



PURCHASE ORDER TERMS AND CONDITIONS

1. **ACCEPTANCE AGREEMENT** Seller's commencement of work or shipment of the goods, whichever occurs first, constitutes acceptance of this purchase order and all of its terms and conditions. MGS hereby objects to any terms proposed in Seller's acceptance or acknowledgement of MGS's offer which add to, vary from, or conflict with the terms of this order. Any such proposed terms shall not operate as a rejection of this offer but are deemed a material alteration, and this offer shall be deemed accepted by the Seller without said additional or different terms. If this purchase order shall be deemed as acceptance of a prior offer by Seller, such acceptance is expressly limited to the terms contained on the front and back of this order.
2. **PRICE** The articles shipped or work performed against this order must not be invoiced at a higher price than shown on the face of this order without the written consent of MGS. The invoice must itemize transportation charges, including foreign inland freight and insurance and taxes separately, if applicable. If the price is omitted from the order, the price shall be the lowest prevailing market price. No charge will be allowed for packing, labeling, commissions, customs duties, storage, crating, or expenses handled unless indicated on this order.
3. **CONFIDENTIAL PROPRIETARY INFORMATION** Any information or data furnished by MGS to Seller under this order in the form of specifications, drawings, reprints, technical information, equipment, prototypes, forecasts, schedules, or other technical or business information shall be deemed MGS's Confidential Proprietary Information, shall remain MGS's property, shall be kept confidential, and shall be promptly returned to MGS at MGS's request. Seller shall not disclose, without MGS's written permission, any such information or data to any person, or use any such information or data for any purpose other than performing this order. The obligations under this paragraph shall survive cancellation, termination, or completion of this order. Unless otherwise agreed in writing, no commercial, financial, or technical information disclosed in any manner or at any time by Seller to MGS shall be deemed secret or confidential.
4. **WARRANTIES** Seller expressly warrants that all goods or services provided under this order shall be merchantable, free from defects in material and workmanship, of the highest quality, and shall conform to all applicable specifications and appropriate standards. Component, goods/services suppliers must notify MGS of any changes in the components, goods or services so that MGS may evaluate whether such changes could affect the quality of MGS's finished product. If Seller knows or has reason to know the particular purpose for which MGS intends to use the goods or services, Seller warrants that such goods or services shall be fit for such particular purpose. Seller further warrants that the goods are wholly new and contain new components and parts throughout and that Seller has good and warrantable title to the goods free and clear of all liens. Seller shall indemnify and hold MGS harmless for all damages arising out of any breach of these warranties. In addition to the warranties above, Seller shall extend all warranties it receives from its vendors to MGS, and to MGS's customers. Breach of the warranties in this provision, or any other term of this order, shall entitle MGS to all available remedies, including those of the Uniform Commercial Code.
5. **TERMINATION** MGS may terminate all or any part of this order at any time for its convenience upon written notice to Seller. MGS will pay a reasonable termination charge based on a percentage of the order price reflecting the percentage of work performed by Seller prior to termination. Any claim for payment of such termination charges must be submitted in writing to MGS within thirty (30) days of receipt of written notice of termination. MGS shall have the right to audit all elements of any termination claim, and Seller shall make available to MGS on request all books, records and papers relating thereto. Late deliveries, deliveries of products which are defective or which do not conform to this order, failure to perform as agreed, and failure to provide reasonable assurances of future performance upon request, shall all be reasons allowing MGS to terminate this order for cause. In such event Seller shall be liable for any damages (or at MGS's option, specific performance) due to Seller's breach or default. Neither party will be liable to the other for any delay or failure to perform if that delay or failure results from an unforeseeable cause beyond its reasonable control, except that MGS may terminate all or any portion of this order without liability to Seller if such delay or failure to perform by Seller or on behalf of Seller extends beyond thirty (30) days of MGS's requested delivery date. MGS'S TOTAL LIABILITY FOR DAMAGES UNDER THIS ORDER SHALL NOT EXCEED THE PRICE ALLOCABLE TO THE GOODS OR SERVICES GIVING RISE TO THE CLAIM. IN NO EVENT WILL MGS BE LIABLE FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES.
6. **INTELLECTUAL PROPERTY INDEMNITY** By acceptance of this order, Seller agrees to indemnify MGS against all claims, judgments, decrees, costs and expenses, and attorney's fees incident to any proceeding which may be brought against MGS or its agents, distributors, customers, or other vendors based on a claim of alleged copyright, trademark, maskwork right, or patent infringement, as well as for an alleged claim of unfair competition resulting from similarity in design, trademark or appearance of goods or services furnished under this order, unless the goods or services are of MGS design or formula, and Seller agrees that it will, upon request of MGS and at Seller's own expense, defend or assist in the defense of any action which may be brought against MGS or its agents, distributors, customers, or other vendors for such infringement or claimed infringement or alleged claim of unfair competition. MGS agrees to notify Seller promptly upon receipt of notice of infringement or information of such a suit having been filed.
7. **INSIGNIA** If any products are rightfully rejected or not purchased by MGS which utilize MGS's name or MGS's customer's name, trademarks, trade names, insignia, symbols, or decorative designs, Seller shall remove same prior to any sale, use or disposition thereof.
8. **MATERIAL, TOOLS AND EQUIPMENT** All tools, equipment, dies, gauges, models, drawings or other materials paid for or furnished by MGS for the purpose of this order shall be and remain the sole property of MGS. Seller shall safeguard all such



