



## PURCHASE ORDER TERMS AND CONDITIONS

- 1. General.** THIS PURCHASE ORDER TERMS AND CONDITIONS (THE TERMS AND CONDITIONS CONSTITUTE THE ONLY TERMS AND CONDITIONS UPON WHICH GRACE PRODUCTION SERVICES (BUYER) IS WILLING TO ORDER THE GOODS AND/OR SERVICES IDENTIFIED ON ANY BUYER PURCHASE ORDER (THE GOODS) FROM THE ADDRESSEE IDENTIFIED ON SUCH PURCHASE ORDER (SELLER))
- 2. Offer, Acceptance.** Buyers order to purchase the Goods (the Purchase Order is an offer and is not an acceptance of any offer by Seller to sell the Goods). Sellers acceptance of the Purchase Order is expressly limited to the Terms and Conditions, and any terms and conditions proposed by Seller in Sellers acceptance, acknowledgment, invoice, transmittal, or any other document that are different from, conflict with, or add to the Terms and Conditions will be deemed to materially alter the Terms and Conditions and are hereby unconditionally objected to and rejected by Buyer. Acceptance of the Purchase Order, including the Terms and Conditions, both or either of which may be delivered to Seller in electronic form, will occur upon the first to occur of any of the following events: (i) when Buyer receives written acknowledgment that Seller has accepted the Purchase Order, or (ii) when Buyer is aware that Seller has commenced performance thereunder.
- 3. Modification.** No modification of the Terms and Conditions will be undertaken or valid without the prior written authorization of the President of Buyer. Buyer may at any time, by giving written notice to Seller, modify the Purchase Order specifications, designs, drawings, packaging, methods of shipment, quantities, place of delivery, or delivery schedules. If any such modification causes an increase or decrease in the cost of or the time required for Sellers performance, an equitable adjustment may be made in the price or delivery schedule, or both, provided Buyer agrees to such adjustment by written approval given within ten (10) business days from the date Buyer receives Sellers request therefore and any additional documentation that Buyer may request. Nothing contained in this Section will relieve Seller from proceeding without delay to perform the Purchase Order as modified.
- 4. Delivery.** Seller will deliver the Goods to Buyer on the time(s) and date(s) shown in the Purchase Order/Material Release Schedules. Time of delivery is of the essence. If delivery is not made by the scheduled delivery date, Buyer reserves the right to cancel delivery and to purchase elsewhere and hold Seller accountable for any excess cost resulting therefrom. Substitutions outside of normal accepted standards and advance and excess shipments may at Buyers option be rejected and returned to Seller at Sellers expense.
- 5. Premium Shipments.** If Sellers acts or omissions result in Sellers failure to meet Buyers delivery requirements and Buyer requires a more expeditious method of transportation for the Goods than the transportation method originally specified by Buyer, then at Buyers option Seller will (i) promptly reimburse Buyer the difference in cost between the more expeditious method and the original method, (ii) allow Buyer to reduce its payment of Sellers invoice by such difference, or (iii) ship the Goods as expeditiously as possible at Sellers expense and invoice Buyer for the amount which Buyer would have paid for normal shipment.
- 6. Factory Failure.** In the event that Seller is unable to produce and/or deliver the Goods as a result, either directly or indirectly, of problems at the facility or facilities at which the Goods are produced, regardless of whether such problems are caused or controlled by Seller, Seller will be liable to Buyer for liquidated damages in the amount of all direct, indirect, consequential, or incidental losses incurred by Buyer resulting from such problems, including the loss of business profits or revenue, business interruption, loss of business information, or other pecuniary loss.
- 7. Inspection and Tests.** The Goods will be subject to inspection and testing by Buyer and Buyers customer at all reasonable times and places, including Sellers facilities. It is expressly agreed that inspections and/or payments prior to, at the time of, or after delivery do not constitute a final acceptance of the Goods. Any inspection, discovery of any breach of warranty, failure to make an inspection, or failure to discover any breach of warranty does not constitute a waiver of any of Buyers rights or remedies whatsoever. Goods rejected as not conforming to the Purchase Order or as otherwise deemed defective, will be returned to Seller at Sellers expense, including transportation and handling costs.
- 8. Warranties.** Seller warrants that the Goods will conform to applicable specifications, instructions, agreed upon measurement and layout criteria, drawings, data, and samples, will be merchantable, will be of good material and workmanship and free from defects, that the Goods will be fit and sufficient for the purposes intended, if such intent is known to Seller, and that the Goods will be free from all liens, encumbrances, and patent, trademark, copyright, trade secret, or other intellectual property right infringement or claims. These warranties are in addition to all other warranties, express or implied, and survive acceptance of and payment for the Goods by Buyer, its successors, assigns, customers, and users of its products. The warranties of Seller will not be excluded or limited in any manner whatsoever unless expressly authorized in writing by the President of Buyer. Seller also represents and warrants that the prices for the Goods will be no less favorable than those that Seller presently, or in the future, offers to any other customer for the same or similar goods or service for similar quantities. If Seller offers a lower price for the same or similar goods or services to any other customer during the term of the Purchase Order, then to the extent permitted by law, Seller will immediately offer Buyer the same price for the Supplies on the same terms and conditions as was offered to the other customer.
- 9. Price.** The Goods will be supplied at the price set forth in the Purchase Order and in no instance will Buyer be liable to Seller in excess of such price, less any applicable discounts and/or other deductions, and no interest or other charge will be recognized or paid by Buyer upon the Purchase Order or resulting invoice, whether claimed by reason of late payment or otherwise.
- 10. Ingredients, Disclosure, and Special Warnings and Instructions.** Pursuant to Federal and State regulations, Buyer maintains a current file of Material Safety Data Sheets (MSDS). It is Sellers responsibility to supply MSDS information along with all updates as they shall occur. In addition and at Buyers request, Seller will promptly furnish to Buyer in such form and detail as Buyer may direct (i) a list of all ingredients in the Goods, (ii) the amount of each ingredient, and (iii) information concerning any changes in or additions to such



