

Former Associates Terms and Conditions – Former Associates Purchases from Vendors

PURCHASE ORDER TERMS AND CONDITIONS

The following terms and conditions (these “**Terms of Purchase**”) shall apply when Former Associates, LLC (“Former Associates”), is purchasing goods (“**Goods**”) and/or services (“**Services**”) from a Seller (“**Seller**”) pursuant to a Purchase Order (“**Order**”) issued by Former Associates to the Seller. In consideration of Former Associates agreeing to buy Goods and/or Services from Seller, Seller agrees as follows:

1. **Formation of Contract.** These Terms of Purchase, together with any other specific terms and conditions contained any Order issued by Former Associates, constitute the agreement between the parties (the “**Contract**”). Fulfillment of any part of an Order, or any other conduct by Seller that recognizes the existence of a contract pertaining to the subject matter of such Order, shall constitute acceptance by Seller of such Order and all the terms and conditions included or referenced in these Terms of Purchase. Seller agrees to each, and every term contained in the Contract as a precondition to Former Associates’ performance. Former Associates objects to any terms proposed in Seller’s proposal, sales note, acknowledgment, or other form of acceptance of Former Associates’ offer that add to, vary from, or conflict with these Terms of Purchase. No other term or condition not set forth in the Contract shall apply unless expressly agreed to in a written acknowledgment issued by Former Associates. These Terms of Purchase may be modified only by a written instrument executed by an authorized representative of both Former Associates and Seller. If an Order has been issued by Former Associates in response to Seller’s offer and if any of the Terms of Purchase add to, vary from or conflict with any terms of Seller’s offer, then the issuance of the Order by Former Associates shall constitute a conditional acceptance of Seller’s offer subject to the express conditions that Seller assents to the additional, different and conflicting Terms of Purchase and acknowledges that the Order and these Terms of Purchase constitute the entire agreement between Seller and Former Associates with respect to the subject matter hereof and the subject matter of Seller’s offer. Seller shall be deemed to have so assented and acknowledged unless Seller notifies Former Associates to the contrary in a writing signed by Seller’s authorized representative within ten (10) working days of receipt of the Order. Identification of the Goods shall occur upon Seller’s acceptance of the Order or as soon thereafter as the Goods are identifiable. The provisions of any Order and these Terms of Purchase will be read, to the extent possible, to be consistent. If a provision in an Order directly conflicts with a provision in these Terms of Purchase, the provision in these Terms of Purchase will prevail unless either (i) the provision of the Order specifies characteristics, quantities, prices, delivery times or other similar commercial terms for Goods and/or Services to be provided under that Order, or (ii) the Order specifically states that the provision in the Order will prevail.

2. **Prices.** An Order shall be filled at the price shown on the Order. The price shall not in any event be higher than the lowest price Seller provides to any of Seller’s other customers ordering similar quantities, after taking into consideration all rebates, discounts, and allowances. Unless otherwise provided on the Order, delivery of Goods shall be F.O.B. destination and Seller will not charge for boxing, packing, crating or other similar charges. Former Associates shall not be responsible for any charge not appearing on the Order.

3. **Invoices.** An invoice for Goods and/or Services, with evidence of shipment properly signed by carrier’s representative, if applicable, shall be submitted to Former Associates for each shipment or performance of services. Error or omissions on invoices or delay in the receipt of invoices shall entitle Former Associates to withhold payment without penalty or loss of any discount. Payment shall be made per the payment terms on the Order. Except as otherwise provided herein, payment for Goods and/or Services covered by the Order shall be made only (i) after arrival of Goods at destination or after satisfactory completion of services, (ii) after Former Associates’ inspection and acceptance of goods and workmanship, (iii) after receipt of the appropriate and corrective invoices, and (iv) insofar as final payment is concerned, after Seller has complied with all of its obligations to Former Associates. Former Associates shall have the right to set off against the Order any amounts that Seller may owe to Former Associates. Neither inspection nor payment shall be deemed to waive any rights of Former Associates.

