

WAGNER PURCHASE ORDER TERMS AND CONDITIONS

("Buyer" = Wagner, "Seller" = Supplier)

1. PARTIES

"Seller", as used herein, means the addressee. "Buyer", as used herein, means Wagner Spraytech Corporation, a Minnesota corporation, on its own behalf or as agent for Wagner Group, a Delaware corporation or any affiliate of Wagner Group. In cases where the purchase is made by Wagner Spraytech in its capacity as agent, all rights of Buyer hereunder shall inure to the benefit of the principal on whose behalf the agent is acting.

2. ACKNOWLEDGMENT AND ACCEPTANCE. Seller's action in (a) acknowledging this order or (b) making shipment of materials or otherwise commencing performance under this order shall constitute an unqualified acceptance of the terms and conditions set forth in this order, including any attachments hereto. Buyer hereby objects to any different or additional terms in seller's acceptance of this offer. No claimed verbal order by Buyer shall bind Buyer unless confirmed by Buyer by written purchase order. Commencement of performance by Seller in the absence of Buyer acceptance of a counter offer by a Seller will constitute Seller's acceptance hereof with change.

3. QUANTITIES AND PRICES. Buyer's count shall be accepted as conclusive on all shipments not accompanied by a packing slip. Buyer reserves the right to reject and return, at seller's expense, early deliveries or excess or short shipments, or to defer payment for early deliveries until the specified delivery date. To the extent that the prices for articles or services ordered hereunder are not specified herein, the prices for the same, unless otherwise agreed by buyer, shall be those applicable to buyers last preceding order for a comparable quantity, or if there is no such order, sellers last preceding quotation for the same. Unless otherwise specified herein, prices are F.O.B. buyer's plant at the location indicated on the face hereof and include all customs duties and sales, use, excise, retailer's occupation, value-added taxes or any other impositions payable by reason of this transaction. Seller warrants that all prices comply with all laws and regulations.

4. PAYMENT TERMS, INVOICES. Unless otherwise specifically agreed to herein, payment shall be due no earlier than sixty (60) days after the receipt of a correct invoice or date of buyer's acceptance of the goods or services, and shall be entitled to a 2% discount if paid before this due date except where other terms are agreed upon. Any discount or payment period shall be calculated from the date each correct invoice reaches buyer. Invoice and duplicate must be mailed immediately upon shipment, together with the original bill of lading or other bona fide receipts attached thereto. F.O.B. point, cash discounts and terms must be shown on all invoices.

5. INSPECTION, REJECTION OF GOODS. All goods furnished hereunder shall be subject to inspection at destination, notwithstanding any previous inspection, and seller shall be given notice of any defects other than latent defects within a reasonable time after receipt of the goods and all records required to be furnished there within. Buyer may reject or require the prompt correction, in place or otherwise, of any goods which are defective in material, workmanship, design or which otherwise fail to meet the requirements of this order. Buyer may, in addition to any rights it may have by law, prepare for shipment and ship the goods to seller, require Seller to move them, or direct their correction in place, and the expense of any such action, including transportation both ways, if any, shall be borne by Seller. If Seller fails promptly to remove such goods or to proceed promptly to replace or correct them, Buyer may replace or correct such goods at the expense of Seller, including any excess cost. Payment for any or all of the goods or services supplied hereunder shall not constitute acceptance by Buyer. Nothing in this paragraph shall in any way limit Buyer's rights under the paragraph hereof entitled "warranties".

