

Associated Materials, LLC Purchase Order Terms and Conditions

1. **ACCEPTANCE** This order is an offer and in order to constitute a contract, actual and/or implied acceptance by Vendor must be limited to the precise terms and conditions of this offer. Commencement of performance by Vendor shall constitute acceptance by Vendor of all the terms and conditions hereof and waiver of all conflicting, different or additional terms and conditions contained in any Vendor purchase order, acknowledgement or other document that relates to the subject matter hereof, whether furnished before, during or after the acceptance of this Purchase Order. No further terms or conditions including, without limitation, purported disclaimers of express or implied warranties of purported limitations of Vendor's liability for consequential damages stated by Vendor in accepting or acknowledging this order shall be binding on Vendee unless accepted in writing by Vendee; and any such terms or conditions of Vendor shall be treated as a counter offer and not as part of this contract.
2. **PRICE** Vendee shall be obligated to pay only the prices and other charges stated in this order or Vendor's current price for the goods or services whichever is lower at the date of shipment. When Prices are stated, the prices charged shall not exceed those charged on the last invoice to the Vendee of the same goods or services or Vendor's current price for such goods or services if lower than that charged on such invoice. No payments shall be made in advance unless otherwise agreed to on the face of this order.
3. **GOVERNING LAW AND JURISDICTION** The contract resulting from this Purchase Order is entered into under the laws of the State of Ohio and shall be interpreted and construed in accordance therewith. Any litigation involving this Purchase Order shall be brought only in the appropriate state or federal court located closest to Akron, Ohio and Vendor expressly consents to the personal jurisdiction of such courts for such purpose.
4. **ASSIGNMENT AND DELEGATION** Vendor shall not assign this contract, nor assign, nor pledge the consideration therefor, nor delegate any obligation which Vendor may have under this contract without Vendee's written consent. Any such attempted assignment or delegation, by Vendor, without such written consent of Vendee, shall be wholly void for all purposes.
5. **COOPERATION WITH OTHER CONTRACTORS** Vendor and its subcontractors, if any, shall cooperate with Vendee and other vendors on Vendee's premises and shall so carry on their work that other cooperating vendors shall not be hindered, delayed or interfered with in the progress of their work.
6. **DELIVERY AND RECEIPT OF SHIPMENTS** deliveries shall be made in the quantities and at times and places and in the particular matter specified in the order or in schedules furnished by Vendee. Vendee shall have no liability for payment for material or items delivered to Vendee which are in excess of quantities so specified, and excess quantities shipped shall at Vendee's option be returned at Vendor's expense. Vendee may without extra cost time to time change the time of deliveries or delivery schedules or direct the temporary suspension of scheduled shipments. Vendor waives all obligations of Vendee with respect thereto or to facilities for receipt of goods being delivered.
7. **TIME** Time is of the essence and delivery must be actually effectuated within the time stated on this order. In the event of any failure or delay in delivery, Vendee has the right, in addition to any other rights provided by law, to place this order elsewhere and to hold Vendor liable for any excess cost involved as well as for other damages. Unless otherwise expressly provided, the Vendor shall be obligated to make delivery to Vendee's premises as designated herein and all prices stated herein shall be for such delivery free from all freight, transportation, drayage, boxing, and similar charges. No charge will be allowed for packing, boxing, or cartage unless agreed upon at the time of purchase but damage to any goods not packed to insure proper protection will be charged to Vendor.
8. **CANCELLATION** Vendee has the right to cancel the unfilled portion of this order upon giving Vendor written notice. If Vendee elects to cancel this order, Vendee shall have the option to take any goods or services included in this order whether finished, unfinished, or in process upon such terms as Vendee and Vendor may then agree upon.
9. **EMERGENCIES** Vendee shall not be held responsible for failure to accept or delay in accepting goods or services hereunder, if such failure or delay is due to act of God or the public enemy, war, governmental acts or regulations, fire, flood, embargo, quarantine, epidemic, strike, accident, unusually severe weather or other cause either similar or dissimilar to the foregoing beyond Vendee's control. In the event of failure to accept or delay in acceptance of goods sold hereunder or performance of services hereunder for any such cause, the quantity of goods and period of services provided for in the order may be reduced accordingly by written notice by the Vendee to the Vendor.
10. **WARRANTY** Vendor expressly warrants that all material and work covered by this order will conform to the specifications, drawings, samples or other description furnished to Vendee and shall be merchantable, of good material and workmanship and free from defect. Vendor expressly warrants that all material and work will meet the quality standards specified by Vendee and if no such standards are provided, that such material and work will meet the highest standards in the industry for such material and work. Vendor expressly warrants that

