



## PURCHASE ORDER STANDARD TERMS AND CONDITIONS

All purchases by HB International, Inc. ("HBI") are made on the following terms and conditions and any additional terms and conditions set forth in the purchase order ("P.O.") issued by HBI to the selling party ("Seller") for each purchase. No additional or different terms or conditions offered by Seller or set forth in any quotation, acknowledgment, invoice or other document received from Seller shall become part of the P.O. or the contract between the parties, and all such additional, different or conflicting provisions are hereby specifically objected to and rejected.

**1. Offer and Acceptance:** Each P.O. issued by HBI constitutes an offer by HBI to purchase goods and/or services ("Goods") from Seller according to the specifications, instructions and conditions set forth in or accompanying the P.O. If the P.O. follows any previous offer or proposal from Seller, HBI's acceptance of any such offer or proposal is expressly conditioned on Seller's assent to the additional or different terms contained herein. Absent HBI's express written acceptance or confirmation of any such previous offer or proposal from Seller, the P.O. shall be deemed a rejection and counter-offer with respect to any such previous offer or proposal, HBI's offer being expressly limited to the terms hereof. The acceptance by HBI of Goods furnished by Seller shall not constitute or be construed as an acceptance or confirmation of any previous offer or proposal or of any alternate terms or conditions of sale set forth in any documentation provided by Seller or otherwise. Seller shall be bound by the P.O. and its terms and conditions when it commences production or delivers any of the Goods ordered, or when it performs any other act constituting legal acceptance, whether or not any such acceptance or confirmation purports to state terms and conditions additional to or different from those stated herein.

**2. Price and Taxes; Payment Terms:** HBI shall not be billed at prices higher than those stated in the P.O., and any change in prices must be authorized by HBI in writing. If no price is shown, HBI must be notified of the price and must accept such price in writing prior to Seller filling the P.O. Quoted prices include all expenses for delivery of the Goods, including (without limitation) shipping, loading, unloading, storage, freight, and insurance, and, unless separately itemized in the P.O., no additional charges of any kind, including service or handling charges, boxing, packing, cartage or other extras, will be allowed. In addition, unless otherwise required by federal or state laws, stated prices shall include all applicable taxes, fees, and/or duties applicable to the goods purchased, and Seller shall be responsible for payment of any such tax, fee, or charge. Any taxes required to be paid by HBI must be agreed to by HBI and separately stated on the invoice to HBI. Seller agrees that any price reduction made with respect to the items covered by the P.O. subsequent to its placement but prior to payment will be applicable to the P.O. Unless otherwise stated on the P.O., payment of the purchase price shall be due on or before sixty (60) days after the later of HBI's receipt of: (i) Seller's invoice or (ii) the Goods, via check, draft or electronic funds transfer. All prices and payments hereunder shall be in U.S. Dollars.

**3. Packing and Shipment:** Seller shall properly and carefully package the Goods for shipment and storage to minimize risk of damage in transit. Whenever requested to do so, Seller will identify the Goods in the manner specified by HBI. Each package or crate must be legibly marked on the outside to show the part number, lot number and quantity of Goods shipped, and must contain a packing slip detailing part number, lot number, quantity, HBI P.O. number and any applicable certifications, test reports and serial numbers. Seller shall contract with a carrier for shipment, and obtain and promptly deliver to HBI any documents necessary to obtain possession of the Goods. HBI shall have the right at any time to specify the carrier or method of transportation, and agrees, unless necessitated through fault of Seller, to compensate Seller for the excess cost of any specific transportation over the transportation cost for shipment in the manner specified in the P.O. HBI shall also have the right to require special, express or air shipments if Seller fails or will fail to meet the delivery requirements of the P.O. Seller shall reimburse HBI for any resulting additional transportation costs, unless due solely to causes beyond the control and without the fault or negligence of Seller. All containers, pallets, drums, carboys or like packaging materials to be returned must be shipped by Seller on a no charge or consignment basis.