6. DELIVERY: TIME IS OF THE ESSENCE OF THIS CONTRACT. Delivery shall not be deemed complete until goods or materials actually have been received, inspected and accepted by Buyer, notwithstanding any agreement to pay freight, express or other transportation charges. If delivery of items or rendering of services is not completed by the time provided for herein Buyer reserves the right, without liability, in addition to and without waiving any of its other rights and remedies under this order or otherwise, to cancel this order by notice effective when received by Seller, as to any or all stated items not yet shipped or services not yet rendered, and to purchase substitute items or services elsewhere and charge Seller with any loss or damage incurred by Buyer, and Seller agrees promptly to reimburse Buyer for any such losses or damages. Seller shall not, however, be liable to Buyer for damages resulting from delays in delivery or failure to manufacture due to causes which are not reasonable foreseeable and which are beyond its reasonable control, such as acts of God, fires, strikes and acts of the Government, provided that such delay is not due to the fault or negligence, in whole or in part, of Seller or its vendors, contractors, suppliers or agents. If a delivery date has not been specified by Buyer, Seller must specify a definite date for delivery. If a delivery date specified by Seller is not satisfactory to Buyer, Buyer reserves the right to cancel this order at no cost to Buyer. Any provision in this order for delivery of articles or the rendering of services by installments shall not be construed as making the obligations of Seller severable.

7. WARRANTIES. Seller expressly warrants that all articles, materials, parts and work covered by this order (i) shall conform to the specifications, drawings, samples or other descriptions referred to in this order, (ii) shall be merchantable and free of defects in workmanship, material and design, (iii) shall perform as specified herein, and (iv) to the extent that Seller knows or has reason to know of the purpose for which the goods are intended, shall be fit and sufficient for such purpose. These warranties are in addition to all other warranties specified herein or implied by law, and shall survive acceptance and payment. The warranties contained herein shall run to Buyer, to Buyers customers and to the users of Buyer's products and services.

8. CANCELLATION. The Seller's failure to comply with the specifications, terms and conditions of this order or any part thereof, or Seller's failure to deliver items ordered herein in accordance with specification, shall be grounds for cancellation by Buyer at no cost to Buyer. In case of ambiguity in the specifications drawings or other requirements of this order, Seller, before proceeding, must consult Buyer, whose written interpretation shall be final. Buyer's right to cancel hereunder shall be in addition to all other rights and remedies available to Buyer under this order or otherwise.

