



Specification Form

Specification Form Title: Standard Purchase Agreement Terms and Conditions

Specification No. RAI-0116
Revision:1

Category:

Product Code:Press button for Product Code Rev:

Product Line:

Responsible Engineer:

Part Description:

Department: Purchasing
Area:

Approved & Released Specification Form

Implementation Date:
11/12/2003

Type of Document: Purchasing

1.0 Product Specification:

1. OFFER, ACCEPTANCE, AND MODIFICATION

This Purchase Order is an offer to Seller by Buyer to enter into a purchase agreement on the terms and conditions set forth on the front and back sides of this document, any attachments and any specifications and other materials expressly referred to in this document (collectively, the "Agreement"). Seller shall accept the offer in writing, or by beginning to fill the order or perform the services requested by Buyer. This Agreement shall be the sole and exclusive statement of the purchase agreement between Buyer and Seller notwithstanding any terms and conditions that may be contained in any proposal, acknowledgment, confirmation, invoice or other document received from the Seller or any act of Buyer in accepting or paying for any products or services. No additional terms or conditions proposed by Seller either orally or in writing shall be a part of this Agreement unless expressly agreed to by Buyer in writing.

2. PRICE

The prices to be paid for the products ordered or services to be performed shall be as set forth in this Agreement unless otherwise agreed to in writing by Buyer. All charges are included in the price and no extra charges of any kind shall be allowed unless specifically agreed to in the Agreement.

3. DELIVERY SCHEDULE, RISK OF LOSS, TRANSPORTATION, AND PACKAGING

Shipment and delivery of products or performance of services shall be in accordance with the schedule set forth in this Agreement unless otherwise agreed to in writing by Buyer. All products are sold to Buyer "F.O.B. Destination - Freight Prepaid" unless otherwise indicated. Seller shall promptly advise Buyer of any inability to make timely shipment. If Seller does not, or it appears that Seller will not, meet Buyer's delivery or work schedule, Buyer may, in addition to any other rights or remedies provided by law or this Agreement:

- (a) cancel this Agreement, in whole or in part, without liability to Seller except for payment for products previously shipped and accepted or services previously performed to the extent reasonable in amount;
- (b) approve an agreed upon revised delivery or work schedule; or
- (c) require that Seller ship via expedited routing to meet such delivery schedule or to recover the time lost. If Buyer approves a revised delivery schedule or requires Seller to ship via expedited routing, any additional transportation cost incurred as a result shall be paid by Seller. All risk of loss, damage in transfer, or delay in delivery of the products ordered pursuant to this Agreement shall remain with Seller until delivery to and acceptance by Buyer, except where transportation of the products is provided by Buyer's own vehicle, and then risk of loss or damage in transit and delay in delivery shall shift to Buyer upon completion of loading of Buyer's vehicle by Seller, Seller shall prepare all products for shipment so as to secure the lowest transportation rates consistent with timely delivery. Buyer has the right to specify carrier and routing. Buyer will not allow extra charges for packing, cartage, drayage, storage or anything else unless stated in this Agreement or otherwise agreed to in writing by the Buyer. Seller shall place identification markings and shipping documents in places and in a manner as defined in this Agreement or otherwise in writing by Buyer. If not accompanied by a packing slip, Buyer's count and weight shall be conclusive. Time is of the essence under this Agreement. Unless otherwise agreed to in writing by Buyer, Seller shall not make a commitment for materials or production arrangements to fulfill this Agreement in excess of the amount or in advance of the time necessary to meet Buyer's delivery schedule.

4. OVERSHIPMENTS; DELIVERIES IN ADVANCE OF SCHEDULE

Overshipments exceeding five percent (5%) of the quantity of products ordered by Buyer may be accepted by Buyer upon the terms and conditions set forth herein unless otherwise stated in this Agreement. Buyer's on-time delivery window is + 0 days late/minus 5 days early. Products which are delivered in advance of schedule without authorization from Buyer may, at Buyer's option:

- (a) be returned to Seller at Seller's sole risk and expense;
- (b) be accepted by Buyer with payment terms extended by Buyer from the date the original payment was due; or
- (c) be placed in storage, at Seller's sole risk and expense, until the delivery date specified under Buyer's delivery schedule.

