

# FABORY, FABORY NORTH AMERICA, FABORY CANADA INC

## Standard Terms & Conditions

### Article 1: Applicability

1.1 The order placed herewith for the purchase of goods and / or services by *FABORY, FABORY NORTH AMERICA, FABORY CANADA INC* ("Buyer") is subject to the term and conditions of purchase stated herein.

1.2 BUYER SPECIFICALLY OBJECTS TO THE INCLUSION OF ANY DIFFERENT OR ADDITIONAL TERMS OR CONDITIONS BY THE SELLER IN ACKNOWLEDGING AND ACCEPTING THIS ORDER. If Seller does include different or additional terms or conditions in its acknowledgement, acceptance, confirmation, invoice, or other written forms sent in response to this order and Seller expressly conditions in acceptance of this order upon acceptance by the Buyer of such different and additional terms and conditions, neither Buyer's acceptance of delivery of all part of the goods covered thereby nor payment for those goods shall constitute acceptance of Seller's different and additional terms.

1.3 If this order is made in response to a written proposal or other form of offer from Seller, and is Seller's proposal or other form of offer contains terms additional to or different from the terms and conditions contained in this Purchase Order, then BUYER'S ACCEPTANCE OF SELLER'S PROPOSAL OR OFFER IS HEREBY EXPRESSLY CONDITIONED UPON SELLER'S ASSENT TO ALL THE TERMS AND CONDITIONS CONTAINED IN THIS PURCHASE ORDER. The commencement of any work or the performance of any services purchased hereunder, as well as the shipment of conforming or nonconforming goods shall constitute acceptance by Seller of the Purchase Order and all its terms and conditions.

1.4 If Buyer agrees in writing to Seller's different or additional terms or conditions, all other provisions of the Purchase Order shall remain in full force.

### Article 2: Binding Orders

2.1 This order constitutes an offer and maybe revoked or changed by Buyer at any time before its acceptance in writing by seller

2.2 The Buyer may require the Seller to acknowledge and confirm within the time period specified by the Buyer's in Buyer's acknowledgement form provided by the Buyer.

### Article 3: Change in Price

3.1 Seller guarantees that the prices on the face of the order shall not be increased unless agreed to in writing.

3.2 Unless expressly agreed to the contrary, all prices shall be net selling price (after deductions for discounts, promotions, ect.)

3.3 Seller further guarantees that the prices contained in this Purchase Order do not exceed the maximum establish by federal or state law.

3.4 Buyer shall receive the benefit of any general reduction that Seller may make in the price of goods with the quality and quantity provided for in this order.

### Article 4: Warranty

4.1 Seller expressly warrants that the goods or services purchases in accord with this Purchase Order shall confirm to the specifications, drawings, samples or other descriptions furnished or specified by Buyer, including performances specifications, and will be fit for the purpose intended, be of good material and workmanship, and be free from any defect and material, labor or fabrication. THE WARRANTIES CONTAINED IN THIS PARAGRAPH ARE IN ADDITION TO WARRANTIES AND REMEDIES PROVIDED BY THE UNIFORM COMMERCIAL CODE.

### Article 5: INSPECTION AND TESTING BY SELLER

5.1 Prior to dispatch, the Seller shall carefully inspect and test whether the goods are in compliance with this order. At the Buyer's request, the Seller shall submit at its expense, a certified copy of the text reports.

5.2 The Buyer shall have the right to inspect and test the goods or their performance during their processing, manufacturing or storage by Seller.

5.3 Buyer or its agents shall have access during normal business hours to the Seller's facilities where the goods ordered by the Buyer are manufactured, processed or stored.

### Article 6: Packaging and Shipment

6.1 All goods ordered pursuant to this Purchase Order shall be suitable of packed, marked and shipped in ordinance with the requirements of common carriers in a manner to secure lowest transportation costs.

6.2 Seller must follow all Buyer's written instructions as to labeling, packing, palletizing, certification of standard, ect. These instructions shall be strictly followed unless Buyer expressly agrees in advance to any modifications.

6.3 Seller shall follow all Buyer written instructions as to mode and routing of shipments including designation of common carrier.

6.4 Unless otherwise specified on the face of this order or authorized in writing by the Buyer, all shipments are F.O.B Buyer's facility and shall be made at Seller's expense and risk. Unless otherwise expressly shown on the face of this order no charge will be allowed for packing, boxing, freight, expense or cartage. If the price herein does

include freight and the freight rate for charges between point of shipment and designation are reduced to shipment, the price paid shall be reduced accordingly and Buyer shall be entitled to a credit equivalent to such reduction.

