

ELKAY PURCHASE ORDER TERMS AND CONDITIONS

1. ACCEPTANCE - AGREEMENT

These terms and conditions govern all Purchase Orders issued by Purchaser to the Seller indicated on the Purchase Order. Seller's commencement of work on the goods subject to any Purchase Order or shipment of such goods, whichever occurs first, shall constitute acceptance of the Purchase Order and these Terms and Conditions. Any acceptance of a Purchase Order is limited to the express terms contained on the face of any applicable Purchase Order and these Terms and Conditions (the "Contract Terms"). Unless expressly agreed to in writing by an authorized representative of Purchaser, any proposal for additional or different terms or any attempt by Seller to vary in any degree any of the terms of this offer in Seller's acceptance is hereby objected to and rejected and these Contract Terms shall be the complete and exclusive statement between Seller and Purchaser.

2. TERMINATION FOR CONVENIENCE OF PURCHASER

Purchaser reserves the right to terminate any Purchase Order or any part thereof for its sole convenience upon giving notice to Seller. In the event of such termination, Seller shall immediately stop all work, and shall immediately cause any of its suppliers or subcontractors to cease such work. Purchaser shall be liable to Seller only for services satisfactorily performed or conforming goods delivered prior to notice of termination. Seller shall neither be paid for any work done after receipt of the notice of termination nor for any costs incurred by Seller, Seller's suppliers or subcontractors, including costs of raw materials.

3. TERMINATION FOR CAUSE

Purchaser may also terminate any Purchase Order or any portion thereof for cause in the event Seller fails to comply with any of the Contract Terms. In addition, deterioration in Seller's financial condition, absent reasonable assurances of future performance, shall allow Purchaser to terminate any Purchase Order for cause.

4. PROPRIETARY INFORMATION - CONFIDENTIALITY - ADVERTISING

Seller shall consider all information furnished by Purchaser to be confidential and shall not disclose any such information to any other person or use such information itself for any purpose other than performing its obligations under the Purchase Order. This paragraph shall apply to all drawings, specifications, or other documents prepared by Seller for Purchaser in connection with the Purchase Order. Seller shall not advertise or publish the fact the Purchaser has contracted to purchase goods from Seller, nor shall any information relating to the order be disclosed without Purchaser's written permission. Upon request of Purchaser, Seller shall return or destroy all such information. Seller's obligations under this paragraph survive the cancellation, termination, or completion of the Purchase Order.

5. WARRANTY

Seller warrants that all goods and services furnished to Purchaser as a result of any Purchase Order have been manufactured, distributed, and delivered in compliance with all applicable federal, state and local laws, regulations and ordinances. Seller expressly warrants that all goods or services furnished pursuant to this Purchase Order shall (i) conform to all applicable specifications, descriptions and appropriate standards and will be free from defects in material and workmanship, (ii) be merchantable, safe and appropriate for the purpose for which the good services of that kind are normally used, and (iii) be free and clear of all liens and encumbrances, good title thereto being in Seller. If Seller knows or has reason to know the particular purpose for which Purchaser 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 hereunder will conform in all respects to samples previously provided and to the most current specifications. Seller's warranty shall run to Purchaser, its successors, assigns and customers, and users of goods sold by Purchaser pursuant to this Purchase Order. In the event of failure of Seller to correct defects in or replace nonconforming goods or services promptly, Purchaser, after reasonable notice to Seller, may make such corrections, replace such goods or services and charge Seller for the cost incurred by Purchaser in doing so.

6. PRICE

Seller warrants that the prices for the goods sold hereunder are not less favorable than those currently extended to any other customer for the same or similar goods in similar quantities after taking into effect all discounts and rebates. In the event Seller reduces its price for such goods during the term of any Purchase Order, Seller agrees to reduce its price for such goods during the term of any Purchase Order, Seller agrees to reduce the prices hereof correspondingly. Seller warrants that the prices shown on the Purchase Order shall be complete, and no increase in prices or additional charges of any type, including surcharges, shall be added without Purchaser's express written consent. Unless otherwise stated in the Purchase Order, delivery of goods shall be DAP destination (Purchaser's plant location) with Seller to incur freight, boxing, packing or other charges.

