



## TERMS AND CONDITIONS

1. **ACCEPTANCE OF ORDER:** Performance of all or any portion of the Services, or shipment by Seller of all or any portion of the Goods, covered by this Order, shall constitute an acceptance of this Order upon the terms and conditions contained in this Order. All terms and conditions proposed by Seller, which are different, or in addition to this Order are unacceptable to Buyer, are expressly rejected by Buyer, and shall not become part of this Order.
2. **MODIFICATION OF AGREEMENT:** No modification of this Order, or waiver of; or addition to any of this Order's terms and conditions, shall be binding upon Buyer unless made in writing and signed by Buyer's authorized representative.
3. **PACKING AND SHIPPING:** All Goods are to be suitably prepared for shipment and must be packed and shipped in accordance with Buyer's specifications. No charge shall be made for packing except as stated otherwise in this Order. Material shipped in advance of releases or shipping dates specified in the Order, or more than the quantity ordered, shall be at Seller's risk and may be returned to Seller and all transportation charges both to and from the original destination shall be paid by Seller. If the Goods are not shipped in accordance with the Buyer's directions and the instructions set out in this Order Seller shall pay or reimburse Buyer for any excess cost occasioned thereby.
4. **DELIVERY:** Delivery must be affected within the time specified in this Order but neither shall be liable for any default under this paragraph due to unforeseeable contingencies beyond its control and without its fault or negligence. Seller's default shall not be excused, however, unless written notice of any such contingency is given to Buyer within five (5) days of the occurrence thereof. If the delivery date specified in this Order is marked "as scheduled", Buyer will issue from time-to-time shipping schedule authorizations specifying shipping dates, quantities, and destinations. If Seller is unable to make shipments as specified in the schedule authorization, Buyer must be notified before the specified date.
5. **FREIGHT TERMS:** Terms are Freight at Destination. Risk of loss of any goods sold hereunder shall transfer to Buyer at the time and place of delivery; provided that risk of loss prior to actual receipt of the goods by Buyer shall nonetheless remain with Seller.
6. **PRICE:** Unless otherwise specified, the price on this Order represents the complete cost to Innotech at the point of delivery.
7. **PAYMENT:** Unless otherwise agreed or otherwise stated on the face of this Order net invoices shall be paid within 45 days after the date of delivery of the goods, whichever is later.
8. **MSDS REQUIREMENTS:** All hazardous material shipments must be accompanied by SDS. Labeling of shipment must also comply with Transportation of Dangerous Goods Act (TDGA). Grounds for rejection may apply if conditions are not satisfied.
9. **WARRANTIES:** Seller warrants that all Goods and Services, including without limitation, the articles, materials, supplies, work and services including any special tools, dies, jigs, patterns, machinery and equipment obtained at Buyer's expense for the performance of this Order and which are to be property of the Buyer, will conform to applicable drawings specifications, samples and other descriptions furnished, specified or adopted by Buyer and will be of good quality and workmanship and will be free from any defects. If the Goods are not ordered to Buyer's specifications, Seller further warrants that they will be of merchantable quality and fit and sufficient for the purpose intended. Seller further warrants to sell the Goods to Buyer free and clear of all liens, charges or claims of any nature whatsoever.
10. **DEFECTIVE GOODS:** If any of the Goods fail to meet the warranties contained in the **WARRANTIES** section above, Seller, upon notice thereof from Buyer at any time within twelve (12) months after delivery to Buyer, shall promptly correct or replace the same at Seller's expense. Seller's warranty shall apply to corrected or replaced Goods until twelve months after the date of the re-delivery to the Buyer. If Seller shall fail to correct or replace the defective or non-conforming Goods, Buyer may cancel this order as to all such Goods and in addition, may cancel the then remaining balance of this Order. After notice to Seller, all such Goods will be held at Seller's risk, and all transportation charges, both to and from the original destination, shall be paid by Seller. Seller shall refund any payment of such Goods unless Seller promptly corrects or replaces the same at its expense.
11. **CHANGES:**
  - a. Buyer reserves the right to make changes in the drawings, specifications, and other provisions if this Order. If any such change causes an increase in the cost of, or the time required for the performance of any part of the work under this Order, an equitable adjustment should be made in the price or delivery schedule, or both and this Order, shall be modified in writing accordingly. Any claim by Seller hereunder shall be asserted within thirty (30) days of the notification of the change.
  - b. The Seller shall give the Buyer advance notice in writing of all specifications, design, part numbers and other identification changes, as well as major changes in process procedure or changes in the location of the manufacturing plant, made by the Seller applying to Goods covered by this Order.
12. **MATERIAL, EQUIPMENT, TOOLS, AND FACILITIES:** Unless otherwise agreed in writing, Seller will supply at its own expense all material, equipment, tools, jigs, dies, patterns, drawings, specifications, samples, and facilities required to perform this Order. All material, equipment, tools, jigs, dies, patterns, drawings, specifications, samples and facilities, (referred to this Order as Items) furnished to Seller by Buyer or specifically paid for by Buyer, and any replacements thereof, or any materials affixed or attached thereto, shall be and remain the property of, with the right if possession in the Buyer, and Seller shall use said items only in the performance of work for Buyer and not otherwise. All such Items, while in Seller's custody or control and while in the custody or control of Seller's supplies shall be held at Seller's risk and shall be kept insured by Seller at Seller's expense against loss or damage in an amount equal to the cost of replacement and shall be subject to removal at Buyer's written request, in which event Seller shall be subject to removal at Buyer's written request, in which event Seller shall at its expense prepare such Items for shipment and shall deliver to Buyer in the same condition as originally received by Seller, reasonable wear and tear excepted. Seller shall promptly notify Buyer of the location of such Items if Items are in any place other than at Seller's plant. Except as otherwise provided in this Order, Seller shall maintain accountability and property control records of such Items in accordance with sound industrial practice. Seller shall, at its expense maintain all such Items in good condition and repair, replacing any such Items, if necessary, Buyer does not warrant the accuracy such Items which it furnishes and all material, supplies and services must be strict accordance with the specifications set forth in this Order. Upon completion of termination of this Order, Seller shall retain all such Items furnished or specifically paid for by Buyer at its expense, until disposition directions are received from Buyer. Buyer acquires title to and the right to possession of special tooling, the cost of which is fully or substantially amortized in the price of articles purchased.