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property while it is Seller's custody or control, be liable for any loss or damage to such property, at MGS's option procure adequate insurance, use it only for MGS orders, and return it to MGS upon request. Any such property described above whether furnished or ordered by MGS and which may be in an unfinished state may be removed from Seller's premises or the premises of subcontractors upon request without further action or bond. In the event that MGS removes such property that is not finished, MGS will pay Supplier a percentage of the order price that corresponds to the percentage of completion. Seller agrees to waive and hereby does waive any lien it may have in regard to such property and ensure subcontractors do the same.

9. **INDEMNIFICATION** Seller shall defend, indemnify and hold MGS harmless against all damages, claims or liabilities and expenses (including attorney's fees) arising out of or resulting in any way from any obvious or apparent defects of latent defects in the goods or services purchased under this order, or from any act or omission of Seller, its agents, employees or subcontractors. This indemnification shall be in addition to all other obligations of Seller under this order.

10. **CHANGES** MGS shall have the right to make changes in this order at any time for its convenience upon written notice to Seller. Such changes shall be subject to an equitable adjustment in the performance schedule or purchase price, based on reasonable and unavoidable costs incurred by Seller prior to notice of the change. Any claim of Seller for an adjustment must be submitted in writing to MGS within thirty (30) days of the MGS change notice.

11. **INSPECTION** Seller's facilities, equipment, and goods and services purchased under this order are subject to MGS's (and/or its customer's) inspection and acceptance. Payment for the goods and services delivered shall not constitute acceptance. Goods and services shall only be deemed accepted when they have actually been counted, inspected, and tested by MGS and found to be in conformance with this order. Goods rejected and / or goods supplied in excess of those ordered and delivered in advance of the delivery schedule may, in addition to MGS's other rights, be returned to Seller at its expense, including all expenses of unpacking, examining, repacking and reshipping such goods. If MGS receives goods or services with defects or nonconformities, whether or not apparent on inspection, MGS reserves the right to require a refund or replacement, as well as transportation costs and payment of damages. Nothing contained in the purchase order shall relieve Seller from the obligations of testing, inspection and quality control.

12. **PACKING, DELIVERY AND SHIPMENT** All goods shall be packed and shipped in accordance with instructions or specifications on this order. In the absence of any such instructions, Seller shall comply with best commercial practice to ensure safe arrival at destination at the lowest transportation cost. **TIME IS OF THE ESSENCE ON THIS ORDER.** If goods are not delivered or services provided by the date specified, MGS may terminate, without liability, this order as to items not yet shipped or services not yet rendered, by notice effective upon receipt by Seller. In such instance, MGS may purchase substitute items or services elsewhere and charge Seller with any loss incurred. If in order to comply with MGS's required delivery date it becomes necessary for Seller to ship by a more expensive method than specified in this purchase order, Seller shall pay any increased transportation costs, unless the necessity for such rerouting or expedited handling has been caused by MGS. A copy of the invoice paid for a more expensive method of shipment by the Seller must be submitted to MGS for its records.