6.5 Duplicate itemized invoice showing Buyer's Purchase Order, accompanied by bill of lading covering each shipment and giving weight and rate must be rendered on the date of shipment.

6.6 In addition to other rights and remedies provided to this order, Buyer may reject goods shipped contrary to instructions or not in recognized standard container.

#### Article 7: Storage

7.1 If the Buyer, for whatever reason, not be able to take delivery of the goods as the time agreed and the goods are ready for dispatch, the Seller shall, at the Buyer's request, store and safeguard the goods and take all reasonable steps to prevent the quality from deteriorating until they have been delivered to the Buyer. The Buyer and the Seller shall make arrangements relating to payment and date of delivery.

#### Article 8: Transfer of Title and Passing of Risk

8.1 Title to and the risk of loss of the goods covered by this order shall not pass to the Buyer until delivery of goods at Buyer's facility and until acceptance of the goods by Buyer.

8.2 Seller assumes all responsibility for and expense of preparing and filing claims against carriers for loss or damage to goods in transit.

8.3 If Seller postpones the delivery at Buyer's request as provided in Article 7 and stores goods at the Buyer's request, title in goods shall pass to the Buyer, provided payment has been made, but the risk in the goods shall remain with the Seller. The Seller shall store goods separately as the recognized property of the Buyer.

#### Article 9: Delivery

9.1 Delivery of goods purchased under this order must be made within the time specified by the Buyer on the face of this order unless Buyer approves in writing a revised delivery schedule.

9.2 Seller shall promptly notify Buyer in writing if Seller has reason to believe that deliveries will not be made as scheduled, stating the causes for the antedated delay.

9.3 TIME IS HEREBY EXPRESSLY DECLARED TO BE OF THE ESSENCE AND THE SELLER IS NOTIFIED THAT FAILURE TO SHIP ON TIME WILL RESULT IN SUBSTANTIAL DAMAGE TO BUYER.

9.4 Unless otherwise specified by this order, all goods purchased under this order must be tendered in a single delivery and not to lots from time to time.

9.5 If delivery is not made as specified this order, Buyer may terminate this order as to all or any portion of the goods ordered and Seller agrees to indemnify Buyer for any loss, damage or penalty resulting from Seller's failure to make delivery as specified including any incidental and consequential damages. Buyer may further return, with a carrier chosen by Buyer and at Seller's expense and risk, any goods delivered pursuant to this order which are no longer useable by Buyer as the result of Seller's breach of delivery terms of this agreement.

#### Article 10: RIGHT OF INSPECTION AND REJECTION

10.1 All goods are received subject to Buyer's right to Buyer's right of inspection at Buyer's facility before payment or acceptance. Payment for the goods purchased pursuant to this order shall not constitute acceptance of the goods.

10.2 Buyer's rejection or revocation of acceptance of any goods or services purchased pursuant to this order shall be effective if Buyer notifies Seller within (1) month following Buyer's discovery of the defect or other breach justifying rejection or revocation of acceptance.

10.3 Any rejected goods may be returned or held at Seller's risk and expense, and Buyer may charge Seller with the cost of transportation, shipping, unpacking, examining, repacking, reshipping, or like expense.

10.4 At Buyer's option, Seller shall at all possible speed and at Seller's expense, including transportation costs, replace the rejected goods or services, but goods returned as defective shall be replaced without Buyer's written authorization.

#### Article 11: DAMAGES

11.1 The remedies conferred on the parties by this Purchase Order are in addition to all remedies available under the Uniform Commercial Code as enacted by the State of Michigan and are cumulative with all other rights accorded to the parties under law or equity. Such rights, moreover, shall in no way impair the rights and remedies of either party incident to any obligation collateral or ancillary to the Purchase Order.

11.2 Neither party shall be liable for delays or defaults due to acts of God, acts of governmental authority, war, fire, flood, strikes, or other causes beyond its control, provided, that Seller shall not be relieved of liability for delays or defaults due to labor trouble or shortage, inability to obtain materials, equipment or transportation, and provided also, that in any event Buyer may terminate this agreement as to all or any portion of the goods if delivery is not made as specified.

#### Article 12 PAYMENTS:

12.1 Unless otherwise agreed to in writing by Buyer, the purchase price set forth on the face of this order constitutes the full amount due from Buyer to Seller pursuant to this order.

