

PURCHASE ORDER TERMS AND CONDITIONS BelGan

- Acceptance-Agreement:** Seller's acknowledgment of this purchase order or commencement of performance, whichever occurs first, constitutes acceptance of this purchase order and all of its terms and conditions. Buyer hereby objects to any terms proposed in Seller's acceptance or acknowledgment of Buyer's offer which add to, vary from, or conflict with the terms of this order. Any such proposed terms shall not operate as a rejection of this order but are deemed a material alteration, and this offer shall be deemed accepted by the Seller without said additional or different terms. If the purchase order is deemed an acceptance of a prior order by Seller, such acceptance is expressly limited to the terms contained on the front and back of this order.
- Price:** Seller will furnish the goods or services at the prices stated in this purchase order. The articles shipped or work performed against this order must not be invoiced at a higher price than shown on the face of this order without the written consent of Buyer. The invoice must include purchase order number, item number, description of items, sizes, quantities, a payment term of 60 calendar days, custom tariff code, unit prices, and extended totals and must itemize transportation charges (including foreign inland freight and insurance) and taxes separately, if applicable. No charge will be allowed for packing, labeling, commissions, customs duties, storage, crating, or express handling unless indicated on this order. Seller represents that the prices to be charged to Buyer for goods and/or services ordered herein are not in excess of prices charged by Seller to other customers for similar quantities and delivery requirements. If at any time before full performance of an order Buyer notifies Seller in writing that Buyer has received a written offer from another supplier for similar goods at a price lower than the price set forth in this order, Seller must immediately meet the lower price for any undelivered goods. If Seller fails to meet the lower price, in addition to other rights or remedies, Buyer, at its option, may terminate the balance of any applicable order without liability.
- Confidential/Proprietary Information:** Any information or data furnished by Buyer to Seller under this order in the form of specifications, drawings, reprints, technical information, equipment prototypes, forecasts, schedules, or other technical or business information shall be deemed Buyer confidential proprietary information, shall remain Buyer's property, shall be kept confidential, and shall be promptly returned to Buyer at Buyer's request. Seller shall hold in confidence and Seller shall not disclose such information or data except to its own employees or agents as required in the performance of their duties without Buyer's written permission. Seller shall not use such information or data for any purpose other than performing this order. Nothing contained in this purchase order limits a party from filing a truthful complaint, or the party's ability to communicate directly to, or otherwise participate in either: (i) any investigation or proceeding with any government agency alleging a securities law violation, waste, fraud, or abuse; or (ii) an investigation or proceeding that is protected under any whistleblower provision of any applicable laws or regulation. Unless otherwise agreed in writing, no commercial, financial or technical information disclosed in any manner or at any time by Seller to Buyer shall be deemed secret or confidential.
- Warranties:** Seller warrants to Buyer that all goods or services provided under this order shall be merchantable, free from defects in material and workmanship, of the highest quality, and shall conform to all applicable specifications and appropriate standards. Where design is Seller's responsibility, Seller warrants the goods or services shall be free from defects in design. If Seller knows or has reason to know the particular purpose for which Buyer intends to use the goods or services, Seller warrants that such goods or services shall be fit for such particular purpose. Seller further warrants that the goods are wholly new and contain new components and parts throughout and that Seller has good and warrantable title to the goods free and clear of all liens. Seller warrants that all goods or services and the sale thereof do not, and the use of such goods and services for their ordinary intended purpose as well as any special purpose specified, will not constitute infringement or contributory infringement of any patent, or infringement of any copyright, mask work or trademark, or violation of any trade secret. Seller shall indemnify and hold Buyer harmless for all damages arising out of any breach of these warranties. In addition to the warranties above, Seller shall extend all warranties it receives from its vendors to Buyer, and to Buyer's customers. If any goods delivered hereunder do not meet the warranties specified herein and/or otherwise applicable, Buyer may, at its option, and, in addition to all other remedies available under applicable law, (i) require Seller to correct at no cost to Buyer, any defective and/or nonconforming goods by repair or replacement, or (ii) return such defective and/or nonconforming goods at Seller's expense to Seller and recover from Seller the order price thereof, or (iii) correct the defect and/or nonconforming goods itself and charge Seller with the cost of such correction. Breach of the warranties in this provision, or any other term of the order, shall entitle Buyer to all available remedies under applicable laws and regulations. These warranties will survive any inspection, delivery, acceptance by Buyer of the goods or service.