13. **MATERIAL SAFETY DATA SHEETS** Seller shall provide a Material Safety Data Sheet for those chemicals purchased under the terms and conditions of this order which are regulated by OSHA's hazard communication regulations set forth in 29 C.F.R. 1910.1200. All chemical suppliers certify by acceptance of this order that the chemicals purchased are on the Toxic Substances Control Act, 15 U.S.C.S. §2601, et. seq., chemical inventory or are subject to an exemption and that such exemption is specified in the Material Safety Data Sheet.

14. **OZONE DEPLETING SUBSTANCES** Seller agrees to comply with the Clean Air Act ozone depleting substances labeling regulations set forth in 40 C.F.R. Part 82, Subpart E.

15. **INSURANCE** If this order includes services or work to be performed on MGS's premises, Seller agrees to indemnify MGS from all loss or damage arising out of such work, to observe the highest safety standards, to adhere to all MGS work rules, safety standards and security requirements, to maintain insurance satisfactory to MGS, and to furnish evidence of such insurance at MGS's request.

16. **COMPLIANCE WITH LAWS** Seller warrants that all goods and services supplied pursuant to this order have been produced and supplied in compliance with all applicable federal, state and local laws, orders, rules and regulations. Seller shall indemnify MGS against any liability caused by any non-compliance with this provision.

17. **IMPORT / CUSTOMS** For each shipment where the Seller sources goods covered by this order outside the United States Customs Territory, MGS shall have the option of being the Importer of Record. In such case, the Seller shall furnish MGS with a commercial invoice containing the following information: (1) port of entry; (2) names of Seller and MGS entity purchasing the merchandise; (3) name of shipper (if different from Seller); (4) country of export; (5) detailed description of merchandise; (6) quantities and weights; (7) actual purchase price, including all elements of the amount paid or payable by MGS; (8) the currency in which the sale was made; (9) all charges, costs and expenses associated with the merchandise, including freight, insurance, commission, containerization and packing, unless the cost of packing, containerization and inland freight are already included in the invoice price; (10) all rebates or discounts; (11) the country of origin (manufacture) of the goods; and (12) all goods or services furnished for the production of the merchandise (e.g. "assists") not included in the invoice price for the first shipment of goods



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destined for the United States Customs Territory unless MGS directs otherwise in writing. The Seller agrees to comply with all laws and regulations governing the importation of goods into the United States Customs Territory.

18. EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION When applicable, the contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, or disability. Seller agrees to comply with any and all applicable State and Local Government Equal Opportunity and Affirmative Action requirements, including any and all applicable statutes, rules, regulations, ordinances, and other guidelines.

19. BUSINESS CONDUCT AND COMPLIANCE WITH LAWS Supplier represents and warrants that, in connection with this Purchase Order, the Supplier shall comply with all Applicable Laws, and provisions within the Supplier Code of Conduct, which may be revised time to time and published on the MGS website at www.mgsmfg.com, or otherwise made available to the Supplier.

20. DISPUTE RESOLUTION Both parties agree that any claims or disputes, except for claims or disputes relating to intellectual property, will be submitted to non-binding mediation prior to initiation of any formal legal process. Costs of mediation will be shared equally.

21. GENERAL This purchase order and any documents attached to or referred to on this order constitute the entire agreement between the parties and can only be modified in writing signed by authorized representatives of both parties. No part of this order may be assigned or subcontracted without the prior written approval of MGS. All claims for money due or to become due from MGS shall be subject to deduction or set off by MGS for any counterclaim arising out of this order or any other transaction with Seller. MGS's failure to enforce or insist on performance of any of the terms or conditions in this order shall not operate as a waiver of that or any other right. This order shall be governed by the laws of the State of Wisconsin.

22. BUYER'S COMMITMENT Buyer is not committed to purchase any goods or services except in the quantity and at the price on the purchase order or as provided for in the firm commitment period of any separate release.

