

## W.R. GRACE & CO. PURCHASE ORDER TERMS AND CONDITIONS

Applicable to the Canada and US

**1. Acceptance:** Unless this order or contract ("Order") is issued under a written procurement agreement between Buyer and Seller, this Order, these terms, and any documents attached hereto are the sole and exclusive understanding between Buyer and Seller concerning the goods and services (collectively, "Goods") purchased hereunder. Seller must send an electronic Order Confirmation via the Ariba Network prior to the commencement of any work or service, or shipment of Goods, under such Order. Buyer disclaims all liability for work performed or Goods delivered prior to Buyer's receipt of such Order Confirmation through the Ariba Network. Seller's delivery of such Order Confirmation shall constitute Seller's acceptance of these terms. All additional or different terms proposed by Seller are expressly rejected by Buyer and shall not become a part of this Order unless agreed in writing by Buyer. Any modifications to this Order shall be made and approved only by duly authorized representatives of Buyer and Seller (the "Parties") through use of the acknowledge process in the Ariba Network.

**2. Prices and Taxes:** Seller's price indicated in this Order is the sole price applicable to the Goods. Seller's price for the Goods hereunder will not be in excess of (a) the maximum which Seller may charge under applicable government regulations, and (b) the price Seller charges other customers purchasing similar quantities of the same or similar items. Unless otherwise provided in this Order, prices are D.D.P. (Buyer's facility) (Incoterms 2010) and include all freight charges and all federal, state and local taxes and duties now or hereafter enacted. If Buyer otherwise agrees to pay any such tax or duty, Seller shall invoice such applicable taxes and duties separately unless Buyer furnishes Seller with exemption certificates.

**3. Packing and Delivery:** Seller shall at its expense package all Goods to insure safe arrival at ultimate destination, secure lowest freight costs, and comply with requirements of common carriers. Seller shall comply with all of Buyer's labeling and documentation requirements, including clearly marking Buyer's Order numbers, part numbers, quantities and symbols on all invoices, packages, and bills of lading. Shipping memoranda or packing lists shall accompany Goods. Buyer's count or weight shall be conclusive on shipments not accompanied by a packing list. Bills of lading or shipping receipt shall be sent to Buyer on date of shipment. Seller shall bear all excess transportation or other charges and costs resulting from failure to follow Buyer's routing instructions and delivery schedules. Unless otherwise provided in this Order, Seller shall ship Goods D.D.P. (Buyer's facility) (Incoterms 2010) and title shall pass to Buyer upon its receipt of the Goods. Seller has no right to ship under reservation.

**4. Delivery Schedules:** Seller shall make deliveries during Buyer's general business hours in quantities and at times specified in the Order or Buyer's delivery schedules. Time is of the essence in this Order. Buyer shall not be required to pay for Goods delivered in excess of quantities specified in the Order or Buyer's delivery schedules. Such excess deliveries are entirely at Seller's risk and may be returned at Seller's expense. Buyer may change the rate of or temporarily suspend scheduled shipments, neither of which shall entitle the Seller to a modification of the price for Goods 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.

**5. Changes:** Buyer reserves the right at any time to direct or make changes to drawings and specifications of the Goods 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 agreement of the parties.

**6. Inspection:** Goods shall be subject to inspection by Buyer at all reasonable times, including inspection during manufacture. Inspection and approval by Buyer at Seller's plant does not preclude rejection for defects by subsequent inspection.

**7. Warranty:** Seller warrants that the Goods conform to the specifications, drawings, samples or other descriptions furnished to or agreed 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 they shall not contain and are not formulated with raw materials known to contain asbestos; that, if Seller is or reasonably should be aware of Buyer's intended use for the Goods, they are fit for such particular purpose; that services shall be performed by qualified personnel; and that the Goods 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 on the face of the Order or, if no such period of time is set forth, for a period of two (2) years after date of acceptance of such Goods. Any Goods rejected by Buyer shall be promptly repaired, corrected or replaced at Seller's expense. Seller shall bear all expenses in connection with the

return of Goods rejected by Buyer 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.

**8. Force Majeure:** If a party is prevented from performing its obligations hereunder as a result of governmental actions or regulations, fires, strikes, accidents, acts of God or other causes beyond the reasonable control of that party, such obligations shall be suspended for the period during which such conditions continue to exist, provided that the party affected uses reasonable and diligent efforts to avoid and remedy the impacts of such force majeure event. Buyer may change or cancel without penalty any Order delayed by a force majeure event and/or immediately seek alternative sources of supply without being in breach hereof, and any such purchases shall be included within any Buyer volume commitments.

**9. Nondisclosure and Ownership:** Ownership of, and all rights with respect to, any Goods designed specifically for Buyer and any services purchased under this Order, and all other deliverables, including all materials, sketches, layouts, tooling, molds, dies, negatives, photographs, designs, blueprints, programs, code or specifications relating thereto, shall be vested exclusively in Buyer. 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 written consent of Buyer be disclosed to any third party.

**10. Cancellation for Breach:** Buyer reserves the right to cancel all or any part of this Order, without liability to Seller if Seller: (a) breaches any of the terms of this Order; (b) fails to perform or deliver Goods as specified by Buyer; or (c) fails to make progress so as to endanger timely and proper completion or delivery of Goods and does not correct such failure within ten (10) days (or such shorter period of time if commercially reasonable under the circumstances) after receipt of written notice thereof from Buyer.

