



## Terms and Conditions of Purchase

These Standard Terms and Conditions of Purchase govern the conditions under which Hawkins, Inc., and its affiliated companies ("Buyer"), will purchase products from seller ("Seller"), and Seller will sell products to Buyer.

These Terms supersede any inconsistent terms and conditions in any documentation submitted by or on behalf of Seller to Buyer. No change, addition, or modification of any of these Terms shall be valid or binding unless agreed to in writing. **Seller's acceptance of any purchase order, or sale of products to Buyer, is EXPRESSLY LIMITED TO, and EXPRESSLY MADE CONDITIONAL ON, Seller's acceptance of these Terms. BUYER OBJECTS TO ANY DIFFERENT OR ADDITIONAL TERMS.**

**1. GOVERNING PROVISIONS.** Each shipment received by Buyer from Seller shall be deemed to be an acceptance of such shipment based upon the terms and conditions contained in this Terms and Conditions of Purchase and in the Purchase Order or accompanying agreement (the Terms and Conditions of Purchase and the Purchase Order or accompanying agreement shall be collectively hereinafter defined as the "Order"), notwithstanding any terms and conditions that may be contained in any acknowledgment, invoice or other form of Seller (even though it may be signed by Buyer) and notwithstanding Buyer's act of accepting or paying for any shipment or any similar act of Buyer. Buyer hereby rejects any different or additional terms and conditions proposed by Seller. If this order is sent to Seller in response to a quotation or an offer of Seller submitted to Buyer, the terms of the Order shall (i) supersede and control all provisions in the quotation or offer of Seller; (ii) be a rejection of such quotation or offer from Seller and (iii) constitute an offer to Seller. Seller's shipment of any of the goods or the like (the "Products") or performance of any of the services (the "Services") covered by the Purchase Order, or Seller's acceptance of any payment made by Buyer pursuant to the Purchase Order, shall constitute Seller's acceptance of the Purchase Order (including these Terms and Conditions of Purchase), as fully as if Seller had accepted them in writing. In the event of a conflict between the terms in the body of the Purchase Order and these Terms and Conditions of Purchase, such terms in the body of the Purchase Order shall prevail. No oral modifications of the Order shall be binding on Buyer. Any modifications and alterations or superseding agreements to the terms contained in the Order must be reduced to writing and signed by Buyer.

**2. COMPLIANCE WITH LAWS.** If Seller is domiciled in a country other than the United States, Seller agrees to comply with the United States laws that are cited in this Section 2 and all equivalent laws of Seller's country of domicile. Seller warrants that the Products shall be adequately contained, packaged, marked, labeled and registered in compliance with, and that the Products and Services shall conform to, the requirements of all applicable federal, state and local laws, regulations, rules and orders. In accordance with the foregoing provision, but not by way of limitation, it is specifically understood that Buyer is an Equal Opportunity Employer and Seller warrants that Seller complies with the Fair Labor Standard Act of 1938, as amended. Seller agrees that, if this is construed to be a subcontract within the meaning of the Rules and Regulations approved by the United States Secretary of Labor pursuant to Executive Order 11246, as amended, the Vietnam Era Veterans Readjustment Act of 1974, as amended, or the Rehabilitation Act of 1973, as amended, or of the regulations issued pursuant to Executive Order 11625, the provisions of the applicable regulations as well as the Equal Opportunity and Nondiscrimination provision of Section 202 of Executive Order 11246 shall be incorporated herein by reference and shall be binding upon Seller as part of this Order.



Seller warrants that all Products and Services meet or exceed the safety standards established and promulgated under the Occupational Safety and Health Act of 1970, and the regulations issued thereunder, as amended. Seller warrants that every chemical substance and/or mixture as defined under the Toxic Substance Control Act, as amended, contained in the Products or utilized in their manufacture or the Services, has been properly reported to the Environmental Protection Agency and properly handled and disposed of in accordance with the provisions of the Toxic Substance Control Act and the regulations issued pursuant thereto, and any other applicable Federal, State or local laws, regulations and rules.