- Termination**
- Buyer may terminate this order without liability if Seller commits a material breach.**
- Buyer may terminate all or any part of this order at any time for its convenience upon written notice to Seller. Buyer will pay a reasonable termination charge based on a percentage of the order price reflecting the percentage of work performed by Seller prior to termination. Any claim for payment of such termination charges will be waived unless submitted in writing to Buyer for review within thirty (30) days of receipt of written notice of termination.**
- Buyer shall have the right to audit all elements of any termination claim, and Seller shall make available to Buyer on request all books, records and papers relating thereto. Late deliveries, deliveries of products which are defective or which do not conform to this order, failure to perform as agreed and failure to provide reasonable assurances of future performance upon request, insolvency and/or adjudication of bankruptcy of Seller, the filing by Seller of a voluntary petition in bankruptcy, and/or entering into an individual or collective arrangement with one or more creditors by Seller shall all be reasons allowing Buyer to terminate this order for cause. In such event Seller shall be liable for any damages (or at Buyer's option, specific performance) due to Seller's breach or default.**
- Intellectual Property Indemnity:** By acceptance of this order, Seller agrees to indemnify, hold harmless and defend Buyer against all demands, claims, judgments, decrees, costs and expenses, and attorney's fees incident to any proceeding which may be brought against Buyer or its agents, distributors, customers, or other vendors based on a claim of alleged copyright, trademark, mask work right, trade secret or patent infringement, as well as for an alleged claim of unfair competition resulting from similarity in design, trademark or appearance of goods or services furnished under this order, unless the goods or services are of Buyer design or formula, and Seller agrees that it will, upon request of the Buyer and at Seller's own expense, defend or assist in the defense of any action which may be brought against Buyer or its agents, distributors, customers, or other vendors for such infringement or claimed infringement or alleged claim of unfair competition. Buyer agrees to notify Seller promptly upon receipt of notice of infringement or information of such a suit having been filed. If the goods or services provided or any part or use thereof are held to constitute infringement and the use enjoined, Seller shall promptly and at its own expense either: (i) procure for Buyer the right to continue using the goods or services, or (ii) replace such with satisfactory non-infringing goods or services, or (iii) modify the goods and services in a way satisfactory to Buyer so as to be non-infringing.
- Insignia:** If any goods are rightfully rejected or not purchased by Buyer which utilize Buyer's name, trademarks, trade names, insignia, symbols, or decorative designs, Seller shall remove same prior to any sale, use or disposition thereof.
- Materials, Tools and Equipment:** All tools, equipment, dies, gauges, models, drawing or other materials paid for or furnished by Buyer for the purpose of this order shall be and remain the sole property of Buyer. Seller shall safeguard all such property while it is in Seller's custody or control, be liable for any loss or damage to such property, at Buyer's option procure adequate insurance, use it only for Buyer's orders, and return it to Buyer upon request. Any such property described above whether furnished or ordered by Buyer and which may be in an unfinished state may be removed from Seller's premises or the premises of subcontractors upon request without further action or bond. In the event that Buyer removes such property that is not finished, Buyer will pay Seller a percentage of the order price that corresponds to the percentage of completion. Seller agrees to waive and hereby does waive any lien it may have in regard to such property and ensure subcontractors do the same.
- Indemnification:** Seller shall defend, indemnify and hold Buyer harmless against all damages, claims or liabilities and expenses (including attorney's fees) arising out of or resulting in any way from any defects of any kind in the goods or services purchased under this order, or from any act or omission of Seller, its agents, employees or subcontractors. This indemnification shall be in addition to all other obligations of Seller under this order.
- Changes:** Buyer shall have the right to make changes in this order at any time for its convenience upon written notice to Seller. Such changes shall be subject to an equitable adjustment in the performance schedule or purchase price, based on reasonable and unavoidable costs incurred by the Seller prior to notice of the change. Any claim of Seller for an adjustment will be waived unless submitted in writing to Buyer for review within thirty (30) days of the Buyer change notice.
