

SUMCO PHOENIX CORPORATION
PURCHASE ORDER TERMS & CONDITIONS

- 1. General.** The purchase order ("Order") is an offer by SUMCO Phoenix Corporation ("Buyer") for the purchase of the materials and/or goods ("Items") specified on the face of the Order from the supplier or other party to whom the purchase order is addressed ("Seller"), in accordance with and subject to these terms and conditions. The Order, together with these terms and conditions, and any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the Order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Order. The Order expressly limits Seller's acceptance to these terms and conditions. These terms and conditions prevail over any terms or conditions contained in any other documentation and expressly exclude any of Seller's general terms and conditions of sale or any other document issued by Seller in connection with the Order. Notwithstanding anything in the foregoing to the contrary, if Seller has heretofore made Buyer an offer with respect to any of the Items, the Order shall not operate as an acceptance of Seller's offer, but shall be deemed to be a counteroffer. Buyer may withdraw the Order at any time before it is accepted by Seller. Additional terms, instructions or conditions set forth in the Order or under separate cover from Buyer supersede any conflicting provisions in these terms and conditions.
- 2. Shipping.** Except as otherwise indicated on the Order or in these terms and conditions, Incoterms 2010 DDP shall apply to the shipment and delivery of the Items. All Items will be packed for shipment in a manner sufficient to ensure that the Items are delivered in an undamaged condition. No additional charge shall be made for packaging, marking or storage. Buyer shall only be responsible for shipping charges if indicated on the Order. If Buyer is responsible for shipping charges, all Items must be shipped via ground/standard service unless otherwise approved in advance by Buyer's purchasing department or stated in the Order. Seller shall not "declare value" when processing shipments or otherwise select shipping insurance to be paid for by Buyer unless instructed to do so on the Order. In the event Seller ships contrary to the foregoing, Seller is solely responsible for excess shipping and/or insurance charges. Seller shall deliver the Items in the quantities and on the date(s) specified in the Order, and shipment quantities shall not exceed the quantities indicated on the Order without prior written approval from Buyer's purchasing department. The parties expressly agree that timely delivery of all Items in accordance with the Order is of the essence. In the event of default or failure by Seller to so timely deliver, in addition to its other available remedies, Buyer may procure the Items from other sources and Seller shall be responsible for any cost incurred in excess of the amounts to be paid under the Order. Seller shall promptly notify Buyer of any delay or of any anticipated delay in delivery of the Items, and Buyer reserves the right, without liability or waiver of any other remedies available to Buyer, to either approve a new delivery schedule or to cancel the Order, in whole or in part. If Seller's overall production of an Item is curtailed for any reason such that some, but not all, of Buyer's order may be delivered in a timely manner, Seller will offer to timely deliver a portion of Buyer's order equal to no less than the highest percentage filled for any other customer similarly situated, and Buyer may thereafter accept or reject such partial delivery without waiving any other remedies available to Buyer, under these terms and conditions or otherwise. Any provisions for delivery of Items by installments shall not be construed as making the obligations of Seller severable.
- 3. Prices and Payment.** The price of the goods is the price shown on the Order, and unless otherwise indicated on the Order or in these terms and conditions, applies to all of the Items. If any price is omitted, the price for the Items will be the lowest price at which goods or services the same as or substantially similar to the Items are currently offered or sold by Seller to any customer, under similar circumstances and in quantities similar to those being purchased hereunder. If Seller sells items covered by the Order to other customers at prices less than those set forth herein, the price of any unshipped items shall be adjusted to such lower prices. Unless otherwise specified on the front hereof, all bills will be paid on a net sixty (60) day basis. Cash discounts will be calculated from the time the invoice or Items are received by Buyer, whichever is later. If other conditions to payment have not been met by Seller, the discount period shall not commence until all conditions have been met. Payment is deemed made to Seller when Buyer deposits a check in the mail.
