

AMERICAN PRIDE FASTNERS TERMS AND CONDITIONS OF PURCHASE

- 1. Delivery and Acceptance.** Time of delivery is of the essence of this purchase order. Acceptance of this purchase order shall be unqualified, unconditional and subject to the terms and conditions herein. Signing and returning the acknowledgment copy of this purchase order or commencement of performance hereunder shall constitute unqualified and unconditional acceptance of this purchase order subject to the terms and conditions herein. Any additional or different terms in Seller's forms are hereby deemed to be material alterations and notice of objection to them and rejection of them is hereby given. Seller agrees that it will not assert, as a defense to the enforcement of the conditions of this purchase order, any limitation set out in its acceptance or acknowledgment of this order. Notwithstanding any references in this purchase order to Seller's quotation, this order is not in response to or an acceptance of such quotation, and any references to or attachment of Seller's terms and conditions, or any over stamping on the acknowledgment or invoicing of this order shall not alter the terms hereof and shall be disregarded by Buyer, and are hereby rejected.
- 2. Specifications.** All products furnished under this purchase order must comply with any applicable specifications of Buyer unless Seller has obtained Buyer's prior written permission to make changes. In the event that there is a conflict between Seller's published specification and Buyer's specification, Seller agrees to immediately advise Buyer in writing and proceed with this order on the basis of Buyer's specification. Seller shall inform Buyer of any changes to the specifications that could impact form, fit, function or process at least ninety (90) days prior to implementation of any such change. Buyer may at any time make changes to drawings, designs, specifications, method of shipment or packaging and the place of delivery or work covered by hereby.
- 3. Price.** Prices shall be as agreed to between Buyer and Seller and specified in this order. Invoices hereunder shall be issued by Seller upon shipment of products or completion of services, unless mutually agreed in writing otherwise. Seller agrees that any price reduction made in products or services covered by this order subsequent to the placement of this order will be applicable to this order. Prices are firm unless provision is made for escalation on the face of this order. Notwithstanding any other provision of this order, Seller warrants to Buyer that all prices, terms, warranties and benefits taken as a whole granted to Buyer are at least as favorable as those offered by Seller to any of its other like customers. If, during the term of this order, Seller should enter into an arrangement with any other like customer that provides more favorable prices, terms, warranties or benefits taken as a whole, Seller shall so notify Buyer in writing within thirty (30) days, and this order shall thereupon be amended to provide to Buyer the more favorable prices, terms, warranties or benefits taken as a whole under the same conditions, to be effective on the date of Seller's arrangement with its other like customer.
- 4. Changes.** Buyer may, at no charge, request rescheduling of the delivery of any order for products and/or services. Buyer reserves the right at any time to make changes in drawings, designs, specifications, quantities and delivery schedules as to any products and/or services covered by this order. Such changes, to be binding on either Buyer or Seller, must be made by a change order to this order. Any differences in price or time for performance resulting from such changes shall be equitably adjusted, agreed to by Buyer in advance and shown on a supplemental purchase order. Any claim by Seller for adjustment under this Article must be asserted within thirty (30) days from the date of notification of the change; provided, however, that Buyer, in its sole discretion, may receive and act upon any such claim asserted at any time prior to final payment under this order.
- 5. Delivery.** Time is of the essence. Deliveries of products or services ordered hereunder are to be made both in the quantities and at the times specified by this order. Buyer shall have the right, at no charge to Buyer, to (a) cancel this order if shipment or performance is not made in accordance with such schedules for quantities, or time periods, and (b) refuse to accept delivery if shipments are made in advance of schedules herein or if quantities are in excess of this order. In the event Seller fails to deliver the products and/or services hereunder in accordance with the delivery dates or other agreed to schedule incorporated into the applicable order, and such delay is attributable to the acts or omissions of Seller, Buyer, in addition to any other remedies available to it, shall be entitled to collect liquidated damages for such delay from Seller as follows: the excess cost of re-procuring similar items and Buyer shall have the right to offset any damages against any and all sums owing to Seller. Payment of liquidated damages shall not relieve Seller from performance of any of its obligations under the applicable order. Any provisions herein for delivery of products or the rendering of services by installments shall not be construed as making the obligations of Seller severable.