5. PAYMENT TERMS AND SET-OFF

Payment for products ordered or services to be performed shall be as set forth in this Agreement unless otherwise agreed to in writing by the Buyer. For purposes of determining Buyer's eligibility to earn any prompt payment discounts specified in the Agreement or in any invoice, the period during which the applicable discount may be earned and a discount payment made shall be computed from such date of delivery and/or accepted performance, or the receipt by Buyer of a correct invoice, whichever is later. Buyer shall be entitled at all times to set off any amount owing at any time from Seller, or any affiliated company of Seller, to buyer, or any affiliated company of Buyer, against any amounts payable at any time by Buyer in connection with this Agreement. As used in this Agreement, "affiliated company" means any firm, corporation, partnership, limited partnership, joint venture, or association which controls, is controlled by, or is under common control with Seller or Buyer, respectively, and shall specifically include any division, subsidiary, and any company or firm in which Buyer or Seller own an interest.

6. NO SUBSTITUTION OF MATERIALS

No change in the products or services ordered under this Agreement, or their method of production, including substitutions or changes in materials, equipment, processing, or production location shall be made by Seller, or any approved subcontractor, without the prior written consent of Buyer.

7. WARRANTIES

Seller represents and warrants:

- (a) that it is the sole owner of any products to be sold under this Agreement, that it has the unrestricted right to convey marketable title free and clear of all liens, claims and encumbrances, and that no part of any products sold by Seller will infringe any patent, copyright, trademark, trade secret or other intellectual property right of any third party;
- (b) that any products delivered or services performed will conform to this Agreement, to all representations made by Seller, and to any applicable description, specification, drawing or sample relating to such products or services;
- (c) that any products shall be merchantable, in good working condition and fit for the use intended by Buyer, and all products or services shall be free of all defects in design, material and workmanship; and
- (d) that all products shall be manufactured in accordance with good manufacturing practices, and that all products and/or services shall conform to and be furnished in accordance with all applicable Federal, state and local law, rules and regulations. Seller agrees that these warranties shall run to Buyer, its successors, assigns, and customers, and the users of its products. These warranties shall survive any delivery, inspection, testing, acceptance or payment by Buyer under this Agreement, and the termination of this Agreement for any reason. Seller acknowledges that it is an expert in producing and supplying the products and/or services to be purchased pursuant to this Agreement, and notwithstanding Buyer's acceptance of specifications, samples, test data and the products and/or service, Seller agrees that Buyer may rely on Seller as an expert. Notwithstanding the foregoing, except where different terms are stated in this contract, this contract incorporates by reference all the terms of the Uniform Commercial Code as adopted in the Commonwealth of Pennsylvania (as amended, the "UCC") providing any protection to the Buyer, including but not limited to all warranty protection (express or implied) and all of the Buyer's remedies under the UCC.

8. INSPECTION, REJECTION AND RETURN OF PRODUCTS

- (a) All products and services to be purchased under this Agreement are subject to Buyer's right of inspection and approval, notwithstanding prior payment therefor by Buyer. Products purchased hereunder may be inspected at Buyer's destination or Seller's plant. Buyer reserves the right, in addition to any other rights which it may have at law, at equity or under this Agreement, to reject and refuse acceptance of all or a portion of such products or services which are not in conformity with Seller's warranties as determined by Buyer. Seller agrees that time for acceptance or rejection of any shipment of products or performance of services shall not expire until Buyer's use of the products in products which it manufactures or processes which embody or employ the products, or use of any item which is an embodiment of the services performed by Seller. Buyer shall have the right to return to Seller all or a portion of such non-conforming products or any item representing or embodying the services, at Seller's sole risk, expense, for full credit or refund, or require that Seller, at its sole risk and expense, correct or replace such products or services with conforming products or services within such time as Buyer may require, provided, however, that such corrected or rejected products or services shall not be converted or replaced by Seller without written authorization from Buyer. If Seller fails to correct or replace any nonconforming products or services promptly after notification and authorization from Buyer, Buyer may correct or replace such products or services and charge Seller for the cost incurred by Buyer thereby, equitably adjust the order price for such products or services or set-off the cost hereunder, at the sole discretion of Buyer. Any products or services corrected, replaced or repaired by Seller shall be subject to the warranties and other terms of this Agreement. In the event of rejection by Buyer of all or a portion of the products or services, Buyer may charge to Seller and set-off against any payments due Seller all expense of unpacking, examining, repacking, storing and shipping any products rejected. Payment for any products or services hereunder shall not be deemed acceptance thereof.
- (b) Buyer's failure to inspect and accept or reject any products or services shall not relieve Seller from responsibility for products which are not in conformance with this Agreement nor for latent defects in any products, whether inspected or not, nor for fraud or such gross mistakes as amount in fraud, nor shall anything herein relieve Seller from the obligation to inspect and test the products or services covered by this Agreement in accordance with good commercial practices and Buyer's requirements and specifications, nor impose any liability upon Buyer for such failure of defects.