4. **Payment Terms.** As full consideration for Seller’s satisfactory provision of the Goods or performance of the Services, Former Associates will pay Seller’s invoice not later than sixty (60) days following Former Associates’ receipt of said invoice unless otherwise indicated in the Order. Former Associates’ payment of any such invoice shall constitute full and complete satisfaction of all actual and potential fees for the billing period or Goods or Services covered by the invoice. All payment terms will be calculated based upon date of invoice and payment terms will be considered satisfied based upon date of postmark of payment, or if EFT payment, date of transmission. Former Associates shall be deemed to have received invoices three (3) business days after the invoice date.

5. Delivery and Risk of Loss. Regardless of the method of shipment used, Seller agrees to deliver all goods specified on the Order to the location(s) specified on the Order at Seller's own risk. Seller or its carrier shall be responsible for supervising the loading and unloading of goods and for securing all loads for safe transport and shall indemnify and hold Former Associates harmless from any liability for personal injury, death, property damage, or other loss resulting from the loading, transport, delivery or unloading of the goods until the goods are accepted by Former Associates. Time is of the essence. Seller agrees to comply with Former Associates' shipping, delivery, installation, or startup schedules as indicated in its Order or otherwise communicated to Seller (if applicable). Shipments must equal the exact amounts identified in the Order and no partial shipments, changes or substitutions in specifications may be made without Former Associates' prior written consent. Former Associates' acceptance of late shipments or partial shipments shall not constitute a waiver of any of Former Associates' rights to collect damages for goods not delivered or for late delivery. Seller shall report any delays in a schedule immediately to Former Associates as they become known to Seller. Former Associates reserves the right to cancel the Order and effect cover if Seller cannot comply with the schedule(s) indicated on the Order. If dates are not specified on the Order, Seller shall procure materials, fabricate, assemble, and ship Goods or provide Services only as authorized by shipment releases Former Associates issues to Seller. Former Associates may return over shipments to Seller at Seller's expense for all packing, handling, sorting and transportation. Former Associates may from time to time, and with reasonable notice, suspend schedules specified in the Order or such shipment releases. If it becomes necessary for Seller to ship by a more expensive mode than specified on the Order to meet a schedule, Seller shall pay any resulting increase in transportation cost unless Seller can establish to Former Associates' satisfaction that the necessity for the change in routing is occasioned by force majeure events.

6. Packaging. Unless otherwise specified, the Goods Seller sells to Former Associates shall be (a) packed, packaged, marked, and otherwise prepared for shipment in a manner which is in accordance with good commercial practice, (b) acceptable to common carriers for shipment at the lowest rate for the particular goods and in accordance with applicable regulations, and (c) adequate to ensure safe arrival at the named destination. Seller agrees to mark all containers with necessary lifting, handling, and shipping information and Order numbers, date, or dates. A packing list must be enclosed in all shipments showing the Order number and exact quantity and description of the goods shipped.

7. Unavoidable Delay. Neither party shall be liable for a delay in performance of its obligations and responsibilities under this Order due to causes beyond its control, and without its fault or negligence, such as but not limited to war, embargo, national emergency, insurrection or riot, acts of the public enemy, fire, flood or other natural disaster, provided that said party has taken reasonable measures to notify the other promptly in writing, of delay (but in any event, within seventy-two (72) hours of the force majeure event). Time is of the essence in this Contract, and should Seller fail to comply with Former Associates' delivery schedule or otherwise fail to comply with its obligations hereunder, Former Associates may terminate its Order without liability. Failure of subcontractors or inability to obtain materials shall not be considered as a force majeure delay.

