

## TERMS OF PURCHASE

1. **CONTRACT:** The terms of the purchase order, these terms of purchase, and any riders and signed documents referred to in the purchase order (collectively, the "Purchase Order") constitutes the final, complete and exclusive terms of agreement with the Seller and may not be modified or rescinded except by a written change order issued and signed by the Buyer. The parties agree that the express terms of the Purchase Order may not be explained or supplemented by evidence of trade usage or prior course of dealing. The Buyer will not be bound by any additional or different terms in any proposal, offer, acknowledgment, invoice or any other record or document submitted by the Seller at any time. If this Purchase Order is construed as an offer, this offer expressly limits acceptance to the terms of this Purchase Order and the Buyer hereby rejects any different or additional terms contained in any response to this offer from the Seller. If this Purchase Order is construed as an acceptance of an offer, this acceptance is expressly conditioned on the offeror's assent to the terms contained in this Purchase Order. If this Purchase Order is construed as a confirmation of an existing contract, the parties agree that this confirmation states the final, complete and exclusive terms of any contract between the parties.

2. **WARRANTY:** Seller warrants title to goods sold hereunder to be free and clear of all liens, encumbrances and/or colorable claims. Seller further warrants that all goods and services (a) shall be of merchantable quality and free from defects in material, design and workmanship, (b) shall be fit for the purposes intended, (c) shall conform to promises, affirmations, descriptions, specifications, samples, drawings and plans (collectively, the "Specifications") provided from time to time, if any, and (d), in the case of services shall be performed in a prudent, professional and competent manner in accordance with the highest standards of the industry.

3. **PRODUCT UNIFORMITY:** Seller shall not make any changes in the goods that may alter properties, impurities, specifications, dimensions, or any other characteristic of the goods.

4. **INDEMNITY/SAFEGUARDS/INSURANCE:** Seller agrees to defend, indemnify, and hold harmless Buyer from any loss, cost, damage, claim or expense, including reasonable attorney's fees, of any nature including, but not limited to, any claim of death or injury to persons or damage to property arising out of or in any way related to (whether directly or indirectly) the goods and services supplied hereunder, including, without limitation, defects in design, materials, workmanship or manufacture, regardless of whose actions, omissions, or negligence may have caused the incident, even if Buyer's negligence was a or the predominant cause, except where such loss, cost, damage, claim or expense results from the sole negligence of Buyer.

Without in any way limiting Seller's obligations or liability set out hereunder, Seller shall procure and maintain during the term of the Purchase Order and at its expense insurance in sufficient amounts to ensure its obligations and liabilities hereunder. Such insurance shall include at a minimum the following:

- a) Automobile liability insurance protecting the Seller from automobile bodily injury and property damage liability with a combined limit of \$1,000,000 per claim.
- b) Commercial general liability insurance which includes broad form contractual, property damage, products/completed operations, personal injury, premises-operations, independent contractors and subcontractors and fire legal liability. Coverage will be on a claims made basis with limits of liability no lower than \$2,000,000 per occurrence and \$2,000,000 aggregate combined single limit, personal injury, bodily injury and property damage.
- c) Such insurance of employees as may be required by any workers' compensation act or other law, regulation or ordinance which may apply in the circumstances.

For (a) and (b) above, such policies shall name Buyer as additional insured when requested by Buyer.

Seller shall furnish to Buyer certificates of insurance setting forth the amount(s) of coverage, policy number(s) and date(s) of expiration for insurance maintained by Seller; Seller shall use commercially reasonable efforts to provide Buyer with thirty (30) days' prior written notification from the insurer of any termination or reduction in the amount or scope of coverage. Seller's purchase of appropriate insurance coverage or the furnishing of certificates of insurance shall not release Seller of its obligations or liabilities under the Order. In the event of Seller's breach of this provision, Buyer shall have the right to cancel the undelivered portion of any goods or services covered by

the Order and shall not be required to make further payments except for conforming goods delivered or services rendered prior to cancellation.

Without limiting the foregoing, if Seller's work under the Purchase Order involves operations by Seller on Buyer's premises, Seller agrees to take all proper precautions in its operations against the occurrence of injury to any person or damage to property, and to be responsible for and to hold Buyer harmless from all loss and any claim by reason of injury, including death, to any person or damage to property solely and directly attributable to Seller in connection with such work, and from all fines, penalties, or loss incurred by reason of failure to comply with the terms as aforesaid.

5. INFRINGEMENT: Seller warrants that the use or sale of the goods and services shall not infringe any patent claims, trademarks or other intellectual property rights in any jurisdiction where Buyer will use such goods or services. Seller shall defend, indemnify and hold harmless Buyer from all expenses, including attorneys' fees, claims and liabilities arising out of a breach of this warranty. Seller will not assert any claim with respect to technical information that Seller may disclose in connection with goods or services supplied under the Purchase Order.

