

1. **ACCEPTANCE; AGREEMENT:** This purchase order, including these Terms and Conditions, supersedes all other agreements, oral or written, and all other communications between the parties suggesting additional or different terms. This order represents the final and complete understanding of the parties and may be amended or canceled only by written agreement signed by both parties. This order expressly limits acceptance to these terms, and any proposal for the addition of different terms or any attempt by Seller to vary in any degree any of the terms hereof is hereby deemed material and objected to and rejected. No terms of any document or forms submitted by Seller shall be effective to alter or add to the terms and conditions contained in this order. Unless otherwise stated herein, Seller's acknowledgement of this order or commencement of any work or performance of any services hereunder shall constitute acceptance by Seller of this order and all of its terms and conditions.
2. **MODIFICATION:** No change or modification of this contract shall be made without Buyer's specific written consent. Stenographic and clerical errors are subject to correction by Buyer.
3. **PRICE:** If price is not stated in this order, the goods shall be billed as the price last quoted or at the prevailing market price, whichever is lower. If prices in effect on the date of this order are reduced prior to date of shipment or billing, the goods subject to this order shall be billed at such lower price.
4. **DELAYS:** If Seller shall fail or refuse to proceed with this order, or if Seller shall fail to make delivery of all items within the time specified by Buyer, Buyer shall have the right to cancel all or any part of this order. Time is of the essence to this contract.
5. **QUANTITY:** The specific quantity ordered must be delivered in full. Delivery of any unauthorized quantity is subject to Buyer's rejection and such goods shall be held at Seller's risk. Buyer may return such goods at Seller's risk, and all transportation charges to and from the original destination shall be paid by Seller.
6. **WARRANTY:** Seller warrants that all goods furnished and work performed hereunder shall conform strictly to specifications and drawings, shall be free from defects of material or workmanship, shall be merchantable and fit for their particular purposes. No inspection or acceptance of, or payment for, goods made by Buyer shall constitute a waiver of such warranties of any action against Seller for breach of such warranties. No attempt by Seller to disclaim, exclude, limit or modify any warranties or Seller's liability for direct, incidental, or consequential damages shall be of any force or effect. With respect to goods which are to be resold or otherwise transferred to a third party by Buyer, Buyer's customer shall have the full benefit of all warranties from Seller and its suppliers, whether hereunder or otherwise, and Seller agrees to any assignments or such warranty to such customers by Buyer.
7. **DEFECTIVE GOODS:** If any goods furnished hereunder fail to meet the above warranties, Seller, upon notice thereof from Buyer, shall promptly correct or replace the same at Seller's expense. If Seller shall fail so to do, Buyer may cancel this order as to all such goods, and in addition may cancel the then remaining undelivered balance of this order. After such notice to Seller, all such goods shall be held at Seller's risk. Buyer may return such goods at Seller's risk and all transportation charges to and from the original destination shall be paid by Seller. Any payment for such goods shall be refunded by Seller unless Seller promptly corrects or replaces the same at its expense.
8. **INDEMNIFICATION:** Seller agrees to indemnify, defend, and hold Buyer harmless from any and all claims, actions, liabilities, costs, or expenses (including attorney's fees) which Buyer incurs or becomes liable to pay resulting from or in any way arising out of (i) the goods supplied hereunder in any way being defective or failing to meet the warranties provided hereunder or (ii) any act or omission, whether negligent or otherwise, of Seller and/or its subcontractors employees, workers, servants, representatives, or agents.
9. **SPECIFICATIONS:** Goods ordered according to Buyer's drawings and specifications are to be manufactured in accordance with the latest issue of such drawings and specifications, and such drawings and specifications are to be considered a part of this order. If Seller should find any discrepancy between the drawings, design specifications or order as issued by Buyer, it shall immediately give notice in writing to Buyer of such discrepancy and shall carry out the work thereafter in accordance with Buyer's instructions.
10. **SPECIAL TOOLS:** No charge shall be made for patterns, pattern equipment, dies, jigs, fixtures or special apparatus used in the manufacture of the articles shown on this order unless written authorization is given by Buyer.
11. **MATERIALS, EQUIPMENT FURNISHED BY BUYER:** All writings, drawings and photographs, as well as all patterns, dies, jigs, fixtures or special apparatus furnished, specifically paid for, or otherwise provided by Buyer, shall be treated as confidential and remain the exclusive property of Buyer and subject to removal by Buyer. Such materials and equipment shall not be used to the detriment of Buyer and disclosure to third parties of information derived from such documents is forbidden. All such documents and reproductions thereof, as well as equipment, shall be returned to Buyer as soon as Seller has no further need for them in connection with this order, and in any event, no later than the time of delivery of the goods ordered herein.
12. **CHANGES:** Buyer reserves the right at any time, by written notice, to make changes in (i) specifications, drawings, samples and miter descriptions furnished or specified by Buyer, (ii) shipping schedules or places of delivery provided on the face hereof, (iii) packing of items to be delivered by Seller, and (iv) in delivery schedules of items which are not shipped at the time specified therefore and this order shall be deemed amended accordingly. If any such change is made which causes an increase or decrease in the amount or character of the work to be done by Seller in filling this order, or the time required therefore, and

