

Procurement Terms and Conditions

All Products sold to Seals Unlimited (“Buyer”) shall be in accordance with the following terms and conditions:

ACCEPTANCE – This Purchase Order is Buyer’s offer to Seller and shall become a binding contract on the terms and conditions set forth herein when it is accepted either by Seller’s acknowledgement or performance.

COMPLETE AGREEMENT – This Purchase Order and the terms and conditions herein shall constitute the complete agreement between the parties and may not be altered or modified except in writing duly executed by each party. No terms and conditions stated in or attached to Seller’s communications to Buyer, including but not limited to acknowledgement or invoices, are applicable to this Purchase Order in any way and are not to be considered Seller’s exceptions to the provisions of this Purchase Order. Trade custom, trade usage and past performance are superseded by this Purchase Order and shall not be used to interpret this Purchase Order.

CHANGES – Buyer reserves the right to suspend all work as well as make changes to the scope of product to be furnished by Seller. Seller shall negotiate all claims for adjustments due to changes in writing to Buyer within thirty (30) days after receipt by Seller of notification of the change, but in no event after the final payment of the Purchase Order.

CANCELLATION – Buyer reserves the right to cancel this Purchase Order in whole or in part upon written notice to Seller. Seller shall be entitled to reasonable charges consisting of a pro rata apportionment of the Purchase Order price based on the work actually performed prior to cancellation, not to exceed the aggregate commitment specified in the Purchase Order. Seller shall not be entitled to charges due to Seller’s unreasonable accumulations of raw material. Cancellation shall not have the effect of waiving damages the Buyer might otherwise be entitled to.

CONFIDENTIALITY – Seller shall not, without obtaining the written consent of Buyer, in any manner advertise, publish, or disclose the fact that Seller has contracted with Buyer to furnish the product herein ordered nor any of the details connected with this Purchase Order to any third party except as herein specified and except as may be required to perform this Purchase Order.

DELIVERY – Times is of the essence. Deliveries shall be strictly in accordance with the schedule set out or referred to in the Purchase order and in the exact quantities ordered. The prices on this Purchase Order are firm and are not subject to escalation unless expressly noted on the face hereof. Buyer reserves the right at Seller’s expense to return product shipped in advance of schedule. Seller shall provide written notification to Buyer of any possible or actual delay in performance under this Purchase Order and shall provide all relevant information concerning the cause for such delay. In no event, however, shall such notice relieve Seller of its obligation under this Purchase Order.

WARRANTY – In addition to any other warranties provided by Seller, Seller shall warrant product to be free of defects in design, workmanship, and material and shall repair or replace at Seller’s expense (including parts, freight, and labor for removal and installation) any product found to be defective. Seller shall assure product is suitable for its intended use and that product conforms to the specifications, drawings, samples, or other descriptions furnished or specified by Buyer.

NONCONFORMANCE – Product not conforming to the requirements of this Purchase Order may be rejected. All costs with respect to the rework, repair or the replacement of the nonconforming product, including packing, packaging and freight charges, shall be at Seller’s expense as deemed equitable under the circumstances.

Any and all NCR’s relating to this order are to be reported to Seals Unlimited prior to shipping.

PROPRIETARY RIGHTS – Seller agrees that Buyer’s designs, specifications, formulas, and manufacturing information are proprietary data and shall not be disclosed to others or utilized for purposes other than those intended in this Purchase Order. Seller shall return all proprietary data and copies thereof to Buyer upon completion of Seller’s obligations under this Purchase Order or upon Buyer’s request at any earlier time.

RIGHT-OF-ACCESS – Buyer reserves the right to verify purchased product at the Seller’s, or its subcontractors’, premises. Buyer’s inspection does not absolve Seller of the responsibility for the quality of product, and shall not preclude subsequent rejection by Buyer.

IDENTIFICATION – Seller shall identify Buyer’s purchase order number on Seller’s invoice, packing list, bill of lading or any packages.

PACKING AND SHIPPING – No charge shall be allowed for handling, packing, crating, drayage or storage without written permission of Buyer. Product shall be packaged in a method to preserve and protect from damage and/or degradation. All goods are to be suitably prepared for shipment by Seller in accordance with acceptable commercial rates and meet the carrier’s requirements. In addition, Seller shall cause the product to be labeled to conform to all requirements of federal, state, provincial, and local laws. Unless otherwise provided on the face thereof, all sales are F.O.B. Buyer’s place of business.

PRICING – This Purchase Order must not be filled at prices higher than last quoted by Seller without notice to Buyer and acceptance in writing by Buyer. With respect to any particular product, the price to be paid or otherwise charged to Buyer shall be no higher than the lowest price for such product offered by Seller to any other customer.

HAZARDOUS MATERIALS - Seller shall notify Buyer in writing upon acceptance of this Purchase Order if goods furnished are subject to laws or regulations relating to hazardous or toxic substances, or when disposed of, to regulations governing hazardous wastes, or any other applicable environmental, health, or safety laws or regulations. Instruction for handling, warnings, and material safety data sheets shall be provided with each shipment.

