

# ACA Group



## PURCHASE ORDER TERMS AND CONDITIONS OF SALE

- 1. DEFINITIONS.** "Buyer" means the person or entity that submits a Purchase Order to Seller. "Seller" means the person or entity that receives this Purchase Order from, or fills an order from, Buyer for the sale of Goods. "Goods" mean the goods and/or services ordered by Buyer or delivered by Seller to Buyer under this Purchase Order. "Purchase Order" means this purchase order used by Buyer to place an order for Goods with Seller.
- 2. AGREEMENT.** Upon Seller's acceptance of this Purchase Order or commencement of performance pursuant to this Purchase Order, the terms and conditions set forth herein will constitute the entire agreement relating to the purchase and sale of the Goods. Seller objects to, and specifically rejects, any terms and conditions proposed by Buyer which are inconsistent with or in addition to the terms and conditions contained in this Purchase Order. Neither Seller's subsequent lack of objection to any such terms and conditions, nor the commencement of performance pursuant to this Purchase Order, will constitute agreement by Seller to any terms proposed by Buyer. The provisions of this Purchase Order will prevail and govern, unless the parties hereto expressly otherwise agree in writing. No modifications of the terms and conditions set forth in this Purchase Order shall be binding unless such modification is signed by both Buyer and Seller.
- 3. ORDERS.** Seller will only acknowledge the receipt of an order for Goods if such request is included on the Purchase Order at the time the Purchase Order is placed with, and accepted by, the Seller. At any time after Seller accepts this Purchase Order, Buyer may not change the quantity or specifications of the Goods. Seller reserves the right to make changes in product design or specifications at any time without providing prior notice to Buyer. Seller shall not accept, and reserves the right to reject, Purchase Orders less than \$500.00.
- 4. PRICE.** As the price for the Goods, Buyer will pay Seller the amount set forth in this Purchase Order.
- 5. QUOTATIONS.** From time to time, Seller may issue quotations at the request of the Buyer. Prices listed on quotations are only applicable to the quantities set forth on such quotations. Quotations are estimates only and are non-binding. Quotations are provided by Seller for Buyer's reference to assist with Buyer's decision to place a Purchase Order. Orders for quantities not previously quoted by Seller on a quotation or on conditions of purchase and sale that differ from, or are in addition to, the terms and conditions herein are subject to price changes by Seller. Prices and other terms and conditions set forth on quotations are valid for 30 days from the date of such quotations.
- 6. PAYMENT.** Unless otherwise indicated in this Purchase Order, Buyer will pay each invoice for Goods net 30 days from the date of the invoice. Seller reserves the right to modify the payment terms provided herein if, in Seller's sole discretion, the payment record or financial condition of the Buyer so warrants. Late payments shall be subject to interest on the unpaid balance at a rate of 12% per annum, calculated from the date payment was due until payment is actually received by Seller. Seller shall retain title to and ownership of the Goods until payment in full in accordance with this section has been made. In the event payment is not so made, Seller shall be entitled in its sole discretion to terminate the Purchase Order, retake possession of the Goods and retain all monies received on account from Buyer. Unless otherwise stated in this Purchase Order, pricing includes Seller's packaging (including boxing and crating), labels, labour, materials, production costs (including any design and fabrication work, dies, tools, molds or similar items used to produce the Goods).
- 7. TAXES.** Unless shown as a separate line item indicated in the Purchase Order, taxes or tariffs/duties imposed upon production, storage, sale, transportation or use of the Goods are not included. If included in the Purchase Order, import duties, sales taxes and currency exchange will be calculated at rates prevailing on the date of the quotation on which the pricing of the Purchase Order is based. Buyer acknowledges and agrees that if, prior to delivery of Goods, such tariffs/duty, tax or currency exchange rates have changed substantially or other charges are imposed by any governmental authority, Seller may change the pricing of the Goods accordingly and include the then prevailing rates in the Purchase Order with the revised prices. Buyer will be notified of the changes.
- 8. DELIVERY AND RISK OF LOSS.** Except as otherwise expressly provided in this Purchase Order, delivery shall be F.O.B. point of origin. Upon request by Buyer, Seller shall arrange and prepay insurance and freight for Goods and subsequently invoice Buyer for such costs.

