

NDSL, Inc.
Purchase Order Terms and Conditions

Acceptance – Agreement. Seller's commencement of work on the goods subject to this purchase order or shipment of such goods, whichever occurs first, shall be deemed an effective mode of acceptance of this purchase order. Any acceptance of this purchase order is limited to on the face and back hereof. Any proposal for by Seller to vary in any degree any of the terms of this offer in Seller's acceptance is hereby objected to and rejected, but such proposals shall not operate as a rejection of this offer unless such variances are in the terms of the description, quantity, price or delivery schedule of the goods, but shall be deemed a material alteration thereof, and this offer shall be deemed accepted by Seller without said additional or different terms. If this purchase order shall be deemed an acceptance of a prior offer by Seller, such acceptance is limited to the express terms contained on the face and on the back hereof. Additional or different terms or any attempt by Seller to vary in any degree any of the terms of this purchase order shall be deemed material and are objected to and rejected but this purchase order shall not operate as a rejection of the Seller's offer unless it contains variances in the terms of the description, quantity, price or delivery schedule of the goods. In situations where there is a difference between the Purchase Order and these Terms and Conditions, the Purchase Order will take precedence.

Termination for Convenience of Purchaser. Upon written notice, purchaser reserves the right to terminate this order or any part hereof for its sole convenience. In the event of such termination, Seller shall immediately stop all work hereunder, and shall immediately cause any of its suppliers or subcontractors to cease such work. Purchaser will reimburse Seller for all reasonable costs, unrecovered non-recurring charges and fees incurred in the performance of the order prior to cancellation. Seller shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided. Seller will submit cancellation charges within thirty (30) business days of receipt of written notice of cancellation.

Termination for Cause. Either Party (Purchaser or Seller) may terminate this order or any part hereof for cause in the event of any default by the other Party or if the other Party fails to comply with any of the terms and conditions of this offer and the other party has not cured the breach or commenced to cure and proceed diligently therewith within a reasonable time that is mutually agreeable to Purchaser and Seller. In the event of termination for cause, neither party shall be liable to the other Party for any and all damages sustained by reason of the default which gave rise to the termination.

Proprietary Information – Confidentiality – Advertising. Seller shall consider all information furnished by Purchaser to be confidential and shall not disclose any such information to any other person, or use such information itself for any purpose other than performing this contract unless Seller obtains written permission from Purchaser to do so. This paragraph shall apply to drawings, specifications, or other documents prepared by Seller for Purchaser in connection with this order. Seller shall not advertise or publish the fact that Purchaser has contracted to purchase goods from Seller, nor shall any information relating to the order be disclosed without Purchaser's written permission. Unless otherwise agreed in writing, all commercial, financial or technical information disclosed in any manner or at any time by Seller to Purchaser shall be deemed secret or confidential.

Warranty. Seller expressly warrants that all goods or services furnished under this agreement shall conform to all specifications and appropriate standards, will be new, and will be free from defects in material or workmanship for 18 months from date of shipment. In the event returns with the same manufacturing defect exceed 5% of product shipped in one calendar year, this will be considered an epidemic failure and the warranty for this defect will not be time limited. Seller warrants that all such goods or services will conform to any statements made for such goods or services, and that any products will be adequately contained, packaged, marked, and labeled as agreed to by Purchaser and Seller through quotations and specifications. Services are to include but not be limited to the management of material and process through the entire production cycle. If Seller knows or has reason to know the particular purpose for which Purchaser intends to use the goods or services, Seller warrants that such goods or services will be fit for such particular purpose. Seller warrants that goods or services furnished will conform in all respects to samples and specifications provided by Purchaser, and that Seller shall not modify the specifications of the goods with respect to form fit or function without written authorization from Purchaser. Inspection, test, acceptance or use of the goods or services furnished hereunder shall not affect the Seller's obligation under this warranty, and such warranties shall survive inspection, test, acceptance and use. Seller's Warranty shall run to Purchaser, its successors, Assigns and customers, and users of products sold by Purchaser. Seller agrees to replace or correct defects of any goods or services not conforming to the foregoing warranty promptly, without expense to Purchaser, when notified of such nonconformity by Purchaser, provided Purchaser elects to provide Seller with the opportunity to do so. In the event of failure of Seller to correct defects in or replace nonconforming goods or services promptly, or Purchaser and Seller agree that Seller will not perform repairs, Purchaser, after reasonable notice to Seller, may make such corrections or replace such goods and services and charge Seller for the cost incurred by Purchaser in doing so.

Price Warranty. Seller warrants that the prices for the articles sold Purchaser hereunder are not less favorable than those currently extended to any other customer for the same or similar articles in similar quantities. In the event Seller reduces its price for such article during the term of this order, Seller agrees to reduce the prices hereof correspondingly. Seller warrants that prices shown on this purchase order shall be complete as per Sellers quotation, and no additional charges of any type shall be added without Purchaser's express written consent. Such additional charges include, but are not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing, crating.

Force Majeure. Neither Party shall be liable for its failure to perform hereunder due to any occurrence beyond its reasonable control. The Party whose performance is prevented by any such occurrence of such occurrence. And shall promptly give written notice to the other party of the cessation of such occurrence. The Party affected by such occurrence shall use reasonable commercial efforts to remedy or remove such even of Force Majeure as expeditiously as possible.

