

GARDNER MANUFACTURING COMPANY

TERMS AND CONDITIONS OF PURCHASE

1. Governing Provisions. All purchases by Gardner Manufacturing Company, a Wisconsin corporation ("Buyer"), shall be subject to these terms and conditions of purchase (these "Terms and Conditions"). This document is an offer by Buyer to purchase the goods and/or services herein described, not a confirmation or acceptance of any offer to sell; and acceptance of this offer is expressly made conditional on assent to these Terms and Conditions and the other provisions contained in this document. Buyer hereby objects to any additional or different terms contained in any of Seller's quotation, acknowledgment or other forms or correspondence from Seller. These Terms and Conditions and this document, as supplemented by agreed-upon prices, quantities and delivery dates, shall constitute the entire agreement between the parties on the subject of purchases by Buyer from Seller, superseding all prior written and oral communications and negotiations (hereinafter, the "Agreement"). This offer expires 30 calendar days after its date or upon prior written notification thereof to Seller. EACH SALE BY SELLER TO BUYER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF WISCONSIN, U.S.A., WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS. THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL NOT BE GOVERNED BY THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.

2. Changes in Orders. Buyer reserves the right at any time to make changes in any one or more of the following: (a) specifications, drawings and data incorporated in this Agreement when the items to be furnished are to be specially manufactured for Buyer, (b) methods of shipment or packing, (c) place of delivery, and (d) time of delivery. If any such change causes an increase or decrease in the cost or the time required for performance of an order, an equitable adjustment shall be made in the contract price or delivery schedule, or both, or Buyer may, at its option, terminate the order pursuant to Section 12 hereof if agreement on an equitable adjustment cannot be reached. Any claim by Seller for adjustment under this Section 2 shall be deemed waived unless asserted in writing within 20 calendar days after receipt by Seller of the change order. Price increases or extensions of time for delivery shall not be binding on Buyer unless evidenced by a writing signed by Buyer. No substitutions or changes of the ordered items shall be made except upon Buyer's written authority.

3. Delivery, Delay and Anticipation. Time is of the essence of this Agreement. Seller shall deliver the goods in the quantities, and shall deliver the goods and/or provide the services within the time, in accordance with the specifications, drawings and approved samples, and at the prices specified herein. Failure of Seller to comply with such requirements shall entitle Buyer, in addition to any other rights or remedies, to cancel any order and be relieved of all liability for any undelivered portion thereof. In the event that, for reasons which are beyond Buyer's reasonable control, shipment is delayed beyond the last date on which shipment by the method contemplated herein would result in delivery guaranteed on or before the required delivery date, Seller shall make shipment by the most expeditious available method of transportation. Any additional cost of such method of shipment shall be borne solely by Seller. If shipment is delayed for any reason, Seller shall promptly notify Buyer in writing thereof. Failure of Buyer to insist upon strict performance shall not constitute a waiver of any of the provisions of this Agreement or waiver of any default. Any failure by Buyer to exercise its remedies with respect to any installment shall not be deemed a waiver with respect to other installments. Seller shall not unreasonably anticipate delivery by purchasing materials or manufacturing quantities in excess of what is reasonably required to meet Buyer's delivery schedule. Items received in advance of Buyer's delivery schedule may, at Buyer's option, be returned at Seller's expense or be accepted and payment withheld until the scheduled delivery date.

4. Shipping, Packaging and Risk of Loss. All goods purchased hereunder shall be delivered F.O.B. destination, unless the goods originate from shipping points located outside the United States, in which case the goods shall be delivered DDP Buyer's designated facility (as that latter term is defined in Incoterms 2000). All goods shall be suitably packed, marked with Buyer's purchase order number and shipped in accordance with shipping instructions specified herein or otherwise approved in writing by Buyer. Packing slips must be included in English with all shipments showing order number, part number and quantity. The order number must be shown on each packing slip and invoice. No charge shall be made to Buyer for boxing, packing, crating or carting unless separately itemized in this document. Regardless of shipping terms, all risk that the ordered goods may be lost, damaged or delayed in transit shall be borne solely by Seller until conforming goods have been actually received, inspected and accepted by Buyer. Seller shall be liable to Buyer for any and all loss and/or damage resulting from Seller's failure to act so as to provide adequate protection during shipment. Additional expenses, charges or claims incurred as a result of deviation from the specified route, noncompliance with other shipping instructions or improper description of the shipment shall be assumed and paid solely by Seller.