**13. PATENTS AND OTHER IDEMNNITY:**

- a. Seller shall hold and save Buyer and its affiliated corporations, and their customers, harmless from loss and/or liability of any nature or kind arising out or existing because of the infringement of any patent, trademark, copyright, industrial design or process of manufacture for or on account of the manufacture, sale or use of any Goods furnished under this Order, except in the case where compliance by Seller with specifications prescribed by an originating with Buyer constitutes the sole basis of the infringement or alleged infringement. Buyer shall notify Seller in writing of any suit filed against it or its affiliated corporations or their customers, on account of any such infringement or alleged infringement, and at Seller's request shall give Seller control of the defense of such suit, insofar as Buyer has the authority to do so, and information and assistance for the same, all at Seller's expense. Buyer and the party against whom suit is brought may be represented by their own counsel in any such suit.
- b. Buyer shall defend, at its expense, any suit brought against Seller for the infringement or alleged infringement of any patent, trademark, copyright, industrial design or sale of any Goods furnished under this Order, and shall pay all damages and costs awarded therein against Seller, in any case where compliance by Seller with specifications prescribed by and originating with Buyer constitutes the sole basis of the infringement or alleged infringement, if notified in writing and given authority, information and assistance, at Buyer's expense, for defense of same.

**14. DESIGNS, DRAWINGS AND DATA:** Buyer retains all rights in designs and other data furnished to Seller by Buyer and no such designs, drawings and other data shall, without Buyer's specific written permission to Seller be reproduced or in any way used in whole or in part, in connection with goods furnished to others. The term "data" includes, without limitations, drawings, reproductions, specifications, engineering instructions, photographs, reproducible copy, parts lists, plans, reports, and computations.

**15. INSPECTION, SUPPLIER QUALITY, AND DEVELOPMENT:**

- a. All Items and workmanship utilized in the performance of this Order will be subject to inspection and test by Buyer and its customers to the extent practicable at all times and places including the period of manufacture. If any such inspection or test is made in Seller's premises. Seller will provide without additional charge, all reasonable facilities and assistance for sale and convenient inspections and test. Inspections and approval at Seller's plant do not preclude rejection of any defects subsequently discovered. Seller will provide and maintain without additional charge a test and inspection system, acceptable to Buyer covering the Items and workmanship hereunder.
- b. At Buyer's option the Buyer may audit Seller's inspection, quality, control, and reliability procedures as well as the data supporting same. Seller shall comply strictly with the provisions of Buyer's Quality Control Specifications and Inspections Standards, as supplied by Buyer to Seller from time to time. If requested by Buyer, furnish a certificate indicating such compliance. Seller will provide PPAP documentation describing production process and quality systems upon request.
- c. Acceptance of the Goods by Buyer shall not relieve Seller from any of its obligations and warranties, under this Order. In no event shall payment be deemed to constitute acceptance.

**16. CANCELLATION ON ACCOUNT OF INSOLVENCY:** Either party may cancel this Order without liability in the event of insolvency bankruptcy, reorganization, arrangement, receivership, or liquidation by or against the other party or if either party makes an assignment for the benefit of or compromise with its creditors generally or ceases to carry on business in the ordinary course.