- 4. Taxes.** Buyer shall pay sales or use tax, if any is due, of the state in which the Order originates. Seller agrees to pay and bear all other applicable federal, state and local taxes, customs duties and fees, foreign taxes or other government charges upon the production, transportation, distribution, delivery, sale or resale of Items supplied under the Order.
- 5. Changes.** Buyer may make changes to the Order, including to any specification, drawing, quantity, instruction, destination or delivery schedule relating to any Items, notice to Seller of same. If any such change results in a reduction in the price to be paid by Buyer, a corresponding adjustment shall apply automatically. If such a change results in an increase in the price to be paid by Buyer and/or to a delay in the delivery date originally stated in the Order, Seller shall promptly notify Buyer of same, and Buyer shall have the option of either agreeing to the increased price and/or delayed delivery date, or cancelling the Order. All claims for price adjustments in Seller's favor shall be made by Seller to Buyer in writing within thirty (30) days after the change to which the adjustment relates is made, or Seller forgoes any such adjustment, and no such adjustment shall be binding upon Buyer unless Buyer has agreed in writing to the same. Seller shall not substitute raw materials, outsource manufacturing or other processes, or otherwise deviate from or modify any Order (including any specification or instruction contained therein) without the prior written consent of Buyer's purchasing department.
- 6. Inspection and Risk of Loss.** Buyer may inspect all Items during their manufacture, construction or preparation, as well as on and after the delivery date. Buyer, at its sole option, may inspect all or a sample of the Items, and may reject all or any portion of the Items if it determines that the Items are nonconforming or defective. If Buyer rejects any portion of the Items, Buyer has the right, effective upon written notice to Seller, to: (i) rescind the Order in its entirety; (ii) accept the Items at a reasonably reduced price; or (iii) reject the Items and require replacement of the rejected Items. If Buyer requires replacement of the Items, Seller shall, at its expense, promptly replace the nonconforming Items and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Items. If Seller fails to timely deliver replacement Items, Buyer may replace them with goods from a third party and charge Seller the cost thereof and terminate the Order. Any inspection or other action by Buyer under this section shall not reduce or otherwise affect Seller's obligations under the Order, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions. Acceptance shall not remove Seller's responsibility for any defect or breach of warranty discovered by subsequent inspection, use or otherwise. Title and risk of loss with respect to the Items shall remain with Seller until the Items have been delivered to and accepted by Buyer, or an agent or consignee duly designated by Buyer, at the location specified in the Order.
- 7. Compliance with Laws.** Seller, on behalf of itself and its parents, subsidiaries, suppliers, vendors, contractors, subcontractors, employees, officers, owners, directors, agents and representatives, represents and warrants that it is in full compliance with any and all federal, state or local, ordinances, regulations, statutes, rules and orders ("Laws") as are applicable to such parties, their business and operations, the Items, and the purchase and sale, resale, assembly, distribution, manufacture, shipment and delivery thereof, including, without limitation, the Fair Labor Standards Act, the Robinson-Patman Act, the Occupational Safety and Health Act of 1970, the Sherman Act, and any other Laws relating to or concerning non-discrimination, health and safety, equal pay and opportunity, price discrimination, price fixing, employment practices, consumer protection, unfair trade practices, anti-trust and/or anticompetition, the environment, pollution and environmental protection, together with all amendments to the foregoing and regulations promulgated thereunder, as well as the EICC Codes of Conduct and the labor standards applicable thereto, and any other codes of conduct and/or ethical rules promulgated by applicable trade associations, industry groups or other private, governmental or quasi-governmental organizations. Seller further represents and warrants that it will obtain and maintain (at its sole cost and expense) any license, permit, inspection or listing by any public body or certification organization required in connection with the purchase and sale, resale, assembly, distribution, manufacture, shipment and delivery of the Items.