**4. Delivery:** Goods shall be shipped F.O.B. HBI's designated delivery location as set forth on the P.O. Requested delivery time or times are set forth in the P.O. and, when accepted by Seller, are firm. Unless otherwise agreed by HBI in writing, the entire P.O. must be delivered by the date specified. Time is of the essence. Goods not timely delivered are non-conforming. Seller agrees to pay whatever additional cost, expense, loss or damage HBI or its customers sustain as a result of any delay or any other deviation from the P.O., including lost sales, lost profits, and any incidental or consequential damages, including cover (under the UCC) unless the delay is due to unforeseeable causes beyond the control and without the fault or negligence of Seller. Seller

shall not ship in advance of the time necessary to meet HBI's delivery schedule, except as consented to by HBI. Seller shall promptly notify HBI of any delay or anticipated delay in delivery. Should Seller, for any reason, not comply with HBI's delivery schedule, HBI may either approve a revised delivery schedule or may terminate the applicable P.O. without liability. Seller shall not unreasonably anticipate delivery by purchasing materials or manufacturing quantities in excess of what is reasonably required to meet HBI's schedule. Items received in advance of HBI's delivery schedule may, at HBI's option, be returned at Seller's expense or accepted, with payment withheld until the scheduled delivery date. Any overshipments, including minimum requirements without advance agreement, are made at Seller's risk and shall be Seller's responsibility. HBI reserves the right to reject and return the same at Seller's expense. HBI shall have the right to cancel any future delivery on the P.O. for any reason upon thirty (30) days' notice to Seller.

Seller shall bear all risk of loss, damage, theft and other risks until HBI's acceptance of the Goods, except that if HBI rightfully rejects the Goods, receives a nonconforming tender, or revokes its acceptance, the risk of loss and title shall be deemed to have remained with Seller. The parties agree that any contrary provisions of sections 2-509, 2-510 or other provisions of the Uniform Commercial Code or other applicable law shall not apply to the P.O.

**5. Quality Standards; Inspection:** All Goods shall be provided in strict accordance with all specifications, samples, drawings, designs, artwork, samples, and other requirements or details approved or adopted by HBI or its customers and provided to Seller ("Specifications"). Where specified, unless otherwise agreed by HBI in writing, Seller will provide all certifications of Specifications to HBI's satisfaction. Seller shall provide and maintain an adequate inspection system covering the supplies, processing methods, special tooling, materials, workmanship, and final products ordered under the P.O. If, for any reason, Seller is compelled to use materials or methods other than what is required by the Specifications, Seller must promptly notify HBI, and HBI shall have the option either to agree in writing to the modification or to cancel the P.O. without penalty. HBI reserves the right at any time to make changes in the Specifications. Any difference in price or time for performance resulting from such changes shall be equitably adjusted, and the P.O. shall be so modified. All Goods purchased hereunder are subject to inspection and testing by HBI at any time, notwithstanding any prior payment, inspection, or testing without limiting any other rights available to HBI. HBI or its designated agents or representatives may perform, or cause to be performed, whatever testing is deemed reasonably necessary to confirm that Goods conform to the Specifications. In addition, HBI shall have the right at all reasonable times (i) to inspect the places of manufacture and storage of Goods, (ii) to inspect and test all supplies, tools, processing methods, materials, components, workmanship, work in process, and final product ordered under the P.O., and (iii) to inspect Seller's books and inspection records of all work and materials relating to the P.O. HBI shall bear its own expenses in connection with such inspections.

Claims by HBI that the goods are not in the quantity ordered, inferior in quality, defective, contaminated, not in conformity with the terms, specifications or requirements of a P.O. or otherwise shall be communicated to Seller by telephone, writing or in person within a reasonable time after the discovery of such deficiency or nonconformance. HBI shall not be deemed to have accepted any Goods until the expiration of a reasonable period of time for inspection after delivery which period of time shall not be less than sixty (60) days after delivery and HBI may thereafter revoke acceptance of nonconforming Goods. Seller acknowledges and agrees that HBI may inspect any commercial lot of Goods consisting of numerous units of the same product by inspecting only a reasonable sampling of such units and that HBI may revoke acceptance of any other units of such commercial lot which HBI at a later time discovers to be nonconforming.

**6. Warranty:** Seller warrants that all Goods covered by the P.O. (i) will conform to the Specifications, (ii) will be free of toxic lead paint and other known toxic materials, and properly labeled to disclose all materials used therein, (iii) will be new and of merchantable quality, and not used, rebuilt or made of refurbished material unless approved in writing by HBI, (iv) will be free from defects in design, materials and workmanship, and suitable for the purpose for which they are intended, (v) will comply and be produced, processed and delivered in conformity with all applicable federal, state or other laws, administrative regulations and orders, and (vi) will be free and clear of liens, claims or encumbrances of any nature. The limitations period set forth in section 2-725 of the UCC shall not be changed, and any effort by Seller to do so shall be of no effect. Seller further warrants that the Goods and the use thereof shall not infringe or invade any third party rights, including any patent, design patent, industrial design, trademark, trade secret, trade dress, copyright, right of privacy, or any other tangible or intangible