ingredients. Prior to and with the shipment of the Goods, Seller will furnish to Buyer sufficient warning and notice in writing (including appropriate labels on goods, containers, and packaging) of any hazardous material that is an ingredient or a part of any of the Goods, together with any special handling instructions as may be necessary to advise carriers, Buyer, and their respective employees of the measure of care and precaution that will best prevent bodily injury or property damage in the handling, transportation, processing, use, or disposal of the Goods, containers, and packaging shipped to Buyer.

**11. Tools.** Unless otherwise agreed upon in writing by Buyer, Seller at its own expense will furnish, keep in good condition, and replace when necessary all tools, jigs, dies, gauges, fixtures, and molds (Tools) necessary for the production of the Goods. At Buyers request a complete set of Tool drawings will be made available to Buyer. Seller will insure the Tools with full fire and extended coverage insurance for the replacement value thereof and provide proof of such insurance to Buyer at Buyers request. Seller grants Buyer an irrevocable option to take possession of and title to the Tools upon payment to Seller of the book value thereof less any amount that Buyer has previously paid to Seller for the cost of such Tools; provided, however, that this option will not apply if such Tools are used to produce goods that are the standard stock of Seller or if a substantial quantity of like goods are being sold by Seller to others. All Tools furnished by Buyer, either directly or indirectly to Seller to perform the Purchase Order, or for which Seller has been reimbursed by Buyer, will be and remain the property of Buyer. All Tools owned by Buyer must be identified per GRACE Production Services Instructions. At Buyers request, such property shall be immediately released to Buyer or delivered to Buyer by Seller F.O.B. to the destination designated by Buyer, properly packed and marked in accordance with the requirements of the carrier selected by Buyer to transport such property.

**-Tooling Payment Terms-**

Net 45 days from GRACE Production Services (hereinafter GPS) PPAP unless agreed to by GPS President in writing prior to Tool construction.

**12. Rights of Setoff.** Buyers obligation to pay the price set forth in the Purchase Order will be subject to any abatement, reduction, setoff, defense, counterclaim, or recoupment for any reason whatsoever.

**13. Confidentiality.** All information, drawings, know-how, methods, marketing strategies, specifications, prices, costs, business plans, purchasing data, research and development data, customer lists or information, and other data (collectively, Confidential Information) furnished by Buyer to Seller, or otherwise learned by Seller as a result of its relationship with Buyer, is proprietary to Buyer, and Seller agrees to keep all such Confidential Information confidential and use such Confidential Information only as necessary in order to fulfill Sellers obligations to Buyer under the Purchase Order. Seller further agrees to return to Buyer all Confidential Information, including all copies thereof made by or for Seller, upon Buyers request. Excess inventory of Goods made by or for Seller (and not purchased by Buyer) with the use of Buyers Confidential Information, Buyers trademarks or trade names, or trademarks and trade names of Buyers customers, will be destroyed by Seller at Sellers expense. Seller will not in any manner advertise or publish the fact that it has furnished or contracted to furnish to Buyer the Goods without prior written consent of the President of Buyer. Seller will not have the right under any circumstance to use the name of Buyer as its own or hold itself out in a manner that would lead a third party to reasonably believe Seller is acting as or on behalf of Buyer. The provisions of this Section will survive the execution, delivery, and performance of the Purchase Order.