7. FORCE MAJEURE

Purchaser may delay receipt or acceptance of goods or services pursuant to this Purchase Order if the delay is occasioned by causes beyond its control. Seller shall hold such goods at the direction of the Purchaser and shall deliver them when the cause affecting the delay has been removed. Purchaser shall be responsible only for Seller's direct additional costs of holding the goods delaying performance hereunder at Purchaser's request.

8. INDEMNIFICATION

Seller shall, at Seller's sole cost and expense, release, defend, indemnify and hold harmless Purchaser, its directors, officers, agents, and employees from, and against, any and all damages, liabilities, claims, losses, and expenses (including reasonable attorney fees) arising out of, or resulting in any way from (i) any alleged defect or non-conformity in the goods or services purchased hereunder, (ii) any act of omission of Seller, its agents, employees, or subcontractors, (iii) any recall of the goods in conjunction with the Consumer Products Safety Commission, or (iv) any claim that the goods or services infringe a patent, copyright, trademark, trade secret or other intellectual property right of a third party.

9. INSURANCE

Seller agrees to carry and to furnish certificates from its insurance carrier to Purchaser showing that it carries insurance in the following minimum limits: (a) worker's compensation - statutory limits for states in which the work is to be performed, (b) general liability with minimum limits of \$1,000,000 each occurrence, and in the aggregate (c) auto liability with minimum limits of \$1,000,000 each occurrence and in the aggregate. Seller agrees to obtain and provide to Purchaser certificates reflecting vendor's endorsements under such insurance policies naming Purchaser as an additional insured thereunder. All policies of insurance specified herein shall provide, at the request of Purchaser, that the coverage thereunder shall not be terminated without at least ten (10) days' prior written notice to Purchaser.

10. INSPECTION/ TESTING

Payment for or receipt of the goods delivered hereunder shall not constitute acceptance thereof. Purchaser shall have the right to inspect such goods and reject any of all of such goods which are in the Purchaser's sole judgment defective or non-conforming. Goods rejected hereunder may be returned to Seller at its expense, and, in addition to Purchaser's other rights, Purchaser may charge Seller all expenses of unpacking, examining, repacking and reshipping such goods. In the event Purchaser received goods whose defects or non-conformity is not apparent on examination, Purchaser reserves the right to reject or revoke any acceptance of such goods and to require replacement as well as payment of damages. If any inspection or test is to be made on the premises of Seller, Seller without additional charge shall provide all reasonable facilities and assistance for the safety and convenience to the inspectors in the performance of their duties.

11. ENTIRE AGREEMENT

Except as provided in written contract executed by both Purchaser and Seller, these Contract Terms constitute the entire agreement between the parties concerning the goods and/or services specified herein. The terms and provisions hereof may not be modified in the absence of the prior express written consent of Purchaser.

12. ASSIGNMENTS AND SUBCONTRACTING

No part of this order may be assigned or subcontracted without the prior written approval of Purchaser.

13. SET - OFF

All claims for money by Seller against Purchaser shall be subject to deduction or offset by any claim for money of Purchaser against Seller arising out of this or any other transaction.

14. REMEDIES AND WAIVER

Purchaser's remedies shall be cumulative and shall include any and all remedies allowed by law or equity. Purchaser's failure to insist on performance of any of the terms of conditions herein or to exercise any right or privilege or Purchaser's waiver of any breach hereunder shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type.

15. DELIVERY

Time is of the essence hereof, and if the delivery of goods or services is not completed by the date set forth in the Purchase Order, Purchaser reserves the rights and remedies, to terminate this Purchase Order and to purchase substitute goods or services elsewhere and charge Seller with any loss incurred. No partial shipments may be made without Purchaser's written consent. Purchaser has the right to cancel any outstanding balance. Goods supplied in excess of quantities called for hereunder may be returned to Seller at its expense, and, in addition to Purchaser's other rights, Purchaser may charge Seller all expenses of unpacking, examining, repacking and reshipping such good. Seller shall report any delays in delivery schedule immediately as they become known to the Seller. Purchaser may, upon reasonable notice to Seller, cancel schedules specified in the Purchase Order.