Patents. For products where Seller owns the design rights or is licensed to manufacture, Seller agrees upon receipt of notification to promptly assume full responsibility for defense of any suit or proceeding which may be brought against Purchaser or its agents, customers, or other vendors for alleged patent infringement, as well as for any alleged unfair competition

resulting from similarity in design, trademark or appearance of goods, or services furnished hereunder, and Seller further agrees to indemnify Purchaser, its agents and customers against any and all expenses, losses, royalties, profits and damages including court costs and attorneys' fees resulting from any such suit or proceeding, including any settlement. Purchaser may be represented by and actively participate through its own counsel in any such suit or proceeding if it so desires, and the costs of such representation shall be paid by Seller.

Insurance. In the event that Seller's objections hereunder require or contemplate performance of services by Seller's employees or persons under contract to Seller, to be done on Purchaser's property, or property of Purchaser's customers, the Seller agrees that all such work "be done as an independent contractor and that the persons doing such work" not be considered employees of the Purchaser. Seller shall maintain all necessary insurance coverages, including public liability and Workers' Compensation insurance. Seller shall indemnify and save harmless and defend Purchaser from any and all claims or liabilities arising out of the work covered by this paragraph. Unless agreed in writing under a separate agreement, Seller does not insure equipment owned or given by Purchaser at Seller's location.

Indemnification. Either Party (Purchaser or Seller) shall defend, indemnify and hold harmless the other Party against all damages, claims or liabilities and expenses (including attorneys' fees) arising out of or resulting in any way from any defect in the goods or services purchased hereunder, or from any act or omission of the other Party, its agents, employees or subcontractors, or from any breach by the other Party of the terms of this purchase order. This indemnification shall be in addition to the warranty obligations.

Changes. Purchaser shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation. If any such changes cause an increase or decrease in the cost, or the time required for the, performance, an equitable adjustment shall be made and this agreement shall be modified in writing accordingly. Seller agrees to accept any such changes subject to this paragraph.

Inspection/Testing. Payment for the goods delivered hereunder shall not constitute acceptance thereof. Purchaser shall have the right to inspect such goods and to reject any or all of said goods which Purchaser validates as defective or nonconforming. Goods rejected and goods supplied in excess of quantities called for herein may be returned to Seller at its expense and, in addition to Purchaser's other rights, Purchaser may charge Seller all expenses of unpacking, examining, repacking and reshipping such goods. In the event Purchaser receives goods whose defects or nonconformity is not apparent on examination, Purchaser reserves the right to require replacement, as well as payment of damages as per warranty section. Nothing contained in this purchase order shall relieve in any way the Seller from the obligation of testing, inspection and quality control.

Entire Agreement. This purchase order, and any documents referred to on the face hereof, constitute the entire agreement between the parties. This purchase order shall be governed by the law of the State of North Carolina. Seller hereby agrees that it shall be subject to the jurisdiction of the state and federal courts located in Raleigh, North Carolina, and shall not object to any of those courts being an improper venue for disputes related to this purchase order.

Assignments and Subcontracting. No part of this order may be assigned or subcontracted without prior written approval of Purchaser.

Setoff. All claims for money due or to become due from Purchaser shall be subject to deduction or setoff by the Purchaser by reason of any counterclaim arising out of this or any other transaction with Seller.

Shipment. If in order to comply with Seller's confirmed delivery date it becomes necessary for Seller to ship by a more expensive way than specified in this purchase order, any increased transportation costs resulting therefrom shall be paid for by Seller unless the necessity for such rerouting or expedited handling has been caused by Purchaser.

Waiver. Purchaser's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or Purchaser's waiver of any breach hereunder shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type.

Delivery. Time is of the essence of this contract, and if delivery of items or rendering of services is not completed by the time promised, Purchaser reserves the right without liability in addition to its other rights and remedies to terminate this contract by notice effective when received by Seller as to items not yet shipped or services not yet rendered and to purchase substitute items or services elsewhere and charge Seller with any loss incurred where Seller has not cured the breach or commenced to cure and proceed diligently therewith within a reasonable time that is mutually agreeable to Purchaser and Seller.

Limitation on Purchaser's Liability - Statute of Limitations. In no event shall either Party be liable for anticipated profits or for incidental or consequential damages. Purchaser's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this agreement or from the performance or breach thereof shall in no case exceed the price allocable to the goods or services or unit thereof, which gives rise to the claim. Purchaser shall not be liable for penalties of any description. Any action resulting from any breach on the part of Purchaser as to the goods or services delivered hereunder must be commenced within one year after the cause of action accrued.

Certifications. Seller warrants to maintain all certifications such as International Standards Organization, Underwriters' Laboratories, CE, etc for so long as Seller is producing goods or products for Purchaser. Seller shall notify Purchaser in writing within five business days of becoming aware of any facts that might result in Seller being decertified and shall provide Purchaser with proposed plans for correcting the problem.

Non-Solicitation of Personnel. The parties agree that during the term of this Order and for one (1) year thereafter, neither Party will solicit personnel or consultants of the other party for the purpose of inducing them to join their employ without the prior written permission of the other Party.