



AMSTED INDUSTRIES INCORPORATED

PURCHASE ORDER – TERMS AND CONDITIONS

This purchase order expressly limits acceptance by Seller to the terms, conditions and specifications contained herein. Buyer expressly rejects any additional or different terms, conditions or specifications proposed by Seller, whether stated in Seller's form of acknowledgment to this purchase order or elsewhere, except as expressly agreed to in writing by Buyer.

Transportation; Delivery. All goods, products or materials (referred to interchangeably in this purchase order as "goods") shall be suitably packed, loaded, stored, marked and shipped as required by common carriers and in a manner to secure lowest transportation costs. Transportation costs, if prepaid, must be shown on Seller's invoice and a receipted expense bill attached thereto. Any expenses incurred due to Seller's failure to follow shipping instructions will be borne by Seller and may be deducted by Buyer from Seller's invoice. For carload shipments, written notice showing contents, car number, gross tare and net weights must be sent promptly to Buyer's facility to which such shipments are destined, and, if such notice is not received prior to the arrival of a shipment, such shipment may be refused by Buyer. Time is of the essence for all deliveries of goods, and Seller shall promptly notify Buyer if Seller will be unable to meet Buyer's delivery requirements. If Seller fails to meet delivery requirements for any reason, including without limitation reasons beyond Seller's control, then Buyer may, at its option, cancel this purchase order in whole or in part and obtain elsewhere all or any part of the goods and then charge to Seller all costs of such substitution or "cover" in excess of what Buyer would have paid Seller had this purchase order not been cancelled. If transportation terms are F.O.B. Seller's shipping point, then Seller shall assist Buyer in filing any necessary freight claims.

Inspection; Acceptance. All goods shall be received at their destination subject to Buyer's final inspection and acceptance, but such inspection or acceptance shall not relieve Seller from any obligations or liability under this purchase order. Because goods may be received and put in inventory or storage without examination until such goods are to be used or resold, inspection and acceptance shall not be deemed to have occurred prior to actual inspection and acceptance by Buyer. Title and risk of loss for goods shall pass from Seller to Buyer upon actual acceptance by Buyer. No reasonable delay in rejection or return of goods, nor payment for goods, shall be considered acceptance or waiver of Buyer's rights to reject, return or retain such goods as provided herein or by law. Any goods not in precise conformity with Buyer's specifications, ordered quantities or delivery requirements, or Seller's warranties, may be rejected, returned or retained by Buyer at Seller's risk and expense, including without limitation the cost of substitution or "cover," transportation both ways, labor and administrative expenses, reloading and trucking. If Buyer elects to retain nonconforming or defective goods, then Seller shall pay Buyer for all necessary costs and expenses incurred in correcting such nonconforming or defective goods.

Force Majeure. Buyer may delay delivery and/or acceptance for causes beyond its control, provided that Buyer shall be responsible only for Seller's direct additional costs in holding goods or delaying performance at Buyer's request. Causes beyond Buyer's control include without limitation governmental action, strikes or other labor disputes, fire, unusually severe weather or other circumstances which make delivery and/or acceptance impossible or impracticable.

Price. Seller warrants that the prices for goods under this purchase order (1) are not less favorable than those currently extended to any other comparable customer of Seller for the same or substantially similar goods in similar quantities and (2) are complete and include all applicable taxes, transportation, delivery, packaging, labeling, customs duties, storage, boxing, crating, insurance and other charges, unless otherwise expressly agreed to in writing by Buyer.

Warranties. Seller warrants to Buyer that all goods furnished under this purchase order: (1) are new, merchantable and free from defects in design, materials, workmanship and construction; (2) are fit and safe for any purpose for which they are foreseeably to be used by Buyer, by Buyer's customers and by the ultimate consumers of such goods; (3) conform in all respects to all specifications, drawings, samples



or other descriptions provided or agreed to in writing by Buyer; (4) are adequately contained, packaged, marked and labeled; (5) conform to all representations made by Seller on containers, labels or advertisements for such goods and are equivalent in materials, quality, fit, finish, workmanship, performance and design to any samples submitted by Seller and approved by Buyer; and (6) comply with all applicable industry standards and federal, state and local laws, and the regulations, rules, standards and orders issued thereunder, as amended from time to time (including without limitation, laws and regulations pertaining to safety of persons and property, weights and measures, sources, content, labeling and origin disclosure, labor and employment and trademarks and copyrights and the Fair Labor Standards Act of 1938, the Occupational Safety and Health Act of 1970, the Federal Hazardous Substances Act, 49 CFR 171.1, the Consumer Product Safety Act, Title VII of the Civil Rights Act of 1964, Section 503 of the Rehabilitation Act of 1973, Title I of the Americans with Disabilities Act of 1990, the Family and Medical Leave Act of 1993, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, the Drug Free Workplace Act of 1988, the Age Discrimination in Employment Act of 1967, the Immigration Reform and Control Act of 1986 and Executive Order 11246, and that its provisions, as appropriate, are incorporated herein by specific reference. To the extent that this purchase order is subject thereto, the "Equal Opportunity Clause" set forth in 41 CFR 60-1.4 and the "Affirmative Action Clauses" set forth in 41 CFR 60-250.4, 41 CFR 60-250.5 and 41 CFR 60-741.4 are also incorporated herein by reference. Seller's warranties shall run to Buyer, Buyer's customers and the ultimate consumers of the goods, and their respective successors and assigns.

