

TERMS AND CONDITIONS OF PURCHASE ORDER

1. THE TERMS AND CONDITIONS SET FORTH AND ON THE FACE SIDE HEREOF CONSTITUTE A COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN BUYER AND SELLER. ALL REPRESENTATIONS, PROMISES, OR STATEMENTS BY AN AGENT OR EMPLOYEE OF BUYER THAT DIFFER IN ANY WAY FROM THE TERMS AND CONDITIONS HEREOF SHALL BE GIVEN NO FORCE OR EFFECT. NO MODIFICATIONS OR ADDITIONS THERETO SHALL BE BINDING UPON BUYER UNLESS EXPRESSLY CONSENTED TO IN WRITING. ANY CONFLICTING TERMS AND CONDITIONS IN THE INVOICE OR ANY OTHER SELLER'S DOCUMENT ARE SPECIFICALLY REJECTED BY BUYER. No course of prior dealing or usage of trade shall supplement or explain any term used in this agreement.
 2. TERMS AND CONDITIONS.
 - A. Part number and purchase order must appear on invoice, packing list and all containers.
 - B. Prompt acknowledgement of this order on the Toledo Commutator form including shipping schedule is essential. This order must not be filled at higher price than last quoted or changed without consent of buyer.
 - C. Acceptance of this order constitutes your guarantee that all goods and/or services to be supplied fully comply with requirements of the Fair Labor Standards Act of 1938, as amended, and that your invoice will so certify.
 - D. All contractors must fulfill the insurance requirements indicated below.
 3. ACCEPTANCE. By shipping the goods ordered hereunder, by acknowledging receipt of the Purchase Order, or by performing any or all of the work or service contemplated hereby, Seller agrees to the terms and conditions of Buyer's order expressly set forth in this Purchase Order. Any additional or different terms or conditions in Seller's acceptance of this Purchase Order (whether oral, written, by course of performance, prior dealings between the parties, custom or usage within the trade or otherwise) are hereby objected to and shall not constitute, by implication or otherwise, part of the agreement between Seller and Buyer.
 4. PRICES AND QUANTITIES. All prices are F.O.B. destination unless otherwise specified and payment is to be made if discounted, 10th prox., or net 30th prox., unless otherwise specified. A separate invoice shall be issued for each shipment and dated as of date the invoice is mailed. In the event an invoice is backdated to a prior shipping date, payment due dates, including discount periods, will be computed from the date the invoice is mailed. In the event Goods have not been received, Buyer has the right to withhold payment until Goods are received and checked, without loss of cash discount. Without written authority of Buyer: (1) This order must not be filled at prices higher than last quoted; (2) Quantity of Goods ordered must not be exceeded or changed. Improperly priced Goods or excess quantities may, at Buyer's option, be returned at Seller's expense.
 5. PACKING AND CARTAGE CHARGES. No charge is allowed for cartons, packing, delivery, or cartage unless designated on this order. All returnable containers shall be invoiced by Seller and full credit rendered to Buyer upon return, at Seller's expense, in good condition and within a reasonable time.
 6. INSPECTION AND REJECTION. All goods are subject to final inspection, testing and acceptance by Buyer at destination notwithstanding any prior or subsequent payment or prior inspection at source. If goods are to be incorporated into an operating facility, Buyer's inspection and testing of the goods may be made under operating conditions after the goods have been installed. Neither inspecting nor failure to make such inspection nor acceptance of goods shall release the Seller from any warranty or other obligation set forth in this Purchase Order nor impair Buyer's right to reject nonconforming or defective goods. Buyer reserves the right, even after it has paid for and accepted such goods, to make claim against the Seller, irrespective of Buyer's failure to notify Seller of a rejection of nonconforming goods or a revocation of acceptance thereof or to specify with particularity any defect in nonconforming goods after rejection or acceptance thereof. If upon inspection, testing or otherwise, goods delivered hereunder or any portion thereof are found to be nonconforming, unsatisfactory, defective, or inferior quality or workmanship, or fail to meet any of the terms and conditions herein or other requirements of the Buyer, then without prejudice to any other of Buyer's rights and remedies, Buyer may, at its election and Seller's risk and expense, return the goods or any part thereof to Seller and all amounts thereof paid by Buyer on account of the purchase of such returned goods, together with all cost incurred by Buyer in connection with the original delivery or return of such goods, shall be immediately repaid to Buyer by Seller. No replacement or correction of defective or nonconforming goods shall be made by Seller unless agreed to in writing by Buyer. The Buyer may inspect and/or test the Goods at any reasonable time at its own expense and the Seller, at no charge, will make its premises reasonably available for inspection and testing.
