

Standard Terms & Conditions

- Acceptance.** This Purchase Order is an offer to buy the goods and/or services described on the face hereof and shall become a binding contract on the terms and conditions herein when accepted by the referenced seller (the "Seller") either by acknowledgment of the order or by shipment or other commencement of work. Any acceptance hereof is limited to acceptance of the express terms of the offer contained on the face and back hereof. No revision of this order or any of the terms and conditions hereof shall be valid unless in writing and signed by an authorized representative of Rockwood Service Corporation, or its applicable subsidiary or affiliate placing the order hereunder ("Buyer"), and no condition stated by Seller in acceptance of or acknowledging this order shall be binding upon Buyer if inconsistent with, or in addition to, the terms and conditions contained herein unless expressly accepted in writing by Buyer.
- Excess Quantities, Order Changes and Cancellation.** Seller shall not deliver, and Buyer shall not have any obligation or liability with respect to, any quantity of goods in excess of the quantity specified on this order unless Buyer shall specifically agree to the additional quantity in writing. Buyer reserves the right to modify any aspect of this order (including without limitation, make changes to the drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation) at any time before shipment of goods or completion of the services, as applicable, upon notice to Seller. If any Buyer requested changes cause an increase or decrease in the cost or the time required for Seller's performance, an equitable negotiated adjustment shall be made and the order shall be modified by the parties in writing accordingly. Seller agrees to accept any such changes subject to this paragraph, and Seller shall promptly deliver a quote to Buyer for Buyer's written approval in the event of requested changes from Buyer relating to this order. Buyer may also cancel this order or any part hereof for cause upon written notice to Seller, and in such event, without limitation, Seller shall be liable to Buyer for any and all damages sustained by reason of the cause which gave rise to the termination. For purposes of the foregoing sentence "cause" shall include (i) delays in shipping, partial shipments, late delivery, late or improper performance, a delivery of defective or nonconforming goods or workmanship, a breach of any of Seller's warranties hereunder, or any other default or failure of compliance by Seller with the terms and conditions hereof, or (ii) the commencement or continuance of any bankruptcy or insolvency proceeding by or against Seller.
- Specifications and General Warranties.** By acceptance hereof, Seller shall be deemed to have inspected and approved all plans, drawings, and specifications applicable to the goods and/or services ordered hereunder. Seller expressly warrants that it will convey good title to all goods furnished hereunder and that all goods and/or services furnished hereunder will conform to all applicable Buyer specifications and professional standards in the industry, will be free from defects and non-conformances in material and workmanship; will be merchantable; and will be safe and appropriate for the purpose for which goods of that kind are normally used. If Seller knows or has reason to know the particular purpose for which Buyer intends to use the goods, Seller warrants that such goods will be fit for such particular purpose. Seller warrants that all services will be performed in a professional manner, in compliance with Buyer's specifications, in compliance with all applicable laws and regulations, and to Buyer's reasonable satisfaction. All warranties outlined herein are in addition to, and not in limitation of, any warranties which may be available to Buyer at law or equity. The warranties of Seller shall run to Buyer, its successors, assigns, and customers and users of products or services procured from Buyer. Seller hereby assigns to Buyer any warranties or guaranties provided by third party manufacturers or sellers of products incorporated into the goods or services provided by Seller hereunder and shall upon request enforce any such warranty or guaranty on behalf of Buyer. NO ATTEMPT BY SELLER TO DISCLAIM, EXCLUDE, LIMIT, OR MODIFY ANY WARRANTIES OR SELLER'S LIABILITY HEREUNDER SHALL BE OF ANY FORCE OR EFFECT.
