

## Eberhard Manufacturing Company - Terms and Conditions of Purchase

\*subject to change without notice\*

**CONSTRUCTION:** This Purchase Order constitutes Buyer's offer to Seller and is subject to withdrawal at any time prior to communication of Seller's acceptance of this Purchase Order to Buyer. Upon Seller's acceptance of this Purchase Order or commencement of performance pursuant to this Purchase Order, the terms and conditions set forth herein will constitute the entire agreement relating to the purchase of any products. All inconsistent or additional terms in the Seller's sales order are hereby rejected. Neither Buyer's subsequent lack of objection to any such terms and conditions, nor the acceptance of products ordered, will constitute agreement by Buyer to any terms proposed by Seller. Any terms, conditions or provisions not addressed directly herein shall be viewed as not applicable to the purchase.

**MODIFICATION:** No representative of the Buyer is authorized to make any oral commitments, promises, warranties, representations, or modifications of these terms and conditions. No terms and conditions requested or specified through any format submitted before or after the quotation, acknowledgement, or sale shall be valid unless a copy of the Buyer's "Modification of Terms and Conditions of Purchase" form has been signed by the Buyer's immediate supervisor and is in the possession of the Seller.

**PRICING:** Seller shall notify the Buyer in writing within (24) hours of receipt that pricing on the PO is incorrect. The Buyer has the right to agree or dispute the increase, which will void the original purchase order. A revised purchase order will be issued to the Seller within (24) hours, if the Buyer accepts the new pricing. Any current production pricing, blanket order pricing and supplier replenishment agreement pricing requires a 30 day advance written notice of an adjustment at which time the Buyer has the authorization to accept the new price or null and void the purchase order.

Seller must provide Buyer with an invoice that meets the requirements for entry into the United States. The Seller is responsible for additional costs (including but not limited to: inspection, storage, demurrage, and attorney fees) resulting in detention or refusal of goods if due to their failure to meet United States customs requirements. The United States Customs, Boarder Protection and the United States Customs Regulations (CFR Title 19) require that the Seller provide the Buyer with the Harmonized System Classification and product specific Country of Origin, as well as provide a valid, signed Certificate of Origin or qualifying statement on the invoice if a product is eligible for a special trade program.

**PACKING AND SHIPPING TERMS:** All orders are F.O.B. Buyer's plant, Strongsville, OH unless specified otherwise on the Buyer's request for quotation or Purchase Order and terms will be governed by Incoterms 2000.

All products will be packed as deemed proper by the Buyer unless specified otherwise on the Buyer's request for quotation or Purchase Order. Any special packaging required which results in an additional handling or packing charge must be authorized by the Buyer prior to shipment.

Buyer is not responsible for delays of any carrier; damage to the goods in transit or any loss occasioned after shipment has been delivered to the carrier and receipted for as being in good order.

Seller assumes sole responsibility for filing and prosecuting claims against the carrier for goods lost, damaged or destroyed in transit.

Buyer accepts no responsibility for extra freight charges resulting from split or inaccurate shipments.

Claims of shortages in a shipment not chargeable against the carrier will be considered by the Buyer with written notice given to the Seller within (60) days from date of receipt of product.

Title will pass after the Buyer inspects the merchandise and accepts that they are in conformity with the purchase agreement.

**TITLE AND RISK OF LOSS.** Except as otherwise expressly provided in this Agreement, title to and risk of loss on all products shipped by Seller to Buyer will pass to Buyer at the delivery point designated on the face of this Purchase Order; provided, however, that damage discovered by Buyer after transfer of title determined to be a result of faulty packaging or handling by Seller will be Seller's responsibility. Cost of all return shipments will be borne by Seller with title and risk of loss passing to Seller at Buyer's plant, unless otherwise specified by Buyer at the time of return.

**REJECTION OF GOODS.** At Seller's expense, Buyer may reject and return any products that do not meet Buyer's specifications as to quality or quantity or Seller's express or implied warranties. Buyer will have a reasonable time within which to inspect and approve the products, but in no event less than 45 days after receipt. Payment for the products will not be deemed an acceptance or a waiver by Buyer of any defect in the products, whether known before or after payment. At Buyer's option, any products not accepted will be returned to Seller for full credit or replacement at Seller's sole risk and expense. Acceptance of any part of the products will not bind Buyer to accept future shipments, nor deprive it of the right to return products already accepted or to make any claim for damages. The rights and remedies set forth in this Section are not exclusive and nothing herein limits Buyer's rights and remedies under this Purchase Order.

**DELAYS:** Buyer shall not be liable for any delay in the performance of this contract or for any damages suffered by the Seller because of such delay, regardless of cost.

**EXCLUSIVE REMEDY AND RETURN PROCEDURE:** As the sole and exclusive remedy under the foregoing warranty

[No warranties are stated. What warranties are being extended by the Seller? Also, the Buyer may not want to limit its remedies as it does in this section.

