

AAF INTERNATIONAL - GENERAL TERMS AND CONDITIONS OF PURCHASE (Rev. 08/2017)

- 1. ORDER.** This purchase order constitutes an offer by the Buyer to Seller upon the terms and conditions stated herein and in the body of the order, and shall become a binding contract upon acceptance thereof either by acknowledgment or performance. Any acceptance of this order is limited to the express terms of the offer contained in this order, and Buyer objects to any proposal for additional and/or different terms or any attempt by Seller to vary any terms of this order in Seller's acceptance. This order is deemed accepted by Seller without the additional and/or different terms.
- 2. PRICING.** Prices for the goods are firm. Seller warrants that the prices for the goods sold to Buyer under this order are not less favorable than those currently extended to any other customer for the same or like articles in equal or less quantities. In the event Seller reduces its price for such articles during the term of this order, the price for the goods ordered hereby shall be reduced correspondingly. The prices for the goods includes all applicable charges such as packing, loading, shipping, and insurance. Seller agrees to pay all applicable federal, state, or local taxes imposed by law or on account of the manufacture, sale, or delivery of the goods or services furnished hereunder.
- 3. PAYMENT.** Unless otherwise stated, payment for the goods shall be made Net 30 days from Buyer's receipt of a valid invoice or delivery of the goods, whichever comes later. Applicable freight charges shall be shown separately on invoices. In order to assure Buyer of the prompt and unrestricted use of the project for which the Goods under this order are procured, to the extent permitted by law, Seller waives any and all liens which it might otherwise assert. Buyer may withhold any payment due hereunder to protect purchaser itself from loss because of: (i) bankruptcy or insolvency of Seller; (ii) liens or encumbrances in connection with this order; or (iii) breach by Seller of any contractual term or condition. Buyer shall be entitled to set-off from any amounts due or owing by Buyer to Seller any and all amounts owed by Seller to Buyer arising out of this order or any other transaction with Seller.
- 4. DELIVERY.** Seller shall deliver the goods in good condition and properly packed for shipment, taking into account the nature of the goods and mode of transportation. Costs of packing and proper loading, including all necessary blocking and bracing, shall be the responsibility of Seller and included in the purchase price. Seller must use correct packing and shipping classification descriptions to obtain lowest applicable shipping rates. Itemized packing lists must accompany each shipment. Buyer's count will be accepted as final and conclusive on shipments not accompanied by Seller's itemized packing list. If routing is specified in the order, Seller must strictly comply prior to shipment. No shipment is deemed completed until Buyer has received the bill of lading or transportation receipt. All shipping documents must reference Buyer's order number.
- 5. TIME.** Time and date of deliveries are of the essence of this order. Buyer reserves the right to cancel the order and reject the goods upon default by Seller in time or date of delivery, or Buyer as its option may approve in writing a revised delivery schedule. If, prior to the stated delivery date, Seller has reason to believe that it cannot make delivery in the time stated, it shall give Buyer reasonable notice of the anticipated delay, and Buyer shall have the right to cancel this order without charge if the anticipated delay will prevent Buyer from fulfilling its own contractual obligations. Unless otherwise agreed to in writing by Buyer, Seller shall not make material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet delivery schedule. Goods shipped to Buyer in advance of delivery schedule may be rejected or returned to Seller at Seller's expense. Goods delivered in error or in excess of the stated quantity may be returned at Seller's expense. Seller shall not reserve a security interest in goods shipped to Buyer.
- 6. INSPECTION AND ACCEPTANCE.** All goods are subject to inspection and test by Buyer at place of manufacture or at destination or at both. Goods shall not be accepted until inspected and accepted at the final destination. No inspection of the goods or failure to inspect, or payment for, or acceptance of the goods shall relieve Seller of any of its obligations under this order. If any of the goods are found at any time to be defective in material or workmanship (including goods damaged because of unsatisfactory packaging by Seller), or otherwise not in strict conformity with the requirements of the order, including drawings and specifications and approved sample, if any, Buyer, in addition to any other rights which it may have under warranties or otherwise, shall have the right to (a) reject and return such goods at Seller's expense and to receive full credit for any such rejected goods, (b) upon written request, to require replacement of any such rejected goods without additional cost to Buyer, (c) retain and use the goods with an equitable reduction in purchase price. Buyer is under no obligation to hold rejected goods for the Seller.
