

## **PURCHASE ORDER TERMS & CONDITIONS**

"BUYER" MEANS MAR-BAL, INC. "SELLER" MEANS THE PARTY SELLING THE PRODUCTS TO BUYER.

BY SELLING PRODUCTS TO BUYER, SELLER CONFIRMS THAT THE FOLLOWING TERMS AND CONDITIONS ("the Std Terms") APPLY TO BUYER'S PURCHASE. ANY MODIFICATIONS MUST BE IN WRITING AND SIGNED BY BUYER. THE TERM "PRODUCTS" ALSO INCLUDES THE TERM SERVICES, WHERE APPLICABLE.

### **1. TERMS AND CONDITIONS OF PURCHASE**

a. Any Products Buyer purchases from Seller by paper, electronic means, phone, pager or any other form of transmission, are purchased subject to the following: (i) if Seller already has a fully signed separate purchase agreement currently in effect with Buyer, then the terms of that agreement, together with any terms and conditions of Buyer's applicable purchase order with the effect provided in that separate agreement, constitute the complete agreement; and (ii) if Seller does not already have a fully signed separate purchase agreement with Buyer, then the terms and conditions of Buyer's applicable purchase order constitute the complete agreement. The complete agreement as defined in this Section 1 is referred to as the "Purchase Agreement."

b. Seller may not assign or subcontract its obligations under the Purchase Agreement without prior written consent of Buyer, and if Seller does so, the assignment or subcontract will not be enforceable against Buyer.

c. The Purchase Agreement is governed by, and will be interpreted under the substantive laws of the State of Ohio.

### **2. PRICING; PAYMENT**

a. Unless otherwise provided in writing, prices are (i) stated in U.S. dollars, and (ii) not subject to increase for the duration of the Purchase Agreement. No extra charges of any kind will be allowed without Buyer's specific written agreement.

b. Unless prohibited by law, Seller will separately indicate on its invoices any taxes or other governmental charges imposed on the sale or delivery of Products.

c. Unless otherwise provided in the Purchase Agreement, payment will be net 60 days after the later of (i) the date of Buyer's receipt of a proper invoice, or (ii) the date of Buyer's receipt of product at its location as provided in the purchase order, as applicable.

d. Seller warrants that it is selling Buyer at the lowest prices and upon the most favorable terms (including, without limitation, volume, quality and/or payment terms) that it offers any buyer for Products of the same or similar quality as that provided for in the Purchase Agreement. If, during the term of the Purchase Agreement, Seller makes an offer to sell any similar Products to a third party at a lower price or upon one or more terms that are more favorable than the price or terms then applicable under the Purchase Agreement, an equivalent reduction or modification of Buyer's terms under the Purchase Agreement will automatically apply as of the earliest date Seller sold at a lower price or on more favorable terms.

e. Buyer will be responsible for all sales, use, and similar taxes (excluding taxes based on or measured by the net income, commercial activity, net worth or gross receipts of Seller) imposed as a result of the sales of Products. With notice to Seller, Buyer may pay such taxes directly to the taxing authority where allowed by law. Seller shall remit all taxes paid to Seller by Buyer to the appropriate taxing authority. Upon Buyer's request, Seller will provide written evidence that Seller is properly licensed to collect the taxes paid by Buyer and that Seller has remitted taxes to the appropriate taxing authority.

### **3. TRANSPORTATION; DELIVERY**

a. Delivery dates are firm and TIME IS OF THE ESSENCE. Seller will use all commercially reasonable efforts to meet the Delivery Request Date and will promptly notify Buyer in writing if Seller anticipates difficulty in meeting a Delivery Request Date. Buyer is not obligated to accept deliveries that are not made on the Delivery Request Date. If Seller fails to meet a Delivery Request Date, Buyer may procure replacement Products without obligation to purchase the products which are late. Seller will be responsible for all of Buyer's costs incurred as a result of early or late deliveries and procurement of replacement Products.

b. Unless otherwise provided in writing, delivery will occur and title and risk of loss will transfer, when the product arrives at Buyer's designated location.

### **4. INSPECTION**

Buyer may inspect and test all Products and materials, equipment and facilities used by Seller in producing Products for Buyer. Seller will maintain an inspection and testing system for its Products sold that is acceptable to Buyer and will keep records of all inspection and testing data and, with respect to Products, samples of each lot shipped, for two (2) years after delivery. Unless otherwise agreed by Buyer

in writing, Seller will deliver to Buyer a certificate of analysis as to specifications required by Buyer with respect to each product lot shipped.