- 6. Force Majeure.** Seller shall not be liable for delays in or failure to deliver to the extent such delay or failure is due to causes beyond its reasonable control and which were not foreseeable, provided written notification of excusable delay is given to Buyer within ten (10) days of the occurrence causing same. In such event, Buyer may, in addition to any other rights granted herein or under the law, terminate this order, in whole or in part, without liability on account thereof. Notwithstanding the above, whenever an actual or potential labor dispute delays or threatens to delay the timely performance of this order, Seller will immediately notify Buyer of such dispute and furnish all relevant details. Seller will include the substance of this provision in each subcontract hereunder and immediately transmit any such notice to Buyer.
- 7. Inspection.** Payment for the products or services furnished hereunder shall not constitute acceptance thereof. All products and/or services are subject to Buyer's inspection, including at the source if deemed necessary by Buyer or required by government regulation. If any of the products or services are found at any time to be defective in design, material or workmanship, or otherwise not in conformity with the requirements of this order, Buyer in addition to any other rights which it may have under warranties or otherwise, shall have the right to reject and return such products (plus inbound transportation charges if bought F.O.B. shipping point) and/or services at Seller's expense. Such products and/or services shall not be replaced without Buyer's prior written authorization. Buyer may reject the entire shipment, where it consists of a quantity of similar articles and sample inspection discloses that the articles inspected contain defective design, material or workmanship or do not conform to specifications or samples, unless, at Buyer's discretion, Seller agrees to reimburse Buyer for the cost of a complete inspection sort of the articles included in such shipment.
- 8. Adequate Assurance.** If Seller's financial condition is found to be or becomes unsatisfactory to Buyer during the term of this order, or should Seller's ability to perform become doubtful, Buyer may demand immediate assurance of performance, and in the event that such assurance is not forthcoming within five (5) working days, Buyer may terminate this order and also terminate all other contracts with Seller whether or not Seller may otherwise be in default, and no rights shall accrue to Seller against Buyer on account of any such terminations. Buyer's duties hereunder are conditioned upon the continuance of Seller's solvency and Seller's ability to perform within the delivery schedule.
- 9. Warranties.** Seller represents and warrants that all products and services covered by this order are merchantable, free from defects in design, material and workmanship, are suitable for the purpose intended, whether express or implied, and conform to specifications, instructions, drawings, data, samples and other descriptions furnished by Buyer. Seller warrants that all services shall be performed in a professional and workmanlike manner in accordance with standard industry practice. Seller further warrants that it has good and warrantable title to the products and services. All warranties run to Buyer and its customers. In the event of any failure to meet any of these warranties, Buyer may, in addition to any other rights it may have, at its option, (i) return the defective products or services to Seller at Seller's risk of loss, damage and expense; or (ii) repair, repurchase or replace for itself all products and/or services failing to meet the above warranties. All costs incurred during this process of repair, repurchase or replacement of Seller's products or services, including, but not limited to costs of repurchase or replacement, manpower and field service, shall be charged to and borne by Seller. Seller shall pay any such invoice within thirty (30) days from receipt. Defective products returned to Seller shall be repaired or replaced, at Buyer's discretion, by Seller at no cost to Buyer and such repaired or replacement products shall be shipped to Buyer within ten (10) days of receipt by Seller of the defective products, unless otherwise specified by Buyer. Repaired or replacement products will be shipped to Buyer, FOB Buyer's designated site, freight prepaid. Risk of loss or damage during shipment shall be the responsibility of Seller.
- 10. Gratuities.** Seller warrants that it has not and will not offer or give to any employee, agent or representative of Buyer any gratuity with a view toward securing any business from Buyer. Any breach of this warranty shall be a material breach of each and every contract between Buyer and Seller.