**14. Title and Engineering Drawings, Specifications.**

**(a) Any documents, including drawings and specifications, produced or acquired by Seller under the Purchase Order will belong to Buyer, subject only to Sellers patent rights, if any, but without any other restrictions on Buyers use, including reproduction, modification, disclosure, or distribution of the documents or the information contained therein.**

- i) All drawings, know-how, and confidential information supplied to Seller by Buyer and all rights therein will remain the property of Buyer and will be kept confidential by Seller. Seller is licensed to use Buyers drawings, know-how, and Confidential Information only for the purpose of fulfilling its obligations under the Purchase Order. In addition to the obligations set forth in the Terms and Conditions, Seller will not disclose such drawings to third parties unless this is required for Seller to fulfill its duties under the Purchase Order. Seller will inform Buyer in writing of any third parties to whom Seller subcontracts any of the work required under the Purchase Order specifying in detail the work that had been subcontracted to such third party. Seller will ensure that any third party to whom Seller subcontracts any of the work hereunder is bound by all the Terms and Conditions relating to such work to which Seller is bound under the Purchase Order. Seller will nevertheless remain liable under the Terms and Conditions for all work performed by the Subcontractor as if it had been performed by Seller even if Buyer has consented to such subcontracting under Section 23 hereof.
- ii) Termination. Buyer may terminate performance of the work under the Purchase Order, in whole or in part, for any reason or no reason, by written notice to Seller, without incurring any liability to Seller other than as specifically set forth in this Section. Upon receipt of such notice, Seller will immediately discontinue all work and the placing of all orders for material, facilities, and supplies pursuant to the Purchase Order. Upon termination by Buyer under this Section, Buyer will negotiate payment to Seller based on Sellers non-recoverable, reasonable, and actual documented costs and expenses; in no case, however, will payments made under this Section exceed the aggregate price specified in the Purchase Order, less payments otherwise made or to be made. Nothing contained in this Section will be construed to limit or affect any rights or remedies that Buyer may have against Seller.

**15. Proprietary Rights.** Seller will not sell or otherwise dispose or transfer any product that is supplied to Buyer under the Purchase Order and that incorporates any trademark, patentable invention, copyright work, industrial design or other matter that is the subject of any intellectual property right of Buyer to any party other than Buyer except when specifically authorized by Buyers President in writing.

**16. Force Majeure.** Buyer will have the right to suspend shipments from Seller hereunder and refuse to accept delivery of the Goods, without incurring any liability to Seller, in the event of war, riot, flood, acts of God, terrorist acts, fire, court order, strike, work stoppage, act of governmental authority, or other causes beyond Buyers control.

**17. Cancellation, Default.**

(a) If Sellers financial condition is found to be or becomes unsatisfactory to Buyer during the term of the Purchase Order, Buyer reserves the right, without incurring any liability to Seller, to cancel the Purchase Order by written notice and receive a refund of any deposits, down payments, or other advance payment (except for goods or services already delivered). Buyer also reserves the right similarly to terminate all other contracts covering purchases by Buyer of Sellers products or services whether or not Seller may otherwise be in default, and no rights will accrue to Seller against Buyer on account of such termination. The foregoing rights of Buyer are in addition to, and not in lieu of, any rights Buyer may possess under '2-609 of the Uniform Commercial Code.

- i) If Seller fails to perform as specified in the Purchase Order or breaches any of the Terms and Conditions, Buyer reserves the right, without incurring any liability to Seller, and upon giving Seller written notice, to: (i) cancel the Purchase Order in whole or part, and Seller will be liable to Buyer for all damages, losses, and liability incurred by Buyer directly or resulting from Sellers breach; (ii) obtain the Goods ordered herein from another source, with any excess cost resulting therefrom chargeable to Seller; (iii) setoff or reduce all claims for money due or to become due from Buyer to Seller to the extent Buyer is damaged by Sellers failure to perform; or (iv) repair any defective merchandise and charge the Seller for the expense involved when, in Buyers opinion, the cost to the Seller would be less than replacement. The remedies herein provided will be cumulative and in addition to any other remedies provided at law or in equity. Buyers failure to insist on performance of any of the Terms and Conditions or to exercise any right or privilege, or Buyers waiver of any breach hereunder, will not be treated as a future waiver of any provision of the Terms and Conditions, whether of the same or similar type.
- ii) Indemnification.

