

TERMS AND CONDITIONS

1. **DEFINITION OF TERMS.** As used in this Purchase Order, "Buyer" is Semler Industries Inc. and its agents, representatives, subcontractors, customers, and parties designated by it who are to receive, inspect, use, fabricate or otherwise process the goods which are the subject of this Purchase Order. "Seller" is the seller identified on the face of this Purchase Order and its agents, representatives, successors and assigns. "Terms and Conditions" of this Purchase Order include terms and conditions on both sides of this Purchase Order and any attachments to it. "Requirements" of this Purchase Order means all applicable blueprints or specifications of Buyer or incorporated by reference by Buyer on the face of or an attachment to this Purchase Order describing the condition, or quality, of the goods Seller is to provide. "Goods" includes any tangible thing, including but not limited to raw materials, components, intermediate assemblies, equipment, technical data, or drawings, and also includes all services or work performed in connection with the sale of such goods by Seller to Buyer under this Purchase Order.
2. **CONTROLLING TERMS.**
- 2.1 This is a counter offer to any terms and conditions which may have appeared in prior quotations or agreements between Buyer and Seller. It is not an acceptance of any offer or order of Seller and any such offer or order is expressly rejected. Seller assents to the Terms and Conditions of this Purchase Order by acknowledging or confirming this Purchase Order with Buyer's attached acknowledgment form, by shipment of any of the Goods against this Purchase Order, or by the acceptance of Buyer's payment referenced to this Purchase Order. No additional or different terms in Seller's acknowledgment, confirmation or other document or communication shall be binding upon Buyer unless accepted in writing by the Buyer.
- 2.2 This Purchase Order is intended to be the final, complete, and exclusive expression of the agreement between Buyer and Seller. Any and all representations, promises, or statements by Buyer's agents that differ in any way from the terms of this written agreement shall be given no force or effect.
- 2.3 No waiver, alteration, or modification of the Terms and Conditions of this Purchase Order shall be binding unless in writing and signed by an executive officer or purchasing agent of the Buyer.
3. **PRICING.** If price is not stated in this Purchase Order, it is agreed that the Goods shall be billed at the price last quoted, or at the prevailing market price, whichever is lower. This Purchase Order must not be filled at a higher price than last quoted or charged without Buyer's specific authorization.
4. **DELIVERY.** Delivery in accordance with the time specified on the front side of this Purchase Order is of the essence of this Purchase Order. If Seller fails to make delivery as stated in this Purchase Order, Buyer may cancel, or purchase elsewhere and charge Seller with any loss incurred as a result thereof. Buyer will have no liability or risk of loss for the care, return or payment of any of the Goods delivered to Buyer after the time specified in this Purchase Order or which are in excess of quantities ordered and Buyer reserves the right to return such late or excess goods with transportation cost at the expense of the Seller. Shipment shall be made by the most economical method. No charges will be allowed for cartage, packing, boxing, and storage unless agreed upon in writing at the time of purchase.
5. **WARRANTIES AND INDEMNITY.** Notwithstanding any inconsistent term, disclaimer, or limitation, express or implied, of warranties, damages or other liability, contained in or arising from any prior quotation, acknowledgment, confirmation, invoice, vendor's, distributor's or other override agreement, or other document or communication, or course of performance, course of dealing or usage of trade between Buyer and Seller or concerning the Goods or this Purchase Order.
- 5.1 Except to the extent that the Goods are designed by the Buyer, Seller warrants that the Goods and their sale or use, alone or as a significant element of a combination will not infringe any United States or foreign patents. Seller agrees, solely at its expense to defend any suit or proceeding brought against Buyer or its customers based on a claim that any Goods constitute an infringement of any patent, and Seller agrees to indemnify Buyer and its customers of the Goods for expenses arising from any such claim. Should the Goods be adjudicated to constitute infringement, Seller further agrees to pay all court awarded damages and costs, and solely at Seller's expense, either to procure for Buyer or its customers of the Goods the right to continue selling or using the materials, or to replace the same with non-infringing Goods; or to modify it so it becomes non-infringing; provided that such modification does not materially alter its dimensions or increase the costs of their use, operation or maintenance.
- 5.2 Seller expressly warrants that all Goods conform to the Requirements, specifications, drawings, samples or other descriptions furnished to or adopted by the Buyer, if any, and will be merchantable, fit and safe for the purpose or purposes intended, of good workmanship and material, and free from patent and latent defects. Such warranties shall survive all inspections, tests, acceptance, and payment. Any warranties, express or implied, shall run to Buyer, its successors, assigns, and to all persons who purchase from Buyer, or use, or are affected by the Goods alone or in combination with other property.
- 5.3 Seller, its heirs, successors, assigns and legal representatives, shall forever protect, indemnify and save harmless Buyer, its subsidiaries and affiliated companies, their successors and assigns, against all damages, claims, suits at law or in equity, demands or losses of any kind (including any attorney's fees, and litigation expenses), arising out of or in connection with (i) Seller's breach of any warranty concerning the Goods; (ii) Seller's breach of any of the other Terms and Conditions of this Purchase Order (iii) any products liability, personal injury, property damage, statutory, or negligence or other tort claim concerning the condition, use, safety or fitness of the Goods, or (iv) any environmental damage, pollution, waste, or clean-up in any way involving the Goods or the maintenance thereof. No limitations on damages for breach of warranties in favor of Buyer are permitted.