9. TERMINATION AND REMEDIES

Buyer may terminate all or any part of this Agreement at any time or times by written notice to Seller:

- (a) if Seller fails to observe or comply with any covenants, terms, conditions or warranties contained in this Agreement;
- (b) if Seller, in Buyer's opinion, fails to make progress so as to endanger performance or shipment in accordance with this Agreement; or
- (c) in the event of any proceeding by or against Seller in bankruptcy or insolvency, the appointment of a receiver or trustee, or an assignment for the benefit of creditors is made by Seller. Upon termination, Buyer may produce or purchase or otherwise acquire the products or services ordered under this Agreement elsewhere on such terms or in such manner as Buyer may deem appropriate, and Seller shall be liable to Buyer for any excess cost or other expenses incurred by Buyer. In addition,

Buyer shall have all other rights and remedies provided by law, at equity and under this Agreement, and all of Buyer's rights and remedies shall be cumulative and none shall be considered exclusive.

Upon termination, Buyer's only responsibility to Seller shall be the purchase price for:

- (a) products previously made, delivered to, inspected and accepted by Buyer in accordance with the terms of this Agreement; and
- (b) services performed and accepted before the date of receipt by Seller of the termination notice.

10. INFRINGEMENT OF PROPRIETARY RIGHTS

To the extent that the products supplied under this Agreement are not manufactured to detailed designs and specifications originated and furnished by Buyer, Seller represents and warrants that the sale or use of such products will not infringe any United States or foreign patent, copyright, trademark, industrial design right or other proprietary right. Seller shall indemnify, defend and hold Buyer, its successors, assigns, shareholders, officers, directors, employees, agents, attorneys, customers and those persons selling or using any of Buyer's products and any affiliated company of Buyer, its shareholders, officers, directors, employees, agents, attorneys, and customers, harmless from and against any damage, liability, claims, loss, costs, expenses and fees (including reasonable attorneys' fees) which may be incurred on account of infringement or alleged infringement of any United States or foreign patent, copyright, trademark, industrial design right or other proprietary right by the products or use of the products supplied under this Agreement. Buyer shall have the right to employ counsel separate from counsel employed by Seller in any proceeding for which Buyer may be indemnified by Seller and to participate in the defense thereof, but the expense of such counsel employed by Buyer shall be borne by Buyer unless Seller has failed to assume the defense of Buyer or employ satisfactory counsel. Seller shall reimburse Buyer on an on-going, periodic basis for all reasonable fees, costs and expenses incurred by Buyer promptly after submission of statements of expenses of Buyer during the pendency of any such proceeding. In addition to all other rights and remedies Buyer has at law, at equity or under this Agreement, in the event Buyer, its customers or anyone selling or using Buyer's products are enjoined from the use, sale or other disposition of the products, conditionally or otherwise, Seller shall, at no additional cost to Buyer, repurchase the products at the purchase price and/or Buyer's products at their purchase price, and repay all costs of all shipments of such products incurred by Buyer.

11. COMPLIANCE WITH LAWS

Seller agrees to comply with all laws, rules and regulations of the United States and of any other country or applicable jurisdiction in the performance of this Agreement, including without limitation all environmental laws.