These are some typical warranties that could be included in the Purchase Order:

Seller warrants to Buyer that the products: (a) will conform strictly to specifications, samples and description specified by Buyer, furnished by Seller, and/or set forth in this Purchase Order; (b) will be of good and merchantable quality; (c) will be fit for any particular purpose for which the products are required by Buyer, to the extent known by Seller; (d) will be free from defects in material, design, and workmanship; (e) will not infringe any patents, copyrights, trademarks or intellectual property rights of third parties; (f) are owned by Seller immediately prior to delivery, will be transferred to Buyer without violation of any agreement to which Seller is a party or by which Seller is bound and will be free of security interests, liens, and encumbrances; and (e) will be produced, packaged and shipped in compliance with good manufacturing practices, applicable licenses and all applicable laws, regulations and rules, including without limitation those related to hazardous and toxic materials, the environment, labor, immigration, occupational safety and health, labeling and adulterated, misbranded or banned goods. These warranties will survive any inspection, delivery, acceptance, payment or use by Buyer of or for the products.]

Seller will, without charge repair or replace, at its plant, products found to be defective in materials or workmanship or refund the purchase price to the Buyer. Upon rejection notification, the Seller has (24) hours to respond to the Buyer with a Returned Authorization Number or product will be returned to the Seller, at Seller's expense and Buyer will be refunded all costs incurred for the product, inspection as well as freight costs.

**NO INDEMNIFICATION:** In no event will the Buyer indemnify or hold the Seller harmless from or against any loss of damage, notwithstanding any indemnity of hold harmless provisions to the contrary in the Seller's quotation or Purchase Order Acknowledgement.

**SECURITY:** Seller agrees to take such responsible measures as required to ensure the physical integrity and security of all shipments against the unauthorized introduction of harmful or dangerous material. Such measures may include, but not limited to, physical security of manufacturing, packaging and shipping areas, restrictions on access of unauthorized personnel to such areas: personnel screening and maintenance of procedures to protect the integrity of shipments.

Seller accepts responsibility for factory and container security until such time the container or merchandize is delivered to the ocean terminal, authorized yard, or consolidation point. Seller will immediately report container seal changes and reason for those changes to the U.S. distribution center manager.

**IMPORT/EXPORT CONTROL:** Seller shall comply with applicable import and export laws and regulations of the Seller's country and of the United States and applicable export licenses and their provisions.

Seller acknowledges that Eberhard Manufacturing, its subsidiaries, and authorized representatives rely upon the information relating to export controls supplied by the Seller. Information related to export control shall include, without limitation, any Commodity Jurisdiction (CJ) determination issued by the Department of State, any commodity classification determination issued by the Department of Commerce and other export control determinations issued by any agency of the United States government, including software and technical data provided to the Buyer by the Seller. Seller shall defend, indemnify and hold Eberhard Manufacturing, its subsidiaries and its authorized representatives harmless from claims, suits, costs, damages, judgments, attorney fees, license fees settlement of expenses incurred, claimed, obtained or sustained by third parties, because of Eberhard's reliance on the information related to export control supplied by the Seller including commercial invoice, packing list and NAFTA documents.

**NONDISCRIMINATION:** The seller will not discriminate against any employee or applicant for employment due to race, color, religion sex, national origin, disability, or veterans of the Vietnam Era, disabled veterans or other eligible veterans. The seller will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, disability or veteran status. Such action shall include but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The seller agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

The seller will, in all solicitations or advancements for employees placed by or on behalf of the seller; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, disability or veteran status.

The seller will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the seller's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The seller will comply with AFL provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

The seller will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

In the event of the seller's noncompliance with the nondiscrimination clauses of this contract or with any such rules, regulations, or orders this contract may be cancelled, terminated, or suspended in whole or in part and the seller may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.

The seller will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965 so that such provisions will be binding upon each subcontractor or vendor. The seller will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions or noncompliance. Provided, however, that in the event the seller becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction the seller may request the United States to enter into such litigation to protect the interest of the United States. "[Sec. 202 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684 EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230.]

**GOVERNING LAW.** This Purchase Order will be governed by and construed in accordance with the laws of the State of Ohio, including but not limited to the Uniform Commercial Code as adopted therein. The parties expressly waive the application of the United Nations Convention for the International Sale of Goods.

**MISCELLANEOUS PROVISIONS.** No failure or delay on the part of Buyer to exercise any right, remedy, or power under this Purchase Order will operate as a waiver thereof. No waiver of any breach or of any terms or conditions of this Purchase Order will be construed as a waiver of any subsequent breach of that term or condition or of any other term or condition of the same or of a different nature or any other order given by Buyer to Seller. No waiver will be valid unless it is in writing and signed by Buyer. This Purchase Order will be binding upon, and will inure to the benefit of, Buyer, Seller and their successors and permitted assigns. Without Buyer's prior written consent, Seller will not assign this Purchase Order (including monies due from Buyer under this Purchase Order) or delegate or subcontract performance of its obligations. Any such purported transfer or assignment without Buyer's prior written consent will be null and void. Any provision of this Purchase Order which is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and will be severed from the balance of this Purchase Order without affecting the remaining provisions of this Purchase Order or affecting the validity or enforceability of such provision in any other jurisdiction. Agreements may be executed in one or more counterparts, each of which is an original but all of which together will constitute one and the same agreement. Electronic or facsimile signatures will be deemed to be original signatures. Neither party will be liable for any delays resulting from circumstances or causes beyond its reasonable control, including, without limitation, fire or other casualty, act of God, threatened acts of terrorism, pestilence or epidemic, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority.

**EFFECTIVE DATE:** The above terms and conditions shall be effective July 1, 2010 and take precedence over, supersede any previous agreements between parties.