8. Defects; Warranty; Remedies. Seller expressly warrants that all Goods and Services supplied to Former Associates by Seller as a result of an Order shall conform to the specifications, drawings, or other description upon which the Order is based, shall be fit and sufficient for the purpose intended, merchantable, of good material and workmanship, and free from any defects, latent or patent, in material, design, or workmanship. Seller represents and warrants that any Services performed by Seller (or its duly appointed sub-contractor) will comply to all applicable statutory rules and regulations and shall not infringe or misappropriate any patents, copyrights, trademarks, trade names, trade secrets or other intellectual property rights and be performed (i) in a good, timely, efficient, professional and workmanlike manner using then-current technology, (ii) using sufficient numbers of personnel who have suitable competence, ability, education, training and other qualifications for any assigned roles, (iii) with at least the degrees of accuracy, quality, efficiency, completeness, timeliness and responsiveness as are equal to or higher than the accepted industry standards applicable to the performance of the same or similar Services, and (iv) in compliance with the requirements of the Order and these Terms of Purchase. Seller acknowledges that Former Associates has relied on representations or statements made by Seller to Former Associates, and that Former Associates is relying on Seller's expertise, knowledge, skill, and judgment. Inspection, testing, acceptance, or use of the goods by Former Associates shall not affect Seller's obligations under this warranty, and such warranty shall survive inspection, testing, acceptance, and use. When notified of such non-conformity by Former Associates, Seller agrees to replace or correct promptly defects of any goods or services not conforming to the foregoing warranty without expense to Former Associates. If Seller fails to correct defects in or replace non-conforming goods or services promptly, Former Associates may give reasonable notice to Seller and, thereafter, if Seller has not cured such defects to the reasonable satisfaction of Former Associates, then Former Associates may (but is not obligated to), at Seller's expense, make such corrections or effect cover. Seller is responsible for any losses incurred by Former Associates because of breach of warranty, including without limitation incidental and consequential damages.

9. **Setoff.** Former Associates shall have the right to deduct, and or set-off amounts owed by Seller or any of Seller's affiliates to Former Associates against amounts payable under any Order.

10. **Changes.** Former Associates reserves the right to make changes in drawings, designs, specifications, scope of work to be performed, time and place of delivery and method of transportation. If such change is to be made, it will be evidenced in writing by Former Associates (in the form of a "**Change Order**"). If any such change causes a decrease in the cost or the time required for performance of the Order, an equitable adjustment shall be made in the price or delivery schedule, or both, and the Order shall be modified in writing to reflect such changes. If any such change causes an increase in the cost or the time required for performance of the Order, for Seller to be able to recover such increase, Seller must immediately notify Former Associates of its claim for such an increase. Former Associates may then request from Seller an estimate of the increase in the cost, or the time required for performance of any change prior to ordering the same, whereupon Seller shall promptly submit to Former Associates a firm bid in writing stating the amount of any increase or decrease. Seller shall not proceed with the change for which any such estimate has been requested unless and until Former Associates gives written notice to Seller to make such change.

11. **Limitations.** Any attempt by Seller to disclaim any warranties, including those specified under the Uniform Commercial Code, shall be ineffective. IN NO EVENT WILL FORMER ASSOCIATES BE LIABLE TO SELLER OR ANY THIRD PARTY, IN CONTRACT, TORT OR OTHERWISE, FOR ANY LOSS OF PROFITS OR BUSINESS, OR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, ARISING FROM OR AS A RESULT OF THESE CONTRACT TERMS, ANY ORDER OR ANY AGREEMENT BETWEEN THE PARTIES RELATING TO THE GOODS, SERVICES OR DELIVERABLES SELLER PROVIDES, EVEN IF FORMER ASSOCIATES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12. **Taxes.** Former Associates will not be liable for any taxes with respect to an Order, except for sales, use, retailer's occupation, service occupation, excise, ad valorem, value added, or consumption taxes imposed by any governmental authority for the purchase of the goods Seller supplies, to the extent that Seller is required by law to collect from Former Associates. Seller shall not collect or remit and Former Associates shall not be liable for, any such taxes if Former Associates has provided Seller with a tax exemption certificate. Former Associates also will not be liable for any taxes of any nature based on the income of Seller. If Former Associates reasonably believes it is required by the law of any jurisdiction to withhold any taxes, duties, fees, levies, or charges ("**Withholding Taxes**") from any fees or other charges (including reimbursement of expenses) paid to Seller, Former Associates will be entitled to deduct the amount of such Withholding Taxes from the amount of such fees or other charges (including reimbursement of expenses). If Seller is either exempt from withholding or entitled to a reduced rate of withholding pursuant to applicable law, and provides Former Associates with adequate documentation of such exemption from or reduced rate of withholding, Former Associates will be entitled to withhold only such Withholding Taxes from which Seller is not exempt. In case of doubt by Former Associates as to Former Associates' liability for any such tax, Seller shall allow Former Associates, at Former Associates' expense, to assume control of any litigation or proceeding relating to the determination and settlement of such tax. Former Associates shall, upon final settlement of such litigation and proceeding, reimburse Seller for any tax owing including in the amount to be reimbursed, any interest charges and penalties accruing thereon.