6. **CONFIDENTIALITY.** Any designs, specifications, drawings, technical data, samples or models supplied by Buyer for or in connection with any Goods which Seller did not previously possess ("Confidential Information") is proprietary to Buyer, shall be held in confidence by Seller, shall only be used by Seller to fulfill Buyer's orders, and shall not be used for any other purpose or products or disclosed to third parties without Buyer's prior written consent. Seller shall be liable for any loss to Buyer or commercial gain by others from unauthorized use or incorporation of Confidential Information occasioned by Seller's failure to comply with this provision.
7. **INSPECTION AND SAMPLES.** Buyer has the right in advance of deliveries or upon request, to receive from Seller representative samples of the Goods for Buyer's and Buyer's customers approval, and to inspect at Seller's plant or other location, the Goods and all work in process. Buyer also shall have the right to a final inspection within a reasonable time after arrival of the Goods at the ultimate destination. The Goods shall not be deemed accepted until after such inspection. The making or failing to make a final inspection shall in no way impair Buyer's right to reject nonconforming Goods or to avail itself of any other remedies to which Buyer may be entitled notwithstanding Buyer's knowledge of the nonconformity, its substantiality, or the ease of discovery.
8. **DISPOSITION OF REJECTED MATERIAL.** Buyer shall have the right, at its option, to reject any of the Goods which do not conform with the description, Requirements, and specifications of this Purchase Order and require Seller to (i) remedy such lack of conformity within fourteen working days after written notification so that the Goods are made to conform either by correction in place or replacement at Seller's expense, including transportation costs, or (ii) remove the nonconforming Goods promptly if correction or replacement cannot be made within fourteen working days after written notification and repay Buyer the full price listed on the face of this Purchase Order, plus all transportation costs which Buyer may incur in connection with the non-conforming Goods and the costs of replacement in excess of the Purchase Order price. These remedies of Buyer for rejected Goods are in addition to all other remedies accorded to Buyer by law including the right to incidental and consequential damages.
9. **CANCELLATION.** Buyer may cancel this Purchase Order at any time upon written notice to Seller without liability except for payment to Seller of the cost of the Goods, work in process, or material commitments made prior to the cancellation date less any recovery Seller may recoup on the Goods, work in process, or materials. Notwithstanding the foregoing, Buyer may cancel this Purchase Order without liability or cancellation charges in the event of any cause beyond its control, such as, but not limited to, fires, strikes, floods, or acts or demands of any governmental authority. In the event of any proceedings by or against Seller, voluntary or involuntary, in bankruptcy or insolvency, or for the appointment of a receiver or a trustee, or an assignee for the benefit of creditors, the Buyer shall have the right to cancel this Purchase Order and any resulting contract without liability or cancellation charges.
10. **TAXES.** Unless otherwise specifically provided in this Purchase Order, the price for the Goods includes all federal, state or local taxes which become due because of the manufacture, sale or delivery of the Goods.
11. **COMPLIANCE WITH LAWS.** Seller agrees, in connection with the production of the materials specified herein and services performed hereunder, to comply with all applicable local, state, and federal laws, regulations, and executive orders issued pursuant thereto, and agrees to indemnify the Buyer against any loss, cost, liability or damage (including any attorney's fees, and litigation expenses) by reason of the Seller's violation of this paragraph. Without limiting the generality of the foregoing, the Seller agrees to comply with the applicable provisions of the following, any and all of which provisions are incorporated herein by reference:
- (a) The Wage Hour Act (40 U.S.C. 324-326).
 - (b) The Fair Labor Standards Act (29 U.S.C. 201-219).
 - (c) Federal Occupational Safety and Health Act (P.L. 91-596).
 - (d) Non-discrimination in Employment, Paragraphs 1 through 76, Section 210, and file the compliance reports referred to in Section 203, of Executive Order 11246 or any amendments or extension thereof.
 - (e) The Walsh-Healy Public Contracts Act (41 U.S.C. 35-45).
 - (f) All environmental laws and regulations including The Clean Air Act and its labeling requirements or any amendments or extension thereof.
12. **LAWS OF ILLINOIS GOVERN/JURISDICTION.** This order shall be interpreted under and governed by the laws of the State of Illinois. Any suit concerning this order shall be brought in the State of Illinois.
13. **WAIVER OF PERFORMANCE.** All the rights and remedies of the Buyer stated herein are non-exclusive and are in addition to other rights and remedies provided by law. Buyer may waive performance of any term or condition, but waiver by Buyer of any condition with reference to any shipment or otherwise shall not be construed as a waiver of that condition for any subsequent shipment or subsequent transaction.
14. **ASSIGNMENT.** The Seller has neither the power nor the right to delegate his duties under this contract either in whole or in part without Buyer's prior written consent and any attempted assignment or delegation without Buyer's consent shall be void. Buyer may, at its option, cancel this contract without liability if Seller attempts to assign its rights or delegate its duties under this contract without authorization.
15. **SEVERABILITY.** In the event any provision or term of this Purchase Order shall be declared invalid or non-enforceable by a court of a competent jurisdiction, all other provisions and terms shall remain valid and binding.