**17. SUPPLIER QUALITY AND DEVELOPMENT INSPECTION:** Seller agrees to participate in Buyer's supplier quality and development program(s) and to comply requirements and procedures specified by Buyer as revised from time to time including those applicable to Seller as set forth in Quality System Requirements IATF-16949/ISO 9001. In addition, Buyer shall have the right to enter Seller's facility at reasonable times to inspect the facility, goods, materials, and any property of Buyer covered by this contract. Buyer's inspection of the goods, whether during manufacture, prior to delivery or within a reasonable time after delivery, shall not constitute acceptance of any work-in-process or finished goods.

**18. TERMINATION:**

- a. Buyer may terminate this Order in whole or in part at any time by written or telegraphic notice stating the extent and effective date of such termination. Upon receipt thereof, Seller will, to the extent directed by Buyer:
  - i. stop work under this Order and place no further orders hereunder.
  - ii. terminate work under outstanding orders which relate to work terminated by such notice, and
  - iii. protect property in Seller's possession in which Buyer has or may acquire an interest.

Unless otherwise authorized in writing by Buyer, Seller shall not make commitments for materials except as may be necessary for Seller to effect shipment on delivery date. Buyer shall in no event be liable or responsible for any such costs or amounts incurred by Seller in breach of this provision.

- b. Seller will submit to Buyer its claim, if any, as soon as possible, but in any event not later than thirty (30) days (unless Buyer agrees otherwise) from the effective date of termination. Seller hereby gives Buyer the right to audit and inspect its books, records and other documents relating to its termination claim. If the parties cannot agree within a reasonable time upon the amount of fair compensation for such termination, Buyer will, in addition to making prompt payment of the contract price for the Goods or Services delivered or performed and accepted by Buyer prior to the effective date of termination, pay to the Seller the following amounts without duplication:
  - i. the contract price to Goods completed or Services performed in accordance with the provisions of this Order but not previously paid for, and
  - ii. The actual costs incurred by Seller and property allocable or apportionable under recognized commercial accounting practices to the terminated portion of this Order.
- c. Seller may, with Buyer's consent, retain at an agreed price or sell at an approved price any completed Goods, work in process or other physical inventory the cost of which is allocable or apportionable to this Order under paragraph (b)(i) above, and will credit or pay the amounts so agreed or receive as Buyer directs, with appropriate adjustments for delivery cost savings. Seller will, if directed by Buyer, transfer title to and make delivery of any Goods; work in process or other physical inventory not so retained or sold.
- d. Buyer reserves the right to terminate this Order in whole or in part for default occasioned by failure on the part of Seller to perform in accordance with the requirements of this Order. Such termination will be without liability except for completed Goods delivered or Services performed and accepted by Buyer. Seller will be liable for damages caused by or resulting from its default.



