parties by or on account of any person, persons, or entities, or on account of any injuries received or sustained by any person, persons, or entities in any manner (howsoever arising, including without limitation, by reason of negligence, breach of warranty, defect in design, material or workmanship or otherwise, and even though strict liability be claimed), directly or indirectly caused by, incident to, or growing out of breach of this order, defects in the design, manufacture, or materials used in the goods, negligence in the manufacture or provision of the goods supplied, or performance of the services hereunder. Seller further agrees to take upon itself the settlement of all such claims and the defense of any suit, suits, or legal proceedings of any kind brought to enforce such claim or claims, and to pay all judgments entered in such suit, suits or legal proceedings, and all costs of attorneys' fees or other expenses. Seller agrees that in any instance where such claims in any way affect Buyer's interests under this order or otherwise. Seller shall not consummate any settlement without Buyer's prior written consent. Seller's covenants of indemnity herein shall continue in full force and effect notwithstanding the termination or expiration of this order.

10. PATENT INDEMNIFICATION. Seller will indemnify and hold Buyer harmless against all liability and expenses, including attorneys' fees, arising from actual or claimed infringement or patent trademark, copyright, misappropriation of trade secrets, breach of confidential relationship, or other rights occasioned by the manufacture, sale or use of the goods or services provided under this order.

11. INSPECTION. The goods and services are subject to Buyer's inspection and approval within a reasonable time after delivery, notwithstanding any prior payment. Buyer, without prejudice to any other rights or remedies, shall have the right to reject defective goods and, at Seller's risk (notwithstanding the terms of delivery) and expense, return the same to Seller or dispose of the same according to Seller's instructions. No goods returned as defective shall be replaced without the written consent of Buyer. Payment for the goods delivered hereunder shall not constitute acceptance hereof. Buyer shall have the right to inspect such goods and to reject any or all of said goods which are in Buyer's judgment defective or nonconforming to this order. Goods so rejected may be returned to the Seller at Seller's expense. Buyer may at its option, require Seller to grant a full refund or credit to Buyer, in lieu of replacement, with respect to any item the Buyer is entitled to reject hereunder.

12. CHANGES. Buyer shall have the right at any time prior to the delivery date of the goods or services to make changes in drawings, designs, specifications, packaging time and place of delivery, nature and duration of services, and method of transportation. If any such changes cause an increase or decrease in the cost of the time required for the performance or otherwise affect any other provision of this order, an equitable adjustment shall be made and this order shall be modified in writing accordingly.

13. CANCELLATION/TERMINATION. In addition to the other rights hereunder, Buyer reserves the right to cancel this order or any part thereof without further cost or liability 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. Buyer further reserves the right to terminate this order or any part thereof for the sole convenience of the Buyer. If such termination right is invoked, all reasonable costs incurred to date of termination will be reimbursed, provided Seller establishes entitlement thereto.

14. ASSIGNMENT. No right or interest in this contract shall be assigned by Seller without the written permission of the Buyer. Any attempted assignment or delegation shall be wholly void and totally ineffective for all purposes. Seller shall remain liable for performance notwithstanding Buyer's approval of an assignment. Any person or entity to which this order is assigned pursuant to the provisions of Bankruptcy Code 11 U.S.C., Section 101 et seq., shall be deemed without further act or deed to have assumed all of the obligations arising under this order on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to Buyer an instrument confirming such assumption.

15. BUYER'S PROPERTY. All tools, equipment dies, gauges, models, drawings or other materials furnished by the Buyer to Seller or made by Seller for the purpose of this order or paid for by the Buyer and all replacements thereof and materials faxed or attached thereto, shall be and remain the property of the Buyer. All Buyer's property and, whenever applicable, each individual item thereof, will be plainly marked and otherwise adequately identified by Seller as "property of Carrier Corporation," will at Seller's expense be safely stored (separate and apart from Seller's property whenever practicable) and will be kept free of all liens, claims, encumbrances and interests of third parties. Seller will not substitute any property for Buyer's property, will not deliver or make available to any third party any of Buyer's property or any property or goods developed, manufactured or created with the aid of any of Buyer's property and will not use any of Buyer's property or any property or goods manufactured, developed or created with the aid of Buyer's property, except in filing the orders of Buyer. Upon completion by Seller of this order, or upon the written request of Buyer at any time. Seller will prepare all Buyer's property for shipment and deliver such property to Buyer in the same condition as originally received by Seller, reasonable wear and tear accepted. Buyer shall have the right, at all reasonable times, upon prior notice to enter Seller's premises to inspect any and all Buyer's property and any property or goods manufactured, developed or created with the aid of any Buyer's property. Buyer's property is identified on this order. Seller shall have such responsibility for such property as is chargeable to Seller by law by reason of its position as a bailee.

