

## PURCHASE ORDER TERMS AND CONDITIONS

**Date of Last Revision:** March 2017

**Summary of Revision:** Modified section 5 – Payment terms

- 1. PARTIES:** For the purposes of this Order, "Buyer" shall mean "Grace Brasil Ltda." "Seller" shall have the meaning set forth on the first page of this Order.
- 2. ACCEPTANCE:** Seller has read and understands this Order and agrees that Seller's written acceptance or commencement of any work or service under this Order shall constitute Seller's acceptance of these terms and conditions only. All additional or different terms proposed by Seller are expressly rejected by Buyer, and shall not become a part of this Order. Any modifications to this Order shall be made only in a writing signed by a duly authorized representative of Buyer.
- 3. PRICES AND TAXES:** Seller's prices for the Goods hereunder will not be in excess of (a) the maximum that Seller may charge under applicable government regulations and (b) those Seller charges other customers purchasing similar quantities of the same or similar items. Unless otherwise agreed in writing or provided in this Order, prices are D.D.P. (Buyer's facility) (Incoterms 2000) and include all federal, state and local taxes and duties now or hereafter enacted.
- 4. PACKING AND TRANSPORTATION:** Seller shall, at its own expense package all goods (a) to ensure safe arrival at the ultimate destination, (b) to secure lowest transportation costs, and (c) to comply with requirements of common carriers, Buyer's Order numbers, part numbers, quantities and symbols shall be clearly marked on all invoices, packages, bills of lading, shipping orders and correspondence. Shipping memoranda or packing lists shall accompany goods. Seller shall bear all excess transportation or other charges and costs resulting from failure to follow Buyer's routing instructions and delivery schedules. Risk of loss shall pass to Buyer upon receipt of the goods. Seller has no right to ship under reservation.
- 5. PAYMENT TERMS:** Net sixty (60) days, unless otherwise provided in this Order. Terms of payment and terms during which discounts are offered shall be counted starting on the date a correct invoice with all required supporting documents is received by Buyer's Accounts Payable Department. With respect to the foregoing, such correct invoice and supporting documents must not be issued to Buyer until title transfers to Buyer and must be sent electronically to AccountsPayable.GOC@grace.com. If required by applicable law, Seller shall also send a paper copy of the invoice to Buyer's designated address. All invoices shall conform to the instructions stated in the Order.
- 6. DELIVERY SCHEDULES:** Deliveries shall be made both in quantities and at times specified in Buyer's schedules. Time is of the essence. Buyer may change the rate of scheduled shipments or direct temporary suspension of scheduled shipment, neither of which shall entitle the Seller to a modification of the price for goods or services covered by this Order. For Orders of goods where quantities and/or

delivery schedules are not specified, Seller shall deliver goods in such quantities and at such times as Buyer may direct in subsequent releases.

**7. CHANGES:** Buyer reserves the right at any time to direct or make changes to drawings and specifications of the goods or services or to otherwise change the scope of the work covered by this Order, and Seller agrees to promptly make such changes. Any difference in price or time for performance resulting from such changes shall be equitably adjusted by Buyer after receipt of documentation in such form detail as Buyer may direct.

**8. INSPECTION:** All goods and services shall be subject to inspection by Buyer at all reasonable times, including inspection during manufacture. Any goods and services rejected by Buyer shall be promptly repaired or replaced at Seller's expense. Any and all costs incurred by Buyer in connection with the return of Goods rejected by Buyer as defective shall be for the account of Seller.

**9. WARRANTY:** Seller warrants that the Goods conform to the specifications, drawings, samples or other descriptions furnished to or adopted by Buyer; that they are of good material and workmanship and free from defects; that they are new and unused; that they are of merchantable quality; that, if Seller is or reasonably should be aware of Buyer's intended use for the goods, they are fit for such particular purpose; and that they will be free of all liens and encumbrances. Seller warrants that it is conveying good title to all goods. If Seller is responsible for design, Seller warrants that such goods are free from defects in design and are fit and sufficient for the purposes intended by Buyer. Approval by Buyer of designs furnished by Seller shall not relieve Seller of its obligation under this warranty. Inspection, testing or use of goods shall not affect this warranty. Seller shall supply certificates of compliance with specifications or certified analyses, if requested by Buyer. Seller's warranty shall be effective for the period of time set forth in the Order, or if no such period of time is set forth, for a period of one (1) year after date of acceptance of such goods or services. Seller shall bear all expenses in connection with returning goods to Seller for breach of warranty, and shall bear all risk of loss or damage to goods while in transit. This warranty shall run to Buyer, its successors, assigns, customers and the users of its products and shall not be deemed to be exclusive.

**10. FORCE MAJEURE:** If a party is prevented from performing its obligations hereunder due to an event of force majeure or act of God, pursuant to article 393 of the Civil Code, such as, but not limited to, governmental actions or regulations, fires, strikes, accidents and other causes beyond its reasonable control, such obligations shall be suspended for the period during which such conditions continue to exist. However, Buyer may cancel any Order and/or immediately seek alternative sources of supply without being in breach hereof and any such purchase shall be included within any Buyer volume commitments.