## VENDOR TERMS AND CONDITIONS

Seller notifies Buyer therefore within five (5) days from the date of notice from Buyer to make such change, an equitable adjustment of the purchase price or the time for Seller's performance will be made, and this order will be modified in writing accordingly.

13. **LIENS:** All materials or articles delivered and work performed under this purchase order shall be free of all liens and, if Buyer requests, a proper release of all liens or satisfactory evidence of freedom from liens will be delivered to Buyer.
14. **TAXES:** Unless otherwise stated on the face of this order the prices quoted do not include Federal, State or local taxes imposed directly upon the manufacture or sale of the items or services to be furnished. Any such taxes applicable at the time of shipment or performance of services shall be shown as a separate amount on Seller's invoices. Tax exemption certificates acceptable to the taxing agency or other evidence of exemption, when furnished, shall be accepted by Seller in lieu of payment of any such taxes so invoiced.
15. **PATENTS:** Seller warrants that the goods furnished under this order do not infringe any patent rights. Seller shall indemnify and hold harmless Buyer, its affiliates, and their customers from losses, expenses (including attorney's fees), claims or liability of any nature arising out of the infringement or alleged infringement of any patent on account of the manufacture, sale or use of any goods furnished hereunder except where compliance by Seller with specifications prescribed by and originating with Buyer constitutes the sole basis of infringement or alleged infringement. Seller, at its expense, agrees to defend any suit brought or claim asserted against Buyer, its affiliates, and their customers on account of any such infringement or alleged infringement upon being notified in writing thereof by Buyer. If the use of such goods is enjoined, Seller shall at its expense make every reasonable effort to obtain for Buyer, its affiliates, and their customers, a license to continue to use such goods. If after a reasonable time Seller is unable or fails to obtain such license, Seller shall, at its expense, either replace such goods with equivalent non-infringing goods or modify such goods in a manner acceptable to Buyer so that they become equivalent, non-infringing goods. If Seller fails or is unable to do any of the above, Seller shall refund to Buyer the money or other consideration thereon.
16. **CANCELLATION:** In addition to its right to cancel as provided in Paragraphs 4 and 7, Buyer may cancel this order without liability at any time after acceptance and before complete delivery is made, upon the happening of any of the following: Insolvency of the Seller; the filing by or against Seller of a petition, initiating a proceeding under the Bankruptcy Act; the appointment of a receiver or trustee for Seller or any part of its assets; the execution by Seller of an assignment for the benefit of creditors.
17. **TERMINATION FOR CONVENIENCE OF BUYER:** Buyer may terminate this order at its convenience at any time by written notice to Seller. In such event, Seller may claim only properly documented out-of-pocket costs for work already performed. For specially prepared products which are unique to Buyer's order, any partially completed work or raw materials whose full costs are included in the cancellation charges shall be identified in writing and held by Seller for disposition in accordance with Buyer's written instructions.
18. **ASSIGNMENT:** Any transfer or assignment (by contract, operation of law, or otherwise) of the obligations of Seller hereunder upon acceptance of this order shall be voided and shall automatically be deemed a material breach of this order and agreement relieving Buyer from any further obligations hereunder.