- Inspection:** Seller's facilities, equipment, goods and services purchased under this order are subject to Buyer's inspection, test and acceptance. Payment for the goods and services delivered shall not constitute acceptance. Goods and services shall only be deemed accepted when they have actually been counted, inspected, and tested by Buyer and found to be in conformance with the order. Goods rejected and/or goods supplied in excess of those ordered or delivered in advance of the delivery schedule may, in addition to Buyer's other rights, be returned to Seller at its expense, including all expenses of unpacking, examining, repackaging and reshipping such goods. Any item Buyer requires to be corrected shall be replaced or corrected by and at the expense of Seller promptly after notice. If, after being requested by Buyer, Seller fails to promptly replace or correct any defective item within the delivery schedule, Buyer may replace or correct such item and charge to Seller the cost occasioned thereby, may, without further notice, terminate this order for default, or may require an appropriate reduction in price. If Buyer receives goods or services with defects or nonconformity whether or not apparent on inspection, Buyer reserves the right to require a refund or replacement as well as transportation costs and payment of damages. Nothing contained in this purchase order shall relieve Seller from the obligations of testing, inspection and quality control.
- Packing, Delivery and Shipment:** All goods shall be packed and shipped in accordance with instructions or specifications on this order and in accordance with all applicable regulations. In the absence of any such instructions or regulations Seller shall comply with the best commercial practice to ensure safe arrival at destination at the lowest transportation cost. TIME IS OF THE ESSENCE ON THIS ORDER. If goods are not delivered or services are not provided by the date specified, Buyer may terminate, without liability, this order as to items not yet shipped or services not yet rendered, by notice effective upon receipt by Seller. In such instance, Buyer may purchase substitute items or services elsewhere and charge Seller with any loss incurred. In order to comply with Buyer's required delivery date it becomes necessary for Seller to ship by a more expensive method than specified in this purchase order, Seller shall pay any increased transportation costs, unless the necessity for such rerouting or expedited handling has been caused by Buyer.
- Safety Data Sheets:** In relation to the chemicals purchased under the terms and conditions of this order, the Seller agrees to comply with all applicable chemical regulations, including but not limited to Regulation (EC) No 1907/2006 on the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH), Regulation (EC) No 1272/2008 on the classification, labelling and packaging of substances and mixtures (CLP Regulation), Regulation (EU) No 528/2012 concerning the making available on the market and use of biocidal products (BPR), Regulation (EC) No 1005/2009 on substances that deplete the ozone layer, Regulation (EU) 649/2012 concerning the export and import of hazardous chemicals, and Regulation (EU) No 2019/1021 on persistent organic pollutants (POPs Regulation).
- Safety, Security, Insurance:** If this order includes services or work to be performed on Buyer's premises, Seller agrees to indemnify Buyer from all loss or damage arising out of such work, to observe the highest safety standards, to adhere to all Buyer work rules, safety standards and security requirements, to maintain insurance satisfactory to Buyer and to furnish evidence of such insurance at Buyer's request.
- Compliance with Laws:** Seller represents and warrants that it shall perform all activities required under this purchase order in compliance with all applicable international, national, state and local laws, orders, rules and regulations. Seller shall indemnify Buyer against any liability caused by any noncompliance with this provision.
- Import / Customs:** All goods, unless specifically exempted by the destination country's governing authorities, must be marked with the country of origin (manufacture) of the goods in a conspicuous place as legibly, indelibly, and permanently as the nature of the article or container permits. The Seller will provide Buyer with a commercial invoice containing the following information: (1) port of entry; (2) names of Seller and Buyer entity purchasing the merchandise; (3) name of shipper (if different from Seller); (4) country of export; (5) detailed description of merchandise; (6) quantities and weights; (7) actual purchase price, including all elements of the amount paid or payable by Buyer; (8) the currency in which the sale was made; (9) all charges, costs and expenses associated with the merchandise, including freight, insurance, commission, containerization and packing, unless the cost of packing, containerization and inland freight are already included in the invoice price; (10) all rebates or discounts; (11) the country of origin (manufacture) of the goods; (12) all goods or services furnished for the production of the merchandise (e.g., "assistants") not included in the invoice price for the first shipment of goods unless Buyer directs otherwise in writing; and (13) harmonized tariff schedule (HTS) number, integrated tariff number of the European Union (TARIC), or any other tariff number applicable to the relevant region, and the description according to HTS, TARIC or any other applicable regulation for each itemized good on the invoice; and (14) any other documents or information Buyer may require to comply with international trade regulations or to lawfully minimize duties, taxes, and fees. Seller agrees to comply with all laws and regulations governing the importation of goods into the United States Customs Territory, European Union Customs Union and any other customs region.
