

VANTIVE PURCHASE ORDER AGREEMENT

1. AGREEMENT: This order is Buyer's offer the Seller and becomes a binding contract subject to the terms hereof, when accepted by acknowledgement or commencement of performance by Seller. Buyer objects to all additions, exceptions, or changes to these terms, whether contained in any printed form of Seller or elsewhere, unless approved by Buyer in writing. To the extent there are any inconsistencies between these terms and those written on the face of this order, the latter will control.

2. PRICE: Unless otherwise specified, the prices stated on the front of this order includes all charges for packing, hauling, storage, transportation to point of delivery, and taxes. Sales and use taxes not subject to exemption shall be stated separately in Seller's invoice. Seller warrants that the prices quoted in this order are no greater than those currently charged any other buyer for similar quantities of goods or services. Any price reduction extended to others by Seller prior to delivery shall also be extended to Buyer.

3. CHANGES: Buyer may at any time make changes in the scope or quantity of the goods or services covered by this order or in other terms hereof, to which event an equitable adjustment will be made to any price, time of performance, and other provision of this order if appropriate. Claim for such an adjustment must be made within fifteen (15) days from the date of receipt by Seller of notice of the change. Substitutions or changes in quantities or specifications by Seller shall not be made without Buyer's prior written approval.

4. WARRANTY:

(a) Seller expressly warrants that the goods or services ordered shall be merchantable; shall conform to this order, to specifications, drawings, and other descriptions referenced in this order, and to any accepted samples; shall be free from defects in materials and workmanship; shall be free from defects in design unless the design was supplied by Buyer; and shall be fit and safe for the intended purposes. Seller warrants that it has clear title to the goods and that the goods and services shall be delivered free of liens and encumbrances.

(b) Seller warrants that the goods: (1) are not adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetics Act as amended (Act), or within the meaning of any applicable state or municipal law in which the definitions of "adulteration" and "misbranding" are substantially identical with those contained in Act; (2) are not goods which may not under the provisions of Sections 404, 505, 512, 515, or 516 of the Act be introduced into Interstate commerce, or which may not under substantially similar provisions of any state or municipal law be introduced into commerce; and (3) are in full compliance with the Biological Products section of the Public Health Service Act.

(c) All the warranties and other warranties as may be prescribed by law shall extend to Buyer, its successors, assigns, and customers and to users of the goods or services and shall run through any expiration date stated on the goods, or, if no expiration date is stated, then for a period of one (1) year after delivery. Claims under these warranties must be made within the applicable period prescribed by statute.

5. INSPECTION; TESTING: Goods purchased under this order are subject to Buyer's reasonable inspection, testing, and approval at Buyer's destination. Buyer reserves the right to reject and refuse acceptance of goods, which are not in accordance with this order or Seller's representations or warranties, express or implied. Buyer will charge Seller for the cost of inspecting rejected goods. Rejected goods may be returned to Seller, or held by Buyer, at Seller's risk and expense. Payment for any goods under this order shall not be deemed acceptance of the goods.

6. RECALL: In the event that a recall of the goods is necessitated by a defect, a failure to conform to the specifications, applicable laws, or any other reason within the Seller's control. Seller shall bear all costs and expenses of such recall, including without limitation, costs of notifying customers, customer refunds, costs of returning foods, lost profits, and other expenses incurred to meet obligations to third parties.

7. SPECIAL LAWS: In filling this order, Seller will comply with all applicable federal, state, and local laws, including the following Executive Order 11246 as amended, which provides in part that Seller will take affirmative action with regard to recruiting and retaining minorities in all levels of its workplace, including all requirements set forth in Section 202 of the Executive Order which are incorporated by reference; laws prohibiting discrimination on the basis of an applicant's or employee's protected status and, the affirmative action and non-discrimination requirements provided by 41 CFR 60-250.4(f) and 41 CFR 60-741.4(f) protecting the interests of handicapped workers and disabled and Vietnam-era veterans. Seller also represents that:

The goods are consistent within and can be used in compliance with, the Occupational Safety and Health Act of 1970 (OSHA), That Services to be Performed on Buyer's premises will be consistent with OSHA provisions, and that Seller will provide Buyer the latest material safety data sheet (MSDS) for any chemical substance determined to be hazardous; for any order over \$10,000, Seller shall have an approved plan for small business concerns and small disadvantaged business as specified under Public Law 95-507 unless Seller itself is one of these concerns.

