

Contract Terms and Conditions

Acceptance of Contract. This order becomes a contract subject to the terms and conditions set forth herein when accepted by acknowledgement or commencement of performance by Seller. No change in, modification of, or revision of this order or the terms and conditions hereof, shall be valid unless agreed to in writing by Chautauqua Metal Finishing Supply/Miraclean ("CMFS"). The failure of CMFS to actively reject orally or in writing, any conflicting or contradictory terms contained in any document forwarded by Seller to CMFS subsequent to this Purchase Order shall not be deemed to be an assent to such terms.

Invoices. Any invoices forwarded by Seller to CMFS with respect to this order shall be rendered in triplicate, marked Original, Duplicate and Triplicate, and shall include the following:

- a) the number and date of this Purchase Order, name of any consignee and shipping weight of the goods;
- b) the means of shipment (i.e., freight, express/parcel post, etc.); and
- c) deduction of the allowance, if any, to CMFS for transportation charges.

The goods covered by this Purchase Order shall not be included on invoices covering any other orders. Seller's invoices shall describe the goods covered by this order using the terms used in this Purchase Order.

Prices. If a specific price for the goods has been quoted to CMFS by a representative or agent of Seller, or if a price previously established by Seller has been set forth for the goods on the face of this Purchase Order, such price shall be the price of the goods and the full extent of CMFS's liability for the goods unless a different price is agreed to in writing by CMFS. Seller warrants that the prices for the goods are not less favorable than those currently extended to any other customer for the same or like articles in equal or less quantities. In the event Seller establishes or offers a lower price for the sale of such articles in such quantities, either generally or for any one sale to any other customer, from the date of acceptance of this order to the date the goods are invoiced to CMFS, Seller agrees to reduce the prices hereof correspondingly. All purchases are F.O.B. destination, unless otherwise specified on the face side of this Purchase Order.

Extra Charges. No additional charges of any kind, including charges for boxing, packing, or cartage, taxes, import or export duties, excises, or other extras, will be allowed unless specifically agreed to in writing in advance by CMFS.

Taxes. Seller's prices shall exclude any Federal, state or local sales, use or excise taxes levied upon, or measured by the sale, the sales price or use of the goods. All such taxes lawfully applicable, shall be listed separately on Seller's invoice. If such applicable taxes are not separately listed, Seller assumes responsibility for the payment of them, and shall indemnify and hold CMFS harmless from any and all liability in connection with such taxes. Tax exemption certificates or other evidence of exemption, furnished by CMFS, shall be accepted by Seller in lieu of such taxes.

Delivery. Deliveries are to be made both in quantities and at times specified herein. CMFS reserves the right at any time to cancel and void this order or any part thereof without liability if delivery is not made within the time specified on the order, which is of the essence, or within the time mutually agreed upon or if unspecified, within a reasonable time.

Transportation and Packaging. If the goods are not packaged, marked, shipped and routed in accordance with CMFS's direction and the instructions set out in this Purchase Order, Seller shall pay to CMFS any excess cost occasioned thereby.

Title and Risk of Loss. Except as otherwise expressly provided herein, title to and the risk of loss on all the goods shipped by Seller to CMFS shall not pass to CMFS until CMFS's inspection and acceptance of such goods at CMFS's warehouse or jobsite specified.

Acceptance of the Goods and Inspection. Acceptance of the goods shall take place at the time when such goods have been delivered to CMFS and have passed CMFS's inspection and tests. Inspection and test of the articles by CMFS may at CMFS's option be made at Seller's plant and/or the point of destination. Acceptance of all or any part of the goods by CMFS shall not relieve Seller from any of its obligations and warranties hereunder, nor will acceptance of any part of the order bind CMFS to accept future shipments or deprive CMFS of any right which it may have to return goods already accepted. Acceptance of all or any part of the order shall not be deemed a waiver of CMFS's right either to cancel or to return all or any portion of the goods because of failure to conform to the order or by reason of defects, latent or patent, or other breach of warranty, or to make any claim for damages suffered by CMFS as a result of any default of the Seller or the Seller's products or performance. In no event shall payment be deemed to constitute acceptance.

If inspection discloses that any part of the goods received is not in accordance with CMFS's specifications or if any of the goods fail to meet the warranties contained in Paragraph 11 hereof, Seller, upon notice thereof from CMFS, shall promptly correct or replace the same at Seller's expense. If seller shall fail so to do, CMFS may cancel this order as to all such goods and in addition, may cancel the then remaining balance of this order. After notice to Seller, all such goods will be held at Seller's risk. CMFS may, and at Seller's direction shall, return such goods to Seller at Seller's risk, and all transportation and handling charges, both to and from the original destination, shall be paid by Seller. Any payment for such goods shall be refunded by Seller unless Seller promptly corrects or replaces the same at its expense. Return of any defective material by CMFS shall not be deemed a waiver of any right or remedy which CMFS may have as a result of or in connection with the existence of such defect or defects.

Payment. Payment shall be made according to the terms set forth on the face of this Purchase Order. It is understood that the cash discount period will date from the receipt by CMFS of the goods or of the invoice, whichever is later. C.O.D. shipments will not be accepted.

Warranties. CMFS shall have the right to all remedies of a buyer and Seller's warranties to the fullest extent provided under the Uniform Commercial Code, including, but not limited to warranties of merchantability and fitness, and such remedies and warranties shall survive inspection, tests, acceptance and payment.

Indemnification. Seller shall indemnify and hold CMFS harmless against all loss on account of claims of injuries to persons or damage to property based in whole or in part upon a defect in the goods or from any act or omission of Seller, its agents, employees and subcontractors. Further, Seller agrees to indemnify and hold harmless CMFS, its successors and assigns, against any and all claims, liabilities, costs and expenses (including, but not limited to, court costs, attorney's fees, inspector's fees, or costs of testing) incurred by CMFS in connection with or related to any recall, inspection, tests, replacement or correction of the goods or any and all parts or equipment in which the goods are incorporated when such recall, inspection, tests, replacement or correction result from or are related to, in whole or in part, a defect or alleged defect in the goods.

