

TERMS & CONDITIONS

Acceptance -- Agreement. This Purchase Order ("PO") must be accepted in writing by Seller. Upon acceptance, the resulting contract will include: the PO transmittal letter, the PO, the accompanying PO Requirements, the Product Specification(s), the Supplier Compliance Manual (a/k/a Supplier Manual) and these Terms and Conditions (collectively, "Contract Documents"). If for any reason Seller should fail to accept in writing, any conduct by Seller that recognizes the existence of a contract pursuant hereto shall constitute acceptance by Seller of this PO and all of its terms and conditions and all other Contract Documents. Buyer hereby objects to and rejects any terms proposed in Seller's acceptance of Buyer's offer which add to, vary from, or conflict with the terms herein. Any such proposed terms shall be void and the terms herein shall constitute the complete and exclusive statement of the contract between the parties and may hereafter be modified only by written instrument executed by both parties. If this PO has been issued by Buyer in response to an offer, and if any of the terms herein are additional to or different from any terms of such offer, then issuance of this PO by Buyer shall constitute an acceptance of such offer, subject to the express condition that Seller shall assent to such additional and different terms herein and acknowledge that this PO constitutes the entire agreement between Buyer and Seller with respect to the subject matter hereof and the subject matter of such offer. Seller shall be deemed to have so assented and acknowledged unless Seller notifies Buyer to the contrary in writing within ten days of receipt of this PO.

Price Warranty. Seller warrants that the prices for the articles sold to Buyer hereunder are not less favorable than those currently extended to any other customer for the same or similar articles in similar quantities. In the event Seller reduces its price for such article during the term of this order, Seller agrees to reduce the prices hereof correspondingly. Seller warrants that prices shown on this PO shall be complete, and no additional charges of any type shall be added without Buyer's express written consent. Such additional charges include, but are not limited to, shipping, packaging, labeling, customer duties, taxes, storage, insurance, boxing, crating.

Termination for Cause. Buyer may terminate this PO and resulting contract or any part thereof for cause in the event of any default by Seller or if Seller fails to comply with any of the terms and conditions of this PO. Late deliveries, deliveries of products which are defective or which do not conform to this order, and failure to provide Buyer, upon request, with reasonable assurance of future performance shall all be causes allowing Buyer to terminate this PO and any resulting contract for cause. In the event of termination for cause, Buyer shall not be liable to Seller for any amount and Seller shall be liable to Buyer for any and all damages sustained by reason of the default that gave rise to the termination.

Delivery. Time is of the essence under the PO and resulting contract and if delivery of items or rendering of services is not completed by the time promised, Buyer reserves the right without liability in addition to its other rights and remedies to terminate this contract by notice effective when received by Seller as to items not yet shipped or services not yet rendered and to purchase substitute items or services elsewhere and charge Seller for any loss incurred.

Warranty. Seller expressly warrants that all goods or services furnished under this agreement shall: conform to all specifications and applicable laws, regulations, and standards; will be new; will be free from defects in material or workmanship; and that Seller has good title and authority to transfer title to the goods covered by this PO. Seller warrants that all such goods or services will conform to any statements made on the containers, labels or advertisements for such goods or services, and that any goods will be adequately contained, packaged, marked, and labeled. Seller warrants that all goods or services furnished hereunder will be merchantable, and will be safe and appropriate for the purpose for which goods or services of that kind are normally used. If Seller knows or has reason to know the particular purpose for which Buyer intends to use the goods or services, Seller warrants that such goods or services will be fit for such particular purpose. Seller warrants that goods or services furnished will conform in all respects to samples. Inspection, test, acceptance or use of the goods or services furnished hereunder shall not affect Seller's obligation under this warranty, and such warranties shall survive inspection, test, acceptance, and use. If the product or packaging furnished is or includes food, a food ingredient, or food packaging materials, or for any product that comes into contact with food, food ingredients or food packaging materials, Seller further guarantees and warrants same are not adulterated or misbranded under any applicable law, code, regulation or industry standard. Seller's warranty shall run to Buyer, its successors, assigns, and customers, and users of products sold by Buyer. 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, provided Buyer elects to provide Seller with the opportunity to do so. In the event of failure of Seller to correct defects in or replace nonconforming goods or services promptly, Buyer, after reasonable notice to Seller, may make such corrections or replace such goods and services and charge Seller for the cost incurred by Buyer in doing so. Seller also extends and assigns to Buyer any warranties offered by Manufacturers of products or services supplied under the PO. Seller may not limit in any manner the type or amount of damages to which Buyer is entitled for breach by Seller of this warranty.