19. **ASSIGNMENT:** Seller will not assign this Order or any portion thereof or work hereunder or any interest herein except to the extent that Seller may, upon the prior written consent of Buyer, make an assignment of monies due or which may become, due hereunder to a bank, trust company or other financing institution, provided any such assignment shall be subject to setoff, recoupment or any lawful means of enforcing any present or future claim which Buyer may have against Seller, and provided further any such assignment will not be made to more than a single assignee in the event of such assignment, Seller will file, in addition to the written notice of the assignment, a true copy of the instrument of assignment with Buyer or corporation or to any corporation succeeding to Buyer's business.
20. **INDEMNIFICATION AND INSURANCE:**
  - a. Seller shall, upon entry of premises owned or controlled by Buyer, indemnify and save harmless, Buyer, its employees, agents, directors, officers, assignees, and invitees from and against all liability, demands, losses, cost, damages, and expenses by reason or on account of property damage, death, personal injury or any other damage whatsoever, or whatever nature or kind arising out of, resulting from, or in connection with the performance of this Order, which is occasioned by Seller's actions or omissions. Seller shall maintain and carry General Liability and contractual liability coverage worker's compensation and employee's liability insurance covering all employees engaged in the performance of this Order, in amounts satisfactory to certificates of insurance indicating the foregoing coverage prior to commencing work under this Order.
  - b. Seller agrees to defend, protect and hold harmless, Buyer, its successors, agents, and dealers against any and all claims for personal injury, property, consequential or special damages resulting from improper or defective material, workmanship, design, or Seller's failure to comply with **COMPLIANCE WITH LAWS**, outlined below, but only if Seller is promptly notified in writing of any such claim and given the right to defend settle, or otherwise dispose of such claim through counsel of its own choosing. Buyer shall cooperate in the investigation and defense of any such claim or suit. Seller's obligation shall not extend to or include claims resulting from the use of any Goods in combination with unsuitable goods not furnished under this Order or from an unauthorized modification or alteration of the Goods.
  - c. Except as provided otherwise in the paragraphs on **PATENTS AND OTHER IDEMUNITY**, in no case shall Buyer indemnify or hold harmless Seller against any and all claims for personal injury, property, consequential or special damages resulting from improper or defective material, workmanship or design of Goods purchased from Seller under this Order.
21. **TAXES:** Unless otherwise stated in this Order, process includes all Federal, Provincial, State, and local taxes applicable to the sale of any Goods or provisions of any Services.
22. **DELAY AND NOTICE:** If Seller shall fail or refuse to proceed with this Order, or if Seller shall fail to make delivery or Buyer shall fail to accept delivery, according to the delivery schedule, the other party may cancel the then remaining balance of this Order unless the delay is an excusable delay as subsequently defined. An excusable delay shall not constitute a default hereunder. The term "excusable delay" as used in this paragraph means any delay in making or accepting deliveries which results without fault or negligence on the part of the party involved and which is due to causes beyond the control including, without being limited to acts of God or the public enemy, any preference priority or allocation order issued by government any other act of government, act of the other party hereto, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, unusually severe weather and delays of a supplier due to such causes. Whenever an actual or potential excusable delay is delaying or threatens to delay performance of this Order each party shall immediately give notice thereof to the other party. Such notice shall include all relevant information with respect to such excusable delay. Seller agrees to insert substance of this clause in all purchase orders issued under this Order.
23. **NO ADVERTISING:** Seller shall not, without first obtaining the written consent of Buyer, in any manner advertise or publish the fact that Seller has contracted to furnish Buyer the goods or services covered by this contract or use any trademark and trade names of Buyer in Seller's advertising or promotional materials.
24. **COMPLIANCE WITH LAWS:**
  - a. Seller warrants compliance with all Federal, Provincial, State, and local laws, ordinances, rules and regulations, and all amendments thereto, that are applicable to this Order and will furnish Buyer certificates of such compliance where required thereunder or by Buyer, it is also agreed that each invoice rendered to Buyer under this Order shall constitute written assurance that the Seller has fully complied with applicable laws, regulations and so forth.
  - b. Seller shall package and label the Goods and their containers, those which constitute a health, poison, fire, or explosion hazard, in accordance with all applicable Federal, Provincial, State and local packaging and labeling laws and regulations in effect in the place to which the Goods are shipped or as specified otherwise by Buyer.
25. **REMEDIES:** No remedy provided herein including without imitations the remedies set out in section **DEFECTIVE GOODS** above, shall be deemed exclusive of any remedy allowed by law.
26. **TRANSPORTATION CHARGES:** When terms of delivery or conditions of contract are F.O.B Buyer's plant, all transportation charges (including terminal switching service) must be at the expense of the Seller in accordance with the tariffs of the transportation lines and railroad companies as lawfully in effect at the time the shipments are moved, or the service is performed. No charge shall be made for parking except as stated in this Order. Any premium freight charges incurred by the Buyer, or the Buyer's customers, as a result of the items failing to pass inspection or failure by the Supplier to meet delivery schedules will be the responsibility of the Supplier.
27. **FREIGHT RATES, CUSTOMS DUTIES, IMPORT TAXES, EXCISE TAXES, AND SALES TAX:** Any reduction in Seller's costs resulting from a reduction in the foregoing from those in force on the date of this Order is to be paid to Buyer by Seller in reduction of the price of Goods Ordered.
28. **GOVERNING LAW:** The Buyer and Seller expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods. This Order shall be interpreted and enforced in accordance with the laws of the Province of Ontario and Canada.
29. **DISPUTE RESOLUTION:** Supplier agrees to meet, negotiate, and attempt to resolve, in good faith, without litigation, any disputes. If a negotiated resolution cannot be achieved, both parties agree to submit the dispute to a sole mediator selected jointly by both parties in the province of Ontario.

**THIS ORDER EMBODIES THE ENTIRE AGREEMENT BETWEEN BUYER AND SELLER AND NO UNDERSTANDING OR AGREEMENTS, VERBAL OR OTHERWISE, IN RELATION THERETO EXIST BETWEEN THEM, EXCEPT AS EXPRESSLY SET FORTH IN THIS ORDER. BUYER SHALL NOT BE DEEMED TO HAVE WAIVED ANY OF THE ORDER TERMS AND CONDITIONS, OR TO HAVE ACCEPTED ANY INCONSISTENT TERMS AND CONDITIONS, IF IT FAILS TO OBJECT TO THE CONDITIONS APPEARING IN, INCORPORATED BY REFERENCE, OR ATTACHED TO SELLER'S QUOTATIONS, ACKNOWLEDGMENTS, INVOICES OR OTHER ACCEPTANCES OF THIS ORDER.**