- 7. TITLE AND RISK OF LOSS.** Delivery of the goods shall be as stated on the face of this order. Risk of loss of and title to the goods shall pass upon delivery of the goods unless otherwise agreed in writing.
- 8. DELAYS AND EXTENSIONS OF TIME.** Buyer reserves the right at its option and without liability either to direct suspension of shipments of materials covered by this order or to cancel this order, in whole or in part, at any time where such suspension or cancellation is caused by acts of God, fire, war, riot, government order or other requirements, embargoes, act of civil or military authorities, acts of the public enemy, inability to secure transportation facilities, strikes, differences with workmen, accidents at plant of Buyer, law or order or regulation, or other contingencies beyond control of Buyer.
- 9. CHANGES.** Buyer shall have the right to make changes in the order by a notice in writing to the Seller. If such changes cause an increase or decrease in the amount due under the order or in the time required for its performance, an equitable adjustment shall be made and the order shall be modified in writing accordingly. Any claim for adjustment must be asserted by the Seller in writing within 15 days from the date the change is ordered. Nothing herein shall relieve the Seller from proceeding without delay in the performance of this order as changed. Seller shall not substitute any materials or goods except with Buyer's prior written consent.
- 10. BUYER'S PROPERTY.** Unless otherwise agreed to in writing, layouts, models, all tools, gauges, designs, sketches, drawings, blueprints, patterns, dies, specifications, engineering data or other technical or proprietary information, special appliances, and other equipment or material of every description furnished to Seller by Buyer, and any replacement thereof, or any materials affixed or attached thereto, shall remain the property of the Buyer. Such property, and whenever practical, each individual item thereof, shall be plainly marked or otherwise adequately identified by Seller as "property of AAF International" shall be safely stored separate and apart from Seller's property and shall be subject to examination by Buyer. Seller shall not substitute any property for Buyer's property and shall not use such property except in filling Buyer's orders. Such property while in Seller's custody or control shall be maintained in good condition at Seller's expense, shall be held at Seller's risk and shall be kept insured by Seller at Seller's expense in an amount equal to the replacement cost with loss payable to Buyer. Seller will furnish Buyer a copy of the insurance policy on request. Such property shall be subject to removal at Buyer's written request, in which event Seller shall prepare such property for shipment and shall redeliver the same to Buyer in the same condition as originally received by Seller, reasonable wear and tear excepted. Any special tooling, the full cost or a substantial portion of the cost of which is included in the price of this order shall upon completion of this order become the property of Buyer and Seller shall return the same to Buyer or make such other disposition thereof as may be directed or approve by Buyer.
- 11. PATENT RIGHTS.** Any and all discoveries, inventions and designs, whether or not patentable or subject to copyright, conceived or reduced to practice by Seller or its employees in connection with the supply, pursuant to this order, shall be considered "work for hire" and shall be promptly disclosed to Buyer and shall become the property of Buyer. Seller and its employees shall, upon request, execute all papers necessary to assign such discoveries, inventions and designs to Buyer and to cause at Buyer's expense patent applications to be filed, thereon in favor of Buyer. The decision as to whether to the patent applications and to prosecute same shall be made solely by Buyer.
- 12. WARRANTIES.** Seller warrants that all goods delivered under this order will be (i) free from defects in materials and workmanship (including damage due to unsatisfactory packaging by Seller), (ii) strictly in accordance with Buyer's specifications, drawings, and approved sample, if any, (iii) new and of the best quality, (iv) "merchantable" as defined in Sect. 2-314 of the Uniform Commercial Code, (v) to the extent such items are not manufactured pursuant to detailed designs furnished Buyer, that all items will be free from defects in design and suitable for the intended purposes, (vi) in accordance with applicable laws and that all items subject to the Occupational Safety and Health Act of 1970 are in conformity with the most current Standards established thereby, and (vii) free from liens and defects in title. The foregoing warranties shall survive acceptance of the goods, and shall run to Seller and its customers. If at any time prior to twenty four (24) months from delivery, or with respect to liens and title at any time, it appears the goods do not conform to the foregoing warranties, Seller shall promptly correct the nonconformity to the satisfaction of Buyer. Seller's liability shall include all costs incidental to the nonconformity, including costs of disassembly, inspection, transportation, labor, testing, and re-installation. If Seller fails to remedy the nonconformity within a reasonable period of time, Buyer may correct such nonconformity, itself or through a third party, and Seller shall reimburse Buyer for the expenses of such correction.