9. TERMINATION FOR CONVENIENCE. Buyer, in addition to all other rights and remedies it may have under this order or

- otherwise, shall have the right to terminate this order in whole or in part, without cause, upon notice in writing to Seller. Seller shall thereupon, as directed, cease work and deliver to buyer all completed and partially completed goods or materials and work in process, and Buyer shall pay Seller the following, which in no event shall exceed the total price provided for herein: (a) The price provided in the order for all goods which have been completed prior to termination and which are accepted by Buyer. (b) To the extent commercially reasonable, the actual expenditures on the uncompleted portion of the order, including cancellation charges paid by the Seller on account of commitments made under this order.
10. **INSOLVENCY.** If Seller ceases to conduct its operations in the normal course of business, including inability to meet its obligations as they mature, or if any proceeding under the bankruptcy or insolvency laws is brought by or against Seller, or a receiver for Seller is appointed or applied for, or an assignment for the benefit of creditors is made by Seller, Buyer may terminate this order without liability, except for deliveries previously made or for goods covered by this order then completed and subsequently delivered in accordance with the terms of this order.
 11. **PATENTS, TRADEMARKS AND COPYRIGHTS.** Seller warrants and agrees that all articles furnished hereunder and the use thereof do not infringe any patent, copyright or trademark right. Seller shall forever defend, indemnify and hold harmless Buyer, its successors and assigns and any of its customers and all persons claiming under buyer from and against any and all liability, claims, actions, losses, damages, and expenses of any kind, including without limitation attorneys' fees, by reason of actual or alleged infringement or contributory infringement of any United States or foreign Letter Patent, any copyright, trademark or trade name rights arising in any way out of or connected with this order. Including without limitation by reason of the manufacture, delivery, use or sale of goods supplied under this order. This provision shall apply notwithstanding that any of said claims, actions or suits shall ultimately be determined to be unjustified or to have been unfounded. In case the goods, or any part thereof, are in any suit held to constitute infringement and the use of the goods or part is enjoined, Seller shall, at its own expense, and with Buyers approval, either procure for Buyer the right to continue using such goods or part, or promptly replace the same with substantially equal but non-infringing goods, or modify the goods so they become non-infringing.
 12. **CARTAGE.** No charge shall be made or allowed for boxing or cartage unless by special agreement of the parties in writing. Charges for prepaid cartage must be substantiated by attaching to the invoice the original transportation bills received by the carrier.
 13. **ADVERTISING.** This order is confidential between Buyer and Seller and it is agreed by Seller that none of the details contained herein will be published to a third party without Buyer's written permission.
 14. **CONFIDENTIALITY.** Seller will hold any drawings, specifications, designs, development plans and any other proprietary or technical information ("Confidential Information") related to the goods, articles, or services ordered hereunder in the strictest confidence. Seller recognizes that the Confidential Information is the exclusive property of Buyer and Seller will comply with all of Buyer's instructions for preserving its confidentiality. In addition, Seller will not, except as Buyer otherwise directs, copy or directly or indirectly, disclose, sell, give, loan, or otherwise transfer Confidential Information to any person or entity, or for itself or others use Confidential Information in any manner that is or would be damaging to Buyer's business or competitive advantage. Seller acknowledges that the breach of any of the covenants in this section may result in irreparable harm and continuing damages to Buyer and its business.
 15. **DATA AND DRAWINGS.** All specifications, blueprints, documentary technical know-how, instructions, molds, models, casts, formulas, sketches, drawings, designs, customer lists, promotional copy, mailing labels, manufacturing procedures and processes and employee lists supplied to Seller under this order (and all rights to reproduce or republish any of the foregoing), hereafter "Property" (i) shall be and remain the sole property of Buyer except for exclusive designs developed by Seller prior to the placement of this order, (ii) shall be considered as confidential and not to be disclosed or made available to any other nor to be copied or reproduced by Seller, its agents, representatives or employees, (Seller to take all necessary precautions against theft, loss, duplications not authorized by Buyer in writing or wrongful distribution), (iii) unless otherwise agreed to by Buyer in writing, shall be returned to Buyer upon completion of production or processing or earlier upon demand and (iv) shall not be used by Seller, its agents, representatives, or employees for any purpose except in connection with the work to be done by Seller for Buyer pursuant thereto. With respect to any inventory of Property of Buyer which Seller has in its possession for the purpose of production, transportation, processing, distribution or transactions incidental to the foregoing, Seller shall take every precaution to prevent loss, damage, for the purpose of production, transportation, processing, distribution or transactions incidental to the foregoing, Seller shall take every precaution to prevent loss, damage, destruction, theft, appropriation or wrongful use or taking of such items. Seller shall carry and furnish evidence of adequate insurance against such occurrence in an amount satisfactory to buyer, and whenever inventory or Property of value exceeding \$500 is involved, Seller shall also furnish a loss payee endorsement naming Buyer as a named insured.
 16. **TOOLS.** Except as otherwise specified by Buyer in writing, all tools, dies, gauges, jigs, fixtures, and other items required to execute this order are to be supplied by Seller. Any such items to be paid for by Buyer shall be Buyer's property. Such items and materials shall be used exclusively for work done for Buyer, shall not be removed or disposed of without Buyers written consent, and shall be delivered to Buyer upon demand.
 17. **TITLE TO GOODS, RISK OF LOSS.** Goods shall be delivered to Buyer at its address specified on the face of this order. Unless otherwise explicitly provided for in this order, title and risk of loss to goods shall pass to Buyer only at the time and place of delivery at Buyer's facility.
 18. **DRAFTS.** Drafts against Buyer will not be honored, nor C.O.D. shipments accepted, except by express agreement to that effect.
 19. **COMPLIANCE WITH LAWS.** Seller agrees to comply with all applicable Federal and State laws, rules and regulations including, but not limited to: (a) the Fair Labor Standards Act of 1938 (29 USC 201-219) as amended; (b) Executive Orders 11246 and 11375, including all amendments thereof and all rules and regulations thereto; (c) Federal Procurement Regulations (d) all Workers' Compensation and Disability Benefit Insurance laws; (e) Anti-Kickback Act as amended (41 USC 51-54); (f)