12. RECALL OF PRODUCTS

If Seller becomes aware that any ingredient in the products is or may become harmful to persons or property, or that the design or construction of the products or services is defective in any manner which is or may become harmful to persons or property, or if Seller otherwise breaches any of its warranties to Buyer hereunder, Seller shall immediately give notice thereof, including all relevant information with respect thereto to Buyer, and Seller shall indemnify, defend and hold Buyer, its successors, assigns, shareholders,

officers, directors, employees, agents, attorneys, customers and those selling or using its products, and any affiliated company of Buyer, and its officers, directors, shareholders, employees, attorneys, customers, agents and the users of its products, harmless from and against any and all damages, liabilities, claims, losses, costs, expenses and fees (including reasonable attorneys' fees) paid or incurred by them arising out of or relating or incidental to such products or services provided by Seller, including, without limitation, any costs associated with recalling products developed, manufactured, or created by Buyer with the aid of such products or services. Buyer may, at its option, be represented by and actively participate through its own counsel in any suit or action against the foregoing persons and entities. Should Buyer, either voluntarily or involuntarily, initiate a recall of such products, or if a government or agency shall take action with respect to them, Seller shall assist and cooperate with Buyer in all respects with said recall, including, but not limited to, developing a recall strategy for the products and working with Buyer and any applicable governmental agency in monitoring Buyer's recall operating and in preparing and furnishing such reports, records or other such information as is necessary in connection therewith, and Seller agrees to pay all costs associated with such recall.

13. INDEMNIFICATION

Seller shall indemnify, defend and hold Buyer, its successors, assigns, shareholders, officers, directors, employees, agents, attorneys, customers and those persons selling or using any of Buyer's products, and any affiliated company of Buyer, its shareholders, officers, directors, employees, attorneys, and customers and agents, harmless from and against any and all damage, liability, claims, loss, costs, expenses and fees (including reasonable attorneys' fees) arising out of or relating or incidental to any breach by Seller of the terms, covenants, warranties and conditions of this Agreement, or any act or failure to act by Seller or its agents, representatives or employees in the performance of this Agreement, including, but not limited to:

- (a) Death or injury to persons or damage to property, by whomsoever suffered, claimed to have resulted from any alleged defect in the products or services, or the performance by Seller of work or services pursuant to this Agreement, or the work or performance of services by Seller's agents, representatives or employees, on the premises of Buyer or one of its customers or suppliers, or from the failure of the products to comply with any applicable sample or specification or with the express or implied warranties given by Seller, its agents, representatives or employees.
- (b) Claims arising out of the alleged violation by Seller in the manufacture, processing, storage or sale of the products, or in the performance by Seller of any work or services pursuant to this Agreement, of any applicable laws, rules, regulations, ordinances, administrative orders or standards (including without limitation environmental laws).

Buyer shall have the right to employ counsel separate from counsel employed by Seller in any such proceeding for which Buyer may be indemnified by Seller and to participate in the defense thereof, but the expense of such counsel employed by Buyer shall be borne by Buyer unless Seller has failed to assume the defense of Buyer or employ satisfactory counsel. Seller shall reimburse Buyer on an on-going, periodic basis for all fees, costs and expenses incurred by Buyer promptly after submission of statements of expenses of Buyer during the pendency of any such proceeding.

14. CONFIDENTIALITY

Seller agrees that it and its employees shall treat any information regarding Buyer's plans, programs, plants, processes, systems, products, costs, equipment, operations or customers which may come within the knowledge of or may be developed by Seller or its

employees as Buyer's confidential property and not use or disclose such information to others during the term hereof or subsequent to the termination of this contract. Seller shall restrict the knowledge of any information regarding the foregoing to as few as possible of its employees.

15. OWNERSHIP OF DOCUMENTS

Seller acknowledges that all drawings, specifications, data, memoranda, calculations, notes and other materials or copies thereof made available to Seller or Buyer or generated by Seller using Buyer's information, shall remain the sole and exclusive property of Buyer and shall be given to Buyer or returned to Buyer at completion or termination of the purchase of the goods which are the subject matter of this contract, or whenever requested by Buyer.

16. LABOR DISPUTES

Whenever any actual or potential labor dispute delays or threatens to delay the timely performance of this Agreement by Seller, Seller shall immediately give notice to Buyer.

17. FUTURE TAXES

All taxes, assessments, duties or any charge or increase not in effect on the date of this Agreement which may, prior to the completion of deliveries of products or performance of services, be levied by any governmental agency on products, containers for products or services shall be the liability of Seller without recourse to Buyer.