5. Inspection, Acceptance and Rejection. All goods purchased hereunder (and work-in-process relating thereto) shall be subject to inspection and testing by Buyer at any reasonable time, and from time to time, before, during and/or after manufacture and delivery. If any inspection or test is to be made on Seller's premises, then Seller, without additional charge, shall provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. Notwithstanding prior inspections, all goods are subject to final inspection and approval at Buyer's plant or other place designated by Buyer and, notwithstanding any payment that may be made, no goods are deemed accepted until such final inspection has been made and Buyer has issued its approval. Buyer's inspection shall not constitute a waiver of the right of subsequent rejection by reason of any undiscovered or latent defect. Buyer may return rejected goods at Seller's expense. Seller shall not replace goods returned as defective unless so directed by Buyer in writing.

6. Warranties, Remedies. In addition to its standard warranty and/or service guaranty, Seller warrants that the goods to be furnished hereunder shall (a) be free and clear of all liens and encumbrances, good and merchantable title thereto being in Seller, (b) be free from any defects in design, material or workmanship (latent or otherwise) and of good and merchantable quality, (c) be new, not used, refurbished or reconstituted, (d) conform to Buyer's specifications, and to the sample approved by Buyer (if any), and with representations with respect thereto previously made by Seller, and be fit for the use intended by Buyer, and (e) comply and have been produced, processed, packaged, labeled, delivered and sold in conformity with all applicable national, federal, provincial, state and local laws, regulations, standards and orders. The foregoing warranties shall survive inspection, delivery and payment, and shall run in favor of Buyer, its successors and assigns and its customers, whether direct or indirect. Seller shall determine the particular purposes for which all goods and services purchased by Buyer are required, and shall utilize its skill and judgment to select and furnish suitable goods and services; Seller acknowledges that Buyer is relying on Seller to do so. If any such goods shall be found to be unsatisfactory, defective or inferior in quality, or not to conform to Buyer's specifications or any other requirements hereof (including without limitation Seller's warranties), Buyer may, at its option and in addition to its other remedies, retain such goods at an adjusted price, hold such goods at Seller's risk and expense pending Seller's specific instructions, or return them to Seller at Seller's expense for replacement, credit or refund, as Buyer shall direct. Buyer shall also have the right to cancel any unshipped portions of any such order. Buyer shall be reimbursed by Seller for all of its costs and expenses in connection with the storage, handling, packing and/or transporting of any such defective or otherwise nonconforming goods, and Seller shall assume all risk of loss or damage in transit to goods returned by Buyer pursuant hereto. Seller further warrants that it has not offered, promised or provided anything of value to any employee or agent of Buyer in connection with this offer.

7. Indemnification by Seller. Seller shall indemnify Buyer and its successors, assigns and customers (whether direct or indirect) against all losses, damages and expenses (including without limitation attorneys' fees and other costs of defending any action) which they, or any of them, may sustain or incur as a result of any claim of negligence, breach of warranty, personal injury or death, infringement of any patent, trademark or other proprietary right, strict liability in tort or based on any other theory of law in connection with the goods and/or services furnished by Seller hereunder, or as a result of any claim that the goods furnished by Seller fail to conform to or comply with any national, federal, provincial, state or local laws, regulations, orders or standards.

8. Buyer's Damages. Seller shall be responsible for all losses, liabilities, damages and expenses, including without limitation attorneys' fees and other costs of prosecuting an action for breach, which Buyer may sustain or incur as a result of any breach of contract or warranty by Seller.

9. Patents, Trademarks and Copyrights. Seller warrants that the sale or use of goods furnished hereunder will not infringe or contribute to infringement of any patent, copyright, trademark, trade secret or other proprietary right or subject Buyer or its customers (whether direct or indirect) to royalties in the United States or elsewhere. Seller shall indemnify and hold harmless Buyer and its successors and assigns and customers (whether direct or indirect), against any and all losses, damages and expenses (including without limitation attorneys' fees and legal costs) which they, or any of them, may sustain or incur as a result of a breach of this warranty.

10. Fair Labor Standards Certificate; Compliance with Employment Standards. Seller hereby certifies that all goods furnished hereunder shall have been produced in compliance with all applicable requirements of Sections 6, 7 and 12 of the U.S. federal Fair Labor Standards Act of 1938, as amended, and of regulations and orders of the Secretary of Labor issued under Section 14 thereof, and in accordance with all applicable national, federal, provincial, state and local laws, regulations, orders and standards governing general conditions for labor employed in the production of such goods. In addition, Seller represents and warrants that it does not, agrees that it will not, and agrees that it will not conduct business with any vendors, subcontractors or any other third parties that (a) employ children, (b) use forced labor, prison labor, indentured labor or bonded labor, or (c) use corporal punishment or any other form of mental or physical coercion as a form of discipline. Buyer and Seller agree to define "child" as less than 15 years of age, except that, if local minimum age law is set below 15 years of age, and is in accordance with standards set forth in International Labour Organisation Convention No. 138, then the lower age will apply. Buyer has the right to audit Seller's premises to ensure compliance with this section.