- all applicable Armed Service Procurement Regulations; (g) the Occupational Safety and Health Act and all regulations thereunder; (h) the Clean Air Act (42 USC 1 857c-8(c) (I)), the Federal Water Pollution Control Act (33 USC 1319(c)), and rules and regulations of the EPA and appropriate state and local agencies; (i) the Walsh-Healy Public Contracts Act (41 USC 3545) and the Work Hours Act (40 USC 327-332) as amended and all rules and regulations thereunder, each as and to the extent applicable to this order or Seller's performance hereunder. Nothing in the foregoing shall limit Seller's responsibility to comply with any and all Federal, State and local government laws, rules, and regulations applicable in any fashion whatsoever to this order of Seller's performance hereunder. Seller agrees to provide Buyer with any certificate affirming compliance with applicable laws that the Buyer shall request, and Seller further agrees to indemnify Buyer against, and to hold it harmless from any loss or expense arising from Seller's noncompliance with any applicable law, rule or regulation.
20. **ASSIGNMENT.** Neither this order nor any payments hereunder are assignable or transferable without Buyer's written approval; nor shall Seller sublet or subcontract any or all of the performance of work called hereunder without Buyer's written approval.
 21. **CHANGES.** Buyer may at any time, by written order, make changes or additions within the general scope of this order. If any such change causes any increase or decrease in the cost of, or the time required for, performance of this order, Seller shall notify Buyer in writing, and an appropriate equitable adjustment will be made in the price or time of performance, or both, by written modification of this order. Any claims by Seller for such adjustment must be asserted within 30 days after Seller's receipt of notice of the change. Nothing herein shall excuse Seller from proceeding with the order as changed.
 22. **INCONSISTENT TERMS.** Buyer rejects any additional or inconsistent terms and conditions offered by Supplier at any time, whether or not such terms or conditions materially alter the Purchase Order and irrespective of Buyer's acceptance of or payment for Seller's goods, articles or services. No change to or modification of the Purchase Order will be binding upon Buyer unless in writing, specifically identifying that it is amending the Purchase Order, and signed by an authorized representative of Buyer. If Seller becomes aware of any ambiguities, issues or discrepancies between the Purchase Order and any specification, design or other technical requirement applicable to the Purchase Order, Seller will immediately submit the matter to Buyer.
 23. **WORK ON BUYER'S PREMISES, INSURANCE REQUIREMENTS.** If Seller's work under this order involves operations by Seller on Buyer's premises, Seller shall take all necessary precautions to prevent the occurrence of any injury to person or property (including the goods and services provided hereunder) during the progress of such work, and Seller shall defend, indemnify and save Buyer harmless against any and all liability, claims actions, judgments, losses, damages, or expenses (including attorneys' fees) by reason of injuries to persons (including death) or damage to property arising out of the use of any said premises by seller or the activities of Seller, its agents, representatives, employees, or contractors, except to the extent that any such injuries or damages are due directly and solely to Buyer's negligence. Seller shall maintain and, upon Buyer's request, shall furnish certificates evidencing the minimum insurance requirements set forth on Rider A attached hereto.
 24. **SEVERANCE.** If any court or competent authority finds that any provision of the instant Terms and Conditions (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Terms and Conditions shall not be affected. If any invalid, unenforceable or illegal provision of the Terms and Conditions would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
 25. **COMPLETE AGREEMENT.** The terms and conditions of this order, and any attachment, including Rider A if applicable, are the only terms and conditions governing this order. Reference to Seller's bids or proposals, if noted on this order, shall not affect the provisions hereof, unless specifically provided to the contrary herein and no other agreement or quotation or any acknowledgment of Seller in any modifying any of said provisions or adding additional terms or conditions will be binding upon buyer unless made in writing and signed by buyer's authorized representative.
 25. **GOVERNING LAW.** The contract resulting from this order is to be construed according to the laws of the state from which this order issues, as shown by the address of Buyer printed on the face of this order. The parties agree that any controversy arising under this order shall, at Buyer's option, be determined by the courts of the state from which this order is issued as aforesaid, and Seller hereby submits and consents to the jurisdiction of the courts of said state.