23. DELIVERY Terms of delivery are as stated in this purchase order or as otherwise agreed in writing by Buyer. Seller agrees that time is of the essence and it is Seller's responsibility to cause timely shipment of the proper quantity of goods and /or timely providing of services. Seller shall not make and Buyer shall not be liable for material or labor commitments or production arrangements in excess of the amount or in advance of the time necessary to comply with this agreement.

24. INSPECTION/TESTING Payment for goods or services or inspection or testing by Buyer does not constitute acceptance or relieve Seller of its obligations. Buyer may inspect work performed for Buyer at any stage, Seller's equipment and facilities during business hours, goods or services provided and reject any or all goods or services which are, in Buyer's judgment, defective or non-conforming. Rejected goods may be returned to Seller at Seller's expense and, in addition to Buyer's other rights, Buyer may charge Seller all expenses relating to the inspection and return. Buyer may require Seller to provide or cause to be provided, to Buyer's satisfaction, any services previously rendered in a non-conforming, negligent, defective or unworkmanlike manner, and to pay to Buyer any related damages. Nothing contained in the specifications of this purchase order relieves Seller from its obligation of testing, inspection, and quality control.

25. SELLERS PROVIDING METROLOGY SERVICES MUST COMPLY WITH THE FOLLOWING:

"Please provide a Certificate of Calibration". Your certificate of calibration shall include reference to your ISO 17025 certification and the laboratory scope to perform the specific calibration, the actual as-found and as-left test results, the acceptance criteria used, the standards used and their traceability to NIST or other basis used for calibration, and a statement certifying that the calibration was performed in accordance with paragraph 4.11 of ANSI/ASQC Q9002, or ISO10012-1, ANSI/NCSL Z540-1, or NIST Handbook 44 for weight scales.

26. REMOVAL OF LABELS Seller agrees not to sell or otherwise dispose of goods or services bearing Buyer's or Buyer's customer's trademarks to any other party without first removing Buyer's identification or obtaining Buyer's written consent.

27. SETOFF Buyer shall have the right to reduce and set-off against amounts payable hereunder any indebtedness or other claim which Buyer, or its affiliated or related companies, may have against Seller, or its affiliated or related companies, under this purchase order or any other agreement(s) between the referenced parties.

28. LIMITATION ON BUYER'S LIABILITY In no event shall Buyer be liable to Seller for anticipated profits or for incidental or consequential damages for a claim of any kind, or for any loss or damage arising out of or in connection with this agreement, or from any performance or breach, termination, or expiration of this agreement or any order.



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29. REMEDIES / WAIVER Buyer has a right to all remedies provided by law in connection with this purchase order and such remedies shall be cumulative. A waiver of a breach of any purchase order provisions will not constitute a waiver of any other breach of this purchase order.

30. APPLICABLE LAW This agreement between the parties shall be governed and interpreted by the UCC as adopted in the State of Wisconsin U.S.A., and the United Nations Convention for International Sale of Goods. All disputes involving this agreement shall be adjudicated in Wisconsin.

31. ENTIRE AGREEMENT The purchase order, specifications, any related release, consignment, and other documents incorporated into these terms by Buyer shall constitute the entire agreement regarding the identified goods and services between Buyer and Seller, unless otherwise agreed in writing by the Buyer.

32. TAX EXEMPTION MGS certifies that the merchandise purchased on this order, unless otherwise specified, is purchased for direct use or consumption in the manufacturing process.

33. INTELLECTUAL PROPERTY RIGHTS Seller warrants that the purchase, use or sale of the goods or services covered by this order do not and will not infringe any patent, trademark, copyright, trade secret or other intellectual property right. Buyer shall own all intellectual property rights resulting from any design or development work by Seller in connection with this order.

34. TSE / BSE Statement MGS Requires that all of its suppliers provide, when requested, a certification that the goods (raw materials, packaging, components, etc.) supplied to MGS are not of animal origin, do not contain, make use of, or involve, at any point of their process (i.e, manufacturing, packaging, or storage), raw materials of animal origin, including animal proteins.

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