19. **APPLICABLE LAWS:** This order shall be governed by the laws of the State of New Jersey, without regard to its rules on conflicts of laws. Seller, in the performance of this order, shall comply with the provisions of the Fair Labor Standards Act, as amended, and all other applicable Federal, State and local laws, regulations, rules and ordinances, and agrees upon request, to furnish Buyer a certificate to such effect in such form as Buyer may from time to time require. Seller warrants that such laws shall not be violated in the performance of this order and if such violation does occur, Seller shall indemnify and hold harmless Buyer from all losses, expenses (including attorney's fees), penalties or payment on account of such violation.
20. **WAIVER, COMPLIANCE:** No waiver by Buyer of any breach of any provision of this order shall constitute a waiver of any other breach or provision. No act, conduct or failure to act of Buyer shall constitute a waiver of any provision contained herein unless such waiver is in writing, executed by Buyer and delivered to Seller. Seller shall strictly comply with the terms and conditions of this order, notwithstanding any usage of trade or course of dealing to the contrary.
21. **REMEDIES:** Buyer shall have all remedies allowed by law and all remedies herein provided are cumulative and not exclusive thereof.
22. **SHIPPING AND INVOICING:** (A) Order numbers must appear on all shipping manifests and bills of lading, invoices and correspondence and must be marked on or tagged to all material shipped. (B) The original Bill of Lading and notice of each shipment, giving order number and kind and quantity of material, must be sent by mail, on date of shipment to Buyer or to a consignee designated by Buyer. (C) No invoices may be rendered by Seller until after the goods ordered herein have been shipped. (D) Partial shipments are not to be made unless authorized by Buyer in writing. (E) It is the responsibility of Seller to use the lowest published freight rates and, subject to Paragraph (I), the most practical and economic manner of shipment. Any excess transportation charges incurred are to be borne by Seller. If most economical method will not assure delivery by date shown, contact Buyer for instructions. (F) Routings for all carload shipments must be procured from Buyer. When making request, advise shipping point and originating carrier. (G) If shipment is made wholly or partially by water, it must be covered by maritime insurance if such protection is not included in tariff rate. (H) No charge, unless specifically agreed upon, shall be made for packing, boxing, containers, cartage to freight, express or parcel post station or for other mailers relating to preparation of shipment. (I) Parcel post shipments are at risk of Seller. (J) Dates of allowable cash discount will be calculated



## VENDOR TERMS AND CONDITIONS

from the date of receipt of invoice and not the date of invoice.

23. **INSPECTION:** When materials or goods are ordered according to Buyer's specifications, unless otherwise provided in the order. Such materials or goods are subject to the inspection of the Buyer at the plant of the manufacturer who must notify Buyer's Purchasing Department at Main Office, at least seven (7) days in advance of the date such materials or goods will be ready for inspection. Any inspection or approval at Seller's works or elsewhere during or after manufacture shall be provisional only and shall not constitute final acceptance or be construed as a waiver of the foregoing right of inspection and approval or rejection after receipt of the materials, articles or work by Buyer.
24. **FREIGHT:** The costs of all shipments to Buyer's plant or on which full freight is allowed must be prepaid by Seller unless otherwise expressly stated herein. No charge shall be made by Seller for drayage or storage unless otherwise stated herein.
25. **RISK OF LOSS:** Seller shall assume and pay for any loss or damage to the goods covered by this order from any cause whatsoever until the goods are delivered to Buyer at the F.O.B. Point specified on the front hereof.

Form #05-039B Rev. 6/2016