 7. DELIVERY. Shipments under this order shall be made only on signed releases issued by Buyer. Buyer may cancel unreleased portion at any time. Shipping instructions are subject to change at Buyer's option. As to Buyer, time is of the essence in this Purchase Order. If at any time it appears Seller will not meet the times and quantities established by this Purchase Order, Seller shall promptly notify Buyer of reasons for and estimated duration of the delay and, if requested by Buyer, ship via air or other fast transportation to avoid or minimize delay to the maximum extent possible, bill at Seller's expense. Buyer's option to require alternate transportation without cost hereunder shall be in addition to Buyer's other rights and remedies under this Purchase Order.
 8. TITLE AND RISK OF LOSS. Title to any Goods sold and risk of loss of such Goods passes to Buyer upon delivery by Seller's carrier to Buyer's plant and any claims for losses or damage to that point shall rest with Seller or its carrier.
 9. CANCELLATION. Buyer may, at its option and without liability, extend the date upon which performance hereunder is due and/or cancel this order, in its entirety or in part, due to any of the following conditions: (a) defects in material or equipment, workmanship or quality; (b) materials or equipment not shipped as specified herein (time being of the essence of this order), or any releases issued hereunder; (c) materials not in accordance with drawings and prints, approved samples or specifications, or instructions issued in connection therewith; (d) performance on Buyer's part prevented by strikes, fires, disasters, wars, riots, acts of God, governmental action, or any other cause or condition beyond Buyer's reasonable control; (e) Seller's failure to comply with any terms and conditions of this order; (f) suspension of Seller's business, insolvency of Seller, institution of bankruptcy, reorganization, arrangement or liquidation proceedings by or against Seller, appointment of a trustee or receiver for Seller's property or business, or any assignment by Seller for the benefit of creditors. In addition, Buyer may, for its convenience, terminate the Purchase Order in whole or in part at any time prior to (30) days of the first delivery date scheduled on the reverse side hereof. Orders cannot be terminated, cancelled, modified, or shipment deferred after acceptance of Buyer's order by Seller, except with Buyer's written consent. In the event of cancellation by Seller of this order before the completion thereof, other than breach thereof by Buyer, Seller shall promptly pay to Buyer cancellation charges, if any of Buyer, due to commitments made upon Seller's acceptance of this order.
 10. WARRANTY. Seller expressly warrants to Buyer, its employees, customers, and agents of its products, the Goods ordered herein will be free from defects in labor, material or fabrication. Seller further expressly warrants that unless the Goods covered by this order are manufactured to Buyer's specifications and blue prints, the same will be merchantable and fit for the purpose for which they are purchased. These express warranties do not limit Buyer's rights under any other express or implied warranties arising by operation of law. Any inspection or acceptance of Goods by Buyer shall not be deemed to alter or affect the obligations of Seller of the rights of Buyer and its employees, agents, and customers under the forgoing warranties.
 11. RELIANCE ON SELLER'S REPRESENTATIONS. Seller and Buyer acknowledge that Seller is an expert, fully competent in all phases involved in designing, developing, tooling, producing, testing, altering, reconditioning, stocking, and servicing the goods and services ordered hereunder, and that Buyer has relied on Seller's expertise in placing this order. Seller therefore agrees that it will not deny any responsibility or obligation to Buyer on the grounds that any such phase was suggested, initiated or accomplished by Buyer. Seller shall be responsible for all goods and services ordered hereunder as though all phases set forth above were suggested, initiated and accomplished by Seller. More specifically, and without limiting the above, Buyer's suggestion, furnishing, or approval of any specification, drawing plan, change, schedule or other document or part thereof, or any test report, or release of items for production, shall not relieve Seller from its obligations or its performance under the terms and conditions of this Purchase Order nor affect or otherwise diminish Buyer's continued reliance on Seller's aforementioned expertise. Any such acts by Buyer shall not modify, impair or abrogate any right or remedy of the Buyer hereunder.