6. REJECTION AND REVOCATION OF ACCEPTANCE: Buyer shall have a reasonable opportunity to inspect goods. If the goods or the tender of delivery fail in any respect to conform to the terms of this Purchase Order, the Buyer may reject the goods or their tender, or the Buyer may revoke its acceptance of the goods where appropriate.

7. DELIVERY; TIME IS OF THE ESSENCE; SHIPMENT: Except as otherwise specified on the face of this Purchase Order, all goods shall be delivered DDP, INCOTERMS 2020, Buyer's location stated on the front of this Purchase Order. Seller's performance shall be in strict conformance with the delivery and other time provisions specified in this Purchase Order. TIME IS OF THE ESSENCE. If Seller fails to perform according to the terms of this Purchase Order within the required time, Buyer may cancel this Purchase Order and purchase the goods and services elsewhere and hold Seller liable for any costs or damages incurred. Seller shall forward notice of shipment of goods to Buyer within twenty-four (24) hours, and such notice is an express condition to Buyer's duty under this Purchase Order. The original Bill of Lading must accompany the invoice and be mailed in accordance with the instructions on the face of this Purchase Order. Complete packing lists must accompany each shipment. Separate invoices are required for each Purchase Order and for each shipment when partial deliveries are made. Buyer may change the rate of scheduled shipments or temporarily suspend the Purchase Order, and the Seller shall not be entitled to any change in the prices(s) set out in the Purchase Order.

8. TAXES; DUTIES: Any federal, state, provincial, or local taxes related to the manufacture of goods sold herein, or otherwise applicable to the goods or services to be provided herein, are included in the Purchase Order price and shall be paid by Seller.

9. CONFIDENTIALITY: All drawings, plans, specifications or other documents, data or information furnished by Buyer to Seller, orally or in writing, shall be treated as confidential by Seller. Seller shall not make any commercial use thereof except in performance of this Purchase Order. Seller shall not disclose same to anyone before or after performance of this Purchase Order without having obtained the written consent of Buyer. All such drawings, plans, specifications or other documents, data or information shall be returned to Buyer upon request.

10. COMPLIANCE WITH LAWS: Seller shall comply with the Fair Labor Standards Act. Seller shall not discriminate against any employee or applicant for employment because of age, race, color, creed, national origin or sex. Seller shall comply with all applicable federal, state and local fair employment practices laws, including all provisions of Executive Order 11246 of September 24, 1965, the Rehabilitation Act of 1973, and the Vietnam Era Veterans Readjustment Assistance Act of 1974 and any amendments thereto. Any clause required to be in a document of this type by any applicable law or administrative regulation having the effect of law shall be deemed to be incorporated herein. Seller warrants that the goods and services shall comply with all applicable laws, standards and regulations, whether governmental or industrial, in effect on the date of delivery or known in the industry to become effective after such date.

11. ASSIGNMENT AND SUBCONTRACTING: Any attempt by Seller to assign the rights or delegate the duties under this Purchase Order shall be null and void absent the written permission of the Buyer. Seller shall not subcontract all or any part of its performance of this Purchase Order to any other party without Buyer's prior written consent. No assignment or subcontracting by Seller, with or without Buyer's consent, shall relieve Seller of any obligations under this Purchase Order.

12. APPLICABLE LAW: The Purchase Order, and the rights and obligations of the parties under the Purchase Order, shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein. For greater certainty, the United Nations Convention on Contracts for the International Sale of Goods or the United Nations Convention on the Limitation period in the International Sale of Goods, as amended, shall not apply to the Purchase Order. Any legal proceeding related in any way to the Purchase Order shall be commenced in a court in Ontario. The parties consent to the exclusive jurisdiction of such court as their freely negotiated choice of forum for all such legal proceedings.

13. CHANGES: The Buyer may direct changes to the quantities, delivery dates, or Specifications or to the other provisions or requirements of the Purchase Order or the scope of the work covered by the Purchase Order (any such change, a "Change") upon notice to the Seller. Seller shall promptly review any such Change and within five (5) days notify Buyer in writing of any change in Seller's cost of performance or delay in delivery. Following receipt of Seller's notice, and upon mutual agreement as to any price or delivery change, Buyer shall issue a written change order. Failing mutual agreement as to the price or delivery change within such period of time as the Buyer deems reasonable in the circumstances, then the Buyer may at its discretion equitably adjust the price or time for performance after receipt of such supporting documentation as the Buyer may require. If Seller fails to notify the Buyer within the five (5) day period mentioned above of any change in Seller's cost of performance or delay in delivery, Seller shall be deemed to have waived all claims for increased cost or extension of time of performance.

