

TERMS AND CONDITIONS

1. Please acknowledge promptly, advising shipping date and price. Buyer must be notified in writing with any changes in shipping date as soon as possible. Buyer reserves the right to cancel all or any part of this purchase order if shipment is not made in accordance with the shipping date specified by Buyer. Goods must be shipped as instructed in the purchase order, or additional shipping cost will be back charged. No extras are to be started or changes to be made without written authorization to proceed.
2. Buyer's purchase order number must appear on all written correspondence, including shipping containers and invoices.
3. Supplier warrants goods shipped and prices charged are in accordance with all federal, state, and local laws and regulations and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the applicable purchase order and these terms and conditions (this "Agreement").
4. Except as otherwise specifically provided herein, prices stated in this Agreement are inclusive of all charges for packing, containers, insurance, storage and transportation. All taxes based upon or measured by sale, use or manufacture shall be shown separately on Supplier's invoice. Prices offered and accepted are, and shall be paid, in U.S. dollars and are not subject to escalation except by mutual consent in writing.
5. Supplier guarantees and warrants that Buyer's purchase, use or sale of the goods furnished pursuant to this Agreement, in the form in which furnished to Buyer, will not infringe upon any United States or foreign patent or copyright, or other third party proprietary or industrial or intellectual property rights. Supplier agrees to defend, indemnify and hold Buyer harmless against any claim, action, suit, or proceeding that may be brought against Buyer for patent or copyright infringement or trade secret misappropriation by reason of Buyer's purchase, use or sale of any such goods.
6. Supplier hereby represents and warrants that the goods supplied under this Agreement are well made, of good materials and free from any defect in design, material or workmanship. Supplier agrees to replace or repair, free of all charges, any good(s) or part(s) of any good supplied under this Agreement that proves defective in design, workmanship or material.

7. All warranties shall survive, and shall not be affected by, inspections, test, delivery and acceptance of, and payments for, the goods by Buyer. If a breach of warranty occurs, Buyer may, at its sole option, without waiving the right to damages, either return for credit, or require prompt correction or replacement of, the defective or nonconforming goods.

8. Supplier hereby agrees to indemnify and hold Buyer, its successors, assigns, employees, agents, and customers harmless from all claims, actions, suits, or proceedings for damages to property or injuries, including death to persons and from all judgments recovered therefore, and from all costs and expense in defending said claims, actions, suits, or proceedings, including legal fees, caused by or arising or resulting from any act or omission of Supplier, its agents, representatives or employees while on or about Buyer's premises for the purposes of performing under or in connection with this Agreement, including, without limitation, delivering or repairing the goods designated by this Agreement. If requested by Buyer, Supplier will furnish an insurance certificate with limits designated by Buyer and in a form and substance acceptable to Buyer which shall cover Supplier's obligations as set forth in this paragraph.

9. In the event that Supplier becomes insolvent, admits in writing its inability to pay its debts when due, files for bankruptcy, is the subject of involuntary bankruptcy, enters into any proceeding for the protection from creditors, makes a voluntary assignment for creditors, has a receiver or trustee appointed, or has its assets assigned and the same is not stayed or dismissed within sixty (60) days of the filing, appointment, commencement or purchase order thereof, then Buyer shall have the option of canceling all or any portion of this purchase order.

10. This Agreement may not be assigned by Supplier without Buyer's written consent.

11. If the applicable purchase order constitutes an offer by Buyer to purchase the goods and/or services specified upon the terms and conditions and at the price(s) and with the delivery date(s) specified in this Agreement, Supplier shall indicate its acceptance of such purchase order by verbal acceptance communicated to Buyer, by written acceptance on the face of the purchase order received by Buyer, by other written confirmation received by Buyer, by commencing work on the purchase order in any manner, expressly conditioned on notice of such commencement of work received by Buyer, or by the delivery of the goods or services within the time for such delivery as stated in the purchase order. Regardless of the manner or medium of acceptance, time is of the essence.

