

TERMS AND CONDITIONS

1. Seller's commencement of work pursuant to this Purchase Order ("Order") shall indicate its acceptance to all of the terms and conditions herein. Preformed expressly rejects all other terms and conditions, including but not limited to, those in Seller's documents and acknowledgements. Seller shall be bound by this Order unless it gives Preformed any modifications within 3 days of Order date.
2. **PACKAGING AND SHIPPING.** Seller shall suitably pack, mark and ship all goods in accordance with Preformed's requirements, and the requirements of common carriers, so as to secure lowest transportation costs with no additional charges to Preformed. No charges shall be made for packing, boxing, cage or storage, absent Preformed's prior written approval. Seller shall properly mark each package, packing slip, bill of lading, and invoice with Preformed's part number, Order number and address. Where multiple packages comprise a single shipment, Seller shall consecutively number each package.
3. **DELIVERY** Shipments shall be made in the quantities and at the times specified in this Order or in supplementary schedules furnished by Preformed. Seller will obtain all specifications, standards, drawings, plans, instructions, or other descriptions furnished by Preformed or cited on the reverse side of this Order (collectively, "Specifications"), and will ensure that all goods are shipped in accordance therein. Preformed reserves the right to refuse or return shipments made in excess of quantities ordered and shipments made before or after the times specified in this Order or in supplementary schedules furnished by Preformed, at Seller's risk and expense. Seller shall immediately notify Preformed in writing where it has reason to believe that deliveries will not be made as scheduled, setting forth the cause or causes of the anticipated delay, and the anticipated duration. Seller shall be responsible for all costs Preformed incurs by reason of delivery not at the times and in the quantities specified, except where Seller can prove that the cause was not due to its own negligence.
4. **INSPECTION AND TITLE.** All goods covered by this Order are subject to Preformed's right of inspection and rejection. Preformed may inspect all goods in Seller's plant during production without waiving its right to subsequently reject such goods for undiscovered or latent defects. Title to, and the risk of loss or damage of, the goods covered by this Order shall pass from Seller to Preformed upon unloading of the goods at the destination specified on the reverse side hereof. Upon receipt at the destination, Preformed may inspect the goods, but such inspection does not indicate Preformed's acceptance thereof, and does not preclude Preformed's right to reject such goods.
5. **WARRANTIES.** Seller warrants that all goods covered by this Order will: (a) conform to the Specifications; (b) be fit and sufficient for the purpose for which they were manufactured and sold; (c) be merchantable, (d) be of good material and workmanship, and free from defects, whether latent or patent; and (e) be in compliance with all applicable laws, regulations and ordinances of the United States, any state or local government, or any governmental authority or agency. Preformed shall notify Seller in writing, where it rejects all or part of the goods, and Preformed may either return the rejected goods to Seller or hold them for such disposal as Seller may specify, at Seller's risk and expense.
6. **PATENTS.** Seller warrants that the goods covered by this Order and the sale or use of such goods will not infringe any United States or foreign letters patent or other intellectual property right, and the Seller will indemnify, defend, protect and save harmless Preformed, its successors, assigns, customers and users of its products, against all suits at law or in equity and from all damages and expenses resulting from claims and demands for actual or alleged infringements of any patent or other intellectual property right by reason of the sale or use of the goods covered by this Order. Preformed shall have the right to be represented by counsel of its own choice, at its own expense, without affecting the obligations of Seller hereunder.
7. **CHANGES.** Preformed reserves the right to make changes at any time in: (a) Specifications; (b) the method of shipment or packing; (c) the place or time of delivery, including temporary suspension of shipments; and (d) the terms herein.
8. **EXTRA COMPENSATION.** Preformed shall pay no prices above those listed on the reverse side hereof, except where it has given its prior written approval of a claim for compensation which Seller has presented to Preformed prior to Seller proceeding with the work or shipping any goods relevant to the claim.