14. TERMINATION: The Buyer may, at its option, terminate the Purchase Order in whole or in part for any reason without penalty by giving Seller written notice. Seller shall promptly comply with Buyer's instructions to minimize the cost to Buyer. Upon Seller's receipt of such notice of termination, Seller shall, unless directed otherwise by Buyer in writing, (i) terminate immediately all work under the Purchase Order, (ii) transfer to the Buyer all finished goods which conform to the requirements of the Purchase Order and does not exceed the quantity specified in the Purchase Order, and (iii) transfer all actual and reasonable quantities of work-in-process and raw materials produced or acquired by Seller prior to the effective date of termination in order to produce the quantities of goods specified in the Purchase Order which cannot reasonably be used by Seller in producing goods or services for itself or other customers. Upon such termination by Buyer, Seller shall be entitled to recover only the following amounts without duplication: (i) the Purchase Order price for the goods or services that have been completed in accordance with the Purchase Order and not previously paid for; and (ii) the actual costs of the work-in-process and raw materials transferred to the Buyer as contemplated above. In no circumstances shall the Buyer be liable to the Seller, directly or for claims by Seller's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, unamortized depreciation or general or administration burden charges from termination of the Purchase Order. Within 30 days of the effective date of termination, Seller shall submit its termination claim to Buyer with sufficient supporting data to permit Buyer's audit and shall promptly furnish any additional information Buyer requests. Buyer shall have access to Seller's premises and records prior or subsequent to payment to verify charges supporting a termination claim. If Seller fails to submit its termination claim with the 30 day period referred to above, Buyer may determine, on the basis of information available to it, the amount if any due Seller with respect to the termination and such determination shall be final. If Seller delivers any other material after termination, Buyer may return the material and debit Seller for any cost related thereto.

The Buyer reserves the right to terminate all or any part of the Purchase Order without liability or further obligation, if Seller (i) repudiates, breaches, or threatens to breach any provision of the Purchase Order, including Seller's warranties or (ii) undergoes a material adverse change in its financial condition, including without limitation if Seller (A) admits its inability to pay its debts as they become due or otherwise acknowledges its insolvency; (B) institutes or has commenced against it any proceeding seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, dissolution, winding up, reorganization, arrangement, protection, relief or composition of it or any of its property or debt or making a proposal with respect to it under any law relating to bankruptcy, insolvency,

reorganization, or compromise of debts or other similar laws; (C) has a receiver, trustee, agent, custodian or other similar official appointed for it or a substantial part of its assets; or (D) ceases or threatens to cease carrying on business in the ordinary course.

15. WAIVER: Buyer's waiver of any breach by Seller of any of the provisions of this Purchase Order shall not constitute a waiver of any other breach of the same or any other provision.

16. LIMITATION OF LIABILITY: IN NO EVENT SHALL BUYER BE RESPONSIBLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, SELLER'S LOSS OF ACTUAL OR ANTICIPATED PROFITS ARISING OUT OF, OR IN CONNECTION WITH, THIS PURCHASE ORDER (INCLUDING WITHOUT LIMITATION DAMAGES ARISING FROM THE SUSPENSION, TERMINATION OR BREACH HEREOF).

17. REMEDIES: All remedies set out in the Purchase Order are cumulative. The Buyer's failure to resort to any remedy is not a waiver of any default or remedy. In addition, the Buyer may avail of any other remedy in the Purchase Order and those available at law or equity.

18. HEADINGS AND SEVERABILITY: Any headings preceding the several articles hereof are inserted solely for convenience of reference, shall not constitute a part of the Purchase Order and shall not otherwise affect the meanings, content, effect or construction of this Purchase Order. In the event that any provision contained herein is held to be invalid or unlawful, such provision shall be severable from the remaining provisions of this Purchase Order, which shall remain in full force and effect.

19. PUBLICITY: Seller shall not, and shall require that its subcontractors and suppliers of any tier shall not, cause or permit to be released any publicity, advertisement, news release, public announcement, or denial or confirmation of same, in whatever form, regarding any aspect of this Purchase Order or the goods and/or services to which they pertain without Buyer's prior written approval.

20. RESPONSIBILITY FOR PROPERTY: Unless otherwise specified, upon delivery to Seller, or manufacture or acquisition by Seller, of any materials, parts, tooling, data or other property, title to which is held by Buyer, Seller assumes the risk of and shall be responsible for any loss thereof or damage thereto. In accordance with the provisions of this Purchase Order, but in any event upon completion thereof, Seller shall return such property to Buyer in the condition in which it was received, except for reasonable wear and tear, and except for such property as has been reasonably consumed in the proper performance of this Purchase Order.

21. ADDITIONAL REQUIREMENTS: Buyer's website may contain additional requirements for certain items covered by the Purchase Order, including quality, rules for subcontractors, and a Supplier Code of Conduct. Any such requirements shall be deemed to form part of the Purchase Order and are binding on Seller. Buyer may periodically update such requirements by posting revisions thereto on its internet website and, in such event, Buyer will notify Seller of such updates and revisions. In the event of conflict between the terms contained in these terms of purchase and such additional requirements, these terms of purchase shall prevail. You may visit Buyer's website at <https://ercoworldwide.com>.

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**Buyer is a member of the American Chemistry Council (ACC) and is committed to the Responsible Care® Ethic and Principles for Sustainability, through its commitment to the Responsible Care Global Charter. Buyer requires the support of its suppliers to meet the principles of Responsible Care®.**