12. As an offer by Buyer, acceptance of this offer is strictly limited to the terms and conditions of the offer. Supplier's acceptance or confirmation containing additional or different terms shall constitute an acceptance of the terms of the offer, but Buyer hereby objects to, and is not bound by, such additional or different terms and such additional or different terms shall be of no force or effect. This Agreement shall constitute the final, complete and exclusive statement of this contract and may not be modified or rescinded except in writing by Buyer. Neither Supplier's commencement of performance or delivery, nor acceptance of goods or services on Buyer's part, constitutes acceptance of Supplier's additional or different terms.

13. If the purchase order is construed as an acceptance of Supplier's offer, this acceptance is expressly conditioned on Supplier's assent to any additional or different terms contained in the purchase order and these terms and conditions.

14. If the purchase order is construed as a confirmation of an existing contract, the parties agree that the purchase order, along with these terms and conditions, constitutes the final, complete and exclusive terms and conditions of the contract between the parties. If the parties have otherwise completed a signed, written contract, the parties agree that the use of the purchase order to place orders for goods or services pursuant to such a contract shall be construed to supplement the terms of such written contract only to the extent that the terms and conditions of this Agreement are not inconsistent with such written contract.

15. REGARDLESS OF ITS CONSTRUCTION AS AN OFFER, ACCEPTANCE, CONFIRMATION OR USE TO PLACE ORDERS FOR GOODS OR SERVICES PURSUANT TO AN EARLIER CONTRACT, THIS AGREEMENT INCORPORATES BY REFERENCE ALL TERMS OF THE UNIFORM COMMERCIAL CODE PROVIDING ANY PROTECTION FOR BUYER, INCLUDING, WITHOUT LIMITATION, ALL EXPRESS AND IMPLIED WARRANTY PROTECTION AND ALL BUYER'S REMEDIES UNDER THE UNIFORM COMMERCIAL CODE.

16. Payment shall not constitute final acceptance. Except as otherwise expressly provided in this Agreement, acceptance of any of the goods shall not occur until Buyer has been given a reasonable opportunity to inspect and test such goods after arrival at destination, without regard to the manner of shipment or any shipping or price terms contained in this Agreement. Buyer may reject any or all nonconforming or defective goods, at Buyer's discretion, at full invoice price, plus inspection, handling and transportation charges, if any, and no replacement of defective goods shall be made unless specified in writing by Buyer.

17. Supplier will treat as confidential and not disclose any information received from Buyer in connection with this Agreement to any person not first authorized by Buyer in writing to receive it. Supplier will use such information only as necessary to fulfill its obligations under this agreement.

18. This Agreement is entered into in and shall be governed by the laws (both substantive and procedural) of the State of New Jersey (other than its rules as to conflict of laws). In the event of a dispute or legal action between the parties, Supplier agrees to waive any objections to personal jurisdiction, and agrees to service of process and venue in any federal or state court in the State of New Jersey. The parties expressly exclude application of the United Nations Convention for the International Sale of Goods.

19. Neither party shall be liable for any delay or failure of performance due to the following events: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or action; (e) embargoes or blockades in effect on or after the date of this Agreement; and (f) national or regional emergency; provided such party shall have given prompt, written notice of any such cause and shall have used its best efforts to mitigate said delay or failure. The parties shall use due diligence and all commercially reasonable efforts to promptly address, remedy and/or remove any cause of a force majeure event. In the event that the impacted party's failure or delay remains uncured for a period of thirty (30) consecutive days following written notice of the force majeure event, the other party may terminate this Agreement upon written notice to the impacted party.

20. Each party shall conduct its business in accordance with this Agreement, and all applicable international, regional, national, and local laws, directives, regulations, ordinances, competent authorities' decisions, and guidelines and shall adhere to the Supplier Code of Conduct available at <https://www.gusmerenterprises.com/wp-content/uploads/2024/03/Supplier-Code-of-Conduct.pdf>, which Buyer may amend from time to time, in its sole discretion, and without notice to Supplier. A copy of such Supplier Code of Conduct will be provided to the Supplier upon written request to the Buyer.



Important Note: Gusmer Enterprises, Inc. provides this information to the best of our knowledge. This information does not claim to be complete and Gusmer Enterprises, Inc. cannot assume liability for improper use. All users are advised to test products to meet their specific needs.