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personal or property rights. The foregoing warranties shall run to HBI, its successors and assigns, to HBI's customers, and to the end-users of the Goods

**7. Default:** Seller shall be deemed to be in default if it violates any of the terms of the P.O., if it fails timely to perform any of its obligations under the P.O., or if it performs or fails to perform any other act, whether pursuant to agreement or otherwise, which gives HBI reasonable grounds to be insecure with respect to Seller's future performance of the P.O. Seller further shall be deemed to be in default upon the occurrence of any of the following events, or of any other comparable event: (i) Seller dissolves or liquidates, makes an assignment for benefit of creditors, is subject to any voluntary or involuntary receivership, insolvency or bankruptcy proceedings, or becomes unable or admits in writing its inability to meet its obligations as they mature; (ii) any license, permit or authorization necessary for Seller to conduct its business and provide the Goods under any P.O. is cancelled, suspended or revoked; or (iii) Seller makes any false statement, representation or claim to HBI, to any of its customers or clients, or to any third party, with respect to HBI, the Goods, or the transactions covered hereby.

**8. Remedies:** In case any Goods delivered under any P.O. are nonconforming in materials or workmanship or otherwise not in conformity with the P.O. or Seller's warranties herein, HBI shall have the right, notwithstanding payment or any prior inspection or testing, and in addition to seeking recovery of any and all damages and costs emanating therefrom, to reject or revoke acceptance of such nonconforming Goods, and to: (i) return such non-conforming Goods to Seller, at Seller's risk, for credit or refund, or require Seller to inspect, package, remove, ship and credit or refund the cost of such non-conforming Goods; and/or (ii) require that Seller promptly replace or correct the nonconforming Goods at Seller's expense. If Seller fails to replace or correct the nonconforming goods, HBI in its discretion may either (i) accept delivery of the nonconforming Goods, subject to a reduction in price reflecting the reduced value attributable to nonconformance; (ii) take such actions as may be required to cure or remedy all defects and/or bring the Goods into conformity with the requirements of this Agreement; or (iii) cancel the P.O. for default, with Seller responsible for any damages resulting from such default, including reimbursement for lost sales and profits and all incidental and consequential damages, including cover. Seller assumes all transportation and handling costs and the risk of damage to or loss of nonconforming Goods. Seller grants HBI a security interest in all Goods which HBI rightfully rejects or with respect to which HBI justifiably revokes acceptance as security for the prompt payment by Seller of any purchase price refund or credit due hereunder and any damages suffered or losses incurred by HBI arising out of or relating to the defect or nonconformity giving rise to such rejection or revocation. In addition, upon any default by Seller, HBI may: (i) reject or revoke acceptance or any or all of the Goods, whether or not such Goods are nonconforming and whether or not the condition or delivery thereof otherwise relates to, pertains to, concerns or gives rise to such event of default or (ii) terminate the P.O. without obligation or liability whatsoever with respect to Goods not yet delivered at the time of such termination. HBI's decision to pursue any one such remedy shall not be deemed to be an election not to pursue any other remedy at the same time or any other time. The rights and remedies hereunder shall be in addition to any other rights, remedies and choices available under the UCC and otherwise at law, by contract or in equity. In all cases, HBI shall be entitled to recovery of its reasonable attorney's fees and expenses.

**9. Compliance with Laws:** By accepting the P.O., Seller warrants and certifies that the Goods have been or will be produced in compliance with all applicable federal, state and local laws, rules and regulations, including the Fair Labor Standards Act; Executive Order No. 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; and (38USC2012) Vietnam Era Veterans Readjustments Assistance Act of 1974 and their implementing rules and regulations pertaining to equal opportunity employment. In the event any of the Goods are manufactured outside of the United States, Seller further agrees to comply with all applicable laws of the jurisdiction in which manufacturing occurs and in addition will insure that under no circumstances shall the Goods be manufactured or handled by indentured, slave or prison labor or by children under the age of 14 years or such older age as may be imposed by the applicable law of the jurisdiction in which manufacturing occurs. If any of the Goods are subject to the provisions of the Federal Food Drug and Cosmetic Act (21 USC 301, et seq.), Seller will provide the written guarantee as contemplated by 21 USC 33(c)(2) that such Goods are not adulterated or misbranded. Where applicable, Seller must provide a statement of FDA approval. If Seller, pursuant to the P.O., delivers any hazardous chemicals or materials as that term is defined by OSHA or other similar federal, state or local statute, regulation or ordinance, Seller will provide

HBI with a material safety data sheet relating to those hazardous chemicals or materials under 29 CFR 1910.1200 or other applicable provision.