8. INDEMNIFICATION: Seller shall defend, indemnify and hold Buyer, its successors, assigns, employees, customers, and users of the goods or services harmless with respect to all claims, liability, damage, loss, and expenses, including attorney's fees, incurred relating to or caused by:

actual or alleged patent, copyright, or trademark, infringement or violation of other proprietary right, arising out of the purchase, sale, or use of the goods or services covered by this order; actual or alleged defect in the services or in the design, manufacture, or material of the goods; actual or alleged breach of warranty; failure of Seller to deliver the goods or services on a timely basis; or failure of the goods or services to meet the requirements of the law, including without limitation of the following statutes:

Federal Food, Drug, and Cosmetic Act; Biological Products section of the Public health Service Act; Federal Insecticide, Fungicide, and Rodenticide Act; Federal Hazardous Substances Act; Federal Caustic Poison Act; Toxic Substances Control Act; Flammable Fabrics Act; Fair Packaging and Labeling Act; Wool Products Labeling Act; Magnuson-Moss Warranty Federal Trade Commission Improvement Act; and Occupational Safety and Health Act of 1970.

In the event of a claim under this paragraph, Buyer may at its option terminate this order or defer acceptance of the balance of the goods or services ordered until the claim is resolved. If Buyer is enjoined from use of the goods, Seller shall, at Buyer's option, wither procure for Buyer the right to continue using the goods, replace the goods with substantially goods, modify the goods so as to be usable by Buyer, or repurchase the goods, at the price set

forth in this order. This Paragraph 8 shall not be construed to indemnify Buyer for any loss to the extent it is attributable to Buyer's design, specification, or negligence.

9. INSURANCE: Seller shall obtain and keep in force for three years after the last delivery under this order general comprehensive liability insurance covering each occurrence of bodily injury and property damage in an amount of not less than \$1 Million Dollars (or any other amount Buyer may indicate in this order) combined single limit with special endorsements providing coverage for:

Products and completed Operations Liability
Blanket Broad Form Vendor's Liability; and,
Blanket Contractual Liability.

If services are performed under this order on Buyer's premises, Seller shall also obtain Premises-Operations, Personal Injury, and Independent Contractors Protective Liability endorsements, and shall further obtain Workers' Compensation, Employer's Liability and Automobile Liability insurance coverage in amounts acceptable to Buyer, if requested, Seller shall furnish Buyer with a certificate evidencing the required insurance.

10. RISK OF LOSS: Seller shall bear the risk of loss or damage to the goods covered by this order until they are delivered to and accepted by Buyer.

11. BUYER-FURNISHED MATERIAL: Seller shall not use, reproduce, or appropriate for or disclose to anyone other than Buyer, any material, tooling, dies, drawings, designs, or other property or information furnished by Buyer ("Material") without Buyer's prior written approval. Title to all Material shall remain in Buyer at all times, and where practicable the Material shall be clearly marked or tagged to indicate this ownership. Seller shall bear the risk of loss or damage to the Material until it is returned to Buyer. All Material, whether or not spoiled or used, shall be returned to Buyer at termination or completion of this order unless Buyer shall otherwise direct.

12. REFERENCES TO BUYER: Except to the extent required by law, Seller shall make no reference advertisement, or promotion regarding Buyer or Buyer's purchase or use of the goods or services covered by this order without the prior written consent of Buyer.

13. USE OF SELLER'S INFORMATION: All information disclosed to buyer in connection this order is furnished as part of the consideration for Buyer's placement of this order. This information is not to be treated as confidential or proprietary, and no claim will be asserted against Buyer, its assigns, or customers, for its disclosure or use.

14. TERMINATION:

a). Buyer may terminate this order, in whole or in part, without liability: if Buyer anticipates Seller's breach of this order and Seller does not provide adequate assurance of it performance within ten (10) days of Buyer's request; if deliveries are not made at the time or in the quantities specified, or in the event of a breach or failure by Seller to meet other terms of this order. This right shall be in addition to any other remedies provided Buyer by law.

b). Buyer may terminate this order, in whole or in part, at any time for its convenience by notice to Seller in writing. Seller's sole compensation for such termination shall be payment by Buyer of the percentage of the total order price corresponding to the proportion of work completed in filling the order prior to such notice, plus any reasonable expenses incurred by Seller in terminating orders and work in progress. Such termination claim must be submitted to Buyer within sixty (60) days of the date of termination and shall be subject to audit by Buyer.

c). Upon any termination under this paragraph, title to all equipment, materials, work-in-process, finished products, plans, drawings, specifications, information, special tooling, and any other items for which Seller may submit a claim shall vest in Buyer, and Seller shall promptly deliver these items to Buyer and take all necessary action to protect prior to such delivery.

15. SETOFF: Any counterclaim against Seller or any of its related entities by Buyer or any of its related entities which arises out of this or any other transaction may be set off against any money due Seller under this order.

16. ASSIGNMENT: SUBCONTRACTING: Seller shall not assign this order or subcontract any material portion of the performance of it without Buyer's prior written consent.

17. UNITS OF MEASURE

- a. EA=EACH
- b. CS=CASE
- c. RL=ROLL