9. **INSPECTION OF GOODS.** Buyer will inspect the Goods delivered to it by Seller and will notify Seller and the shipping carrier in writing of any damage or defect in material or workmanship within ten [10] days of receipt of Goods.
10. **RETURNS.** Goods shall not be returnable to Seller except with the prior authorization of Seller. Seller will grant such prior authorization in respect of Goods which have a defect in material or workmanship or have been damaged in transit before delivery so long as (a) such defect or damage has been confirmed by Seller, and (b) Buyer has complied with the inspection and notification obligations required by section 9. Such prior authorization will specify the terms and conditions upon which the Seller will accept a return of Goods and upon which the Goods are to be returned. Any returns may be subject to additional charges imposed by Seller, including but not limited to restocking charges payable by Buyer in an amount determined by the Seller in its sole discretion. Cost of all return shipments will be borne by Buyer with title and risk of loss passing to Seller upon receipt by Seller of returned Goods. Seller's name and Buyer's purchase order number must clearly appear on all correspondence and packaging related to this Purchase Order for return shipments to be accepted by Seller.
11. **CANCELLATION.** An accepted Purchase Order may not be cancelled or rescheduled without Seller's written consent and shall be subject to cancellation or rescheduling charges as determined by Seller in its sole and absolute discretion.
12. **EXCUSABLE DELAYS.** Timing of delivery of Goods is based upon a corresponding promise of delivery by Seller's suppliers. Seller will not be responsible for delays or failures to deliver by Seller's suppliers. Seller will not be liable for any non-delivery or delays resulting from circumstances or causes beyond its control, including, without limitation, fire, flood, accidents or other casualty, act of God, threatened acts of terrorism, pestilence or epidemic, strike or labour dispute, riots, war or other violence, or any governmental interference or embargoes, law, order or requirement of any governmental agency or authority, or other difficulties (whether or not similar in nature to any of those specified) beyond its control. Delivery of Goods under this Purchase Order in such circumstances shall be deemed to be suspended so long as any such circumstances or causes delay performance. Seller agrees to make, and the Buyer agrees to accept, deliveries of Goods whenever such circumstances or causes have been remedied in the Seller's sole discretion. In the event that delivery of Goods is impossible as a result of one of the aforementioned circumstances or causes the Seller has the right to offer alternate solution. If the solution meets the requirements of the original purchase the Buyer will accept the alternate solution, and Seller will fulfill the order. If Seller cannot offer an alternate solution, the original Purchase Order has become impossible to fulfill, the agreement is nullified, and Buyer can cancel the original purchase order.
13. **SOFTWARE.** Seller owns the software in connection with the Goods (the "Software") and such title to the Software shall remain with Seller. Seller grants Buyer a perpetual, non-exclusive license to use such Software on 1 unit of Goods. Seller may terminate such license at any time if Buyer discloses the Software to any third party or uses the Software in any manner other than as permitted herein without Seller's consent.
14. **CONFIDENTIALITY.** All information, including without limitation, prices, designs, drawings, specifications, samples, formulas, recipes, processes, data, Software and instructions, furnished or disclosed by Seller to Buyer in connection with placing or filling this Purchase Order ("Confidential Information") will be treated as confidential and proprietary information of Seller. Buyer will not (a) assert any claims of ownership by reason of the use or disclosure of such Confidential Information by Seller; (b) disclose Seller's Confidential Information to any third party; or (c) use Seller's Confidential Information except as permitted herein. Buyer will promptly return all Confidential Information held by Buyer in tangible form to Seller upon termination of this Purchase Order. Buyer will not in any manner advertise or publish the fact that Seller has agreed to furnish or has furnished Goods to Buyer without the prior written consent of Seller. In addition to all other remedies available to Seller at law or in equity, Seller will be entitled to specific performance and injunctive relief as remedies for any breach or threatened breach of this Section, without the necessity of posting bond or proving actual damages.
15. **BUYER WARRANTY.** Buyer represents and warrants to Seller that neither it nor any of its affiliated entities (if any), or personnel or directors, or any other entities who will be receiving and using the Goods in connection with this Purchase Order, is subject to any sanction or temporary suspension imposed by any governmental authority, organization or other international or supranational organization. If the destination of the Goods is outside Canada, Buyer will arrange for, and represents and warrants that, it has a valid export permit from the relevant governmental authority permitting its export, that the permit is in full force and effect, and that Buyer will comply in all respects with the *Export and Import Permits Act* (Canada). Buyer represents and warrants that it knows of nothing which may result in such permit's revocation. Buyer further represents and warrants that it has made due inquiry and believes that the Goods will not be shipped, transhipped or diverted from the destination, whether as noted on the Purchase Order and designated in Buyer's export permit, or within Canada. Buyer will immediately disclose to Seller if this representation is untrue or if there is any circumstance which will make delivery of the Goods to the Buyer impossible or will prohibit the Seller from fulfilling the Purchase Order.
16. **SELLER WARRANTY AND LIMITATION OF LIABILITY.** Seller warrants each product of the Goods to be free from defects in material and workmanship under normal use and service. Software is warranted to operate in accordance with its programmed instructions. Software is not warranted to be error free. The warranty period is 1 year from the date of purchase of the Goods, unless otherwise set forth in the warranty documentation furnished with the Goods. Product