13. **Insurance.** Before commencing any Services for Former Associates, Seller shall furnish Former Associates with certificates of insurance from companies meeting an A.M. Best rating of at least A- VII showing that Seller is covered by A) Workers' Compensation as required by law, including a waiver of subrogation in favor of Former Associates; B) Employer's Liability and Occupational Disease insurance with limits of \$500,000 per occurrence; C) Commercial General Liability, including Products and Completed Operations, with limits of not less than \$2,000,000 per occurrence for bodily injury and property damage; D) Auto Liability covering all autos with a limit of \$1,000,000; and E) Professional Liability with a limit of \$2,000,000 per claim. The Commercial General Liability policy shall be endorsed to name Former Associates as an additional insured as its interests may appear, contain a cross liability (severability of interests) provision and be primary and non-contributory to any insurance available or maintained by Former Associates. No exceptions to these coverages may be made unless approved in writing by Former Associates. Properly endorsed Certificates of Insurance shall be sent to Former Associates' address ten (10) days prior to commencement of delivery of any goods or services, and upon renewal of insurance policies.

14. Presumptions. Seller shall be conclusively presumed to have waived Seller's right to receive payment for Goods or Services covered by any Order if Seller has not submitted an invoice for the Goods or Services within one (1) year of the date of the Order. Seller's submission of an invoice shall give rise to a presumption that the charges are the full amount Seller is due for the Goods or Services listed on or referred to in the invoice for the purpose of determining the existence of any underpayment. Seller may submit supplemental invoices only if accompanied by a photocopy of the original invoice and documentation acceptable to Former Associates that establishes the validity of Seller's claim for underpayment. Seller waives any claim for underpayment if a supplemental invoice and supporting documentation have not been furnished within the earlier of (i) one (1) year after delivery of the Goods or performance of the Services covered by the supplemental invoice, or (ii) three (3) months after the date of submission of the original invoice.

15. Solvency and Encumbrances. Seller represents and warrants that Seller is solvent. Seller further represents and warrants that it has, or will have, at the time of delivery, good title to the Goods covered by the Order, and that it has a right to transfer such Goods, free from any security interest, lien, or encumbrance. Before final payment, Seller shall, if requested, satisfy Former Associates by affidavits or otherwise, that there is no outstanding security interest, lien or encumbrance for labor or material against the goods delivered to Former Associates.

16. Laws and Compliance. Seller represents and warrants that it has complied, and the Goods and/or Services covered by the Order will comply, with all applicable federal, state, and local laws, rules, regulations, and orders which directly or indirectly regulate or affect the manufacture and/or sale of such Goods or Services. Seller will furnish Former Associates with guarantees and assurances in accordance with the applicable provisions of any such law, rule, regulation, or order which provide a specific written guarantee or assurance to be given by Seller with respect to such Goods or Services.