**11. NONDISCLOSURE AND OWNERSHIP:** Unless otherwise agreed in writing by the parties in the Order, ownership of, and all rights with respect to, any goods and services purchased under this Order, including all creative ideas incorporated therein, all preliminary materials, sketches, layouts, tooling, molds, dies, negatives, photographs, designs, blueprints, or specifications relating thereto shall be vested exclusively in Buyer. Buyer may copy or reproduce any and all goods or services purchased hereunder for any and all purposes and may use the same in any and all media as often as it may so desire. All

plans, drawings, designs and specifications supplied by Buyer to Seller shall remain the property of Buyer, and any information derived there from or otherwise communicated to the Seller, shall be regarded by Seller as strictly confidential and shall not without the prior written consent of Buyer be disclosed to any third party.

**12. CANCELLATION FOR BREACH:** Buyer reserves the right to cancel all or any part of this Order, without liability to Seller if Seller; (a) repudiates or breaches any of the terms of this Order, including Seller's warranties; fails to perform services or deliver goods as specified by Buyer; or (b) fails to make progress so as to endanger timely and proper completion of services or delivery of goods, and does not correct such failure or breach within ten (10) days (or such shorter period of time if commercially reasonable under the circumstances) after receipt of written notice from Buyer specifying such failure or breach.

**13. TERMINATION:** Buyer may at its option immediately terminate all or any part of this Order, at any time and for any reason, by giving written notice to Seller. Upon such termination, Buyer shall pay to Seller the following amounts without duplication: (a) the Order price for all goods or services which have been completed in accordance with this Order and not previously paid for; and (b) the actual costs of work in process and raw materials incurred by Seller in furnishing the goods or services under this Order to the extent such costs are reasonable in amount and are properly allocable or apportionable under generally accepted accounting principles to the terminated portion of this Order; less, however, the reasonable value or cost (whichever is higher) of any goods or materials used or sold by Seller with Buyer's written consent. Buyer will make no payment for furnished goods, work in process or raw materials fabricated or procured by Seller in amount in excess of those authorized in delivery releases nor for any undelivered goods which are in Seller's standard stock or which are readily marketable. Payments made under this Paragraph shall not exceed the aggregate price payable by Buyer for finished goods that would be produced by Seller under delivery or release schedules outstanding at the date of termination. Except as provided in this Paragraph, Buyer shall not be liable for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering cost, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, and general and administrative burden charges. Within sixty (60) days from the effective date of termination. Seller shall submit a comprehensive termination claim to Buyer, with sufficient supporting data, and shall permit Buyer, or its agents, to audit and examine all books, records, facilities, work, material, inventories, and other items relating to any termination claim of Seller.

**14. INFRINGEMENT:** Seller warrants that the use or sale of the goods or service in the form, state and condition as delivered hereunder does not infringe any patent, copyright or trademark covering the goods or their method of manufacture or the services, and Seller agrees to indemnify Buyer, its officers, directors, agents, customers and assigns from any and all loss, expense (including attorneys fees), damages or decrees resulting from such actual or alleged infringement.

**15. INDEMNIFICATION:** If Seller agents, employees or representatives enter premises under the control of Buyer or any of Buyer's customers or suppliers or if Buyer's agents, employees or representatives enter premises under the control of Seller or any of Sellers customers or suppliers in the course of

performance, Seller shall indemnify and hold Buyer harmless from and against any and all loss, claim damages, injury (including death), liability, cost, expense including attorneys fees) and any causes of action whatsoever, arising out of or in connection with any act or omission of Seller, its officers, employees and agents or any joint act or omission of Seller and Buyer or their respective officers, agents and employees, unless such arises out of the sole negligence of Buyer, duly proved. Seller will provide Buyer with proper evidence of such insurance upon request.

**16. SETOFF:** Buyer may set off any amount owing at any time from Seller to Buyer against any amount payable at any time by Buyer to Seller.

**17. COMPLIANCE WITH LAW:** Seller represents, warrants and will certify that the goods sold pursuant to this Order are manufactured, produced and sold in conformity with all applicable federal, state, local and foreign laws, and all applicable rules and regulations promulgated in furtherance thereof. Seller agrees to hold Buyer harmless from any loss, cost or damage arising out of any actual or alleged violation of any of the foregoing.

**18. WAIVER:** Failure of Buyer to enforce any of the provisions of this Order shall constitute neither a notation nor a waiver of such provisions or of the right of Buyer to enforce such provisions at any time.

**19. ASSIGNMENT:** Seller shall not assign or transfer this Order, totally or partially, nor negotiate rights and/or monies issuing from it without the previous written consent of Buyer. This Order shall create no contractual obligation with a third party.

**20. GOVERNING LAW AND VENUE:** This Order, shall be governed in accordance with the laws of "Federalist Republic of Brazil". Buyer and Seller elect the courts of the Judicial District of Sorocaba, State of São Paulo, with waiver of any other, however privileged, to settle the any question which may arise out of this Order.

**21. ENTIRE AGREEMENT:** This Order, together with the attachments, exhibits or supplements specifically referenced in this Order and/or specifically related to this Order, constitutes the entire agreement between Buyer and Seller with respect to the matter contained herein and supersedes all prior agreement.