 12. PATENTS. Seller agrees to indemnify and hold harmless Buyer, customers and users of its products, for any expense, loss or damage sustained due to infringement or claimed infringement of any United States or foreign patent on Goods covered by this order. Seller agrees to assume defense of any suit for infringement of patents brought against Buyer or its vendees based upon Goods covered by this order and to indemnify Buyer and said vendees against any decree or costs in said suit provided Seller is reasonably notified of such claims and proceedings.
 13. CONSIGNMENT. Any material furnished by Buyer to Seller for further use or processing in connection with this order will be deemed as held by Seller on consignment and Seller agrees to pay for all such material spoiled by it or not otherwise satisfactorily accounted for. Where Goods are made to blue prints furnished by Buyer, the design shall be considered as Buyer's and Seller is not to furnish to anyone else the same Goods or parts thereof without written permission of Buyer.
 14. ASSIGNMENT OR SUBCONTRACT. Seller shall not subcontract or assign all, or substantially all, of the work on Goods covered by this order, or monies due or to become due hereunder, without written approval of Buyer.
 15. PRODUCTS LIABILITY. With respect to all Goods covered by this Purchase Order which are the Seller's product or made to the Seller's design or specifications, Seller agrees to indemnify, defend and hold harmless Buyer, its agents, employees, successors, assigns, and customers against any and all claims for personal injury or property damage resulting from improper or defective material, workmanship or design. Buyer will give prompt notification to Seller of the existence of any such claim and cooperate with Seller in the investigation and defense of same. At Buyer's request, Seller shall furnish to Buyer evidence of product liability insurance coverage from an insurer and with limits satisfactory to Buyer.
 16. UNPATENTED KNOWLEDGE OR INFORMATION. Any unpatented knowledge of information concerning Seller's products, methods or manufacturing processes which Seller may disclose to Buyer incident to the manufacture of the goods covered by this order shall, unless otherwise specifically agreed in writing, be deemed to have been disclosed as a part of the consideration for this Purchase Order, and Seller agrees not to assert any claim (other than a claim for patent infringement) against Buyer by reason of Buyer's use or alleged use thereof.
 17. MECHANICS LIEN AND INDEMNITY. If this Purchase Order calls for work to be performed upon property owned or controlled by Buyer, it is agreed that (a) Seller will keep the premises and work free and clear of all mechanic liens, and agrees to furnish Buyer such affidavits and waivers as, in Buyer's opinion, are necessary and appropriate to insure immunity from mechanic liens arising from the performance of this Purchase Order, all as a condition precedent to any payment by Buyer hereunder; (b) The work will remain at Seller's risk prior to written acceptance by Buyer and Seller will replace at its own expense all work damaged or destroyed by fire, force or violence of the elements or any other cause whatsoever; (c) Seller will indemnify, save harmless, and defend Buyer from all liability for loss, damage or injury to person or property in any manner arising out of or incident to Seller's performance hereunder; and (d) Seller will indemnify, save harmless, and defend Buyer from any and all claims, demands or suits made or brought against Buyer on account of any of the terms or provisions of any applicable Workman's Compensation Law and will furnish Buyer with proper evidence that Seller is insured against all liability under such law.
 18. COMPLIANCE WITH LAWS. Seller warrants that in the performance of this Purchase Order. It will comply with all applicable Federal, state and local laws, regulations, rules and ordinances. Seller further warrants that the goods and services covered by this Purchase Order were produced in compliance with all applicable requirements of the Fair Labor Standards Act, as amended, and with regulations and orders of the U.S. Department of Labor issued pursuant thereto. Immediately upon Buyer's written request, Seller shall provide Buyer with a certificate of compliance in respect to all such laws, regulations, rules and ordinances in form satisfactory to Buyer.
 19. NON-DISCRIMINATION. Seller will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, those in the age bracket of 40 to 70 years of age, and handicapped, and will comply with provisions of the Vocational Rehabilitation Act of 1973 and the Vietnam Era Veterans Act of 1974, and all other Executive Orders, laws, and regulations pertaining to Equal Employment Opportunity.