Inspection/Testing. Payment for the goods delivered hereunder shall not constitute acceptance thereof. Buyer shall have the right to inspect such goods and to reject any or all of said goods that are in Buyer's judgment defective or nonconforming. Goods rejected and goods supplied in excess of quantities called for herein may be returned to Seller at its expense and, in addition to Buyer's other rights, Buyer may charge Seller all expenses of unpacking, examining, repacking, and reshipping such goods. In the event Buyer receives goods where defect or nonconformity is not apparent on examination, Buyer reserves the right to require replacement, as well as payment of damages. Nothing contained in this PO shall relieve Seller from the obligation of testing, inspection, and quality control. Nothing herein shall obligate Buyer to perform any service with respect to rejected goods except to hold the same for disposition in accordance with Seller's instructions, provided, however, any adulterated food product or food packaging material shall be appropriately destroyed or disposed of with records regarding such disposition provided to Seller.

Changes. Buyer shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery, and method of transportation. If any such changes cause an increase or decrease in the cost, or the time required for the performance, an equitable adjustment shall be made and this agreement shall be modified in writing accordingly. Seller agrees to accept any such changes subject to this paragraph.

Force Majeure. Buyer may delay delivery or acceptance occasioned by causes beyond its control. Seller shall hold such goods at the direction of Buyer and shall deliver them when the cause affecting the delay has been removed. Buyer shall be responsible only for Seller's direct additional costs in holding the goods or delaying performance of this agreement at Buyer's request. Causes beyond Buyer's control shall include government action or failure of the government to act where such action is required, strike or other labor trouble, fire, or unusually severe weather.

Intellectual Property. Seller warrants that the goods or articles delivered under this PO, and the sale and use of such goods or articles, will not infringe upon any patent, trademark, copyright or other intellectual property right in any jurisdiction. Seller will defend (by counsel acceptable to Buyer), indemnify and hold harmless Buyer, its related and affiliated companies, and all their respective officers, directors, employees, successors, assigns, agents, customers and users of its products or services (collectively, "Buyer's Representatives"), from and against all claims, suits, damages, losses, royalties, profits, costs and expenses incurred or awarded (including attorneys' fees) arising out of any suit, claim or action for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, copyright or other intellectual property right by reason of the manufacture, use or sale of the goods or services ordered including infringement arising out of compliance with specifications furnished by Buyer or for actual or alleged misuse or misappropriation of a trade secret resulting directly or indirectly from Seller's actions, including any settlement. Buyer may be represented by and actively participate through its own counsel in any such suit or proceeding if it so desires, and the costs of such representation shall be paid by Seller. Seller further agrees to waive any claim against Buyer under the Uniform Commercial Code or otherwise, including any hold harmless or similar claim, related to a claim asserted against Seller or Buyer for patent, trademark, copyright or other intellectual property right infringement, including claims arising out of compliance with specifications furnished by Buyer. Seller further grants Buyer a worldwide, nonexclusive, royalty-free, irrevocable license to repair and have repaired, and to reconstruct and have reconstructed, the goods covered by the PO. Seller hereby assigns to Buyer all right, title and interest in and to all trademarks, copyrights and other intellectual property rights in any material created exclusively for Buyer under this PO. Seller agrees not to assert any claim with respect to any technical information that Seller has disclosed or may hereafter disclose to Buyer in connection with the goods or services covered by this PO.

Seller Supplied Materials. Seller may supply to Buyer art, photographs, specifications, descriptions, literature, tags, cards, booklets, audio, video clips or the like for use in connection with the resale of the articles sold to Buyer. Seller makes the same warranties and undertakes the same obligations with respect to Seller Supplied Material as described above regarding Intellectual Property. Additionally, to the extent Seller Supplied Material was not prepared exclusively for Buyer, Seller grants to Buyer a nonexclusive license to use, modify, reproduce, publish, distribute or prepare works based on Seller Supplied Material.

Insurance. In the event that Seller's obligations hereunder require or contemplate performance of services by Seller's employees, or persons under contract to Seller, to be done on Buyer's property, or property of Buyer's customers, Seller agrees that all such work shall be done as an independent contractor and that the persons doing such work shall not be considered employees of Buyer. Seller shall maintain all necessary insurance coverage, including public liability and Workers' Compensation insurance. Seller shall defend (by counsel acceptable to Buyer), indemnify and save Buyer harmless from and against any and all claims or liabilities arising out of the work covered by this paragraph.

Product Liability Insurance. Seller agrees that for a period of at least three years following Seller's last delivery of product to Buyer, Seller will maintain its product liability insurance coverage in the form provided by the certificate of insurance which Seller has provided to Buyer.

