



Standard Purchase Terms and Conditions

Rev 2 9 09

1. APPLICABLE CONTRACT PROVISIONS.

- a. Valspar Sourcing, Inc. or any of its subsidiaries or affiliates (collectively “Buyer”) has previously communicated to you an offer to purchase a quantity of products or services (the “Materials”) at a defined price (“the Order”). The Order, which may be an oral communication or a written or electronic document, may have also included particular shipping instructions and/or other specifications required by Buyer for the products or services. These terms and conditions, together with the aforementioned Order, constitute an offer by Buyer to purchase from you (“Seller”) the described Materials pursuant to the terms and conditions described herein. This offer is not an acceptance or a confirmation of any previous offer or proposal from Seller, and this offer shall be deemed to be a rejection and counteroffer with respect to any previous offer or proposal from Seller. Acceptance of any shipment of the Materials shall not be construed as an acceptance of any such previous offer or proposal or an acceptance of any different or additional terms proposed by Seller.
- b. This offer shall become an “Agreement” upon acceptance by you. You shall be deemed to have accepted this offer by your commencement of production of the Materials for Buyer, by delivery of the Materials to Buyer, by your written acceptance or confirmation of this Agreement, or by any other act or communication constituting legal acceptance, whether or not any such acceptance or confirmation purports to state terms additional to or different from those stated herein. Buyer hereby expressly objects to and rejects any such additional or different provisions, and none of such provisions shall be deemed to be a part of the contract between the parties unless specifically agreed to in writing by Buyer.

2. SALE OF MATERIALS.

- a. Seller agrees to sell, transfer and deliver the Materials to Buyer for the purchase price set forth in the Order, subject to all of the covenants, terms and conditions hereof.
- b. Buyer agrees to purchase the Materials, subject to all of the covenants, terms and conditions hereof, and to pay Seller the purchase price set forth in the Order. Typographical and other clerical errors in any prices are subject to correction. Buyer shall have the right to cancel any future delivery of any Materials upon notice to Seller.
- c. Seller's agrees to obtain from Buyer a purchase order number for any and all orders of goods. Seller further agrees it will clearly reference the purchase order number on the applicable invoice(s). Seller acknowledges that invoices submitted to Buyer that do not clearly reference Buyer's corresponding purchase order number may be considered invalid by Buyer and may result in delayed payment. Seller further agrees that it will take no adverse action against Buyer for any invoices not paid resulting from Seller's failure to obtain purchase order numbers and clearly reference on the applicable invoice(s).

3. PURCHASE PRICE AND TERMS OF PAYMENT.

- a. Materials shipped against this Agreement shall be invoiced at the price set forth in the Order. Unless otherwise agreed to, payment of the purchase price shall be due sixty-days after the later of Buyer's receipt of Seller's invoice for such shipment or the date on which the Materials are received by Buyer.

Rev 5.09

- b. Unless agreed to otherwise, the purchase price for the materials shall include any taxes due with respect to the Materials. Buyer shall, however, pay for any taxes that it is statutorily required to pay. Seller shall provide Buyer with documentation satisfactory to Buyer that establishes Buyer's statutory liability to pay such taxes. If Seller fails to provide such documentation, Buyer shall not be obligated to pay any such taxes.
- c. Unless agreed to otherwise, Seller shall be responsible for all shipping and insurance costs, including without limitation, packing, crating and freight costs.
- d. Buyer may set off any amount owing at any time from Seller to Buyer or any of its affiliates against any amount payable at any time by Buyer in connection herewith.

4. **SHIPMENT, DELIVERY AND ACCEPTANCE.**

- a. Seller shall deliver the Materials F.O.B. to the place designated for shipment by Buyer in the Order. Seller shall follow any shipping instructions provided by Buyer and shall properly and carefully package the Materials to minimize the risk of damage in transit. Notwithstanding anything in the foregoing to the contrary, title to and risk of loss of the Materials shall pass to Buyer only upon receipt of the same by Buyer, and any rightful rejection or revocation of any Materials by Buyer shall immediately shift the risk of loss of such Materials, wherever located, to Seller. Seller agrees that any contrary provisions of Sections 2-509 and 2-510 of the Uniform Commercial Code shall not apply to this Agreement.
- b. Notwithstanding anything herein to the contrary, Buyer shall have a reasonable opportunity to inspect the Materials after the same have been delivered to Buyer's premises. Buyer shall not be deemed to have accepted any such Materials until the expiration of such reasonable time for inspection. The parties acknowledge and understand that Buyer may inspect any commercial lot of the Materials consisting of numerous units of the same product by inspecting only a reasonable sampling of such units and that Buyer may revoke acceptance of any other units of such commercial lot which Buyer at a later time discovers to be defective. Upon rejection or revocation of acceptance of any Materials, Seller promptly shall replace or correct, at Buyer's option, any unsatisfactory units at Seller's expense, including all shipping costs. Buyer's failure to inspect or reject Materials, or payment for Materials, shall not relieve Seller of any of its obligations hereunder or constitute a waiver of any of Buyer's rights hereunder.

