

TERMS OF PURCHASE ORDER

ACCEPTANCE

This purchase order constitutes Buyer's offer to Seller to purchase the specified goods pursuant to the terms set forth on both sides hereof. This offer to purchase expires unless promptly accepted by Seller. Seller's timely acknowledgement of this order, commencement of work on this order or shipment of goods specified in this order shall be conclusively deemed acceptance of this order, including the terms contained herein, unless Seller explicitly informs Buyer that the foregoing do not manifest Seller's acceptance of this order. No terms or conditions stated by Seller in acknowledging and accepting this order shall be binding upon Buyer if they are in any way inconsistent with or in addition to the terms herein set forth unless expressly accepted in writing and signed by Buyer. The terms stated on both sides hereof (including incorporated terms) are the final and complete agreement between Buyer and Seller and cannot be modified or waived by a course of conduct or otherwise than by written agreement signed by Buyer. Buyer's failure to object to inconsistent or additional terms or conditions contained in any of Seller's responses to this purchase order shall not be a waiver of the terms contained herein or an acceptance of such inconsistent or additional terms.

PERFORMANCE; WARRANTY; INSPECTION; INDEMNIFICATION

- A. Time is of the essence and is essential to performance of this agreement. Buyer reserves the right to cancel all or any part of this order if it is not shipped within the time specified.
- B. This order is issued to Seller in reliance on Seller's personal performance and Seller may not assign this order or payment of sums due hereunder or subcontract any substantial part of the performance, other than for standard commercial goods, unless Buyer gives prior written consent.
- C. Seller shall maintain appropriate product liability insurance on all products sold to Buyer.
- D. Seller warrants that the manufacture, sale and warranty of its goods comply with all applicable state and federal laws.
- E. Seller expressly warrants that all material and work covered by this order shall conform to the specifications, drawings, samples or other description as specified by Buyer, and shall be of good grade and quality, fit and sufficient for the purposes intended, merchantable, of good material and workmanship and free from defect. Seller shall indemnify and/or reimburse Buyer for and hold Buyer harmless from expenses and damages of any kind that Buyer incurs due to Seller's negligent performance of this order, Seller's breach of warranty, or Seller's sale to Buyer of defective goods. The remedies contained in these terms are cumulative and in addition to other remedies allowed by law.
- F. Acceptance of all material and goods ordered hereunder is subject to final inspection and tests by Buyer, and any material or goods may be rejected by notice to Seller after final inspection and test if they are not fully satisfactory and in conformity with other requirements. After such rejection, risk of loss and title to rejected goods shall be in Seller. Payment on this order prior to final inspection and test shall not constitute acceptance of the material or goods and Seller shall remain liable for any latent defects. Buyer may cancel the order in whole or in part if Seller does not provide reasonable assurances that conforming goods will be tendered within the specified delivery time.

PACKING, MARKING AND SHIPPING

- A. Delivery of goods shall be made by the most economical, appropriate means. Buyer has the right to instruct Seller on the most appropriate means of delivery. If Buyer determines that a more expeditious method of delivery than originally specified is necessary to meet the delivery schedule of this order, then Seller shall reimburse Buyer for any additional costs of such premium shipments unless the delay is due to causes beyond the control and without the negligence or fault of Seller.
- B. All shipping documents, invoices and correspondence shall indicate Buyer's purchase order number and the complete address to which the goods are to be shipped. All goods shall be packed, marked and shipped in accordance with the National Classification Shipping Instructions, the requirements of the carrier and the instructions of Buyer.
- C. Unless otherwise provided on the reverse side hereof, all freight charges to destination shall be prepaid by Seller, or Buyer may set them off against the amount owed to Seller; and no separate charges shall be made to Buyer for containers, crating, boxing, dunnage carriage or storage.
- D. All import permits, licenses, duties and customs required or imposed on Unless otherwise stated on shipments shall be paid by Seller, and if they are imposed on Buyer, then Seller shall reimburse Buyer therefore.
- E. Seller may not insure shipments for Buyer's account without written consent from Buyer.
- F. Deviations from shipping and billing terms herein shall be at the expense and risk of Seller.

REGULATORY REQUIREMENTS

- A. Modine requires that all materials supplied shall satisfy current governmental and safety constraints on restricted, toxic, and hazardous materials as well as any environmental, electrical, and electromagnetic considerations applicable to the country of manufacture and sale.
- B. Modine requires a Material Safety Data Sheet (MSDS) upon initial shipment and whenever an MSDS is updated.
- C. This contractor and subcontractor shall abide by the requirements of 41 CFR 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, sexual orientation, gender identity or national origin. 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, sexual orientation, gender identity, national origin, disability or veteran status.

PACKING SLIPS, BILLS OF LADING AND INVOICES

- A. Packing Slips must be conspicuously attached to each order shipment and shall include Buyer's purchase order number, the number of items in the order shipment and an adequate description of the goods. Each piece in an order shipment shall be marked so that it can be readily identified as a piece covered by the Packing Slip.