- 8. Cancellation; Survival.** Buyer may cancel the Order upon Seller's failure to comply with any of its obligations hereunder or Seller's insolvency or actions indicating insolvency such as the filing of a petition by or against Seller under any bankruptcy law, the appointment of a receiver for Seller, Seller's attempt to make a general assignment for the benefit of creditors or Seller's ceasing to function as a going concern. Should Buyer cancel the Order as hereinabove provided, Buyer may, at its option and without prejudice to any other rights or remedies it may have, take possession of the Items in whatever stage of completion they may be, with or without seeking a writ of replevin or pursuing any other judicial process or remedy, and Buyer shall pay a proportional amount of the total purchase price. Sections 7, 9, 10, 12-14 will survive any termination or cancellation of the Order. Buyer shall further retain the right to any information or documentation owned by Buyer and necessary to enable Buyer or a third party to product or manufacture the Items, as well as the right to any additional technical support or related services previously agreed to by Buyer and Seller in respect of the Items. If Buyer cancels the Order, Seller's sole and exclusive remedy is payment for Items accepted prior to the termination.
- 9. Warranty.** Seller warrants that all Items will strictly conform to all specifications, drawings, samples, instructions and other descriptions furnished by or provided to Buyer, attached hereto or otherwise delivered to Seller, be of good, workmanlike and merchantable quality, be free from defects in material and workmanship, be free and clear of liens, security interests and other encumbrances, not infringe on any third party's patent or other intellectual property rights, and be fit for the particular purpose intended by Buyer. Seller further warrants that all Items will be manufactured in accordance with the latest ratified revision of the ISO/TS 16949-Quality Management Systems. Seller is responsible for all costs of field repair and return freight incurred by Buyer or Seller in connection with the warranty provided hereunder. All warranties of Seller which are set forth in this Section 9 or in any other part of the Order or which are implied by law shall survive any inspection, delivery, acceptance or payment by Buyer, as well as any termination or cancellation of the Order.
- 10. Indemnity.** Seller shall indemnify, defend and hold Buyer, and Buyer's parents, subsidiaries, affiliates, officers, directors, shareholders, employees, agents, representatives, customers, successors and assigns, harmless from and against all losses, injuries, death, damages, claims, suits, penalties, liabilities, damages, judgments, costs and expenses, including attorneys' fees, whether based upon negligence, breach of express or implied warranty, strict liability or any other theory, and from and against all direct, indirect, special, exemplary, incidental or consequential damages of every kind whatsoever, arising out of or relating to: (i) any breach by Seller of its obligations under the Order or these terms and conditions, including any breach by Seller of the representations and warranties set forth in Section 7 above or elsewhere; (ii) the Items, including any breach of the warranties set forth in Section 9, or otherwise relating to the design, manner of preparation, manufacture, construction, completion, delivery or non-delivery of the Items; and (iii) the negligence or willful misconduct of Seller, or its owners, officers, employees, contractors, subcontractors, affiliates, agents, representatives, successor or assigns. Seller specifically waives any and all constitutional and/or statutory immunity under workers' compensation laws with respect to claims covered by this indemnification agreement, so as to permit Buyer to seek indemnity and/or contribution against Seller for injury or loss sustained by either Seller's employees, Buyer's employees or any other third party.
- 11. Force Majeure.** Buyer shall have the option to terminate the Order or to delay the delivery or completion of all or part of the Order if causes beyond the reasonable control of Buyer make it unreasonable for Buyer to accept delivery of the Items hereunder. Such causes include, but are not limited to, fire, strikes, war, acts of God, acts of the government, breakdown of machinery or equipment, unusually severe weather, inability to obtain or delay in obtaining material, labor, equipment or transportation, lack of demand for Buyer's products or the failure of any party to perform any contract with Buyer that adversely affects Buyer's need for the Items.
