

Bauer Vendor Purchase Order Acceptance Terms and Conditions

This Purchase Order is subject to the following terms and conditions:

1. **Acceptance** This Purchase Order is an offer from Bauer Corporation (Buyer) to buy the Goods and/or Services described herein and becomes a binding contract on the terms and conditions herein when accepted by the Seller either by acknowledgment or by shipment or other commencement of work. Any acceptance hereof is limited to acceptance of the express terms of the offer contained on the face and back of hereof. No revisions of this order or any of the terms and conditions hereof shall be valid unless in writing and signed by an authorized representative of Buyer, and no condition stated by Seller in acceptance of or acknowledging this order shall be binding upon Buyer if in conflict with, inconsistent with, or in addition to the terms and conditions contained herein unless expressly accepted in writing by Buyer. If Seller and Buyer have entered into a Supplier Agreement, the terms of that agreement shall control over these terms to the extent of any inconsistencies or additional terms. Any additional terms proposed by Seller are rejected. Any supplemental terms proposed by Seller are rejected. Any inconsistent terms proposed by Seller are rejected. Any terms proposed by Seller other than an acceptance, without modification, of this Order are rejected.

2. **Warranties** Seller expressly warrants that it will convey good title to all goods furnished hereunder and that all goods and/or services furnished hereunder will conform to all specifications and appropriate standards, will be free from defects in material and workmanship, will be merchantable, and will be safe and appropriate for the purpose for which goods of that kind are normally used. If Seller knows or has reason to know the particular purpose for which Buyer intends to use the goods. Seller warrants that such goods will be fit for such particular purpose. The warranties of Seller shall run to Buyer, its successors, assigns, and customers and users of products sold by Buyer. Seller hereby assigns to Buyer any warranties or guaranties provided by manufacturers or Sellers of products incorporated into goods or services provided by Seller hereunder and shall, upon request, enforce any such warranty or guaranty on behalf of Buyer. Seller's Warranties shall be fully transferrable from Buyer to end customer. NO ATTEMPT BY BUYER TO DISCLAIM, EXCLUDE, LIMIT, OR MODIFY ANY WARRANTIES OR SELLER'S LIABILITY OR CONSEQUENTIAL DAMAGES SHALL BE OF ANY FORCE OR EFFECT.

3. **Defective or Nonconforming Goods or Services** Seller (Identified above) shall certify that the product(s) ordered comply with the specifications for that product, and shall deliver said certification with the good(s) and/or shall transmit such certification to Bauer Corporation identifying the Purchase Order number (above) to which the certification relates. No goods or services received by Buyer pursuant hereto shall be deemed accepted until Buyer has had reasonable opportunity to inspect and/or observe performance of such goods or services. Buyer shall have access to, and the right to, inspect all work prior to its inspection. Notwithstanding any such inspection, Seller shall be solely responsible for the conformance of the work to the specifications. Seller shall promptly correct defects or replace any goods or services not conforming to any of Seller's

Bauer Vendor Purchase Order Acceptance Terms and Conditions

warranties hereunder without expense to Buyer, provided Buyer elects to provide Seller with the opportunity to do so. Irrespective of whether such defect or nonconformity was discovered upon initial inspection, or a later time if not readily ascertainable upon initial inspection in the event of a failure by Seller to correct defects or replace nonconforming goods promptly, Buyer, after reasonable notice to Seller, may make such corrections or replace such goods and charge Seller for the costs incurred by Buyer in doing so. Such remedies shall not affect Buyer's discount privileges and shall not exclude any other legal, equitable, or contractual remedies of Buyer as a result of Seller's delivery of defective or nonconforming goods or services.

4. **Price Warranty** Seller warrants that the prices for the goods sold to Buyer hereunder are not less favorable than those currently extended to any other customer of Seller for the same or similar goods in similar quantities. If Seller reduces its price for such goods during the terms of this order, Seller agrees to reduce the prices hereof correspondingly. Seller warrants that prices shown on this Purchase Order shall be complete, and no additional charges or charges of any type shall be added without Buyer's express written consent. Such additional charges include, but are not limited to, shipping, packaging, labeling, customer duties, taxes, insurance, storage, boxing, and crating. Delay in receiving invoices and errors and omissions on statements or invoices will be considered just cause for withholding settlement without losing discount privileges.

5. **Risk of Loss** All risk of loss shall be upon Seller from the time of the goods first come under Seller's control until such time as the goods shall be delivered to the destination specified herein and there accepted by Buyer. Seller agrees to indemnify and hold Buyer harmless for any and all loss, cost, damage, and expense which Buyer shall sustain as a result or in consequence of the loss or damage to the goods during such period of time.