**1.1.1.1. Except to the extent that any injury or damage is due solely to Buyers gross negligence, Seller agrees to indemnify and hold harmless Buyer, its successors, assigns, customers, and users of its products against all claims, suits at law or in equity, recall campaigns or other corrective service actions and from all damages, claims, and demands in any other manner arising out of or alleged to have resulted directly or indirectly from the Goods (collectively, the claim), and, when notified will, at Buyers sole option, either defend the Claim at its own expense with counsel of Buyers choosing or reimburse Buyers expenses, attorney's fees, and all other costs and liabilities whatsoever for defending such Claim. The foregoing indemnification will apply whether the damage is caused by the sole or concurrent negligence of Seller.**

**1.1.1.2.** To the extent that Sellers agents, employees, or subcontractors enter upon the premises of Buyer, Seller will take all necessary precautions to prevent injury or death to any person or damage to property arising out of acts or omissions of such agents, employees, or subcontractors, and, except to the extent that any such injury or damage is due solely and directly to Buyers gross negligence, will indemnify, defend, and hold Buyer, its officers, employees, and agents, harmless from any and all costs, losses, expenses, damages, claims, suits, or any liability whatsoever, including attorney's fees, arising out of any act or omission of Seller, its agents, employees, or subcontractors. Seller will maintain and require its subcontractors to maintain (i) public liability and property damage insurance (including contractual liability), both general and vehicle, in amounts sufficient to cover obligations set forth above, and (ii) workers compensation and employers liability insurance covering all employees engaged in the performance of the Purchase Order. Seller will furnish, upon Buyers request, certificates evidencing such insurance.

- iii) Intellectual Property. Seller will indemnify and save and hold harmless Buyer, its successors, assigns, customers, and users of its products, and Buyers officers, employees, and agents, from and against all costs, losses, expenses, damages, claims, suits, or any liability whatsoever, including attorney's fees, resulting from any claim that the manufacture, use, sale or resale of the Goods infringe any patent, copyright, trademark, trade secret or other intellectual property rights; and Seller when notified will, at Buyers sole option, either defend any action or claim of such infringement at its own expense with counsel of Buyers choosing, or reimburse Buyers expenses, attorney's fees, and all other costs and liabilities whatsoever for defending such action or claim. If the Goods or any part thereof or any use thereof in reasonable contemplation of the parties at the time of their purchase are held in such suit to constitute an infringement and their use is enjoined, Seller will promptly and at its own expense (i) procure for the Buyer the right to continue use of the Goods, (ii) replace the same with noninfringing goods satisfactory to Buyer, or (iii) modify the Goods in a way satisfactory to Buyer and its counsel so they become noninfringing.

**18. No Implied Waiver. The failure of Buyer at any time to require performance by Seller of any provision of the Purchase Order will not affect the right to require such performance at any time thereafter, nor will the waiver by Buyer of a breach of any provision of the Purchase Order constitute a waiver of any succeeding breach of the same or any other provision.**

**18. Assignment. The Purchase Order may not be assigned or subcontracted by Seller without the Buyers prior written consent.**

**19. Change in Ownership. During the term of the Purchase Order, Seller will not have the right to engage in a transaction or in a series of related transactions in which fifty percent (50%) or more of the voting power of Seller is disposed of, or the consolidation, merger, or other business combination with or into a third party, without the prior written consent of Buyer.**

**20. Applicable Law. All matters relating to Buyers purchase of the Goods will be construed in accordance with and governed by the laws of the State of Michigan. Any claim relating to the sale of the Goods to Buyer will be brought in any Federal or state court located in the State of Michigan and Seller hereby consents to such jurisdiction.**

**21. Severability. The Terms and Conditions are severable and if any Terms and Conditions or portions of any Terms and Conditions are stricken or declared illegal, invalid, or unenforceable for any reason whatsoever, the legality, validity or enforceability of the remaining Terms and Conditions will not be affected thereby.**



**22. Miscellaneous.** Seller will be bound by any representation or undertaking made by any of its agents or employees with respect to the specifications, quality, packaging, price, or conditions of delivery of the Goods. By accepting the Purchase Order, Seller ratifies any such representation or undertaking made by any of its agents or employees. The Purchase Order and the Terms and Conditions will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. If importation of the Goods results in the assessment of a countervailing duty on Buyer as the importer, Seller will reimburse such countervailing duty to Buyer, provided such reimbursement is permitted under applicable laws and regulations. Seller will cooperate fully with the Buyer at Seller's expense in obtaining approvals of the Goods requested by Buyer from certifying organizations.

**23. Entire Agreement.** The Terms and Conditions constitute the complete and exclusive statement of the terms of the Purchase Order, are intended as a final expression of the terms of the Purchase Order and will supersede all prior and contemporaneous agreements, inducements or conditions, express or implied, oral or written. No course of prior dealings between the parties and no usage of trade will be relevant to supplement or explain any term herein. Buyer's acceptance or acquiescence in a course of performance rendered by Seller hereunder will not be relevant to determine the meaning of this contract even though Buyer has knowledge of the nature of the performance and opportunity for objection.