Seller warrants that each shipment or other delivery of the Products covered by this Order, are as of the date of shipment or delivery, whichever is later, not adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, and the Medical Devices Act as amended (the "Act") and are not articles which may not, under the provisions of Section 405, 505 or 512 of the Act, be introduced into interstate commerce and are not adulterated or misbranded within the meaning of the food, drug or cosmetic laws of any state or municipality. The foregoing guarantee shall be a continuing guarantee and shall apply to each shipment. Seller shall defend, indemnify and save harmless Buyer from and against any claims, liabilities, expenses (including attorneys' fees) fines, penalties, damages and/or economic losses associated with the failure of Seller, the Products and/or the Services to comply with the requirements of this Section 2.

**3. CERTIFICATION REGARDING CALIFORNIA TRANSPARENCY IN SUPPLY CHAINS ACT.** You certify that you, and all of your contractors and agents, manufacture products and produce materials without the use of forced labor including, but not limited to, human trafficking, slavery and unlawful child labor. If you are found to be in violation of this certification, BUYER reserves all rights to terminate its business relationship and Purchase Order(s) with you. BUYER will investigate and address any information brought to its attention regarding any actions by you, or your contractors and agents, which violate forced labor laws. You certify that you shall comply with all pertinent U.S. labor laws and the local labor laws of the country or countries in which you operate.

**4. PRICE AND DELIVERY.** Seller shall be paid as specified under terms and at the prices stated in this Order. No extra charge of any kind, including charges for shipping, boxing, packing or crating shall be allowed unless specifically agreed to in writing in advance by Buyer. Unless otherwise provided on this Order, delivery of the Products shall be made at Seller's expense to the location specified on the Order and shall not be deemed complete until the Products have actually been received and accepted by Buyer. Risk of loss and/or damage shall remain with Seller until acceptance of the Products by Buyer. Furthermore, all costs, risks of loss, and damages due to (i) holds or enforcement actions by the USDA or the FDA, and (ii) taxes and duties imposed upon the delivery of the Products, shall be the responsibility of Seller until acceptance of the Products by Buyer. Seller agrees that Buyer may (but is not required to) accept delivery of fewer than all of the items ordered hereunder in the event Buyer accepts one or more of the partial deliveries, Seller agrees to present for payment a separate invoice for each delivery. Buyer is not obligated to accept any Product delivered in excess of that ordered. Any additional Product received may be returned by Buyer to Seller at Seller's expense, or Buyer may, at its election, retain and take title to such additional Product. Seller agrees that all prompt payment discount term days begin to accrue from the date of receipt of Products by Buyer. Any and all charges by Buyer or credits to Buyer for any reason with respect to Seller shall, at Buyer's sole discretion, be paid by Seller to Buyer within 10 calendar days of Buyer's request. This includes, but is not limited to, all charges to Seller for advertising, trade shows, Manufacturer's Charge Backs (MCBs), and any and all credits to Buyer, for damaged, missing, defective, or returned Products to Seller.

**5. INSPECTION AND ACCEPTANCE.** All Products shall be received subject to Buyer's rights of



inspection, testing, rejection, and revocation. All Products shall conform to the specification requirements in the Purchase Order and the Specification Sheet for the Product. Any Buyer's signature on any shipping/receiving, acknowledgment or other like documents shall not constitute (i) acceptance of Products or Services, (ii) acceptance of any different terms or conditions, or (iii) an acknowledgement of the condition of Products, but shall only acknowledge the receipt of a shipment. Without limiting any of Buyer's rights provided by law or by this Order, Seller shall, upon request of Buyer and at Seller's risk and expense, immediately replace any Products rejected in good faith by Buyer and immediately deliver such replacement Products to Buyer's facility. If the Product fails any of Buyer's tests, Seller agrees to reimburse Buyer for any and all costs of testing, and all costs to ship any backorders for Products that go out of stock due to a rejection based on failure to meet Buyer's specifications. If after being requested by Buyer to replace any Products, the Seller fails to promptly correct such defective item within the delivery schedule: Buyer may, at its option: (i) by contract or otherwise replace such Product, and charge to Seller any additional costs incurred by Buyer that are in excess of the original costs of the rejected Products and any other incidental or consequential costs, (ii) without further notice terminate this Order for default, or (3) require an appropriate reduction in price. Payment for or use of Products prior to inspection shall not constitute acceptance thereof and shall be made without prejudice to any and all claims that Buyer may have against Seller.