all the material covered by this order shall be fit and sufficient for the purposes intended. All warranties of Vendor contained herein shall survive delivery and shall not be deemed waived either by reason of inspection and/or acceptance of said goods or services or by the payment therefor by the Vendee.

11. **INSPECTION** All Material shall be received subject to Vendee's inspection and rejection. Defective material or material not in accordance with Vendee's specifications will be held for Vendor's instructions and at Vendor's risk and if Vendor so directs, will be returned at the Vendor's expense. No goods returned as defective shall be replaced without a new order. Payment for material on this order prior to inspection shall not constitute an acceptance therefor.
12. **BREACH OF TERMS** in the event this order is not filled in each particular, as specified, or if Vendor breaches any of the terms hereof including the warranties of Vendor, Vendee reserves the right to pursue any and all legal remedies available, including but not limited to:
 1. To Cancel this order in part or in its entirety.
 2. To recover all loss, damage and expense caused by such failure.
 3. To require delivery by any means. Vendor shall pay any increased transportation expense.
13. **CHANGE IN SPECIFICATIONS** Vendee reserves the right at any time to make changes in drawings and specifications as to any material and/or work covered by this order. Any difference in price or time for performance resulting from such changes shall be equitably adjusted and the contract shall be modified in writing accordingly.
14. **MATERIAL FURNISHED BY VENDEE** Whenever Vendor shall, by virtue hereof have in its possession property of Vendee or of its customers, Vendor shall be deemed an insurer thereof and shall be responsible for its safe return to Vendee and Vendor shall carry insurance to adequately protect Vendee hereunder.
15. **TOOLS** Unless otherwise herein agreed, Vendor at its own expense shall furnish, keep in good condition, and replace when necessary all dies, tools, gauges, fixtures and patterns necessary for the production of the material ordered. The cost of changes in the aforementioned items necessary to effect design or specification changes ordered by Vendee shall be paid for by the Vendee. Vendee has the option, however, to take possession of and title to any dies, tools, gauges, fixtures and patterns that are special for the production of the material covered by this order, and shall pay to Vendor the unamortized cost thereof; provided, however, that this option shall not apply if the material hereby ordered is the standard product of Vendor if like material is being sold by the Vendor to others.
16. **PATENT INFRINGEMENTS** By acceptance and in consideration hereof, the Vendor warrants that the articles ordered herein do not in any way infringe on any patent trademark or copyright; and Vendor agrees to defend, protect, indemnify and save harmless Vendee, its successors, assigns, customers, dealers, agents and users of its products, against all suits at law or in equity, and from all damages. Loss, claims, and demands, for actual or alleged infringement of any United States or foreign patent, trademark or copyright.
17. **SECRET MATTER AND ADVERTISING** Vendor recognizes the confidential and privileged nature of all information that may be disclosed in the performance of this purchase order. Vendor shall be responsible for the safeguarding of all secret, confidential, or restricted matter that may be disclosed or developed in connection with this order and will bring to the attention of all persons connected with the performance of the order this provision Vendor shall not, without first obtaining the written consent of Vendee, in any manner, advertise or publish the fact that Vendor has contracted to furnish Vendee the material herein ordered, and for the failure to observe this provision, Vendee shall have the right to terminate the contract resulting from the acceptance of this order without any obligation to accept deliveries after the date of termination or make further payments except for completed articles delivered prior to termination. In any event, Vendor shall not disclose any information regarding this purchase order without the prior written approval of the Vendee.
18. **MECHANICS LIEN AND INDEMNITY** If Vendor's work under this order involves operations by Vendor on the premises of Vendee, or one of its customers, or covers the performance of labor for Vendee, it is agreed that:
 1. Vendor shall keep premises and work free and clear of all mechanical liens, and furnish Vendee proper affidavits and/or waivers certifying thereto.
 2. Unless otherwise provided by written contract, the work will remain at Vendor's risk prior to written acceptance by Vendee and Vendor will replace at Vendor's own expense all work damaged or destroyed by fire, force or violence of the elements or any other cause whatsoever.
 3. Vendor shall indemnify, save harmless and defend Vendee from all liability for loss, damage or injury to person or property in any manner arising out of or incident to the performance of this contract.
 4. Vendor shall indemnify, save harmless and defend Vendee from any and all claims, demands, or suits made or brought against Vendee on account of any of the terms or provisions of any applicable Workman's Compensation law and shall furnish Vendee with proper evidence that Vendor is insured against all liability under such law.