12.2 Buyer shall pay the purchase price within sixty (60) days after delivery of the goods or revoke its acceptance of all or part of the goods in accord with the provisions of the Uniform Commercial Code as enacted by the State of Michigan, except as modified by the terms of the Purchase Order.

12.3 If the goods are delivered prior to the delivery date specified by this Purchase Order, the Buyer reserves the right to make payment in accord with the provisions of paragraph 12.2 with the term for payment commencing on the agreed date of delivery rather than the actual date of delivery. The Buyer reserves the right to charge Seller for any costs of warehousing storage resulting from early delivery of the goods, or to return the goods to the Seller at Seller's expense.

Article 13: STATUTORY REQUIREMENTS

13.1 The Seller warrants that the goods or services purchased pursuant to this order have been manufactured, delivered or performed in compliance with all applicable federal, state and local laws and regulations, and Seller agrees to furnish upon request, certification of such compliance.

13.2 Seller agrees to furnish on each invoice a certificate, in a form approved by the United States Department of Labor, that the goods or services purchased have been manufactured, delivered or performed in accordance with the Fair Labor Standards Act of 1938, as amended. Seller agrees to indemnify Buyer for any damage, claim or judgment incurred by Buyer because of violation of this provision.

Article 14: INFRINGEMENT OF PATENTS, LICENSES AND THE LIKE

14.1 Seller also agrees to indemnify and hold Buyer harmless from all claims, expenses and judgments based upon any actual or alleged unfair competition or infringement of any patent, trademarks or copyright relating to any goods purchased hereunder, unless such claim arises out of compliance by Seller with specifications of Buyer.

Article 15: CONFIDENTIALITY

15.1 The Seller may not disclose to any third parties any information or knowledge obtained by Seller concerning Buyer's business affairs and trade secrets including, but not limited to, models, drawing, schemes, designs, logistic formats and the like.

Article 16: TERMINATION / CANCELLATION OF AGREEMENT

16.1 In the event of nonperformance, late or improper performance by the Seller of any of its obligations pursuant to this Purchase Order or any ancillary agreements based on the Purchase Order, or in the event of the Seller's bankruptcy, insolvency or discontinuance of business, Seller shall be deemed to be in default by operation of law and the Buyer may unilaterally terminate the order in whole or in part by written notice sent by registered mail to Seller. Buyer shall not be liable to Seller for damages as a result of Buyer's termination of the Purchase Order pursuant to this paragraph nor shall Buyer's termination of this order pursuant to this paragraph premise any rights Buyer may have in accord with the provision of the Purchase Order, the Uniform Commercial Code as enacted in the State of Michigan, or at law or equity.

16.2 Payment for the goods purchased pursuant to this order shall be subjected to set off or recoupment for any present or future claims which Buyer or any of its affiliated companies may have against Seller.

16.3 Upon material breach by either party of obligations under this Purchase Order, if such breach substantially lessens the value of the contract to the other party, the other party may give notice of intent to terminate the Purchase Order. Notice of termination shall become final and effective thirty (30) days after notice of intent to terminate has been given, without necessity for judicial action, unless the notice is withdrawn as a result of correction of the breach or other action satisfactory to the party who gave the notice.

16.4 Upon the occurrence of any circumstances, including adoption of any law, regulation or policy by any government, that adversely affects the ability of the Buyer or Seller to perform its obligations hereunder or that so changes the relationship between Seller and Buyer as to undermine the basic assumptions and expectations of the parties at the time this Purchase Order was executed, or upon the failure of Buyer to execute any new or amendatory Supplement as provided herein, Buyer may terminate this Purchase Order by given notice to Seller. Notice of termination shall be effective immediately without necessity for judicial action.