Excess Goods. Except for customary quantity variations recognized by trade practice, goods in excess of those specified need not be accepted by CMFS and any such goods not accepted will be held at Seller's risk. CMFS may, and at Seller's direction shall, return such goods at Seller's risk, and all transportation charges, both to and from the original destination, shall be paid by Seller.

Fabrication and Material Commitments. Unless otherwise authorized in writing by CMFS, Seller shall not make commitments for materials nor fabricate in advance of time necessary to permit shipment on delivery dates.

Changes. CMFS shall have the right by written notice to cancel, suspend or change from time to time the goods and services to be furnished by Seller hereunder.

Upon the receipt of such notice, Seller shall immediately comply with the notice and adjust operations in connection with this order accordingly. All costs and expenses relating to this order and incurred by Seller subsequent to the receipt of such notice, which would not have been incurred if Seller had complied with such notice, shall be the sole responsibility of Seller.

In the event of cancellation of this order, CMFS shall be responsible and liable only for the price of the goods accepted prior to such notice plus the actual and reasonable costs incurred by Seller prior to notice of cancellation with respect to the goods cancelled.

In the event of suspension of this order, CMFS shall be responsible and liable only for the price of goods eventually accepted. Any increase in the price of such goods shall be subject to the prior approval of CMFS.

In the event of a modification of this order by CMFS (including but not limited to, a change in the number or design of the goods), CMFS shall be responsible and liable only for the price of the goods accepted plus the actual and reasonable costs incurred by Seller to accomplish such modification. Any increase in the price of the goods resulting from modification of this order is subject to the prior approval of CMFS.

In the event of any cancellation, suspension or modification of this order, CMFS shall not be responsible or liable for any costs of production, processing or shipping of the goods apart from the price of goods accepted if such costs represent a portion of and are included in the price of such accepted goods.

In the event of any cancellation, suspension or modification of this order, Seller shall not be entitled to, nor shall CMFS be responsible or liable for, anticipatory profits or consequential damages.

Default. CMFS reserves the right, by written notice, to cancel this order without liability to CMFS in the event of, (i) insolvency of Seller, (ii) the filing of a voluntary petition in bankruptcy by Seller, (iii) the filing of an involuntary petition to have Seller declared bankrupt, (iv) the appointment of a receiver or trustee for Seller, (v) or the execution by Seller of an assignment for the benefit of creditors. If Seller fails to perform, or breaches any of the terms, CMFS reserves the right, immediately upon such failure of performance or breach, and without any liability to CMFS (i) to cancel this order in whole or in part by written notice to Seller, or (ii) after notifying Seller of such failure or breach and of CMFS's intent to exercise such right, to obtain the goods from another source, with any excess costs resulting therefrom chargeable to Seller. Seller shall be liable for CMFS's damages in connection with such breach or failure to perform including consequential damages reasonable foreseeable by Seller or of which Seller was apprised by CMFS; provided, however, the Seller shall not be responsible for delays or defaults occasioned by fires, acts of God, wars or riots, but in the event of such occurrence, CMFS reserves the right to cancel this order without liability of any kind.

Patent Indemnification. Except when CMFS supplies all specifications for the goods, Seller shall hold and save CMFS, its successors, assigns, customers and users harmless from the loss and/or liability of any nature or kind arising out of or existing because of the infringement of alleged infringement of any patent for or on account of the manufacture, sale or use of any goods furnished hereunder. CMFS shall notify Seller in writing of any suit filed against it or their customers, on account of any such infringement or alleged infringement, and at Seller's request shall give Seller control of the defense of such suit, insofar as CMFS has the authority to do so, and information and assistance for the same, all at Seller's expense. CMFS and the party against whom suit is brought, may be represented by their own counsel in any such suit. Furthermore, in the event that CMFS should be enjoined in such suit or proceeding from using any part of the goods delivered hereunder, Seller, at its option, shall promptly either: (a) secure termination of the injunction or liability; or (b) replace said goods with non-infringing goods or modify them to become non-infringing, all at Seller's expense. The provisions of this paragraph shall not apply to CMFS's use of any of the goods delivered hereunder in combination with other materials or in the practice of any process, or to infringement by reason of such use.

Consignment. Machinery, equipment, patterns, drawings, specifications and samples furnished to Seller by CMFS on other than a charge basis shall be held by Seller as upon consignment, and upon the completion of this order shall be returned to CMFS or otherwise satisfactorily accounted for. Unless otherwise agreed, Seller, at its expense, shall insure all such items for the reasonable value thereof against loss or damage of any kind.

Special Tools. Unless otherwise stated, all special drawings, patterns, tools, dies, jigs, machinery and equipment needed by Seller for the performance of this order shall be obtained by Seller at its own expense and shall be the property of Seller.

Compliance with Laws. Seller shall, in the performance of work under this order, fully comply with all applicable Federal, state and local laws and regulations, and shall indemnify and hold CMFS harmless from any costs, loss or liability resulting from Seller's failure of compliance.

Assignment. Seller shall not assign or transfer this order or any interest therein or monies payable thereunder without the written consent of CMFS, and any assignment or transfer made without such consent shall be null and void.

Remedies. The remedies provided CMFS herein shall be cumulative and in addition to any other remedies provided by law or equity. A waiver of a breach of any provision hereunder shall not constitute a waiver of any other breach.

Applicable Law. The contract resulting from the acceptance of this order shall be governed by and construed according to the laws of the State of New York.