6. **Indemnification** To the fullest extent permitted by law, Seller shall save and hold Buyer, its directors, officers, employees, agents, and representatives harmless from and indemnify, defend, and protect such parties against all liability, loss, claims, demands, damage (including damage to property or bodily injury), and expense (including reasonable attorney's fees) arising out of or in any way resulting from Seller's performance or non-performance hereunder, including any defect or nonconformity with Seller's warranties of the goods and services delivered hereunder, any act or omission of Seller, its agents, employees, or subcontractors; any act or omission of any carrier selected and employed by Seller to deliver goods ordered hereunder to Buyer; any failure by Seller, its agents, employees, carriers or subcontractors to comply with the terms hereof; any infringement or claim of infringement of any patent, unpatented invention, copy right, design process, trademark, trade name, brand, slogan, unfair competition, or other adverse rights; or any litigation based on or arising out of the foregoing.

Bauer Vendor Purchase Order Acceptance Terms and Conditions

7. Seller shall cover Buyer as an additional insured on its general liability polic(ies) of insurance, and its products liability/completed operations polic(ies) of insurance, to the extent of the limits of all such policies. Supplier need not name Buyer as an additional insured, but shall ensure that such policy/policies include in the definition of insured, or otherwise cover as an insured, those entities whom Seller, its officers, employees, directors and agents, agrees to provide such coverage to the extent permitted by such coverage, which is required by this written contract. This purchase order constitutes such a contract. Furthermore, compliance with this term does not limit the liability of the Supplier under its indemnity obligations regardless of the limits and exclusions of such insurance policy/policies. This Article 8 is separate and distinct from the duty to indemnify, set forth in Article 7, above.

8. **Set Off** All claims for money due or become due from Buyer shall be subject to deduction or set off by Buyer by reason of any counterclaim arising out of this or any other transaction with Seller.

9. **Force Majeure** Buyer or Seller may delay delivery or acceptance occasioned by causes beyond its control. Seller shall hold such goods at the direction of the Buyer and shall deliver them when the cause affecting the delay has been removed. Causes beyond the control of Buyer or Seller shall include government action or failure of the government to act where such action is required, acts of God, strikes, fires, accidents, or other such causes not due to Buyer's fault or negligence.

10. **Changes** Buyer shall have the right, at any time, to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery, and method of transportation. If any such changes cause an increase or decrease in the cost or the time required for the performance, an equitable negotiated adjustment shall be made, and the agreement created by the acceptance of this Purchase Order shall be modified in writing accordingly. Seller agrees to accept any such changes subject to this paragraph.

11. **Confidentiality** The contents of this order and all related commercial and technical information shall be kept secret and confidential by Seller and will not be divulged by Seller to any third party or utilized by Seller otherwise than in connection with this order. Unless otherwise agreed in writing, no commercial or technical information disclosed in any manner or at any time to Buyer by Seller shall be deemed secret or confidential, and Seller shall have no rights against Buyer with respect thereto except such rights as any exist under any applicable patent law.

12. **Limitation on Buyer's Liability, Statute of Limitation** In no event shall Buyer be liable for anticipated profits or incidental or consequential damages. Buyer shall not be liable for penalties of any description. Any action resulting from any breach on the part of Buyer as to the goods and services delivered hereunder must be commenced within one year after the cause of action has accrued.

Bauer Vendor Purchase Order Acceptance Terms and Conditions

13. **Assignment** Seller shall not assign, transfer, or hypothecate this Purchase Order or any part hereof or any monies payable or to become payable hereunder without, in each case, obtaining the prior written consent of Buyer, which may not be unreasonably withheld. Where assignment of any part of the Seller's obligations are permitted, Seller shall remain primarily responsible and liable for the performance of all obligations hereunder.

14. **Waiver** Any waiver by Buyer of strict compliance with any of the provisions hereof shall not be deemed a waiver of any other provisions hereof and shall not be deemed a waiver of any of Buyer's rights, privileges, claims, or remedies, nor of Buyer's right to insist on strict compliance thereafter.

15. **Governing Law** This Purchase Order shall be governed by the laws of the State of Ohio except for its provisions regarding principles of conflicts of laws, y. Any court action arising under this order shall be in the State Court of Wayne County, Ohio, and the Seller specifically waives any objection to such jurisdiction and venue and specifically submits to the venue and jurisdiction of such court. BOTH PARTIES WAIVE THE RIGHT TO JURY TRIAL, AND ANY ACTION ARISING HEREUNDER SHALL BE TRIED TO A COURT.

16. **General**

a) This Purchase Order, and any documents referenced to on the face hereof, constitutes the entire agreement between the parties, and all prior agreements, written or oral, relating to the subject matter hereof are superseded by the terms hereof. Such terms may be modified only by a writing signed by both parties.

b) The provisions of this Purchase Order are severable; and in the event any provision is held to be unenforceable, the remaining provisions will continue in full force and effect.

c) It is understood that Seller is an independent contractor and not an employee or agent of Buyer and that Seller shall have no power whatsoever to bind Buyer in any way in any dealings between Seller and third parties and shall not attempt or purport to do so.