- 13. INDEMNIFICATION.** Seller shall defend and shall indemnify and hold harmless Buyer, its successors, assigns, customers, and the users of its goods, and each of their respective officers, directors, shareholders, employees, agents, and authorized representatives (collectively, the "Indemnified Parties") from all loss, liability, damage, claims, demands, suits, penalties, and expenses of whatever kind or nature, including but not limited to, incidental, consequential, special, and indirect damages, and further including attorneys' fees, that arise out of or alleged to arise out of, or are related to, in whole or in part, the following: (i) any and all claims and suits charging injury or charging infringement of any patent, trademark or copyright arising out of the sale or use of any goods furnished hereunder except that Seller shall have no liability with respect to patent infringement for goods as to which Buyer furnishes complete specifications; (ii) any alleged or claimed defect in the goods whether latent or patent, including allegedly improper construction and design, or from the failure of the goods to comply with specifications or with any express or implied warranties of Seller; (iii) any willful misconduct, illegal act, or negligent act of omission by Seller in the performance of its obligations hereunder; (iv) any claims relating to Seller's relationship with its employees, agents, or its capacity as an employer; and (v) any alleged violation of any law, statute, ordinance, administrative order, rule or regulation connected with the manufacture or sale of the goods, including but not limited to the Federal Occupational Safety and Health Act of 1970, as amended. Seller further agrees to obtain and maintain during the life of this agreement at its expense, product liability insurance, with a vendor's endorsement, in such form and amount and in such company as may be approved by Buyer in writing. Satisfactory evidence of such insurance shall be submitted to Buyer upon request. "Goods" shall be deemed to include any packaging supplied by Seller. The foregoing shall not apply to the extent caused by the gross negligence or willful misconduct of the Indemnified Party.
- 14. LIMITATION OF LIABILITY. NOTWITHSTANDING ANY OTHER TERMS OF ANY AGREEMENT BETWEEN THE SELLER AND BUYER, IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL THE BUYER BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, WHETHER THE THEORY BE BASED ON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE.**
- 15. SURVIVAL OF INDEMNIFICATIONS AND WARRANTIES.** Seller's obligations under Paragraphs 12 and 13, hereinabove shall not be deemed to be exclusive, and together with any service warranties and guarantees, if any, shall survive acceptance and payment, and shall run to Buyer, its successors, assigns, customers and the users of the goods.
- 16. DEFAULTS - BANKRUPTCY - CANCELLATION.** Buyer may cancel this order, in whole or in part by written or telegraphic notice: (a) if the Seller shall become insolvent or make a general assignment for the benefit of creditors, or a receiver or liquidator for Seller is appointed or applied for, or if Seller admits in writing its inability to pay its debts as they become due; or (b) if any proceeding under any applicable Federal or State bankruptcy or insolvency law is brought by or against Seller; or (c) if, at any time, Seller defaults in the performance of any term or condition which it is obligated to perform hereunder. After receipt by Seller of notice of any such termination, Buyer at its option may require the Seller to transfer title and deliver to Buyer any satisfactorily completed work and such work in process as the Seller has specifically produced or specifically acquired for the performance of such part of the order as has been cancelled, upon any such cancellation pursuant to this clause, if the cost of completion of the order is in excess of the contract price, then Seller shall be liable for such excess. However, except with respect to default of subcontractors, the Seller shall not be liable for any excess costs if the failure to perform arises out of causes beyond the control and without the fault or negligence of the Seller. If the failure to perform is caused by the default of the subcontractor and if such default arises out of causes beyond the control of both the Seller and its subcontractors, and without the fault or negligence of either of them, the Seller shall not be liable for any excess costs for failure to perform, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to comply with the order. The term "causes beyond the control" as used herein may include but is not restricted to acts of God, or of the public enemy, acts of the government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the contractor and subcontractor, as the case may be. The rights and remedies of Buyer provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract. In the event of breach or default by Seller, Seller shall be liable to Buyer for damages, including consequential damages, lost profits, damage to reputation and Buyer's attorney fees.