16. GRATUITIES. Seller has not and will not offer or give to any employee, agent or representative of Buyer any gratuity with a view toward securing any business from Buyer by influencing such person with respect to the terms, conditions, or performance of any contract with or order from Buyer. Any breach of this warranty shall be a material breach of each and every contract between Buyer and Seller.

17. CONFIDENTIAL INFORMATION. All specifications, drawings, designs, manufacturing data, other information delivered by Buyer to Seller are the property of Buyer. They are

delivered solely for the purpose of Seller's performance of this order and on the express condition that neither they nor the information contained therein shall be disclosed to others nor used for any purpose other than in connection with this order without the prior express written consent of the Buyer. Such specifications, drawings, designs, manufacturing data and other information are to be returned to the Buyer promptly upon Seller's completion of this order. The obligations under this paragraph will survive the cancellation, termination, or completion of this order. Any unpatented knowledge or information concerning Seller's goods, products, methods, or manufacturing processes which Seller may disclose to Buyer incident to the manufacture of the goods or the performance of services covered by this order shall, unless specifically agreed to in writing, be deemed to have been disclosed as part of the consideration for this order, and Seller agrees not to assert any claim against Buyer by reason of Buyer's use or alleged use thereof, and if this order involves experimental research or development work paid for by the Buyer, Seller agrees to grant to Buyer an irrevocable and exclusive and royalty-free license to make, have made, use and sell any inventions resulting from the work under this order.

18. COMPLIANCE WITH LAWS. Seller warrants that all goods or services supplied hereunder will have been produced or provided in compliance with, and Seller agrees to be bound by, all applicable federal, state and local laws, orders, rules, regulations, guidelines, standards, limitations, controls, prohibitions or other requirements which are contained in, issued under, or otherwise adopted pursuant to such laws. In addition, that Seller has complied with applicable federal and state laws, rules and regulations, included, but not limited to E.O. 11246, section 202, 11625, 11701, and 11758 pertaining to fair employment practices or which prohibit discrimination because of age, color, sex, physical or mental handicap, race, nationality, religion or creed, or other similar federal or state laws or regulations.

19. REMEDIES CUMULATIVE. Buyer's remedies shall be cumulative and remedies herein specified do not exclude any remedies allowed by law. Waiver of any breach shall not constitute waiver of any other breach of the same or any other provision. Acceptance of any items or payment therefor shall not waive any breach.

20. TITLES/LIENS. Title to all goods and services for which Buyer has paid fully or in part shall vest in Buyer immediately upon such payment. Seller shall pay for labor, services, materials, equipment and parts thereof, and other expenses incurred by its suppliers in connection with the order and indemnify and defend Buyer against all claims and liens arising out of unpaid accounts.

21. INSURANCE. In the event this order requires Seller to enter upon the premises of Buyer or Buyer's customer, Seller represents that it has and will maintain the following types and amounts of insurance coverage:

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| (1) Workers' Compensation  | Statutory                   |
| (2) Employers' Liability   | \$500,000                   |
| (3) Comprehensive General Liability (including blanket contractual liability): |                             |
| Bodily Injury  | \$1,000,000 each person     |
|  | \$1,000,000 each occurrence |

Property Damage	\$1,000,000 aggregate
Broad Form Property Damage	\$ 500,000 each occurrence
Personal Injury	\$ 500,000
(4) Comprehensive Automobile Liability:	
Bodily Injury	\$1,000,000 each person
	\$1,000,000 each occurrence
Property Damage	\$ 500,000 each occurrence

Seller will furnish a certificate of insurance reflecting such coverage to Buyer upon request.

22. ANTI-KICKBACK ACT. By accepting this order, Seller represents, covenants and warrants to and with Buyer that Seller and all subcontractors below Seller are in full compliance with the Anti-Kickback Act of 1986 ("The Act"). Seller further agrees to indemnify and hold harmless Buyer, its parent, and their respective directors, officers and employees from any violation of The Act by Seller or any subcontractors below Seller. All defined terms set forth in The Act apply to this clause.

23. GOVERNING LAWS. THIS AGREEMENT SHALL BE CONSTRUED AND ENFORCED ACCORDING TO THE LAWS OF THE STATE OF NEW YORK, EXCLUDING ITS "CHOICE OF LAW" OR "CONFLICT OF LAW" RULES.

24. EXCLUSION OF U.N. CONVENTION ON INTERNATIONAL SALES. Unless otherwise agreed to by Seller and Buyer in writing, there is excluded from this order (including any amendments or changes thereto) the application of the United Nations Convention on Contracts for the International Sales of Goods.

25. DRAWBACK. Upon request, Seller agrees to furnish completed drawback certificates and retain substantiating documentation pursuant to 19 U.S.C. Section 1313.