**11. Termination:** Buyer may terminate all or any part of this Order without cause by giving either written notice or electronic notification through the Ariba Network, at Buyer's discretion, to Seller. Upon such termination, Buyer shall pay to Seller the following amounts without duplication: (a) the price for all Goods completed and delivered in accordance with this Order and not previously paid for; and (b) the actual costs of work in process Goods and raw materials purchased by Seller to supply the Goods under this Order, but only to the extent such costs are reasonable in amount, properly allocable or apportionable under generally accepted accounting principles to the terminated portion of this Order, do not exceed the aggregate price for finished Goods, do not include amounts relating to damaged or destroyed Goods or materials, and the Goods and materials cannot reasonably be used for other purposes or sold to other customers (with Buyer's written permission). Except as provided in this paragraph, Buyer shall not be liable for any other costs or damages relating to the termination of an Order, including any damages, penalties, loss of business or anticipated profit, unabsorbed overhead, or general and administrative 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 such termination claim.

**12. Infringement:** Seller warrants that the sale or use of the Goods in the form, state and condition as delivered hereunder will not infringe any U.S. or foreign patent, copyright or trademark covering the Goods or their method of manufacture, and Seller agrees to indemnify, defend and hold harmless Buyer, its affiliated companies, officers, directors, employees, agents, customers and assigns from any and all loss, claim, damages, liability, cost, expense (including attorneys' fees) and any causes of action resulting from such actual or alleged infringement. Seller does not warrant against infringement by reason of the use of such Goods in combination with other materials or in the operation of any patented process.

**13. Indemnification:** Insurance: Seller shall indemnify and hold Buyer, its affiliated companies, officers, directors, employees, agents, customers and assigns 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 Seller's breach of any provision hereunder, or any act or omission of Seller, its officers, employees and agents. Seller shall maintain public liability, property damage and employee's liability and compensation insurance in reasonable amounts and kinds sufficient to protect Buyer from any of said risks and from any claims under any applicable worker's compensation or occupational duties acts. Seller shall furnish to Buyer proper evidence of such insurance upon request.

**14. Payment Terms:** Net ninety (90) days or net fifteen (15) days with a three ½ percent (3.5%) discount, with a pro-rated sliding scale, such choice of payment term being solely at Buyer's option, 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 documentation is received by Buyer's Accounts Payable Department. With respect to the foregoing, such correct invoice and supporting documentation shall not be issued to Buyer until title transfers to Buyer and documentation of services completed or Goods received to date are accurately recorded in a Goods Receipt electronically through the Ariba Network. Once the Goods Receipt is completed and so recorded by Buyer, Supplier will be able to generate an invoice in the Ariba Network requesting payment against the amount of the Goods Receipt. Each invoice will contain an itemized description of the work performed or Goods received and all applicable charges and taxes. 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.

**15. Setoff:** Buyer may set off any amount owing from Seller to Buyer or Buyer's affiliates against any amount payable at any time by Buyer to Seller.

**16. Compliance with Law:** Seller represents, warrants and will certify that the Goods or Services sold pursuant to this Order are manufactured, produced and sold in conformity with all applicable federal, state, local and foreign laws, including all anticorruption laws and other laws applicable to where the Goods are manufactured or Services or performed, as well as where the Goods or Services will be used (if know or should reasonably be known by Seller), and all rules and regulations promulgated in furtherance thereof. Seller shall, at its expense, possess or obtain all permits, licenses, and other forms of documentation, pay all governmental fees, and comply with all federal, state, local and other laws, ordinances, rules, regulations and orders applicable to Seller's performance here under. Without charge to Buyer, Seller shall furnish to Buyer copies of such permits, licenses, and other forms of documentation, together with any certificates or other instruments reasonably related to the performance of Seller of its obligations under this Contract, prior to commencement of work hereunder. Seller shall promptly notify Buyer if Seller loses its permitted or licensed status, or if Seller fails to comply with any applicable law, ordinance, rule regulation or order. It is the policy of Buyer to provide equal job opportunities to all people. Buyer maintains a written Affirmative Action Plan designed to ensure equal employment opportunities for qualified women, underrepresented minorities, Vietnam-era veterans, veterans with disabilities, and other individuals with disabilities. Seller is notified that it may be subject to the provisions of the following U.S. regulations: 41 CFR Section 60-300.5(a); 41 CFR Section 60-741.5(a); 41 CFR Section 60-1.4(a); and (c) 41 CFR Section 60-1.7(a). Seller and each vendor/subcontractor shall abide by the requirements of 41 CFR 60.741.5(a) and 41 CFR 60-3005(a). These regulations prohibit discrimination against qualified individuals on the basis of disability and qualified protected veterans, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities and qualified protected veterans. If Seller is to perform work on Buyer's site, Seller shall comply with all site rules and all Buyer requests, regulations and procedures concerning safety, health, and personal and professional conduct.

**17. Waiver:** Failure of Buyer to enforce any provision of this Order shall not constitute a waiver of such provision or of the right of Buyer to enforce such provision at any time.

**18. Assignment:** Seller shall not assign this Order or any monies due or to become due hereunder without the prior written consent of Buyer. This Order shall create no contractual obligation to a third party.

**19. Governing Law:** This Order is to be governed in accordance with the laws of the State of New York, USA, notwithstanding rules concerning conflicts of laws. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

**20. Severability:** The invalidity, illegality and unenforceability of any provision of this Order shall in no way affect or impair the validity, legality or enforceability of the remaining provisions hereof.

**21. Entire Agreement:** This Order, together with the attachments, exhibits or supplements specifically referenced in this Order, constitutes the entire agreement between Buyer and Seller with respect to the matters contained herein, and supersedes all prior agreements.