- 17. ASSIGNMENT AND SUBCONTRACTING.** Seller shall not assign or subcontract all or any part of this order without Buyer's prior written consent. Seller shall not procure or contract for the procurement of any item covered by this order in completed or substantially completed form without first securing the written approval of the Buyer. Any permitted assignment, subcontracting or procurement shall in no way relieve Seller from its obligations under this order.
- 18. CONFIDENTIAL INFORMATION.** Seller agrees that it will keep confidential the features of any equipment, tools, gauges, patterns, designs, drawings, engineering data or other technical or proprietary information furnished by Buyer and use such items only in the production of items under this order or other orders from Buyer and not otherwise, unless Buyer's written consent is first obtained. Upon completion or termination of this order, or sooner if requested by Buyer, Seller shall return all such items to Buyer or make such other disposition thereof as may be directed or approved by Buyer. Seller agrees that all such materials are the proprietary materials and information of the Buyer. Upon completion or termination, retention by Seller of the materials which is inconsistent with the directions of Buyer or unauthorized use of the materials by Seller shall entitle the Buyer to immediate injunctive relief.
- 19. LAWS.** Seller shall observe and comply with all applicable federal, state, and local laws and regulations in the performance of this order. All goods shall be produced and services rendered in accordance with all applicable Federal, State and Municipal laws and regulations governing wages, hours and conditions of labor. The Seller agrees that neither the Seller nor any of the persons furnishing materials or performing work or services which are required by this order are employees of Buyer within the meaning of or the application of any Federal or State law or regulation. The Seller hereby agrees at its own expense to comply with such laws and to assume all liabilities or obligations imposed by any one or more of such laws. If the order is for more than \$10,000 and is otherwise subject to the Walsh-Healey Act (41, U.S. Code 35-45) the representations and stipulations required by that Act and regulations issued thereunder by the Secretary of Labor to be included in all contracts therein specified are incorporated herein by reference. **The Seller and any subcontractors shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**
- 20. UNITED STATES GOVERNMENT CONTRACTS AND SUBCONTRACTS.** With respect to purchases under United States Government contracts and subcontracts, the parties hereto hereby incorporate as part of this purchase order the provisions of Sec. 202 of Executive Order No. 11246 of September 24, 1965, and all of the clauses set forth or referred to in Section VII of the Armed Services Procurement Regulations (as the same are in effect on the date hereof) which are required to be included herein by such regulations. Where necessary to make the context of such required clauses applicable to this purchase order, the term "Government" and equivalent phrases shall mean the Buyer and the term "contractor" shall mean the Seller, and the term "contract" shall mean this purchase order in the event of any conflict between the provisions of any of the clauses of the Armed Services Procurement Regulations hereby incorporated into this agreement and any other terms and conditions of this purchase order, the provisions of the clauses of the Armed Services Procurement Regulations so incorporated shall govern. The Armed Services Procurement Regulations are obtainable from the Superintendent of Documents U.S. Government Printing Office, Washington 25, D.C.
- 21. GOVERNING LAW; JURISDICTION.** The terms hereof shall be construed in accordance with the laws of the Commonwealth of Kentucky without regard to conflict of laws principles. Any action related to or arising from this order shall be brought in the state or federal courts of Jefferson County, Kentucky, and both parties irrevocably submit to the exclusive jurisdiction of such courts.
- 22. MISCELLANEOUS.** This order contains the entire agreement and conditions of these transactions and no agreement or other understanding in any way modifying the conditions hereof will be binding upon Buyer unless made in writing as a change of purchase order and signed by Buyer. Failure of Buyer to insist upon strict performance of any of the terms and conditions of this order shall not constitute a waiver of such terms and conditions or a waiver of any default. The invalidity of one provision shall not affect the validity of remaining provisions which are otherwise valid. Those provisions of the order that by their very nature survive payment, final acceptance or termination shall remain in full force and effect after such payment, acceptance or termination.