- Anti-corruption:** Any services performed by Seller on behalf of Buyer shall be in compliance with all anti-corruption laws, including Articles 246-252, 504bis and 504ter of the Belgian Criminal Code, the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act and any applicable local anti-corruption laws. Such compliance includes a commitment not to pay or offer to pay, or authorize the direct or indirect payment, of any money, gift, or anything of value to any person for the purpose of influencing any act or decision of such person in order to obtain an improper business advantage. Compliance also includes a commitment to not falsify any record.
- Forced, Indentured And / Or Convict Labor:** Seller represents that the goods and services covered by this purchase order, or components thereof, are not produced, manufactured, mined, or assembled in whole or in part with the use of forced, convict, and/or indentured labor.
- Dispute Resolution:** Both parties agree that any claims or disputes, except for claims or disputes relating to intellectual property, will be submitted to nonbinding mediation prior to initiation of any formal legal process. Costs of mediation will be shared equally.
- Patent and Copyright:** Seller, as partial consideration for this order and without further cost to Buyer, hereby grants and agrees to grant to Buyer (and to the extent practiced by Buyer, to the government) an irrevocable, nonexclusive, royalty-free right and license to use, sell, manufacture and cause to be manufactured products embodying any and all inventions and discoveries made, conceived and/or actually reduced to practice in connection with the goods or services provided by Seller and the performance of this order. If Buyer requests, and/or performance by Seller (and/or any subcontractor of Seller) requires and/or encompasses the creation of any original work of authorship fixed in any tangible medium of expression (and/or the creation of any derivative work thereof), Seller transfers and assigns to Buyer all rights of ownership under the copyright laws to such original work and/or derivative work. Seller agrees to notify each subcontractor performing any such work hereunder of the content of this provision, and to secure the written agreement thereto of each subcontractor.
- Limitation of Liability:** IN NO EVENT SHALL BUYER BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IN CASE THESE WERE FORESEEABLE. BUYER'S TOTAL LIABILITY FOR DAMAGES ARISING DIRECTLY OR INDIRECTLY UNDER THIS ORDER SHALL NOT EXCEED THE PURCHASE PRICE OF THE GOODS OR SERVICES THAT ARE THE SUBJECT MATTER OF THE CLAIM.
- General:** This purchase order and any documents attached to or referred to on this order constitute the entire agreement between the parties and, save as otherwise provided herein, can only be modified in writing signed by authorized representatives of both parties. No part of this order may be assigned or subcontracted without the prior written approval of Buyer. All claims for money due or to become due from Buyer shall be subject to deduction or set off by Buyer for any counterclaim arising out of this or any other transaction with Seller. Buyer's failure to enforce or insist on performance of any of the terms or conditions in this order shall not operate as a waiver of that or any other right. Buyer has the right to audit compliance with the provisions of this order at any time upon reasonable notice to Seller. Press releases, exhibitions and/or advertising of any kind naming Buyer and/or regarding this order shall not be made by Seller without the prior written consent of Buyer. This purchase order shall be governed by the laws of Belgium, excluding its conflicts of laws rules. The UN Convention on Contracts for the International Sale of Products (Vienna, 1980) shall not apply to this Agreement or to any dispute or transaction arising out of this Agreement.
- Business Continuity:** Throughout the duration of this order, Seller will have in place a business continuity management process, and will make it available to Buyer for review within 10 days after Buyer's request. Seller's business continuity management process will include a business continuity plan which outlines Seller's policies and procedures of preparedness for maintaining service, consistency and recoverability in the event of any direct or indirect disruption of production, performance or service.
- Language and Translation:** This Agreement shall be executed in the English language only and no translation shall be considered in the interpretation hereof.