Indemnification and Recalls. Seller shall defend (by counsel acceptable to Buyer), indemnify, and hold harmless Buyer and Buyer's Representatives from and against all damages, losses, royalties, profits, costs, claims, or liabilities and expenses (including attorneys' fees) arising out of or resulting in any way from: (1) any defect in the goods or services purchased hereunder; (2) any breach of this PO or the resulting contract by Seller; (3) any act or omission of Seller, its agents, employees, or subcontractors; (4) any violation by Seller, its agents, employees, or subcontractors of any applicable federal, state or local law or regulation or other applicable law, code or regulation; (5) any unfair competition by Seller, its agents, employees, or subcontractors in connection with the use, possession, sale, marketing or delivery of any products or services provided by Seller to Buyer; (6) each and every recall of any product, whether voluntary or involuntary; and (7) any other act or omission as provided in the Contract Documents. This indemnification shall be in addition to the warranty obligations of Seller. In the event of recall of a product (whether voluntary or involuntary), in addition to its indemnification obligations, at Buyer's sole option and discretion, Seller shall: (a) at Seller's expense, subject to Buyer's request and approval, (i) prepare and mail adequate written notification of the recall to Buyer's customers who purchased such product and/or (ii) provide any other type of notification that may be required by any applicable governmental authority and/or be reasonably required by Buyer to provide adequate notice to its customers, and (iii) arrange (in a manner and process acceptable to Buyer) and pay for all other costs and expenses associated with the recall and/or exchange of the product and any loss to Buyer or its customers; and/or (b) pay Buyer for all its and its customers' actual direct and indirect costs, expenses (including attorney's fees) and damages incurred in connection with (i) Buyer providing notification to Buyer's customers in a manner Buyer reasonably deems necessary, and (ii) the recall and/or exchange of the product and any loss to Buyer or its customers. In all recall cases, Seller shall cooperate fully with Buyer and any applicable governmental authorities in connection with the recall and implementing a responsive process to: (i) prevent any loss and minimize any inconvenience to Buyer and its customers; (ii) ensure that

payments are made to Buyer so that it may properly account to its customers; and (iii) account fully to Buyer for all returned products and payments.

Risk of Loss. Unless otherwise specified to the contrary in the PO, Seller agrees to assume all risk of loss and damage until goods are delivered to Buyer at the destination designated in the PO. Insurance, which may be obtained by Seller upon such goods, is to be at Seller's expense, and is not to be included in the purchase price, but shall be payable to Seller and Buyer as their interests may appear. No act or omission of Buyer shall have any effect upon the risk of loss of the goods that are the subject of this order. If this PO provides for any of Buyer's property to be in Seller's possession at any time, Seller agrees to be fully responsible to Buyer for said property which shall include the responsibility to insure said property against all insurable risks, including fire and casualty, for the full insurable value thereof and Seller shall provide to Buyer a certificate of insurance, naming Buyer as an additional insured, to verify such coverage.

Compliance with Laws, Regulations and Industry Standards. (1) Seller shall comply with all applicable federal laws and regulations in effect at the time of shipment of products or performance of services, including but not limited to, applicable portions of the United States Code of Federal Regulations, such as (but not limited to): Titles 7, Agriculture; Title 9, Animals and Animal Products; Title 15, Commerce and Foreign Trade; Title 16, Commercial Practices; Title 19, Customs Duties; Title 21, Food and Drugs; and the corresponding United States Code provisions, including, but not limited to, the Federal Food, Drug, and Cosmetic Act. (2) Seller further represents and warrants that all products which are provided by Seller under this agreement have been produced, manufactured, and labeled for interstate sale in accordance with all applicable state, local and other applicable laws and regulations (including, but not limited to, the California Safe Drinking Water and Toxic Enforcement Act of 1986, as amended [more commonly referred to as Proposition 65], and with all applicable federal laws, codes and regulations and with the laws, codes and regulations of the country of origin. (3) Seller shall comply with any other applicable laws, codes, regulations or industry standards governing the manufacture, sale, labeling, branding, packaging, shipment, importation, distribution or sale of the products covered by this PO and the containers of such products. (4) Seller further agrees that all products sold comply with the applicable industry standards in effect at the time of shipment of products or performance of services, including, but not limited to, American Standard for Test Material (ASTM), International Fabrics Association (IFA), Underwriter's Laboratories (UL), and/or National Institute of Standards and Technology (NIST Handbook 133). (5) To the extent they are applicable to Seller's performance hereunder, this agreement is subject to applicable provisions under: the Fair Labor Standards Act of 1938, as amended; laws relating to equal opportunity and nondiscrimination in employment by reason of race, religion, color, sex, national origin, age, disability, veteran status, use of minority businesses, or other protected classifications. (6) Seller agrees to defend (by counsel acceptable to Buyer), indemnify and hold Buyer and Buyer's Representatives harmless from and against any claim, loss, expense (including attorney's fees), or damage associated with, or arising from, the failure to comply with any applicable laws, codes, regulations or standards and/or from the recall of the product and any resulting loss to Buyer or its customers.