9. **CANCELLATION WITH CAUSE.** Preformed reserves the right to cancel this Order partially or entirely upon any of the following events: (a) Seller's failure to provide goods which conform to the warranties provided herein; (b) Seller's failure to make deliveries as specified in this Order or as specified in Preformed's supplemental schedules; (c) Seller's breach of any terms or conditions of this Order; (d) Seller's insolvency; (e) Seller's filing of a voluntary petition in bankruptcy; (f) the filing of an involuntary petition to have Seller bankrupt, providing it is not vacated within 30 days from the date of filing; (g) the appointment of a receiver or trustee for Seller provided such appointment is not vacated within 30 days from the date of such appointment; or (h) the execution by Seller of any assignment for the benefit of creditors. In the event of any such cancellation, Preformed, without prejudice to any other rights available to it for breach of contract, shall have the right: (i) to refuse or accept delivery of any goods covered by this Order; (ii) to return to Seller any goods already accepted and to recover from Seller all payments made for such goods (and for freight, storage, handling and other expenses incurred by Preformed in connection therewith); (iii) to recover any advance payments to Seller for undelivered or returned goods; and (iv) to purchase replacement goods elsewhere and charge Seller with any resultant losses.
10. **CANCELLATION WITHOUT CAUSE.** Preformed reserves the right to cancel this Order, in whole or in part, at any time, without cause or default on the part of Seller. Seller shall, upon Preformed's request, immediately suspend shipments of goods for reasonable periods of time. Seller shall be liable for all losses and damages resulting from such cancellations and suspensions, and this Order shall be modified accordingly. Preformed shall not be liable for its failure to accept goods covered by this Order where such failure has resulted from causes beyond Preformed's reasonable control.
11. **TOOLS AND MATERIALS OWNED BY PREFORMED.** Seller shall be responsible for and protect Preformed against loss of or damage to materials, tools, dies and other articles owned by Preformed but in Seller's care, custody, possession or control. Seller shall not be responsible or liable for normal loss of or damage to such items arising from processing or manufacturing in accordance with industry standards. Upon completion of all orders, termination or cancellation of the Order, Seller's breach of these terms, or where Preformed directs, Seller shall immediately return all such items to Preformed at Preformed's direction.
12. **INDEMNIFICATION.** Seller shall indemnify, defend, and hold harmless Preformed for all losses, expenses, damages, demands, expenses and claims, including attorneys' fees, arising in connection with or out of any injury, or alleged injury, to persons (including death), or damage or alleged damage sustained or alleged to have been sustained in connection with, or to have arisen out of, Seller's performance herein, including, losses, expenses, injuries or damages sustained by Preformed, or Preformed's employees, agents. Without limiting the rights herein, Preformed has the right to be represented by counsel of its choice, at Seller's costs.
13. **AUDIT.** Preformed has the right to audit Seller's books, records, documents, and facility, upon reasonable notice to Seller. Where Preformed discovers that the raw material for the goods hereunder has decreased from the prices quoted herein, Seller shall reduce the pricing retroactively to the effective date of the raw material decrease.
14. **LIMITATION ON REMEDIES.** Preformed shall not be liable to Seller or to any third party for indirect, incidental, consequential, punitive or exemplary damages (including loss of business or lost profit damages) arising in connection hereunder. The rights and remedies herein expressly provided shall be in addition to any other rights and remedies given by law to Preformed.
15. **SUBCONTRACTORS.** Seller may not use any subcontractor absent prior notice to Preformed. The provisions of this Agreement shall be included in every subcontract Seller's use of any subcontractor shall in no way limit its liability hereunder, and Seller shall remain liable for all act and omissions of its subcontractor.
16. **GOVERNING LAW.** This order is subject to the laws of the State of Ohio without regard to its conflict of laws principles.
17. **STATUS.** The relationship of the parties in the performance of this Agreement shall be solely that of independent contracting parties, and nothing in this Agreement shall be construed as creating any other relationship, including agency, partnership or employment relationships. Neither party shall hold itself out as or claim to be an officer, partner, employee or agent of the other by reason of this Agreement or the relationship created hereby.
18. **ASSIGNMENT.** Seller may not assign its rights or delegate its obligations under this Agreement without Preformed's prior written consent. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.
19. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all prior communications and understandings with respect to the same subject matter. Preformed's waiver of one provision of this Agreement on one occasion shall not be construed as a waiver of that provision on any other occasion, or as a waiver.