repairs performed by the Seller are warranted for 60 days from the date the repairs are completed. The warranty set forth herein extends only to the Buyer. The warranty set forth herein does not apply to fuses, disposable batteries, computer media, or any product or parts which have been subject to misuse, neglect, accident or abnormal conditions of operation. Seller's obligation under this warranty is limited to repairing or replacing the Goods which are returned to an authorized service centre of the Seller within the applicable warranty period and which upon examination, Seller determines to be defective in its sole discretion. If Seller determines the failure has been caused by misuse, neglect, accident or abnormal condition of operation, Seller will make any necessary repairs, and Buyer shall be billed for the reasonable costs of repair as determined by the Seller in its sole discretion. If a failure of the Goods occurs, Buyer must ship the product, transportation prepaid, to the nearest service centre of the Seller. After repairs are made, the Goods will be returned, transportation prepaid. Seller assumes no risk for in-transit damage. THE FOREGOING WARRANTY AND INDEMNITY ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHERS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE. Seller or manufacturer of the Goods, if applicable, SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR OTHER SIMILAR DAMAGES, WHETHER IN CONTRACT, TORT OR OTHERWISE.

- 17. INDEMNITY.** At its expense, Seller will settle or defend and pay all damages and costs finally awarded in any action brought against Buyer to the extent that it is based on a claim that the Goods infringe any patent or copyright, provided Buyer promptly gives Seller the notice, authority and assistance necessary to defend or settle the claim and the infringement does not arise out of compliance with Buyer's specifications, or a combination with or an addition to products not supplied by Seller, or from a modification after shipment. If any Goods in Seller's opinion is likely to cause a claim of infringement, Seller at its option and expense may procure for Buyer the right to continue using the Goods, or modify it to make it non-infringing, or may grant Buyer a credit for the depreciated value of the Goods after it is returned to Seller. Buyer will protect, defend, indemnify, and hold harmless Seller and its directors, officers, employees, affiliates, successors, and assigns against any claims, damages, expenses (including legal fees and disbursements), judgments and liabilities suffered by Seller which arise from or relate to the (a) Buyer's use of the Goods, (b) Buyer's representations and warranties in section 15 being inaccurate or untrue, or (c) the negligence, bad faith, intentional or wilful misconduct of Buyer or their respective directors, officers or employees. Buyer further agrees, at its own cost and expense, to provide complete and adequate insurance to indemnify itself and Seller against all such liabilities. Upon Seller's request, Buyer will include Seller as an additional insured on Buyer's policies and/or provide Seller with certificates of insurance evidencing such coverage. Buyer's compliance with obtaining such insurance, and any insurance coverage Seller may have in place under its own insurance policies, does not in any way affect Buyer's indemnification of Seller under this Section.
- 18. GENERAL.** This Purchase Order will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. No failure or delay on the part of Seller to exercise any right, remedy, or power under this Purchase Order will operate as a waiver thereof. No waiver of any breach or of any terms or conditions of this Purchase Order will be construed as a waiver of any subsequent breach of that term or condition or of any other term or condition of the same or of a different nature or any other order given by Seller to Buyer. No waiver will be valid unless it is in writing and signed by Seller. This Purchase Order will be binding upon, and will inure to the benefit of, Buyer, Seller and their successors and permitted assigns. Without Seller's prior written consent, Buyer will not assign this Purchase Order or delegate or subcontract performance of its obligations. Any such purported transfer or assignment without Seller's prior written consent will be null and void. Any provision of this Purchase Order, which is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and will be severed from the balance of this Purchase Order without affecting the remaining provisions of this Purchase Order or affecting the validity or enforceability of such provision in any other jurisdiction. Agreements may be executed in one or more counterparts, each of which is an original but all of which together will constitute one and the same agreement. Electronic or facsimile signatures will be deemed to be original signatures.