**6. INSURANCE.** Seller agrees to carry the following minimum insurance, which shall be primary to any insurance maintained by Buyer: (i) Commercial General Liability, including Completed Operations and Product Liability Insurance and (ii) Blanket Contractual, with an endorsement naming Buyer as an additional insured with minimum limits of liability of \$2,000,000 each occurrence combined single limit. However, if Seller holds such a Blanket Contractual minimum limit of less than \$2,000,000, then Seller shall give Buyer notice of such lesser amount before delivery and Buyer may, in its sole discretion, waive such Blanket Contractual minimum limit of liability requirement. Not later than ten (10) days from the date of this Order but in any case prior to Seller's entering Buyer's property to perform Services, a certificate evidencing the above coverage and Worker's Compensation Statutory Liability Insurance for the location of the work specified in this agreement, shall be provided to Buyer (subject to Buyer's satisfaction) and said certificate shall provide that Buyer shall be given thirty (30) days advance notice in the event of cancellation or material modification of the coverage.

**7. TAXES AND GOVERNMENTAL CHARGES.** This Order shall not include sales or use Sales or Use taxes, nor shall such taxes be added to the purchase price if Buyer has indicated in the space provided for such purpose on this Order, that the purchase is exempt from such taxes. Seller agrees to pay any other taxes imposed by Federal, State, or local law upon the Products or Services sold to Buyer hereunder, unless: (i) otherwise agreed by written consent of Buyer, or (ii) such taxes are required by law to be paid or borne by Buyer. Seller shall, upon request of Buyer, inform Buyer whether the Products are imported or manufactured with imported materials and furnish Buyer with all documentation required for duty drawback for product or imported materials contained in the Product purchased by Buyer hereunder.

**8. INTELLECTUAL PROPERTY/PATENT INDEMNITY.** Seller agrees to defend, indemnify and hold harmless Buyer, its officers, agents, employees, successors, customers and users, from and against all actual or alleged liability, economic loss, damage, claim, demands or expense, (including attorneys' fees, other expenses for investigation, handling litigation, and settlement or judgement amount) either at law or in equity associated with any actual or alleged infringement of any patent, copyright, trademark, mask work, trade secret, invention, design or any other intellectual property right, or any litigation based thereon, with respect to the Products or Services (or any part thereof) covered by this Order, and any such obligation shall survive acceptance of such Products and payment therefore by Buyer.



**9. SELLER INDEMNIFIES BUYER.** Seller shall assume the sole responsibility for any and all damage or injury (including death) to any and all persons (including, but not limited to employees of Seller or Buyer) and to all property associated with the performance of its obligations under this Order or any act or omission of Seller, and shall defend, indemnify and save harmless Buyer from and against any and all actual or alleged claims, liabilities, expenses (including attorneys' fees, other expenses for investigation, handling litigation, and settlement or judgement amount), fines, penalties, damages and/or economic losses of whatsoever nature associated therewith, except for such claims, liabilities, etc., due solely and directly to Buyer's active negligence. Seller hereby releases and waives all rights of subrogation against Buyer possessed by Seller's insurers. Seller hereby represents that it is authorized by its insurers to grant such release and waiver. This indemnification shall be in addition to the warranty obligations of Seller.