17. Cancellation. Former Associates may terminate any Order, or its obligation to purchase any Goods or Services from Seller at any time for any or no reason, in its sole discretion, by written notice to Seller. If an Order is terminated, then the termination date shall be not less than ten (10) days from the date of notice, unless otherwise mutually agreed to by the parties. Former Associates shall pay for any Goods delivered or Services performed prior to the date that termination becomes effective (on a pro rata basis if Former Associates has paid in advance any fees). Unless Former Associates has requested and received a refund in respect of any undelivered good(s) or terminated services, it shall be entitled to the delivery of all Good(s) and completion of all Services for which it has paid prior to the effective date of the termination. In addition to any other remedy provided at law or equity, either party shall have the right to terminate or cancel an Order, and any obligation to purchase, sell or provide a Good or Service, in the event the other party (a) fails to comply with any condition of the Order or any related agreement, and such failure is not remedied within thirty (30) days after written notice thereof has been given to such other party; (b) becomes insolvent, makes an assignment for the benefit of creditors, suffers or permits the appointment of a receiver, trustee in bankruptcy or similar officer for all or parts of its business or assets; or (c) avails itself of or becomes subject to any bankruptcy proceeding under the laws or any jurisdiction relating to insolvency or the protection of rights of creditors.

18. Acceptance. Payment by Former Associates for the goods or services delivered hereunder shall not constitute Former Associates' acceptance. Former Associates retains the right to inspect the Goods or Services performed and to reject any or all the Goods or Services performed that are defective as determined by Former Associates, as well as the right to inspect Seller's manufacturing operations, handling and storage of goods and raw material, including the equipment used to manufacture the Goods. Former Associates will give Seller reasonable notice of any planned Seller site visit. No inspection or test made prior to final acceptance shall relieve Seller of liability for defects or other failure to meet the requirements of these Terms of Purchase. Goods rejected by Former Associates and goods supplied in excess of quantities called for herein may be returned to Seller at Seller's expense. In addition to Former Associates' other rights, Former Associates may charge Seller all expenses of unpacking, examining, repacking, and reshipping such goods. In the event Former Associates receives Goods whose defects or nonconformity is not apparent on examination, resulting in deterioration of Former Associates' finished product, Former Associates reserves the right to require the replacement, as well as payment of any resulting damages. When a shipment is rejected based upon Former Associates' inspection, and such rejection increases the risk of jeopardizing Former Associates' production schedules by reason of the fact that at least some of the goods are necessary to meet such production schedules, then Former Associates, at its option, may charge Seller for the reasonable costs of an increased level of inspection up to and including inspection of each of the Goods comprising such shipment.

19. Former Associates' Property. Any property, material or parts furnished by Former Associates intended for use by Seller in Seller's execution of Seller's duties as required by an Order are held by Seller as a bailment. Seller shall segregate, clearly mark, and maintain complete inventory of all such property and will notify Former Associates of any loss or destruction of or damage to such property. Upon termination or completion of the Order Seller shall deliver any such property to Former Associates, in good condition subject to ordinary wear and tear and normal manufacturing losses, in accordance with Former Associates' instructions, or shall otherwise dispose of such property as directed by Former Associates. If not accounted for or not returned to Former Associates, Seller shall pay or reimburse Former Associates for such materials or parts. All such materials or parts will be kept insured by Seller at Seller's expense in an amount equal to the replacement cost with a loss payable to Former Associates.