16.5 Buyer may at any time cancel this Purchase Order or any component release under it, in whole or part, for any reason, by written notice, whereupon Seller shall terminate work pursuant to the terms of such notice. Seller shall promptly advise Buyer of the quantities of applicable work and material on hand or purchased prior to Buyer's cancellation to support the pending release. Seller shall comply with Buyer's instructions regarding disposition of such work and material. All claims by Seller based on the cancellation of any component release or the Purchase Order must be asserted in writing and in full within thirty (30) days from the date of nonfiction of the cancellation, or shall be waived. Buyer shall pay Seller the Purchase Order specified net price of completed work related to the pending release only, and the cost to Seller (excluding profit or losses) of work in process and raw material, less, however (a) the agreed value of any items used or sold by Seller with Buyer's consent, and (b) the reasonable value or cost (whichever is higher) of any defective, damaged or destroyed work or material and any items sold or used by Seller without Buyer's consent. **Buyer will make no payments for furnished work, work in progress or raw material fabricated or procured by Seller unnecessarily in advanced of the schedule shipment releases or in excess of Buyer's delivery requirements as specified in Buyer's Purchase Order or release schedules.** The payment provided under this clause shall constitute Buyer's liability in the event this Purchase Order or any component release is terminated as provided herein. The foregoing provisions of this clause not apply to any termination by Buyer for default of Seller or under the following circumstance where these express provisions shall apply: A. To the extent this Purchase Order covers items normally carried by Seller (as distinguished from items specially made to Buyer's specifications), Buyer shall have no liability for any termination of this Purchase order, in whole or in part, prior to actual shipment, and for any termination within ten (10) days after receipt by Buyer. Buyer's liability shall be limited to

returning said items and reimbursing Seller for direct costs of handling and transportation. B. In the event of any bankruptcy proceeding by or against Seller, or the appointment of a receiver for the benefit of Seller's creditors, Buyer may cancel any unfilled part of this Purchase Order without any liability whatsoever. C. Buyer shall not be liable for failure to take delivery of material or work or render any other performance in the event of fire, accidents, labor difficulties, government actions, third part failures or any other conditions beyond Buyer's control.

Article 17: LIABILITY

17.1 In the event of breach of this agreement by Seller, Seller shall be liable to Buyer for any loss or damages incurred by Buyer, including incidentals and consequential damages, and any loss or damages that Buyer is entitled to at law or equity, including any damages Buyers is entitled to in accord with the provisions of the Uniform Commercial Code as enacted by the State of Michigan.

17.2 Seller agrees to indemnify and hold Buyer harmless, assume legal liability for and at Buyer's option, defend Buyer, its agents, employees, officers and directors from any claims or action by any third person arising out of or alleged to arise out of the Buyer or third persons. "Third persons" shall include, by way of example and not limitation, employees of both Buyer and Seller and all third persons not connected with Buyer or Seller. Any costs, settlement, judgment or other expense that Buyer, its agents, employees, officers or directors may pay, or become obligated to pay, in connection with any such claim or action shall be reimbursed by Seller.

17.3 If Seller's work under this agreement involves operations by its employees on the premises of buyer or one of its customers, Seller shall maintain public liability, property damage and employees' liability and compensation insurance as will protect Buyer from any claims or liability under any applicable Workmen's Compensation and Occupational Disease Acts.

Article 18: ASSIGNMENT OF RIGHTS AND OBLIGATIONS

18.1 Nor right or interest in this order shall be assigned, nor any obligation delegated, by Seller without Buyer's written permission.

Article 19: INSURANCE

19.1 Seller must purchase insurance, including product liability insurance, in an amount sufficient to insure Seller's obligations and liabilities as provided by this Purchase Order, at Buyer's request Seller shall provide Buyer with proof of insurance.

Article 20: GOVERNING LAW, VENUE SERVICE OF PROCESS

20.1 Any action arising out of this contract may be brought in the courts for the 61<sup>st</sup> District and 17<sup>th</sup> Circuit, State of Michigan, or in the United States District Court for the Western District of Michigan. Seller consents that such courts shall have personal jurisdiction over Seller with respect to any such action and that the mailing of any process to Seller's last know address by register mail shall constitute lawful and valid service of process.

Article 21: APPLICABLE LAW

21.1 This Purchase Order shall be deemed to have been made in Kent County, State of Michigan, and any action arising out of it shall be governed by the law of the State of Michigan, and whosoever the term "Uniform Commerce Code" is used herein, it shall be constructed as meaning the Uniform Commercial Code as adopted in the State of Michigan as of the date of this Purchase Order.

Article 22: MISCELLANEOUS PROVISIONS

22.1 The provisions of this Purchase Order are servable. If any provisions are held invalid by final judgment of a court, all other provisions shall remain valid.

22.2 No waiver, discharge, or renunciation of any claim or right of Buyer arising out of breach of these terms and conditions by Seller shall be effective unless in writing signed by Buyer and supported by consideration. Any waiver by Buyer of any breach by Seller shall be a waiver of that breach only and not any subsequent breach.