**10. WARRANTY.** Seller warrants good and clear title to all Products. Seller warrants that the Products are new, merchantable, safe, free from defects in workmanship and materials and conform to any specifications referenced herein or applicable thereto. Seller further warrants that all Services shall be performed in accordance with the highest standards, in a workmanlike manner, free from defects in workmanship and materials and in conformance with all specifications, plans, or drawings referenced herein or applicable thereto. Products or Services found to be defective in material or workmanship or nonconforming with specifications within twenty-four (24) months from the date of shipment shall, at Buyer's option and at Seller's expense be replaced at Buyer's facilities by Seller, or be returned to Seller at Seller's expense (including transportation and handling costs) for replacement or full refund. Replacement shall be initiated immediately and shall be pursued diligently and continuously, utilizing Seller's best efforts in order to minimize the impact on Buyer's operations. If Seller refuses or fails to promptly correct or replace the Products, Buyer may by contract or otherwise correct or replace such Products with similar products or services and charge Seller any additional costs accrued to replace such Products and any other incidental or consequential costs occasioned to Buyer thereby. All warranties shall survive any inspection, delivery, resale, incorporation into Buyer's products, use or acceptance of Products, or payment therefore by Buyer. Seller agrees that all warranties and indemnities applicable to Products provided hereunder shall automatically inure to the benefit of Buyer and be directly enforceable by a third party purchasing or receiving such Products from Buyer. Any costs, expenses or damages incurred by Buyer associated directly or indirectly with a breach of these warranties shall be borne by Seller and may be offset against any monies owing to Seller hereunder or otherwise without liability whatsoever to the Buyer.

**11. CANCELLATION AND LATE ORDERS.** Time of delivery and performance and quantities specified in this Purchase Order are of the essence. Failure of Seller to perform on the dates and in the quantities specified shall constitute a material breach of this agreement. In addition to all its other legal remedies, Buyer reserves the right to cancel all or any part of the undelivered or unperformed portion of this Order if Seller does not make deliveries or perform as specified, or if Seller breaches any of the terms hereof. In the event of such cancellation, Seller shall be liable to Buyer for any excess cost or procurement cost as well as incidental, economic and consequential damages or loss sustained as a result thereof. All orders are due at Buyer's specified location by the due date specified in the order. Seller agrees that for late orders which cause backorders of Buyer's Products, in addition to any other damages entitled to Buyer by law, Seller will pay Buyer's actual extra costs incurred to ship backorders.

**12. ASSIGNMENT AND SUBCONTRACTING.** Seller shall not assign this agreement or any rights or obligations hereunder without the prior written consent of Buyer.

**13. CONFIDENTIALITY.** Seller agree not to make any use of writings, data, designs, drawings, specifications or any other information furnished to it by Buyer or observed or developed by Seller associated with this Order and to not disclose any of the foregoing to third parties, except as required in



the performance of this Order and then only after first obtaining a written agreement from such third parties to be bound by similar secrecy and use restrictions. Upon completion, cancellation or termination of this Order, Seller shall return to Buyer all of the foregoing, including all copies, extracts or derivatives of tangible materials containing any such information made by Seller or third parties employed by Seller. Buyer shall at all times have title to all drawings, specifications, writings or other documents prepared or furnished by Seller hereunder. All Products produced for Buyer hereunder which are subject to or may be copyrighted under the Federal Copyright Act shall be deemed to be "works made for hire" and title to and ownership of such Products shall at all times be in Buyer. In return for the valuable consideration listed above, receipt of which is hereby acknowledged, the Seller acknowledges and agrees that the Seller does not retain any patent, copyright, common law right or intellectual property right under any United States, foreign country, or international law to any drawing, product, or work, and Seller does not retain any rights to reproduce, publish, sell or otherwise utilize the work in any form or medium whatsoever. These obligations shall continue to be applicable both during and after the termination of the Purchase Order and shall terminate only from the moment and to the extent such data and information are or become generally available to the public through no fault of the Buyer or its employees.