- 11. Intellectual Property Indemnity.** Seller shall, at its own expense, settle or defend any claim, suit or action which may be brought against Buyer or its customers for infringement of patents, copyrights, trademarks, trade names, trade secrets and/or other intellectual property rights arising out of or resulting from the sale and/or use of any products hereunder, provided that Buyer notifies Seller of any such claim, suit or action known to Buyer, and affords Seller control of the conduct of such settlement or defense. Seller will indemnify Buyer and hold it harmless from and against any and all liability, loss, cost, expense or damage (including reasonable attorney's fees and court costs) that it or its customers may incur by reason of any such claim, suit or action. Buyer agrees to provide Seller with reasonable assistance regarding such claim, suit or action at Seller's expense. If use of any product found to be infringing hereunder is enjoined, Seller shall, at Buyer's option and Seller's expense, either (a) procure for Buyer the right to continue using the allegedly infringing product; or (b) modify or replace it with non-infringing product suitable to Buyer's form, fit and function standards, safety standards, and customer requirements; or (c) with Buyer's consent, request that the products be returned for a full refund. Seller shall not be liable for indemnification under this section to the extent the alleged infringement is the result of specifications provided by Buyer; provided, however, that such specifications could not have been implemented by Seller in any non-infringing manner.
- 12. Indemnification.** Seller agrees to defend, indemnify and hold harmless Buyer from and against any and all loss, damage, liability, cost and/or expense whatsoever caused in whole or in part by Seller's acts or omissions, including but not limited to, any loss arising from breach of contract or improper performance by Seller and for damages and/or injuries which may be incurred by Buyer by virtue of defective design, material or workmanship in the products and/or services furnished hereunder. If this order covers the performance of labor for Buyer, Seller agrees to defend, indemnify and hold harmless Buyer from and against any and all losses, liabilities, claims or demands for injuries to any person (including death) or damages to property arising out of the performance of this order by Seller, its employees or agents.
- 13. Insurance.** Seller shall maintain at all times during the performance of the contract for Buyer under the contract which results from the acceptance of this order, workers' compensation insurance with applicable statutory limits, employer's liability of \$1,000,000 limit, and commercial general liability insurance including products-completed operations, and contractual liability coverage with limits of \$1,000,000 bodily injury and property damage, \$1,000,000 products and completed operations, \$2,000,000 General Aggregate, and Automobile on a combined single limit of \$1,000,000 per occurrence. Seller shall furnish to Buyer, upon request, an insurance certificate and/or state issued certificate evidencing the above coverages. Insurance certificates shall be endorsed to provide that Buyer is named as an additional insured with respect to the commercial general liability, and shall be notified in writing at least thirty (30) days prior to any substantial modification or termination of the subject policy.
- 14. Liens.** Seller shall be solely responsible for all claims of whatever nature arising out of non-payment for services, labor and materials furnished or contracted for by Seller in performance of work hereunder, including all liens which may be levied against Buyer or its customer. Before final payment, or at any time upon Buyer's request, Seller shall furnish Buyer with an affidavit conforming to the laws of the state in which the work is performed, or in absence of any such law, then an affidavit satisfactory to Buyer, setting forth the names and amounts due and remaining unpaid to all persons furnishing services, labor, or materials hereunder. Buyer shall have the right to pay directly to all such lien-holders or Seller's creditors any and all such amounts as may be due them and deduct same from any payments due to Seller.
- 15. Confidential Information.** All of the information belonging to or supplied by or on behalf of Buyer hereunder is confidential and/or proprietary and shall be treated as confidential and/or proprietary. Seller shall not, without prior written consent of Buyer, use or disclose any data, designs, drawings, specifications, know-how or other information belonging to or supplied by or on behalf of Buyer, except in performance of orders for Buyer. Upon Buyer's request such data, designs, drawings, specifications, know-how or other information and all copies thereof shall be promptly returned to Buyer.
