



## PURCHASE ORDER TERMS & CONDITIONS

The purchase order, together with these terms and conditions, and any attachments and exhibits, specifications, drawings, notes, instructions and other information, whether physically attached or incorporated by reference (collectively, the "Purchase Order"), constitutes the entire and exclusive agreement between Comar and Seller. Comar OBJECTS and REJECTS in advance to the inclusion of any additional or different terms proposed by Seller in its acceptance or acknowledgment of the Purchase Order. The inclusion of such terms by Seller shall be of no significance, such terms shall not be conditions or additional terms to the Purchase Order, and Comar's acceptance of Seller's goods shall not be deemed as acceptance of such terms. Unless otherwise stated on the face of the Purchase Order, the following terms and conditions shall apply. Notwithstanding the foregoing, if a master agreement covering procurement of the services, goods or other deliverables described in the Purchase Order exists between Comar and Seller, the terms of such master agreement will prevail over any inconsistent terms herein.

### 1. DELIVERY

All goods must be shipped on the terms specified in the Purchase Order, or in the absence of such terms the most favorable available rates. Any extra expense in effecting delivery of goods not so shipped will be charged to Seller.

Adequate scheduling of shipment of goods shall be made by Seller in that delivery dates included within the Purchase Order are essential to the Comar. Seller shall not, however, make material commitments or production arrangements in advance of reasonable flowtime needed to meet Comar's delivery schedule. No claims shall be allowed for such advance effort in case of change or termination. Shipments shall be strictly in accordance with Comar's delivery schedule. Comar reserves the right to return, at Seller's expense, all goods received in advance of delivery schedules or to hold the goods and pay Seller's invoices on normal maturity after the scheduled delivery date.

### 2. EXCUSABLE DELAYS

Time is of the essence. If the delivery of goods is not completed by the scheduled delivery date, Comar reserves the right to terminate the Purchase Order in accordance with section 9 hereof and to purchase substitute goods elsewhere and charge Seller with any loss incurred. Neither party shall be liable for damages resulting from delays arising out of causes beyond such party's control and without such party's fault or negligence, including acts of God, acts of the Government, fires, floods, strikes, freight embargoes, and unusually severe weather, nor shall such delay affect the remainder of this order. Seller must notify Comar in writing within ten (10) days after the beginning of any cause for delay, in the absence of which Seller waives his right for an excuse for such delay.

### 3. PACKING AND SHIPPING

Unless otherwise specified in the Purchase Order, the price for the goods includes all taxes and other charges such as shipping and delivery charges, duties, customs, tariffs, imposts and government-imposed surcharges. Seller shall preserve, pack, package and handle all goods so as to protect the goods from loss or damage and in accordance with best commercial practices. An itemized list of contents must be placed in each package bearing the applicable Purchase Order Number and shall include the Purchase Order Number, the Comar part number for each of the goods (if applicable), a description and the quantity of each of the goods and the date of shipment. No charge will be allowed by Comar for cartage or packing unless agreed upon in advance and in writing. All expenses incurred by Seller's failure to furnish necessary shipping documents shall be charged to Seller.

### 4. INVOICING

Packing lists in duplicate and itemized invoices, each bearing the Purchase Order Number must be mailed on day of shipment. Bill of Lading or Express Scripts Receipt must be attached to Seller's INVOICE. The Purchase Order Number shall be placed immediately following Comar's name on each invoice.

Invoices subject to cash discount should be mailed on the day they are dated. If such invoices are not mailed on such date, the discount period shall begin on the day such invoices are received by Comar's Purchasing Department. The failure by Seller to attach Bill of Lading or Express Scripts Receipt to an invoice will delay payment.

All invoices must bear the following certification in order to be passed for payment: "We hereby certify that these goods were produced in compliance with the Fair Labor Standards Act of 1938 as amended, and regulations and orders issued by the United States Department of Labor thereunder."

### 5. INSPECTIONS AND TESTING

Comar shall have the right to expedite, inspect and test any of the goods or work covered by the Purchase Order prior to shipment. All goods are also subject to Comar's inspection and approval within ten (10) days of delivery. If rejected, such goods shall be held for return, repair, replacement or disposal at Comar's sole discretion and at Seller's cost and risk. Such inspection, or the waiver thereof, however, shall not relieve the Seller from full responsibility for furnishing goods and work conforming to the requirements of the order, prejudice any claim, right or privilege the Comar may have because of the use of defective or unsatisfactory goods or work.