- Defective or Nonconforming Goods or Services.** No goods or services received by Buyer pursuant hereto shall be deemed accepted until Buyer has had reasonable opportunity to inspect and/or observe performance of such goods or services. Buyer shall have access to and the right to inspect all work prior to its completion. Notwithstanding any such inspection, Seller shall be solely responsible for the conformance of the work to the specifications and otherwise full compliance with the warranties outlined herein. At Buyer's option, Seller shall either promptly refund amounts paid by Buyer for, or promptly replace or correct any defects identified in, any goods or services not conforming to any of Seller's warranties hereunder without further expense to Buyer (including without limitation, any return shipping expenses). In the event of a failure by Seller to promptly refund amounts paid for, or correct or replace, nonconforming goods or services as outlined, Buyer after reasonable notice to Seller may make such corrections or replace such goods or services and charge Seller for the costs incurred by Buyer in doing so without limitation of Buyer's other legal, equitable or contractual remedies as a result of Seller's delivery of defective or nonconforming goods or services.
- Price Warranty and Payment.** Seller warrants that the prices for the goods sold to Buyer hereunder are not less favorable than those currently extended to any other customer of Seller for the same or similar goods in similar quantities. If Seller reduces its price for such goods during the term of this order, Seller agrees to reduce the prices hereof correspondingly. Seller warrants that prices shown on this Purchase Order shall be complete and no additional charges or further charges of any type shall be added without Buyer's express written consent. Such additional or further charges include, but are not limited to, shipping, packaging, labeling, customer duties, taxes, insurance, storage, boxing and crating. Buyer's payment of undisputed amounts due will be made within sixty (60) days of receipt of proper invoice after delivery of the goods or completion of the services, as applicable. Delay in receiving invoices and errors and omissions on statements or invoices will be considered just cause for withholding payment without losing any applicable discount privileges. All claims for money due or to become due from Buyer shall be subject to deduction or set off by Buyer by reason of any counterclaim arising out of this or any other transaction with Seller.
- Delivery.** Time is of the essence respecting this order. In the event that the Seller shall fail to deliver any goods or perform any services on time, Seller shall reimburse Buyer upon demand for any and all loss, cost, damage, and expense which Buyer shall sustain as a result or in consequence of such failure. If in order to comply with Buyer's required delivery date it becomes necessary for Seller to ship by a more expensive way than specified herein, any increased transportation costs resulting therefrom shall be paid for by Seller unless the necessity for such costs has been specifically caused by Buyer. Seller shall notify the Buyer promptly of any likely delays in the performance of this order. No acceptance of goods or services after the scheduled delivery date will waive Buyer's rights with respect to such late delivery nor shall it be deemed a waiver of future compliance with the terms hereof. Risk of loss to any goods or services ordered hereunder shall rest with Seller until actual delivery of the goods or completion of the services, as applicable. Seller agrees to indemnify (as hereafter defined) Buyer from and against any and all loss, cost, damage, and expense which Buyer may incur relating to a loss of or damage to the goods or services while risk of loss rests with Seller. Notwithstanding the foregoing, Buyer or Seller may delay delivery or acceptance occasioned by unforeseen, unpreventable causes reasonably beyond its control and not due to the affected party's fault or negligence, provided that in such event the affected party shall use diligent, continuous efforts, promptly commenced, to address the force majeure situation and to minimize the extent, duration and effect of any resulting delay upon the other party.
- Legal Compliance.** Seller warrants and agrees that in the performance of its obligations hereunder, Seller, its agents, employees, carriers and subcontractors shall (a) comply with all applicable laws, ordinances, codes, rules, regulations and orders, including executive orders now existing or hereafter enacted, adopted or enforced by any governmental body or agency, including where applicable all such laws, ordinances, codes, rules, regulations and orders pertaining to labor and working conditions (including Executive Order 11246, the Rehabilitation Act of 1973, and the Vietnam Era Veterans' Readjustment Assistant Act of 1974), safety and health, food and drug quality, and hazardous materials; (b) apply for, obtain, and pay for all necessary permits and licenses, and pay applicable fees in connection therewith, and (c) pay promptly when due any and all applicable sales, excise, or other taxes due on materials furnished in connection with services performed, and all taxes and amounts due under applicable unemployment, social security, and worker's compensation laws.