- B. Seller shall send a separate invoice for each shipment with a Bill of Lading and a Packing Slip attached to such invoice. Invoices will be deemed properly received and may be approved for payment only when received with the Bill of Lading and Packing slip attached.

RELEASE AUTHORIZATIONS

Seller shall not fabricate any of the goods ordered hereunder, or procure any of the materials required for their fabrication, or ship any fabricated goods to Buyer, except to the extent authorized in the purchase order and release authorizations issued there under by Buyer. Buyer shall have no responsibilities for goods or material for which authorizations have not been issued.

ORDER CHANGES

Buyer has the right at any time prior to completion of the order to make, by written notice to Seller, changes within the general scope of this order. If such changes affect the time or cost of performance, an equitable adjustment shall be made in the performance schedule and/or purchase price by agreement of Buyer and Seller. All claims by Seller for adjustment under this paragraph must be asserted, in writing and in full, within 30 days of Buyer's order change notice or Seller's claim shall be waived. Seller shall not be entitled to any extras under this order agreement except pursuant to Buyer's order change and this paragraph.

TERMINATION

Buyer has the right at any time to direct Seller to cease all further work on the goods ordered or to limit further work to completion of work in process. In such event, Buyer's liability shall be limited to the pro rata purchase prices of the finished goods plus the cost of raw materials and work in process but only to the extent that such raw materials, work in process and finished goods were not procured or fabricated unnecessarily in advance or in excess of buyer's delivery requirements and only if such material and goods are not regularly carried in inventory by Seller. In any event, there shall be no liability under this order for failure to take delivery or pay the purchase price or render other performance if commercially impractical due to fire, accidents, Acts of God, labor difficulties, government actions, third party failures, or any other conditions beyond the reasonable control and without the fault or negligence of the Buyer.

FORCE MAJEURE

Neither Buyer nor Seller shall be liable for any delay or failure in performance, or for any damages suffered by the other party by reason of such delay or failure in performance, if caused by or arising directly from any act, event or circumstance beyond such party's reasonable control without such party's fault or negligence, including, but not limited to, acts of God, vandalism, sabotage, accidents, fires, tornadoes, earthquakes, volcano, pandemics, epidemics, strikes or other labor disputes, interruption of utility services, acts of terrorism, or acts of any unit or agency of government (collectively, "Force Majeure Events"). Seller's economic hardship or changes in market conditions are not considered Force Majeure Events. Seller will be expected to manage its supply chain, including internal operations, equipment, manpower, subcontractors, and third-party suppliers in a reasonable and proactive manner. Failure to perform due to poor maintenance, labor planning, insufficient inventory or other similar supply chain disruptions are also not considered Force Majeure Events. Any delays so occasioned shall result in a corresponding extension of either party's dates of performance that are, in any event, understood to be approximate. Seller shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized and resume performance under this purchase order. If a Force Majeure Event prevents Seller from carrying out its obligations under this purchase order for a continuous period of more than thirty (30) calendar days, Buyer may terminate this purchase order immediately by giving written notice to Seller.

TOOLING - INFORMATION, ETC.

Designs, drawings, information, equipment, material, and tools or tooling supplied or paid for by Buyer for this order belongs to Buyer. Seller agrees not to modify them or use them for any other purpose or person; nor will they be used to make more items than ordered herein, unless the foregoing are authorized by Buyer in writing. At Buyer's discretion, they shall be returned to Buyer or replaced if broken or damaged by Seller's negligence.

PATENT PROTECTION

Seller guarantees that the sale or use of any or all articles or materials delivered hereunder will not infringe any United States or foreign Patent, that he will, at his own expense, defend any action, suit or claim in which any infringement of Patent Rights is alleged with respect to the sale or use of said articles or materials; and that he will save the Buyer and/or its customers from any loss, damage or liability which may be incurred on account of infringement or Patent Rights with respect to the articles or materials delivered unless said articles or materials are produced in accordance with Buyer's designs and specifications.

INVOICES

Invoices must be in triplicate (unless otherwise stated) and must be timely received by Buyer. If, without Buyer's fault, correct invoice(s) are not timely received by Buyer, then discount periods for payment of the invoice(s) shall run from the date of actual receipt or the date they should have been timely received, whichever is later.

TAXES

Unless otherwise stated on the face hereof, all sales, use, excise and other taxes applicable to the manufacturing or furnishing of the goods or materials hereunder shall be the sole responsibility of Seller, and Seller shall reimburse Buyer for any such taxes imposed on Buyer.

INTERPRETATION; CHOICE OF LAW

All questions of validity, interpretation and performance requirements arising out of this agreement between Buyer and Seller shall be governed by the laws of the State of Wisconsin (Uniform Commercial Code). Modifications of these terms appearing on the face of this order shall prevail whenever they are in conflict with the printed terms on this side.