11. No Assignment. Seller shall not assign, delegate or sublet the work to be done hereunder without the prior written consent of Buyer, but this provision shall not restrict Seller in the procurement of component parts or materials. If any order shall be terminated for Buyer's convenience, Buyer's liability to Seller with respect to such parts or materials shall not exceed the amount for which Seller would be liable to its supplier or suppliers if such liability were determined on the basis of Section 12 of these Terms and Conditions.

12. Termination by Buyer. Buyer shall have the right to terminate any order without cause at any time prior to delivery, and Buyer's liability for such termination shall be limited to Seller's out-of-pocket cost for work and materials applicable solely to the terminated order which shall have been expended when notice of termination shall have been received by Seller, reduced by the fair market resale value of such work-in-process. Buyer may, at its option, cancel any order without liability to Seller (except for the obligation to pay for conforming shipments previously accepted by Buyer) in the event Seller shall cease to exist or become insolvent or the subject of bankruptcy, receivership or insolvency proceedings, or shall breach any part of this Agreement, or in the event its assets are seized, nationalized or expropriated.

13. Ingredients Disclosure and Special Warnings and Instructions. If requested by Buyer, Seller shall promptly furnish Buyer in such form and detail as Buyer may direct: (a) a bill of materials for or list of all ingredients, components or constituents in the goods purchased hereunder, (b) the amount of one or more ingredients, components or constituents, and (c) information concerning any changes in or additions to such ingredients, components or constituents. Prior to and with the shipment of goods purchased hereunder, Seller agrees to furnish to Buyer in English sufficient written warning and written notice, 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 such special handling instructions in English as may be necessary to advise carriers, Buyer and their respective employees as to how to exercise that measure of care that will best prevent bodily injury and property damage in the handling, transportation, processing, use and/or disposal of the goods, containers and packaging shipped to Buyer.

14. Buyer's Property; Tools, Design Work, Drawings, Specifications and Technical Information. Buyer shall have no obligation to furnish or pay for any design work, drawings, tools or other equipment required for the performance of any order; provided, however, that Buyer may, at its option, purchase any such items especially required by Seller for any order at the current value thereof on Seller's books for income tax purposes, and any item so purchased shall be deemed furnished to Buyer hereunder. Any design, drawing, specification, photograph, tool or other equipment, material or part or engineering and manufacturing information heretofore or hereafter furnished to Seller by Buyer, or the cost of which shall have been paid by Buyer or included in the aggregate price of any order, whether or not separately itemized, shall be and remain Buyer's sole and exclusive property, shall be conspicuously identified as such in Seller's records and by physical marking thereon, shall be promptly delivered to Buyer upon request, shall be treated as Buyer's confidential information, shall not be used in processing or manufacturing goods for any person or entity other than Buyer and, while in the possession of Seller, shall be Seller's responsibility and adequately insured at Seller's expense for the benefit of Buyer against loss or damage by fire or other hazard. No change shall be made in any design, drawing, specification, tool or other equipment furnished by Buyer without Buyer's express written consent. Any information that Seller may disclose to Buyer with respect to the design, manufacture, sale or use of the items covered by any order shall be deemed to have been disclosed as part of the consideration for that order, and Seller shall not assert any claim (other than a claim for patent infringement) against Buyer by reason of Buyer's use thereof.

15. Taxes. Buyer shall not be liable for any national, federal, provincial, state or local taxes, duties, customs or assessments in connection with the sale, purchase, transportation, use or possession of the goods ordered hereunder. All prices are firm, and no additional charges will be allowed unless specifically provided for herein or otherwise approved by Buyer in writing.

16. Remedies Cumulative. The rights and remedies of Buyer set forth herein shall be in addition to any rights or remedies that Buyer may otherwise have.

17. Arbitration. If the goods purchased hereunder originate from shipping points located outside the United States, then any and all disputes concerning the validity, interpretation or execution of this document or its enforcement shall be resolved by binding arbitration in Milwaukee, Wisconsin, U.S.A. under the Commercial Rules of the American Arbitration Association by a single arbitrator appointed in accordance with such rules. The arbitral proceedings shall be conducted in English. Judgment upon the award of the arbitrator may be entered in any court having jurisdiction. The award of any such arbitration shall be final and binding on the parties and in lieu of all other remedies and procedures available to the parties, except that either party may seek preliminary injunctive or other interlocutory relief as provided by this document or at law.

18. Governing Language. The English-language version of these Terms and Conditions shall govern and control any translation hereof into any other language.