20. Intellectual Property and Confidentiality. If Seller provides to Former Associates any inventions (whether or not patentable), devices, technologies, ideas, improvements, processes, systems, software and other works and matters that Seller creates or develops in the course of Seller's design, development or manufacture of the Goods and all drawings and specifications that Seller provides to Former Associates ("**Intellectual Property**") shall be deemed the property of Former Associates as a work for hire and Former Associates shall have all rights relating to such work product. Seller assigns, and agrees to assign, to Former Associates all right, title and interest that Seller now has or in the future acquires in the Intellectual Property. All specifications, documents, artwork, or drawings delivered to Seller by Former Associates, and any other non-public information Former Associates discloses to Seller (the "**Confidential Information**"), remain Former Associates' property. The information is provided to Seller solely for the purpose of Seller's performance of the Order and on the express condition that neither the Order nor the information contained therein or provided in connection therewith shall be disclosed to others nor used for any purpose other than in connection with the Order without Former Associates' prior express written consent. Former Associates reserves the right to require that Seller return all such information to Former Associates or destroy it. In the event that Seller is determined by a court of competent jurisdiction to be in breach of this Confidentiality provision, Seller agrees that it will not be possible to adequately measure the loss suffered by Former Associates, and that because of the competitive nature of the industry, the injury to Former Associates resulting from a breach of this provision will be irreparable. Therefore, Former Associates will be entitled to a temporary restraining order and preliminary and permanent injunctive relief to halt any actual or threatened violation of this Confidentiality provision, as well as any measurable damages sustained. Seller's obligations under this paragraph shall survive the cancellation, termination, or other completion of the Order.

21. Indemnity. Seller shall indemnify and hold harmless Former Associates with respect to all damages, losses, claims and expenses, including but not limited to attorney fees, that Former Associates incurs as a result of (a) the acts or omissions of Seller, its subcontractors, or agents or the employees of any thereof, in the performance of this Order or any breach or default hereunder, (b) a claim that the Goods or Services Seller provides are defective, or (c) any claimed unfair competition or patent, trademark or copyright infringement or any other claim resulting from Seller's manufacture of the Goods.

22. Buyer's Rights. Former Associates has all rights and remedies that applicable law gives to buyers. Former Associates' rights and remedies are cumulative and not alternatives, and Former Associates may exercise one or more of them from time to time. Former Associates shall not be deemed to have waived any right unless such waiver is express and written. Further, Former Associates waiver of any right on any occasion shall not be a waiver of any future exercise of that right or of any other rights. Without limiting the foregoing, neither delayed enforcement nor acceptance of any items or payments therefore shall be deemed to be a waiver by Former Associates of any breach.

23. Assignment/Delegation/Subcontracting. Seller may not assign, delegate, subcontract or transfer any Order, the work required to be done or any payments to be made hereunder without Former Associates' prior written approval. In the event of agreed delegation or subcontracting, Seller shall continue to be liable with respect to all of the obligations or liabilities assumed by it hereunder and hereby guarantees satisfactory performance of the Contract by its delegate or subcontractor. All claims for monies due or to become due from Former Associates shall be subject to deduction by Former Associates for any setoff or counterclaim arising out of this or any other Orders with Seller whether such setoff or counterclaim arise before or after such assignment, delegation, subcontracting or transfer by Seller.

24. Time for Bringing Action. Any action that Seller brings against Former Associates for breach of the Contract must be brought within one (1) year after the cause of action accrues or such shorter time as provided in the Contract.

25. Applicable Law. The Contract between Former Associates and Seller shall be considered to have been made in the State of Illinois, and it shall be governed by and interpreted according to Michigan law. Either party may bring any action that arises out of or relates to the Contract in any federal or state court in Cook County, Illinois, that has jurisdiction of the subject matter, and Seller irrevocably consents that any such court shall have personal jurisdiction over Seller and waives any objection that the court is an inconvenient forum.

26. **Complete Agreement; Amendment.** If Seller has not otherwise agreed to these Terms of Purchase, then Seller's delivery of, or acceptance of payment for, the Goods shall constitute Seller's agreement to these Terms of Purchase. The Contract will not be amended or supplemented by additional or inconsistent terms contained in any quotation, acknowledgment, or another standard form. The terms on Former Associates' Orders and these standard Terms of Purchase contain the entire agreement between Former Associates and Seller. Any change in the Contract must be by a writing signed by an authorized officer of Former Associates.