5. **WARRANTY PROVISIONS.**

- a. Seller hereby warrants to Buyer that, in addition to any and all express warranties and implied warranties provided under the Uniform Commercial Code, (i) the Materials shall be free from defects in materials and workmanship, and shall be merchantable and fit for their particular purpose; (ii) the Materials shall conform to all specifications and drawings provided by Seller and to any other specifications agreed upon between the parties; (iii) the Materials when shipped shall be free from all liens, security interests and encumbrances of any type whatsoever; and (iv) the Materials shall be manufactured, produced, furnished and delivered to Buyer in full and complete compliance with all applicable laws and regulations, including, without limitation, the Robinson Patman Act, the Fair Labor Standards Act of 1938 as amended by Executive Order No. 11246 (Equal Employment Opportunity) Executive Order No. 11458 and 11625 (Utilization of Minority Business Enterprises), Executive Order No. 11701 (Listing of Job Openings for Disabled Veterans and Veterans of the Vietnam Era), Executive Order No. 11758 (Employment of the Handicapped), the Hazardous Materials Transportation Act of 1975, the Federal Hazardous Substances Act, the Federal Poison Prevention Packaging Act of 1970, the Occupational Safety and Health Act of 1970, the Toxic Substances Control Act and all rules, regulations, standards and rulings promulgated or issued thereunder, as from time to time amended, modified and/or superseded. Seller further agrees to execute upon Buyer's request, a certificate of compliance regarding subsection (iv) above.

- b. Seller shall give Buyer reasonable advance written notice of any production change related to the Materials, including but not limited to any change in the manufacturing process, formulation, raw materials or production location. For any change that could affect performance of the Materials, Seller shall complete any reasonable qualification process(es) of Buyer and address Buyer's concerns about the change.
- c. Seller agrees to indemnify Buyer and hold it harmless from and against any and all liabilities, costs, losses or expenses, including reasonable attorneys' fees, incurred or suffered by Buyer as a result of or in connection with Seller's breach of any of its obligations hereunder.

6. **DEFAULT.**

- a. Seller shall be deemed to be in default hereunder if it violates any of the terms hereof or fails timely to perform any of its covenants, duties or obligations hereunder, or if it performs or fails to perform any other act, whether pursuant to agreement or otherwise, which gives Buyer reasonable grounds to feel insecure with respect to Seller's future performance hereunder.
- b. Upon default by Seller hereunder, Buyer may exercise any or all of the following rights and remedies, in addition to such other rights and remedies as may be provided hereunder or under applicable law: (i) Reject or revoke acceptance of any or all of the Materials, whether not such Materials are defective and whether or not the condition of delivery thereof otherwise relates to, pertains to, concerns or gives rise to such event of default; and/or (ii) Terminate this Agreement without any obligation whatsoever with respect to Materials not yet delivered to Buyer at the time of such termination. Buyer's decision to pursue any one such remedy shall not be deemed to be an election not to pursue any other remedy at the same time or at any other time.

7. **GENERAL PROVISIONS.**

- a. Seller agrees to indemnify and hold Buyer harmless from and in respect of any damages, losses or expenses which Buyer may suffer or incur (including reasonable attorneys' fees) arising out of, relating to or concerning any claim, action or allegation that any of the Materials (or the use of same in an intended manner) infringes any patent or similar rights claimed by a third party; provided that Buyer shall notify Seller in writing of any such claim, act or allegation promptly after learning of the same and shall assist and cooperate in the defense or settlement thereof. Such defense or settlement shall be at Seller's sole expense, and Seller shall pay all damages and costs finally awarded against Buyer as a result of any such suit or proceeding.
- b. This Agreement shall constitute the complete understanding and contract between Seller and Buyer with respect to the subject matter hereof and supercedes any prior written or oral understandings with regard thereto.
- c. Time is of the essence in Seller's performance. No purported amendment, modification or waiver of any provision of the Agreement or resulting contract shall be binding on Buyer unless set forth in a written document signed by an authorized representative of Buyer. Any waiver shall be limited to the circumstance or event specifically referenced in the written waiver document and shall not be deemed a waiver of any other term of the contract between Seller and buyer or of the same circumstance or event upon any recurrence thereof. Seller may not assign any of its rights or obligations without Buyer's prior written consent.
- d. If any provision hereof is held to be unenforceable by the final order of any court of competent jurisdiction, such provision shall be severed herefrom and shall not affect the interpretation or enforceability of remaining provisions hereof.
- e. This Agreement and the resulting contract between the parties shall be governed by and interpreted in accordance with the laws of the State of Minnesota.
- f. All information, drawings, material, goods, equipment, apparatus or documents disclosed or delivered to Seller by Buyer or arising from work or services done for Buyer, and also all

knowledge of any business relationship between Seller and Buyer, shall be treated by Seller as confidential proprietary information of Buyer and shall not be disclosed or made available to others by Seller without prior permission of Buyer. Seller also agrees not to use any of such information, drawings, material, goods, equipment, apparatus or documents for the manufacture or production of products or components for any other party or for Seller. Such obligation shall not apply to any information, material, goods, equipment or apparatus which Seller establishes (a) is already known to Seller at the time of its receipt from Buyer as shown by Seller's records, (b) is or subsequently becomes available and accessible to the public through no fault of Seller, or (c) is disclosed to Seller by a third party on a non-confidential basis.

- g. The title to any tangible property, including but not limited to material, goods, equipment, apparatus, documents, and literary property (e.g., drawings, manuscripts, artwork, motion pictures, video programs, and computer software), provided Seller by Buyer or produced by Seller in submitting a bid or estimate or in carrying out an Order for Buyer shall be vested in Buyer, and Seller agrees to return or deliver such tangible property to Buyer upon request. Seller hereby expressly assigns to Buyer all copyrights in and to any literary property produced by Seller for Buyer.
- h. In the event the Agreement relates to consulting services, the Seller shall be considered a consultant and every work or idea created or acquired by or on behalf of the Seller for Buyer (past and future) shall be considered a "work made for hire" on behalf of the Buyer. It is the intent of the parties that Buyer shall have unrestricted ownership in and to all such works and to any derivative works, without further compensation of any kind to the Seller. To the extent that the law would fail to automatically vest in Buyer the full unrestricted ownership of all such works under "work for hire" treatment or similar concepts, the Seller hereby assigns to Buyer the copyright and any and all other rights in and to ever such work including any derivatives, and the Seller waives any claim of moral right that it may have in or in connection with such work.