 20. GENERAL CONDITIONS.
 - A. The remedies herein reserved shall be cumulative and additional to any other remedies provided in law or equity. No delay or omission by Buyer in exercising any right or remedy provided for herein shall constitute a waiver of such right or remedy and shall be constituted as a bar to or a waiver of any such right or remedy of any future occasion.
 - B. The purchase of Goods pursuant to this order shall be governed by the laws of the State of Michigan.
 - C. This order is confidential between Buyer and Seller and Seller agrees that none of the details connected therewith shall be published or disclosed to any third party without Buyer's written permission.
 21. SEVERABILITY. The invalidity of unenforceability of any one or more phrase, sentences, or sections shall not affect the validity or enforceability of the remaining portions of this Agreement.
 22. INSURANCE. If this contract covers the performance of labor or service for Buyer, Seller agrees to indemnify and protect Buyer against all liability claims or demands for injuries or damages to any person or property growing out of the performance of this contract. Seller further agrees to furnish insurance carrier's certificate evidencing that Seller has adequate insurance coverage in the following minimum amounts:
 1. Worker compensation – Statutory limits for state in which work is to be performed.
 2. General Liability – Minimum \$500,000.
 3. Property Damage – Minimum \$500,000.
 4. Automobile, Public Liability and Property Damage – minimum \$500,000.
 23. NONCONFORMING MATERIALS. The Seller is not authorized to ship or perform review action on Nonconforming Materials. The seller is not authorized to ship or perform review action on nonconforming material with the intent of delivering nonconforming material without the written authorization from Toledo Commutator Company (TCC). Seller must report any departure from drawing, specifications or other P.O. requirements and must describe such departures, including a description of the cause and corrective action taken to preclude recurrence. The Seller shall promptly notify Buyer in the event of an escape for parts shipped with a nonconformance without authorization. Seller shall promptly notify Buyer in the event of an escape for parts shipped with a nonconformance without a disposition.
 24. RECORDS: All quality records as defined by ISO 9001 shall be maintained by the Seller for a minimum of 11 years. Records shall remain legible, readily identifiable and retrievable.
 25. FOREIGN OBJECT DAMAGE (FOD) CONTROL: The Seller shall ensure that Foreign Objects and subsequent Foreign Object Damage (FOD) is eliminated from all parts prior to shipment. The Seller must maintain a FOD free environment during machining, manufacturing, assembly, maintenance, inspection, storage, packaging and shipping.
 26. COUNTERFEIT PARTS PREVENTION. The Seller must prevent the introduction of counterfeit components and materials into the supply chain. Each shipment requires Certificate of conformance (C of C), Material Certification and Test Reports as applicable. Suspect counterfeit components or materials shall be reported to Toledo Commutator Company immediately.
 27. RIGHT OF ENTRY. The Seller shall permit TCC and/or its customers or regulating agency the right of entry for product verification and to assure product conforms to the specified requirements, as well as all facilities and records involved in the order.
 28. QUALITY SYSTEM. The Seller shall implement and maintain an effective quality system. The preferred system is ISO 9001. Suppliers with an alternate system must complete the TCC Self-Assessment form and be approved by TCC prior to shipping product.
 29. FACILITY CHANGES. The Seller shall notify TCC of any facility changes such as relocating any production, inspection or processing facilities, transferring work between different facilities or a change in sellers Quality Management.
 30. OBSOLESCENCE. The Seller must systemically and immediately notify TCC when the part, service or resource provided is no longer available regardless of the origin if its information.
- The insurance certificate must set forth the amount of coverage, number of policy and date of expiration. If Seller is a self-insurer, the certificate of the Department of Labor & Industry of the state in which labor is to be performed must be furnished by such department directly to the Buyer. This order calls for work to be performed by Seller upon any premises owned or controlled by Buyer and/or Buyer's customer.
- Compliance by Seller with insurance requirements does not in any way affect Seller's indemnification of Buyer under this article. All certificates should be forwarded to the attention of Materials Manager, Toledo Commutator Co., Owosso, MI 48867.**
- REVISION IV- 3/15/2021**