**10. Confidentiality; Proprietary Rights:** To the extent, if any, that the Goods include or embody any intellectual property of HBI or its customers, including trademarks, service marks, trade dress, copyrighted material or any other material, information or data which, in the form and manner presented, are proprietary to HBI or its customers, all such intellectual property shall be deemed confidential information and, as applicable, trade secret information, and Seller shall have only a limited non-exclusive license to use the confidential information solely as necessary to complete the P.O. Seller must: (i) employ safeguards appropriate for confidential information trade secrets; (ii) not permit the use or disclosure of any confidential information to any person other than those who have a need to know to fulfill the P.O.; (iii) report to HBI any attempted use of the confidential information in violation of the P.O.; and (iv) not reproduce or copy any confidential information except as required to fulfill the P.O. When no longer required to fulfill the P.O., Seller will return such confidential information or destroy it and provide acceptable proof thereof as HBI directs. In addition to the foregoing, Seller shall not, without first obtaining the written consent of HBI, advertise or publish in any manner the fact that Seller has contracted to furnish HBI or its customers the Goods subject to the P.O. Seller acknowledges that any breach of the provisions of this section would cause irreparable harm that could not be adequately compensated for by damages. Accordingly, in the event of any threatened or actual breach of this Agreement, HBI may, in addition to any other specific remedy for relief, enforce the performance of this Agreement by injunction or specific performance upon application to a court of competent jurisdiction, even if monetary damages are available and readily quantifiable, and without proving in advance the existence or amount of actual damages, the mere risk of potential damage being sufficient.

**11. Indemnity:** Seller agrees to indemnify and hold harmless HBI, its employees, shareholders, customers, affiliates, successors and assigns, from and against any and all claims, suits, causes of action, liabilities, losses, damages, costs and expenses (including attorneys' fees and other costs of defending any action) which they, or any of them, may sustain or incur in connection with, arising out of or related to (a) any breach of any term or condition of the P.O. by Seller, its employees, contractors, affiliates, agents or representatives, including any breach of any express warranty provided in paragraph 6 herein or of any warranty provided or implied by law, or (b) any claim of negligence, breach of warranty or strict liability in tort in connection with the Goods provided hereunder, including any and all injuries or damages to persons or property. Seller agrees to maintain at all times adequate product liability insurance coverage insuring its activities hereunder and listing HBI as an additional insured, and to provide copies or certificates evidencing such insurance to HBI upon request.

**12. General:** Except to the extent the P.O. may be referred to or incorporated by reference in any separate agreement between HBI and Seller, the P.O. (including these terms and conditions) shall constitute the complete understanding and contract between Seller and HBI with respect to the subject matter hereof. HBI shall not be bound by any purported rescission or modification of such contract, and shall not be deemed to have waived any provision of or default under such contract, unless rescission, modification or waiver is set forth in writing signed by an authorized representative of HBI. No waiver of any provision of or default under such contract in any particular instance shall be deemed or construed a waiver of any other provision or default, whether similar or otherwise, in any other instance. All provisions of the P.O. providing for any act or forbearance following fulfillment of the P.O. (including sections 6 through 11) shall survive fulfillment of the P.O. until such time as the provisions have been fulfilled or satisfied or until the period of time which is included in such provisions specifically or by reference has expired. Seller is an independent contractor manufacturing the Goods for HBI; nothing in the P.O. shall be construed as making the parties partners or joint venturers. The P.O. is not assignable by Seller but may be assigned by HBI. If any provision of the P.O. is held invalid by any court in a final decision from which no appeal can be taken, such provision shall be deemed modified to eliminate the invalid element and as so modified, such provision shall be deemed a part of the P.O. The invalidity of any provision of the P.O. shall not affect the force and validity of the remaining provisions. The contract between the parties shall be governed in all respects by and interpreted in accordance with the laws of the United States and the State of North Carolina, without giving effect to any conflict of laws provisions that would cause the application of the laws of any other jurisdiction. Seller agrees to the jurisdiction of the state and federal courts located in North Carolina. This choice of venue is mandatory and not permissive in nature and is intended to preclude the possibility of litigation between HBI and Seller in any other jurisdiction.