TAXES – The prices stated on this Purchase Order include all sales, use, excise or similar taxes or duties. Seller agrees to indemnify buyer against any loss, liability or expense resulting from Seller’s failure to pay taxes, fees, duties, assessments, charges or conditions. Buyer will provide tax exemption certificates on request.

TITLE – Seller warrants full and unrestricted title for all goods and/or related services furnished by Seller under this Purchase Order, free and clear of any and all liens, restrictions, reservations, security interests, and encumbrances. If Buyer makes progress payments, title to the goods and related services in proportion to the total purchase amount shall pass to Buyer at the time that Seller received each progress payment. Seller shall identify the goods to this Purchase Order by clearly identifying the goods (including raw materials and components) as property of Buyer by visible marking or tagging. Care, custody and control of such goods remain with Seller until such time as Buyer takes physical possession or otherwise agrees in writing. All shop drawings, patterns, tools (if such tools are useful only to produce ordered), or other items made preparatory to production of any goods purchased under this Purchase Order are Buyer’s property and upon demand shall be delivered to Buyer.

SELLERS RESPONSIBILITY – Seller shall carry on its work and manufacture of goods at its own risk until product is fully completed and accepted by the Buyer. In the case of any accident, destruction or injury to the product before the final completion and acceptance, Seller shall repair or replace product at its own expense and to the Buyer’s satisfaction.

PATENTS – Seller warrants that the manufacture, use and/or sale of product provided does not infringe any claims of any Canadian or foreign patents, or other intellectual property right. Seller agrees to defend, indemnify and hold the Buyer (and its agents, representatives, employees, officers, related companies, successors and assigns, and customers) harmless from any and all claims, demands, actions, damages and liabilities (including attorney’s fees and costs of investigation) involving the infringement or alleged infringement of any patent, trademark, copyright or other intellectual property right by reason of the manufacture, use, or sale of said product by Buyer.

INDEMNITY & INSURANCE – Seller agrees to defend, indemnify and hold the Buyer (and its agents, representatives, employees, officers, related companies, successors and assigns, and customers) harmless from all claims, demands, actions, damages, and liabilities (including attorney’s fees, costs of investigation, and consequential and incidental damages) arising out of any injury (including death) to any person or damage to any property in any way connected with the performance of this Purchase Order, any product furnished hereunder, or any act or omission of Seller, its agents, employees, or subcontractors. Seller agrees to maintain Workmen’s Compensation and Comprehensive General Liability insurance, including property damage coverage, in an amount and form satisfactory to Buyer.

Upon request, Seller agrees to provide buyer with certificates evidencing that such insurance is being maintained.

LIMITATION OF LIABILITY – In no event shall Buyer be liable for anticipated profits or incidental or consequential damages. Buyer’s liability on any claim of any kind for any loss or damage arising out of or in connection with this Purchase Order or from the performance or breach thereof shall in no case exceed the price allocable to the product ordered hereunder. Buyer shall not be liable for penalties of any description. Any action resulting from any alleged breach by Buyer must be commenced within one year after the cause of action has occurred.

COMPLIANCE WITH LAWS – Seller, in the performance of this Purchase Order, shall comply with all applicable laws and regulations, including those dealing with the sale and distribution of the Products purchased or sold pursuant to this Agreement.

ASSIGNMENT – No part of this Purchase Order may be assigned or subcontracted without the prior written approval of Buyer. Seller shall incorporate the within terms and conditions on any order or subcontract approved by Buyer and procurement from third parties pertaining to this Purchase Order. Seller shall remain fully responsible for all work performed by subcontractors, subvendors, or subsuppliers.

WAIVER – No failure to exercise and no delay in exercising on the part of Buyer any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege hereunder preclude further exercise hereunder preclude further exercise of the same right, power or privilege.

VALIDITY OF PROVISIONS – In the event any provision or any part or portion of any provision of this Purchase Order shall be held to be invalid, void or otherwise unenforceable, such holding shall not affect the remaining part or portions of that provision, or any other provision hereof.

JURISDICTION AND DISPUTES – These terms and conditions shall be governed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The Parties exclude application of the United Nations Convention on Contracts for the International Sale of Goods. All disputes under these terms and conditions shall be resolved by the courts of the Province of Ontario and the parties all consent to the jurisdiction of such courts, agree and accept service process by registered mail or courier, return receipt requested, and hereby waive any jurisdiction or venue defenses otherwise available.

COUNTERFEIT, FRAUDULENT AND SUSPECT ITEMS (CFSI) – Seller warrants the product delivered pursuant to Seals Unlimited purchase order shall (i) be new; (ii) be and only contain materials obtained directly from an Original Material Manufacturer, Original Component Manufacturer or a source with the express written authority of the Original Manufacturer or current design activity, including an authorized aftermarket manufacturer; and (iii) not be and not contain Counterfeit Items. If the seller delivers product that do not conform to the forgoing warranty, the Seller shall bear the remedial costs including repair, rework and corrective action.

PRODUCT – As referred to herein, Product includes both goods and services provided by Seller.