### 6. WARRANTY

All goods furnished by Seller and any services or installation relating thereto pursuant to the Purchase Order shall be warranted to be of the best quality of their respective kinds and to be free of defects in design, workmanship, or material and when known to Seller suitable for their intended purposes. In the event of breach, Seller shall take all necessary action, at Seller's expense, to correct such breach in the most expeditious manner possible. Should Seller fail to correct any such breach in a timely manner, Comar may proceed, at Seller's expense, to perform the necessary corrective work. This warranty shall also inure to the benefit of Comar's customer or user of the goods.

### 7. ASSIGNMENT AND SUBCONTRACTING

Seller shall not assign or subcontract any portion of the Purchase Order without the prior written approval of the Comar.

### 8. CHANGES

Comar may at any time and by written order ("Change Order"), make changes in shipping and packing instructions, quantities, drawings, designs, specifications, place of delivery and/or delivery schedules, for which an appropriate adjustment to the Purchase Order shall be made.

### 9. TERMINATION FOR DEFAULT

Comar may terminate all or any part of the Purchase Order by giving notice of default to Seller, if Seller: (a) refuses or fails to deliver the goods within the time specified; (b) fails to comply with any of the provisions of the Purchase Order or so fails to make progress as to endanger performances hereunder; or (c) becomes insolvent or subject to proceedings under any law relating to bankruptcy, insolvency or the relief of debtors.

In the event of a termination of the Purchase Order by Comar pursuant to this section 9, Comar's aggregate liability shall be limited to the payment for goods actually delivered and accepted by Comar under the Purchase Order.

### 10. TERMINATION FOR CONVENIENCE

Comar may terminate the Purchase Order at any time for its convenience, in whole or in part, in which event, Comar's sole obligations shall be to reimburse Seller for (a) those goods actually delivered and accepted by Comar up to the date of termination, and (b) costs incurred by Seller for unfinished goods, which are specifically manufactured for Comar and which are not standard products of Seller, as of the date of termination, plus a reasonable profit thereon. In no event shall Comar be responsible for loss of anticipated profit nor shall reimbursement exceed the outstanding amount due under the Purchase Order.

### 11. STOP WORK ORDER

Comar may at any time by written notice ("Stop Work Order") to Seller stop all or any part of the work called for by the Purchase Order. Upon receipt of such Stop Work Order, Seller shall take all reasonable steps to minimize the incurrence of costs during the period of work stoppage. Comar may subsequently either cancel the Stop Work Order resulting in an equitable adjustment in the delivery schedule and/or the price, or terminate the work in accordance with the provisions of the Purchase Order.

### 12. PATENT INDEMNITY

Seller agrees to indemnify and save harmless Comar, its officers, employees, agents, representatives or any of its customers buying or using the goods specified herein from any loss, damage or injury arising out of a claim or suit at law or equity for actual or alleged infringement of letters patent, by reason of the buying, selling or using the goods supplied under the Purchase Order, and will assume the defense of any and all suits and will pay all costs and expenses incidental thereto.

### 13. CONFIDENTIAL INFORMATION

Seller agrees not to make any use of data, designs, drawings, specifications and other information furnished to it by Comar, except for the performance of the Purchase Order and Seller further agrees not to disclose such data, designs, drawing, specifications and other information to others except for the performance of the Purchase Order under similar restrictions against use and disclosure. Upon completion or termination of the Purchase Order, Seller shall return to Comar on demand, all such data, designs, drawings, specifications and other information, including copies made by Seller.

The Purchase Order is confidential between Comar and Seller, and it is agreed by Seller that none of the details connected herewith shall be published or disclosed to any third party without Comar's written permission.