- 12. Confidentiality.** Seller shall not, without Buyer's prior written consent, disclose any information concerning Buyer, including the existence of the Order or any terms hereof, to any party other than those employees of Seller who require the same for the performance of their duties in connection with the Order or use any such information in any other way. If Buyer gives written consent, Seller will strictly comply with the terms and conditions of any consent and, even after such consent, will not use Buyer's name or any of its trademarks, service marks, trade names or logos except with the express prior written consent of Buyer to the specific use. Any specification, drawings, schematics, technical information, data, tools, dies, patterns, masks, gauges, test equipment and other materials furnished, owned or paid for by Buyer shall (i) be kept strictly confidential; (ii) remain and/or become Buyer's property, as applicable; (iii) be used by Seller exclusively for Buyer's orders; (iv) be clearly marked as Buyer's property and segregated when not in use; (v) be kept in good working condition at Seller's expense; and (vi) be shipped promptly to Buyer on demand.
- 13. Limitation of Damages.** IN NO EVENT SHALL BUYER BE LIABLE TO SELLER UNDER ANY THEORY INCLUDING CONTRACT AND TORT (INCLUDING NEGLIGENCE AND STRICT PRODUCTS LIABILITY) FOR ANY INDIRECT, SPECIAL OR INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, EVEN IF BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BUYER'S CUMULATIVE LIABILITY FOR MONEY DAMAGES ARISING OUT OF THIS ORDER SHALL BE THE PURCHASE PRICE OF ITEMS ACCEPTED PRIOR TO ANY TERMINATION OR CANCELLATION.
- 14. Miscellaneous.** Any provision of the Order which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating or diminishing rights under the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Except as otherwise indicated herein, the Order may not be amended, altered, waived, discharged or terminated, except by formal agreement in writing signed by duly authorized representatives of both parties. A waiver on any one occasion shall not be construed as a waiver on a future occasion. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT EACH AND EVERY PROVISION OF THE ORDER WHICH PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES OR EXCLUSION OF DAMAGES, IS INTENDED BY THE PARTIES TO BE SEVERABLE AND INDEPENDENT OF ANY OTHER PROVISION AND TO BE ENFORCED AS SUCH. Buyer may assign its rights and obligations under the Order upon written notice to Seller. Seller will not, without the prior written consent of Buyer, assign, subcontract, transfer or encumber its rights or obligations hereunder and any attempted assignment, transfer or encumbering by Seller shall be null and void. All of the covenants, conditions and obligations contained in the Order shall be binding upon and shall inure to the benefit of the respective successors and permitted assignees of the parties. The Order shall in all respects be governed by, and construed in accordance with, the substantive (and not conflicts) laws of the delivery destination state shown on the Order, including all matters of construction, validity and performance. Any cause of action arising hereunder or related in any way hereto shall be brought only in the federal and state courts situated in the delivery destination state shown on the Order and Seller hereby submits to the exclusive jurisdiction of such courts. The rights and obligations of the parties shall not be governed by the provisions of the 1980 United Nation Convention on Contracts for the International Sale of Goods. Any action by Seller arising out of or related to the Order shall be commenced within one (1) year from the date the right, claim, demand or cause of action shall first occur, or be barred forever. Seller acknowledges that any breach of the terms, conditions or covenants set forth in the penultimate sentence of Section 8 and/or Section 12 would be competitively unfair and may cause irreparable damage to Buyer and that a recovery of damages at law would not be an adequate remedy. Accordingly, for any breach by Seller of such terms, covenants and conditions, the parties agree that Buyer may seek injunctive or other equitable relief from any court of competent jurisdiction. If applicable, supplier agrees to comply with the provisions of paragraphs 1 through 7 of 41 C.F.R. Section 60-1.4(a); the affirmative action for disabled workers clauses set forth in 41 C.F.R. Section 60-741.5(a); and the affirmative action for veterans clauses set forth in 41 C.F.R. Section 60-250.5(a), which are incorporated by reference herein. Section headings shall have no force or effect in the interpretation of the Order. The official version of this agreement is in English and it shall be construed and interpreted solely in English.