**14. MATERIAL SAFETY DATA SHEETS.** Seller shall furnish Buyer, prior to the first delivery, Seller's current [Safety Data Sheet and other literature pertaining to the hazards associated with the Products and the precautions which should be observed with respect thereto. Seller shall promptly furnish Buyer copies of any revisions to any of the same issued by Seller during the term of this Order.

**15. WAIVER.** No delay or omission of Buyer to exercise any right under the Order shall impair such right or be construed to be a waiver of any breach or default or an acquiescence therein, and the acceptance of any Product notwithstanding the existence of breach or default shall not constitute any waiver or acquiescence. Any single or partial exercise of any such right shall not preclude other or further exercise thereof or the exercise of any other right, and no waiver, amendment or other variation of the terms, conditions or provisions of the Order whatsoever shall be valid unless in writing signed by the Buyer, and then only to the extent specifically set forth in such writing. All remedies in the Order or afforded by law shall be cumulative.

**16. APPLICABLE LAW.** This Order shall be governed by and construed in accordance with the laws applicable to Buyer's location set forth on this Order without reference to its conflicts of law principles. Buyer and Seller agree that Buyer's location set forth on this order shall be the proper jurisdiction and venue of any action to enforce this agreement, and both parties waive their rights to change venue. The prevailing party in any action to enforce this agreement shall be entitled to attorneys' fees and costs.

**17. SUBSTANCE ABUSE.** Seller certifies at all times while Seller's employees are on Buyer's premises, Seller shall be in compliance with the Drug Free Workplace Act of 1988, as it may be amended, (which shall be deemed to apply to the performance of this Order) and any governmental laws or regulations regarding substance abuse. Seller will take all action necessary to comply with such requirements.

**18. ANTI-KICKBACK.** This agreement shall be breached if Seller or Buyer has reasonable grounds to believe that a Buyer or Seller employee, subcontractor or subcontractor employee, directly or indirectly, solicited, accepted or attempted to accept any money, fee, gratuity, offer or promise of future employment or business opportunity, or thing of value of any kind for the purpose of improperly obtaining or rewarding favorable treatment in connection with a contract or subcontract associated with Buyer. Upon the occurrence of such a Breach, Buyer shall have the sole ability to terminate this agreement and collect any damages resulting from the favorable treatment.

**19. TERMINATION FOR CONVENIENCE.** The performance of the work under this Order may be terminated in whole or from time to time in part by Buyer whenever for any reason Buyer should



determine that such termination is in its best interest.

**20. TERMINATION FOR DEFAULT.** Buyer may by written notice of default to Seller, terminate the whole or any part of this order in any one of the following circumstances: (i) if Seller fails to make delivery of the items described herein or to perform the services described herein within the time specified; or (ii) if Seller fails to replace or correct defective items when required to do so in accordance with the provisions of those clauses hereof entitled "Warranty" and "Inspection and Acceptance"; or (iii) if Seller fails to perform any of the other provisions of this order, or so fails to make progress as to endanger performance of this order in accordance with its terms. In the event Buyer terminates this order in whole or in part as provided above, Buyer may procure, at terms and in such a manner as Buyer may deem appropriate, items or services similar to those terminated and Seller shall be liable to Buyer for any excess costs for such similar items and services, provided that Seller shall continue with the performance of this Order to the extent not terminated under the provisions of this clause. Payment for completed items delivered to and accepted by Buyer shall be at the Purchase Order price. If after notice of termination in accordance with the provisions of this clause, it is determined for any reason that Seller was not in default under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the "Termination for Convenience" clause of this order. The rights and remedies of the 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 purchase order.

**21. SEVERABILITY OF PROVISIONS.** In the event one or more of the provisions hereof or in the Purchase Order is rendered unenforceable, wholly or in part by any arbitrator's or judge's decision, Seller expressly agrees that the remaining provisions contained in the Order shall continue in force.