Indemnification; Insurance. Seller hereby agrees to indemnify, defend and hold harmless Buyer, Buyer's customers and the ultimate consumers of the goods (including any of their respective affiliates, employees, officers and agents) from and against any and all liabilities, claims, losses, damages, costs and expenses of any kind (including without limitation consequential and incidental damages and reasonable professional fees and court costs) incurred by any of them (collectively, "losses") relating to or arising out of: (1) any breach or alleged breach of any of the foregoing warranties or any other representations or covenants of Seller to Buyer; (2) any actual or alleged patent, trademark or copyright infringement or violation of other proprietary right or other litigation or threatened litigation of any kind in connection with any of the goods; (3) any actual or alleged injury to persons (including death) or property resulting from the contemplated or foreseeable handling or use of the goods; and (4) any other negligence, willful misconduct or other wrongdoing by Seller. Buyer shall have the right to reasonably control the defense or settlement of any litigation actually brought or threatened against it without reducing Buyer's rights to be indemnified by Seller. All claims for sums due to Seller from Buyer under this purchase order shall be subject to deduction or setoff by Buyer until all losses giving rise to Seller's indemnification obligations hereunder are satisfied by Seller or otherwise resolved to the reasonable satisfaction of Buyer. Seller's indemnification obligations hereunder shall survive delivery and acceptance of goods. In furtherance of its obligations under this purchase order, Seller shall maintain, and deliver proper evidence thereof upon request, insurance with limits reasonably satisfactory to Buyer.

Installation. In addition to Seller's indemnification obligations immediately above, if goods are to be fabricated, assembled or installed, in whole or in part, by Seller on Buyer's premises, Seller shall indemnify, defend and hold harmless Buyer from and against any and all losses resulting directly or indirectly from any actual or alleged injury to persons (including death) or property which occurs in connection with such work by Seller; provided, however, that Seller's obligation in this regard shall not apply to the extent that such losses are caused by Buyer's negligence or willful misconduct. If goods are to be fabricated, assembled or installed by Seller on Buyer's premises, Seller shall keep such premises free and clear of all mechanics' and other liens or encumbrances and shall furnish or cause to be furnished such lien waivers, guarantees and related forms as may be reasonably requested by Buyer.

Proprietary Rights; Confidentiality. All data, drawings, designs, specifications and other technical information of Buyer (collectively, "proprietary information") directly or indirectly furnished to Seller in writing or otherwise and relating to the goods or this purchase order shall remain the property of Buyer, shall in no event become the property of Seller and shall be used only in fulfilling the obligations imposed by this purchase order. Seller shall consider all such proprietary information to be confidential and shall not duplicate or disclose it to others, except as required by law. Buyer's actions in furnishing proprietary



information to Seller shall not be construed as granting any express or implied rights whatsoever under any of Buyer's patents or other intellectual property. Any and all molds, tools, dies, jigs, fixtures or similar items ordered herein or delivered to Seller by Buyer shall become and remain the property of Buyer, shall be used in the manufacture of articles for Buyer exclusively and shall be promptly delivered to Buyer upon Buyer's request at no additional cost, unless otherwise expressly provided herein. Any confidential information of Seller disclosed to Buyer in connection with this purchase order shall be clearly marked or otherwise identified as such at the time of disclosure, and Buyer shall not duplicate or disclose any such confidential information to others, except as required by law or agreed to in writing by Buyer.

Changes. Buyer shall have the right, in its sole discretion, to make changes to the goods at any time in: (1) design, materials and specifications; (2) packaging and methods of shipment or transportation; and (3) time and place of delivery. If any such change causes an increase or decrease in the costs or the time required for performance or delivery by Seller, then Buyer and Seller shall make equitable adjustments in the prices and delivery requirements under this purchase order to reflect the results of any such change, and such adjustments shall be promptly confirmed by Buyer and Seller in writing. Buyer shall have the right to cancel at any time any undelivered portion of the goods in whole or in part by written notice to Seller. Upon receipt of such notice, Seller shall immediately discontinue all work on the cancelled portion, except such work as may be necessary to preserve and protect the goods and materials then in process, and use its best efforts to cancel and terminate all existing orders which are chargeable and relate to the cancelled portion. In the event of any such cancellation, Buyer shall make payments to Seller in full settlement of all justified claims arising out of such cancellation. Seller shall retain any goods and materials to which any such claim relates for disposition in accordance with Buyer's instructions.

Services. To the extent the parties intend for this purchase order to address, in whole or in part, the performance of services by Seller for Buyer, the terms, conditions and specifications herein shall be read to govern such services by substituting the word "services" for "goods" wherever applicable.

Entire Agreement; Waiver; Remedies; Assignment and Subcontracting. This purchase order constitutes the entire agreement between the parties with respect to the subject matter hereof. If any provision of this purchase order is held to be invalid, illegal or otherwise unenforceable, then such provision shall be deemed modified to the extent necessary to make such provision enforceable, or, if not practicable, then deleted. The unenforceability of any portion of this purchase order shall not impair or affect the validity and enforceability of the remainder. Either party's failure to insist upon full performance of any of the terms, conditions or specifications hereof or to exercise any rights or remedies hereunder shall not thereafter be deemed a waiver of the same or of any other provisions or privileges hereunder. The individual remedies reserved in this purchase order shall be cumulative and in addition to any other or further remedies provided at law or in equity. Seller shall not assign or subcontract, in whole or in part, its rights or obligations under this purchase order without the prior written consent of Buyer.

Choice of Law; Jurisdiction. This purchase order shall be governed by the laws of the State of Oregon, without regard to its conflicts of law principles. The parties consent to the personal and subject matter jurisdiction of the federal and state courts of the State of Oregon, acknowledge that the venue of such courts for any disputes arising under this purchase order is proper, and waive all objections to such jurisdiction and venue. Seller agrees that service of process may be made upon Seller by mail, postage prepaid, addressed to Seller's last known address. Seller and Buyer covenant to promptly notify the other of any action, suit, claim or threat of action of any kind arising hereunder about which their respective home offices or legal departments or attorneys in any way obtain actual knowledge.

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