### 14. RISK OF LOSS

Seller assumes the following risks: (a) all risks of loss or damage to all goods, work in process, materials and other things until the delivery thereof as herein provided; (b) all risks of loss or damage to third persons and their property until the delivery of all the goods as herein provided; (c) all risks of loss or damage to any property received by Seller from or held by Seller or its supplier for the account of Comar, until such property has been delivered to Comar or its customer as the case may be, and (d) all risks of loss or damage to any of the goods or part thereof rejected by Comar, from the time of shipment thereof to Seller until redelivery thereof to Comar.

Any patterns, dies, molds, jigs and fixtures furnished to Seller by Comar, or specifically paid for by Comar, shall be the property of Comar and subject to removal by Comar upon completion of the Purchase Order, and shall be used only in filling Comar's orders and held by Seller at its sole risk.

### 15. INSURANCE AND INDEMNIFICATION

Seller agrees to indemnify and save harmless Comar, its affiliates, and their respective officers, agents and employees from and against any and all claims and liabilities (including expenses) for injury or death of persons or damage to any property which may result, in whole or in part, from any act or omission on the part of Seller, its agents, employees or representatives, or arising from any Seller furnished goods or services, except to the extent that such damage is due solely and directly to the gross negligence or willful misconduct of Comar.

Seller shall carry comprehensive general liability insurance, including contractual and product liability coverage, with minimum limits acceptable to Comar. Seller shall, at the request of Comar, supply certificates evidencing such coverage.

### 16. NORTH AMERICAN FREE TRADE AGREEMENT

Seller agrees to deliver to Comar as a separate line item a NAFTA Certificate of Origin (Customs Form 434) for all goods that meet the NAFTA Rules of Origin. Comar reserves the right to withhold all payments to Seller until such time as a completed NAFTA Certificate is delivered. A NAFTA Certificate is mandatory for all goods which are labeled "MADE IN THE USA."





**PURCHASE ORDER TERMS & CONDITIONS (Continued)**

**17. LAWS AND REGULATIONS**

Seller shall comply with all applicable Federal, State and Local laws, statutes and ordinances including, but in no way limited to rules, regulations and standards of the Occupational Safety and Health Act of 1970 and the Federal Contract Work Hours and Safety Standards Act and the rules and regulations promulgated under these acts.

With respect to the supply of goods relating to a facility regulated pursuant to the Atomic Energy Act of 1954, as amended, or the Energy Reorganization Act of 1974, the provisions of Title 10 Code of Federal Regulations, Part 21 (10CFR21) are applicable to the Purchase Order.

Seller agrees in connection with performance of the Purchase Order, not to discriminate against any employee or applicant for employment because of race, sex, religion, color, age, national origin, handicap or status as a Vietnam Era or Special Disabled Veteran

Unless exempted, the equal employment opportunity clauses in Section 202, paragraphs one through seven of Executive Order 11246, as amended, and the affirmative action clauses as set forth in 41 C.F.R. Section 60741.4 (for orders of \$10,000 or more) and 41 C. F. R. Section 60250.4 (for orders of \$10,000 or more) are incorporated herein by reference.

Seller further represents that neither it nor any of its subcontractors will utilize child, slave, prisoner or any other form of forced or involuntary labor, or engage in abusive employment or corrupt business practices, in the supply of goods or provision of services under this contract.

The Purchase Order shall be governed by and construed under the laws of the State of New Jersey, without regard to principles of conflicts of law. Seller irrevocably consents to the personal jurisdiction of the state and federal courts of the State of New Jersey and waives any claim that proceedings brought in such courts have been brought in an inconvenient forum.

**18. NET PAYMENT TERMS**

Seller agrees to a minimum of Net 60 payment terms from receipt date unless otherwise stated on the Purchase Order.

**19. LIMITATION OF LIABILITY**

NOTWITHSTANDING ANYTHING ELSE IN THE PURCHASE ORDER TO THE CONTRARY, BUYER WILL NOT BE LIABLE TO SELLER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS ARISING OUT OF, OR IN CONNECTION WITH, THE PURCHASE ORDER.

BUYER WILL NOT BE LIABLE TO SELLER WITH RESPECT TO THE SUBJECT MATTER OF THE PURCHASE ORDER UNDER ANY CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY AMOUNTS IN EXCESS OF THE AGGREGATE PRICE FOR GOODS UNDER THE PURCHASE ORDER.