16. LIMITATION ON PURCHASER'S LIABILITY - STATUTE OF LIMITATIONS

IN NO EVENT WILL PURCHASER BE LIABLE TO SELLER OR ANY THIRD PARTY, IN CONTRACT, TORT OR OTHERWISE, FOR ANY LOSS OF PROFITS OR FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING FROM OR AS A RESULT OF THIS PURCHASE ORDER OR ANY AGREEMENT BETWEEN THE PARTIES RELATING TO THE PRODUCTS OR SERVICES SUPPLIED HEREUNDER, EVEN IF PURCHASER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Any action resulting from any breach on the part of Purchaser as to goods or services delivered hereunder must be commenced within one year after the cause of action has accrued.

17. SHIPPING PACKING AND RISK OF LOSS

All goods shall be suitably packed, marked with Purchaser's purchase order number and shipped in accordance with shipping instructions specified herein and other wise in accordance with the requirements of common carriers so as to obtain the lowest transportation cost. No charge shall be made to Purchaser for boxing, packing, carting unless specifically itemized on the face hereof. Seller shall be liable to Purchaser for any loss or damage resulting from Seller's failure to act so as to provide adequate protection during shipment. Unless the Purchase Order indicates that the goods are Ex Works, risk of loss or damage in transit shall be Seller's sole responsibility and liability until conforming goods are delivered to and accepted by Purchaser. Additional expenses, with other shipping instructions, or improper description of the shipment and shipping documents shall be assumed by Seller. Purchaser's purchase order number must be placed on all invoices and shipping papers.

18. PURCHASER PROPERTY

Any materials, parts or tools furnished by Purchaser with a Purchase Order shall be deemed to be held by Seller on consignment, shall remain the property of Purchaser and shall be returned to Purchaser on demand. Seller agrees to maintain said materials in proper working order and repair and to protect them against loss or damage. Seller further agrees to mark or tag said materials (insofar as practical) to clearly indicate Purchaser's ownership thereof.

19. TAXES

Purchaser shall not be liable for any taxes, duties, customs or assessments in connection with the purchase and/or delivery of goods ordered hereunder, except such as are expressly set forth on the face hereof.

20. CHANGES

Purchaser may make changes in drawings, specifications, quantities, delivery schedules or methods of shipment or packaging on any item at any time. If such changes result in an increase or decrease in costs, and equitable adjustment of price and delivery schedule may be made, or Purchaser may, as its option, terminate the Purchase Order if agreement on an equitable adjustment cannot be reached. Seller must assert claims for equitable adjustment within ten (10) days of the change order. This order together with any change orders or instructions approved by Purchaser in writing shall constitute one integrated contract.

21. WAIVERS OF LIEN

Seller shall furnish all necessary lien waivers, affidavits, or other documents required to keep the property and premises of Purchaser, or Purchaser's customers or assignees, free from all liens, claims, encumbrances or assessments arising out of the furnishing of labor, material or equipment by any party or entity in regard to the performance of this Purchase Order, as payments are made from time to time hereunder.

22. EQUAL OPPORTUNITY CLAUSE, FAIR LABOR STANDARDS ACT, AND COMPLIANCE WITH OTHER RELEVANT FEDERAL LAWS

By acceptance of this Purchase Order, Seller hereby warrants and represents to Purchaser that Seller shall comply with the Fair Labor Standards Act and all other applicable federal, state, and local laws, regulations and orders and shall, upon request, furnish to Purchaser a certificate to such effect. The Equal Opportunity Clause in Title 41; Part 60-1.4 of the Code of Federal Regulations (Paragraphs 1-7 of President's Executive Order 11246), the Employment of the Handicapped Clause in Title 41, Part 60-741.4, of the Code of Federal Regulations, are incorporated herein by reference if and to the extent applicable.