Payment. Payment shall be made in accordance with the terms on the face of this PO. Discount period, if any, will begin on the later of the date of receipt of goods at destination or Buyer's receipt of Seller's invoice, unless expressly stated otherwise. In the absence of specific payment terms, invoices will be paid on a net 30 days basis.

Assignments and Subcontracting. No part of this order may be assigned or subcontracted without prior written approval of Buyer.

Setoff. All claims or rights by Seller for money due, or to become due, from Buyer shall be subject to deduction or setoff by Buyer by reason of any sums owed or payable to Buyer or claimed by Buyer (including, but not limited to Charge-backs) due to Seller's obligations or breach under this agreement or as otherwise provided in this agreement that arise out of this or any other transaction with Seller and/or such setoffs may be enforced as provided in the Supplier Compliance Manual.

Shipment. If, in order to comply with Buyer's required delivery date, it becomes necessary for Seller to ship by a more expensive way than specified in this PO, any resulting increased transportation costs shall be paid by Seller unless the necessity for such rerouting, expedited handling or increased costs has been caused by Buyer.

No Waiver. Any failure or delay by Buyer in exercising any right, power, privilege or remedy under (or in insisting on Seller's full performance of) any or all of the terms and conditions hereunder or in the other Contract Documents or that is otherwise available at law or in equity shall not operate as a waiver thereof, nor shall any partial exercise thereof preclude any other or future full exercise thereof. Further, any actual waiver by Buyer of (or other course of conduct by Buyer relating to) any condition, term, right, power, privilege or remedy hereunder or in the other Contract Documents or that is otherwise available at law or in equity shall not operate as a waiver thereof (or establish a course of conduct) for future POs and resulting contracts.

Confidential Information. This PO and all Contract Documents are confidential and it is agreed by Seller that none of the details connected therewith shall be published or disclosed by Seller to any third party without Buyer's prior written permission.

Contract Documents; Entirety; Consistent Interpretation and Cumulative Remedies. The accompanying PO, its transmittal letter, the accompanying PO Requirements, the Product Specification(s), the Supplier Compliance Manual, these Terms and Conditions, and any matters incorporated therein shall be the Contract Documents and shall constitute the entire agreement between the parties relating to the purchase made hereunder. Buyer shall not be bound by or liable to Seller for any representation, promise, or inducement not embodied therein. The various Contract Documents are intended to be interpreted in a consistent and cumulative manner, and all obligations, rights and remedies provided therein are intended to be cumulative.

Electronic Transmission or Signatures Binding. Buyer and Seller agree to conduct contract communications and to sign and/or transmit Contract Documents and acceptances thereof or subsequent amendments

thereto electronically (whether by e-mail, facsimile (Fax), or other similar media); and the Buyer and Seller agree that they will be bound by, and not contest the validity or enforceability of, any Contract Documents or acceptance thereof or subsequent amendments thereto on the basis that they were signed and/or transmitted by such electronic means. Buyer and Seller each represents to the other that the persons signing any of the Contract Documents or transmitting acceptances thereof or amendments thereto or related documentation is authorized to bind their respective companies by such actions for such purposes, and such electronic transmittals shall constitute valid and binding signatures on behalf of the party transmitting them to the other party. Computer maintained records of a party when produced in hard copy form shall constitute business records and shall have the same validity as any other generally recognized business records.

Governing Law, Jurisdiction and Venue, Language. This PO and resulting contract shall be governed by the laws of the State of Wisconsin, without reference to its conflicts of laws principles. To the extent this PO entails delivery or performance of services, such services shall be deemed "goods" within the meaning of the Wisconsin Commercial Code, except when doing so would result in a clearly unreasonable interpretation. Any litigation in connection with this PO, the resulting contract or the relationship of, or disputes arising between, the parties hereto shall be filed in either the United States District Court for the Western District of Wisconsin or the Wisconsin Circuit Court of Green County, and the parties hereby consent and voluntarily submit to the personal jurisdiction and venue of those courts in connection with any such litigation. All Contract Documents and correspondence shall be in English or the author/sender shall provide an authentic English translation thereof.

Limitation on Buyer's Liability. In no event shall Buyer be liable for anticipated profits or for incidental or consequential damages or for punitive or exemplary damages. Buyer's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this agreement or from the performance or breach thereof shall in no case exceed the price allocable to the goods or services or unit thereof, which gives rise to the claim. Buyer shall not be liable for penalties of any description.

Rev: 20080331