- 16. Continuing Availability of Maintenance, Replacement, and Repair Parts.** Seller shall notify Buyer in writing at least one hundred eighty (180) days prior to the date on which Seller intends to discontinue supplying products covered by this order or no longer make such products available. Seller agrees to offer for sale to Buyer, at the then existing order price, for a period of ten (10) years after the expiration date of this agreement, functionally equivalent maintenance, replacement, and repair parts. In the event Seller fails to supply the foregoing or Seller is unable to obtain another source of supply for Buyer, then in addition to whatever other rights and remedies Buyer may have at law or in equity, Buyer may require Seller, without obligation or charge to Buyer, to provide Buyer with the technical information or any other rights required so that Buyer can attempt to manufacture, have manufactured or obtain such parts, from other sources. Such technical information shall include, by example and not by way of limitation: (1) manufacturing drawings and specifications of raw materials and components comprising such parts; (2) manufacturing drawings and specifications covering special tooling and the operation thereof; (3) a detailed list of all commercially available parts and components purchased by Seller on the open market disclosing the part number, name, and location of the supplier; (4) know how.
- 17. Termination.** Buyer, by written notice, may terminate this order in whole or in part. In the event this order is terminated as a result of Seller's default, Seller shall be liable for damages, including the excess cost of re-procuring similar items and Buyer shall have the right to offset any damages against any and all sums owing to Seller. If this order is terminated for the convenience of Buyer, Seller shall be compensated proportionately to the extent that products and/or services have been accepted by Buyer prior to the effective date of termination. Other than to this extent, Buyer shall not be liable to Seller for any damages on account of its failure to accept all of the products and/or services ordered. In addition to the foregoing, Buyer shall be entitled to a refund of any progress payment made to the date of termination.
- 18. Remedies.** The remedies herein reserved shall be cumulative and additional to any other or further remedies provided at law or in equity. No delay or failure by either party to exercise or enforce at any time any right or provision in this order shall be considered a waiver thereof or of such party's right thereafter to exercise or enforce each and every right and provision of this order. To be valid, waivers shall be in writing, but need not be supported by consideration. No single waiver shall constitute a continuing or subsequent waiver.
- 19. Compliance with Laws.** In furnishing products and/or services required under this order or any amendment thereto, Seller represents, warrants and agrees that it shall comply with the provisions of all applicable federal, state, and local laws, regulations, and orders. Without limiting the generality of the foregoing, Seller specifically agrees to comply with the following: Occupational Safety and Health Act of 1970, as amended ("OSHA"); Toxic Substances Control Act, as amended ("TSCA"); Fair Labor Standards Act of 1938, as amended ("FLSA"); Fastener Quality Act of 1990, as amended ("FQA"). Additionally, Seller shall provide North American Free Trade Agreement ("NAFTA") certificate to Buyer as required.
- 20. Applicable Law.** All orders from Buyer shall be governed by and construed and enforced in accordance with the laws of the State of Ohio, USA, excluding its conflict of law provisions. Notwithstanding the above, Buyer and Seller expressly agree that the U.N. Convention on Contracts for the International Sale of Goods shall not apply to this order and is specifically and wholly excluded.
- 21. Chemical Substances Identification.** By acceptance of this order, Seller certifies that any chemical substance(s) furnished pursuant to this order have been properly labeled, and that proper information regarding the substance(s), e.g., material safety data sheets, have been provided to Buyer in accordance with any and all federal, state or local legislation.
- 22. Assignment.** No assignment of this order by Seller shall be binding unless agreed to by Buyer in writing.
- 23. Entire Agreement.** This order constitutes the entire agreement between the parties hereto relating to the subject matter hereof and supersedes all prior oral and written and all contemporaneous oral negotiations, commitments and understandings of the parties. This order may not be changed or amended except by a writing executed by both parties hereto.