18. CHANGES

Buyer reserves the right to make changes within the general scope of this Agreement, except as to price or quantity, by any reasonable means, and if requested by Seller, such changes shall be confirmed in writing by Buyer. If any such change causes an increase or decrease in the cost of, or time required for, Seller's performance, the price therefor and/or time required for performance shall be equitably adjusted. Any claim for adjustment hereunder must be asserted in writing within thirty (30) days from the date the change is ordered. Failure on the part of either party to assert its claim within the time provided shall operate as a waiver thereof.

19. FORCE MAJEURE

Buyer reserves the right to defer any shipment under this Agreement, cancel or modify this Agreement or change any performance dates if Buyer's production is delayed due to strikes in Buyer's plant or the plants of any of Buyer's suppliers or customers, fire, flood, accident, storm, any act of God, war, terrorism, riots, government order or regulation or other conditions beyond Buyer's control. Seller shall not be liable for delays or defaults in delivery due to fire, flood, accident, storm, any act of God, war, terrorism, riots, governmental order or other unforeseeable causes beyond its control and without its fault or negligence, provided that Seller notifies Buyer within ten (10) days after Seller first knows of same, time of such notification being of the essence.

20. GOVERNING LAW AND CONSENT TO JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws and decisions of the Commonwealth of Pennsylvania, without regard to its law of conflict of laws, and Seller consents, exclusively, to the adjudication of any dispute arising out of this Agreement by any federal or state court of competent jurisdiction sitting therein.

21. MISCELLANEOUS

This Agreement and any payment or performance due under it may not be assigned, transferred, sublet, subcontracted or delegated, in whole or in part, by Seller without the prior written consent of Buyer. Buyer may assign its rights under this Agreement to any of its affiliated companies at any time. This Agreement shall inure to the benefit of Buyer and Seller and their respective successors and permitted assigns. No act or failure to act of Buyer shall constitute a waiver of any provision contained in this Agreement and to be valid a waiver of any requirement or obligation under this Agreement must be writing and signed by Buyer. The section headings contained herein are not part of this Agreement, but are included solely for the convenience of the parties. The provisions of this Agreement are severable, and if any provision is held to be unenforceable, the remaining provisions will continue in full force and effect.

22. INDEPENDENT CONTRACTORS.

Nothing contained in this Agreement shall be construed as creating a partnership or joint venture between Buyer and Seller, and Seller shall at all times during the term of this Agreement be deemed to be an independent contractor, solely responsible for the manner by and the form in which it fulfills this Agreement. To the extent Seller's obligations under this Agreement require the performance of services by Seller on the premises of Buyer or any of Buyer's customers, Seller agrees that such services are to be rendered by Seller as an independent contractor and Seller shall comply with all of Buyer's or said customer's safety rules and regulations and insurance requirements, and shall provide all safeguards and take all necessary precautions to prevent the occurrence of any injury to any person or property during the performance of such services.

23. NOTICES.

Any notices, consents or approvals called for hereunder may be given by telephone, but shall be confirmed in writing to be delivered or sent by telecopier, telex, overnight delivery service or by certified mail, return receipt requested, enclosed in a sealed envelop with first class postage thereon, addressed in the case of Buyer to its office located at the address set forth on the front side of this document, and in the case of Seller, at such address as Seller shall provide Buyer, or if no address is provided, at Seller's principal offices. The address of either party may be changed by written notice to the other. Any notice will be deemed to have been received by a party the same date as sent if sent by telecopier or telex, the next day if sent by overnight delivery service and three (3) days from the date sent if given by certified mail, return receipt requested.

24. AMENDMENT

Except in accordance with the provisions of section 19 hereof, this Agreement may be amended only in writing signed by representatives of both Seller and Buyer, each duly authorized to execute such amendment.

2.0 Special Requirements:
none

3.0 Associated Documents:

4.0 Safety Information:
n/a

5.0 Document Revision History:

Document Author:
Mike Royer

6.0 Reason for Change:

Revision:	Sec/Para Changed	Change Made:	Date
1	N/A	Initial Issue of Document	as above

7.0 Electronic Notification List: Purchasing Group

Approver Allowances for this Document: Corporate

8.0 Approvals:

First Approver's Signature

Name: Mike Royer
Title: Manager - Quality & Analytical Services

Approved - 11/12/2003 by Mike Royer

Second Approver's Signature

Name: James Weeks
Title: Director of Purchasing

Approved - 11/12/2003 by James Weeks