5. Vendor further agrees to furnish insurance carrier's certificate showing that Vendor has adequate public liability and property damage insurance coverage. Said certificate must set forth amount of coverage, policy number and date of expiration. Such coverage shall meet the higher of the requirements set forth by Vendee or those of any customer where Vendor will be going onto a customer's site.
19. **PROOF OF COMPLETION** On all orders covering service or work performed, Vendor shall furnish proof of satisfactory completion to Vendee before payment of invoice covering such work will be made. Such proof will consist of any standard from showing Vendee's purchase order number, date of completion, and must be signed by authorized agent of Vendee.
20. **LABOR LAWS AND OTHER REGULATIONS** All Federal and State Laws and Regulations applicable to the subject matter are a part of the contract and will be read into it though not recited or referred to. Vendor represents that the items called for herein will be produced, manufactured and delivered in accordance with all applicable Federal, State, and local laws; including without limitation all applicable requirements of the Fair Labor Standards Act of 1938, as amended and Presidential Executive Order 11246, as amended by Executive Order 11375 and the current applicable rules, regulations and standards issued thereunder. All invoices in order to be passed for payment must contain a statement certifying that the items covered by such invoice were produced, manufactured and delivered in compliance with Sections 6,7, and 12 of the Fair Labor Standards Act, as amended, and of the regulations and order of the United States Department of Labor issued under Section 14 thereof. Vendor warrants the product and/or services supplied hereunder comply with the current applicable provisions of the Occupational Safety and Health Act of 1970, and the current applicable rules, regulations and standards issued thereunder including the laws of any state applicable thereto. Vendor agrees to indemnify Vendee and save Vendee harmless if Vendor fails to comply with the foregoing and in the event of such failure Vendee may, in addition, cancel this order ad contract.
21. **DUTY DRAWBACK RIGHTS** This purchase order includes all related customs duty and import drawback rights, if any, including rights developed by substitution and rights which may be acquired from Vendor's suppliers which Vendor can transfer to Vendee. Vendor agrees to inform Vendee of the existence of any such rights and upon request to supply such documents as may be required to obtain such drawbacks.
22. **REMEDIES** The remedies herein reserved shall be cumulative and additional to any other or further remedies provided in law or equity. No waiver of a breach of any provisions of this contract shall constitute a waiver of any other breach, or of such provision. In addition to the remedies specified above in this contract, Vendee and Vendor shall each have all the remedies provided for by the Uniform Commercial Code of the State of Ohio, except that Vendor's remedy of cure shall in no event bind Vendee to accept a new conforming tender (a) subsequent to Vendor's taking back of nonconforming goods and refunding or otherwise crediting to buyer the purchase price, or (b) subsequent to the expiration of the time for performance specified in this contract.
23. **DIVISIBILITY** If any provision of part of these terms and conditions shall be held invalid or unenforceable, the remainder of such terms and conditions shall nevertheless be deemed valid and binding upon the parties hereto.
24. **COMPLETE AGREEMENT** The contract resulting from the acceptance of the order represents the entire agreement between Vendor and Vendee with respect to the subject matter hereof. There are no promises, terms or conditions except as contained herein and all previous representations, communications, negotiations and agreements, oral or written, are merged herein.