- Indemnification.** Without limitation of Seller's other indemnification obligations hereunder, to the fullest extent permitted by law, Seller will defend, indemnify and hold harmless (collectively, "Indemnify") Buyer, its affiliates and their employees, agents, directors, members, customers, contractors or assigns buying or using the goods and/or receiving the services from and against any and all claims and actions (including without limitation, third party claims, and claims of unfair competition), demands, liabilities, losses, damages (including without limitation, bodily injury, death, property or other damage), fines, assessments, judgments, penalties, costs and expenses (including without limitation attorney's fees) (collectively, "Claims and Costs") in any way relating to the failure of Seller to perform its obligations in connection with this order or by any applicable law, regulation, or order, or arising out of or relating to any use, possession, transportation, consumption, or sale of the goods provided by Seller hereunder and/or any performance or receipt of the services provided hereunder, regardless of whether such Claims and Costs arise out of or relate to or are imposed by reason of negligence, strict liability, tort, contract, statute, ordinance, regulation, code, principles of equity or common law, or any other theory or remedy. Seller shall obtain and maintain adequate insurance to cover its liability under this order and shall provide copies of the applicable certificate(s) of insurance upon request of Buyer. Seller's obligations to indemnify Buyer under this order shall survive any delivery, acceptance or payment by Buyer.
- Confidentiality.** Seller agrees not to disclose to any person outside of its employ, nor to use for any purpose other than to fulfill its obligations under this Order, any drawings, designs, specifications, materials, packaging, tools, dies molds or engineering items, descriptions, customer lists, and/or any other materials, documents, data, items or information received by Seller from Buyer and which relates to this Order or which is developed hereunder (individually and collectively, "Information"), until such Information is made publicly available by Buyer. Upon completion or termination of this order, Seller agrees to return to Buyer upon request all Information and all materials or documents containing or referencing said Information, all of which Vendor acknowledges are the property of Buyer. Seller's obligations under this provision will survive any termination or completion of this order.
- Limitation on Buyer's Liability, Statute of Limitation.** In no event shall Buyer's liability to Seller arising from or in connection with, or otherwise respecting, the goods and services ordered hereunder for any reason and in connection with any claim asserted, directly or indirectly, exceed the amount specified on this order to be paid by Buyer for such goods and services hereunder. Any claim or action relating to an allegation of breach on the part of Buyer as to the goods and services delivered hereunder must be commenced within one (1) year after the termination of this order or otherwise the completion of the transactions contemplated hereby.
- General.** This Purchase Order and any documents referenced to on the face hereof constitute the entire agreement between the parties, and all prior agreements, written or oral, relating to the subject matter hereof are superseded by the terms hereof and merged herein. Such terms may be amended or modified only by a writing signed by both parties. The rights and obligations of the parties hereunder shall not be waived except in writing signed by the waiving party. Seller shall not assign, transfer or hypothecate this Purchase Order or any part hereof or any monies payable or to become payable hereunder without in each case obtaining the prior written consent of Buyer, which may not be unreasonably withheld. The provisions of this Purchase Order are severable and in the event any provision is held to be unenforceable, such provision shall be deemed modified to the extent (and only to the extent) necessary to be held valid while still reflecting the intention herein expressed, and the remaining provisions of this order shall not be impaired or affected in any way. It is understood that Seller is an independent contractor and not an employee or agent of Buyer and that Seller shall have no power whatsoever to bind Buyer in any way in any dealings between Seller and third parties and shall not attempt or purport to do so. Seller agrees to comply with the principles and requirements as set forth in the Buyer's Supplier code of Conduct ("The Rockwood Supplier Code of Conduct"). In the event the Seller is found to have violated the aforementioned code, Buyer reserves the right to discontinue its business relationship with the Seller. This Purchase Order and the contract created by the acceptance hereof are governed by and shall be construed in accordance with the laws of the state in which the goods are to be delivered or the services are to be performed without regarding the conflicts of laws principles thereof.