

KEITH COMPANY  
TERMS AND CONDITIONS OF PURCHASE

1. ACCEPTANCE. This Purchase Order ("Order") is Buyer's offer to Seller limited to the terms and conditions stated herein and does not constitute an acceptance by Buyer of any offer to sell or quotation by Seller. Any reference to such offer to sell or quotation is solely for the purpose of incorporation of the description and specifications of the goods and services contained therein to the extent that such description and specifications do not conflict with the description and specifications on the face of this Order.

This Order must be accepted in writing by Seller. If for any reason Seller should fail to accept in writing any conduct by Seller which recognizes the existence of a contract pertaining to the subject Order hereof shall constitute acceptance by Seller of this Order and all of its terms and conditions. Any terms proposed in Seller's acceptance of the offer which add to, vary from or conflict with the terms herein are hereby objected to and rejected.

If this Order shall be deemed an acceptance of a prior offer to sell or quotation by Seller, and if any of the terms herein are additional to or different from any terms of such offer to sell or quotation, the issuance of this Order by Buyer shall constitute an acceptance of such offer subject to the express condition that the Seller assent to such additional and different terms herein and acknowledge that this Order constitutes the entire agreement between Buyer and Seller with respect to the subject matter hereof and the subject matter of such offer to sell or quotation and Seller shall be deemed to have so assented and acknowledged unless Seller expressly notifies Buyer to the contrary in writing within ten (10) days of receipt of this Order.

2. TERMINATION AND CANCELLATION. At its option, Buyer may terminate all or part of the work under this Order. In such case, Buyer shall have no liability with respect to goods of components thereof procured or work done or goods partially fabricated in excess of authority contained in this Order. Unless specifically agreed to in writing, Buyer shall not be liable to prospective or anticipated profits on work not performed or other cancellation charges by reason of such termination. The provisions of this paragraph shall not limit or affect the right of the Buyer to terminate this Order for the default of the Seller.
3. CONFIDENTIALITY. All specifications, drawings or design information delivered by Buyer to Seller are the property of Buyer. They are delivered solely for the purpose of Seller's performance of this Order and on the express condition that neither they nor the information contained therein shall be disclosed to others nor used for any purpose other than in connection with this Order without the prior express written consent of the Buyer. Such specifications, documents or samples are to be returned to Buyer promptly upon its written request. Such request may be made at any time during or after completion of Seller's performance. The obligations under this clause will survive the cancellation, termination or completion of the Order.
4. WARRANTIES. Seller specifically warrants that all goods delivered hereunder will be free from defects fit for the intended use, merchantable of good materials and workmanship, and will conform to all applicable specifications, drawings or design information. The foregoing warranties, together with all service warranties and guarantees, of any, shall survive inspections and acceptance of and payment for the goods delivered hereunder and shall run to Buyer, its successors, assigns, and customers. Said warranties, however, shall not be deemed to limit any warranties of additional scope given to Buyer by Seller, nor to limit Buyer's rights to Seller's obligations under any other provision of this Order or in law or in equity.
5. INSPECTION AND REJECTION. All goods are subject to inspection by Buyer at destination. Rejected goods will be held at Seller's risk subject to Seller's disposal.
6. CHANGES. Buyer shall have the right to make changes in specification relating to this Order. Upon such change, proper adjustment in the price and in the shipping schedule shall be made. Claim for adjustment shall be made within thirty (30) days of the change.
7. SHIPMENT. Seller shall not ship in advance of schedule except as specified or consented to by Buyer. Unless specifically authorized in writing by Buyer, partial shipments will not be accepted.
8. QUANTITIES. Shipments in excess of quantities specified in this Order, without permission of Buyer are subject to return for credit at Buyer's option and Seller's expense.
9. PACKING AND SHIPPING. All goods are to be suitably packed or otherwise prepared for shipment so as to secure the lowest transportation rates and to meet carriers' requirements. If possible to accomplish without involving delay, combine with other Orders to make minimum LCL or Carload shipments. No charges will be allowed for packing, crating, or carriage, unless stated in the Order. Each container must be marked to show order number, and a packing sheet, showing order number must be included in each package of LCL shipment or each carload shipment. Materials sold f.o.b. shipping point must be forwarded with freight prepaid and cost added to Seller's invoice.
10. INVOICES. (a.) Payment of Seller's invoice is subject to adjustment for any shortage or for rejection. (b.) Individual invoices must be issued for each shipment applying against this Order. (c.) Freight and other changers must be shown if a purchase discount, if any, is not to be taken on full amount of invoice.
11. PATENT PROTECTION. To the extent the subject articles are not manufactured pursuant to design originated by Buyer, Seller agrees it will indemnify and save Buyer and or its agents or customers harmless from any loss, damage or liability which may be incurred on account of infringement of patent rights with respect to such articles or materials and that it will at its own expense defend any action, suit or claim in which said infringement is alleged with respect to the sale or use of the articles or materials delivered hereunder, provided Seller is duly notified as to suits against Buyer, and provided further Seller's indemnity as to use shall not apply to any infringement arising from use in combination with other items where such infringement would not have occurred from the normal use for which the article was designed.
12. (a.) INDEMNITY. Seller will indemnify and hold harmless Buyer, its officers, agents, employees and customers from and against any and all liabilities, claims, losses, damages, and expenses of any nature, directly arising out of any act or failure to act by Seller, its officers, employees or agents in the performance of this Order. Seller will promptly pay or cause to be released, any lien or claim of lien arising out of said performance of this Order, which may be made against any property of Buyer. (b.) INSURANCE. Seller shall maintain Worker's Compensation Insurance as required by all applicable laws.
13. PRICES. Seller warrants that the prices for the articles sold to Buyer under this Order are not less favorable than those currently extended to any other customer for the same or like articles in equal 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.
14. FORCE MAJEURE. Buyer may delay delivery and/or acceptance occasioned by causes beyond its control.
15. ASSIGNMENTS AND SUBCONTRACTING. This Order and any payments to be made hereunder may not be assigned or transferred without prior written approval by Buyer. No invoices may be rendered by others than the named Seller without the written permission of Buyer.
16. SETOFF. All claims for monies due or to become due from the Buyer shall be subject to deduction by the Buyer for any setoff or counterclaim arising out of this or any other Order with the Seller.
17. REMEDIES. The rights and remedies reserve to Buyer shall be cumulative and additional to all other remedies provided by law or equity. Buyer shall be entitled to recover costs and attorney fees in the enforcement or defense or any rights hereunder.
18. INTERGRATION AND MODIFICATION. This instrument contains the entire agreement of the parties relating to the subject matter hereof. This Order may not be waived, changed, modified, extended or discharged orally but only by agreement in writing and signed by a duly authorized office of Buyer.
19. GOVERNING LAW. This Agreement shall be construed, interpreted and the rights of the parties determined in accordance with the laws of the State of California.