## **5. WARRANTIES**

a. Seller warrants that all Products will be: (i) free of any claims by third parties; (ii) in strict accordance with the specifications, samples, drawing or other descriptions approved by Buyer; (iii) free from defects; and (iv) to the extent that Buyer relies on Seller to specify the Products, fit for their intended purpose.

b. Seller further warrants that all services will be performed in accordance with the standards of care and diligence normally practiced by persons performing similar services and in the best workmanlike manner.

c. With each Product delivered Seller will deliver to Buyer a certificate of analysis confirming the conformance to specifications approved by Buyer with respect to each product lot shipped.

d. The above warranties will be in effect for a period of eighteen (18) months after the date of Buyer's receipt of Products by Buyer. If any Products fail to conform to the above warranties Seller, at Buyer's option, will: (i) with respect to Products, replace or repair the nonconforming Products; (ii) with respect to services, re-perform all services necessary to correct any such nonconformity; or (iii) refund the purchase price of the nonconforming Products or services, plus any related costs incurred by Buyer.

## **6. QUANTITY TERMINATION; ORDER CHANGES**

a. Buyer may, by written notice to Seller, terminate its purchase of any quantity of Products (i) for convenience, (ii) if Seller fails to complete or deliver any portion of Product when required, or (iii) if Seller is in breach of any material term of the Purchase Agreement in accordance with Section 16.

b. If termination for convenience, Buyer will pay Seller termination charges equal to the cost of materials and labor incurred (and not otherwise mitigated) on ordered Products prior to the date of Buyer's termination notice; provided Seller takes all commercially reasonable steps to mitigate its costs. Seller must notify Buyer of the actual termination charges within ten (10) days after termination.

c. If termination is due to breach of any material term of the Purchase Agreement (including delivery times), no termination charges will apply and Buyer may procure substitute Products or Services and Seller will be liable to Buyer for any excess costs incurred by Buyer.

d. Prior to shipment or completion, Buyer may request changes with respect to the Products to be provided, including, changes in shipping, packing, time or place of delivery and changes in ordered quantity. Seller will promptly notify Buyer of any resulting increase or decrease in cost and Buyer and Seller must agree on any price adjustment before implementing any change. All changes and adjustments must be confirmed and mutually agreed to in writing by both parties or are not enforceable.

## **7. COMPLIANCE WITH LAWS**

a. Seller certifies and covenants that: (i) Seller will comply with all applicable laws, rules, regulations, orders or other pronouncement of any government or quasi-governmental authority in performing its obligations under the Purchase Agreement, including environmental, health and safety, immigration customs and employment.

b. From time to time, at Buyer's request, Seller shall provide certificates to Buyer relating to compliance with any applicable legal requirements, including ROHS, REACH, NAFTA, county of origin and other reasonable requests of Buyer.

## **8. CONFIDENTIAL INFORMATION; OWNERSHIP OF DOCUMENTS & MATERIALS**

a. Seller will treat as confidential and not disclose any information received from Buyer ("Buyer Info") in connection with the Purchase Agreement other than to its employees or agents with a need to know in order to perform the Purchase Agreement or other disclosure authorized by Buyer in writing. Seller will use Buyer Info only as necessary to perform its obligations under the Purchase Agreement. Upon termination of Purchase Agreement, all Buyer Info will be returned to Buyer, or at Buyer's option, destroyed by Seller. Seller will not make any announcement or release any information concerning the Purchase Agreement to any other person or entity without Buyer's prior written consent, except as required by law.

b. All drawing, models, specifications and other documents and materials prepared by Seller in connection with the Products supplied under the Purchase Agreement are deemed to be Buyer Info and will become Buyer's property and be delivered to Buyer, as part of the consideration of the Purchase Agreement, upon (i) completion, abandonment or postponement, or delivery of the Product or (ii)

termination of the Purchase Agreement. Seller hereby assigns any and all rights that it has in and to all such documents, materials and Buyer Info to Buyer.

## **9. INTELLECTUAL PROPERTY INFRINGEMENT**

Seller represents and warrants that the sale or use of the Products provided to Buyer will not infringe or contribute to the infringement of any patents, trademarks, or copyrights anywhere in the world. If any product, service, or part thereof is held to constitute an infringement, Seller, at its expense, will obtain for Buyer a license to use the item or service, or replace or modify the same, in a manner satisfactory to Buyer, so as to avoid the infringement. Seller will not assert any of its patent or other intellectual property rights against Buyer or Buyer's affiliates or customers worldwide in connections with any use of Products provided under the Purchase Agreement.

## **10. QUALITY**

Seller will not change the manufacturing process, raw materials or proportions of raw materials used in Products unless Seller notifies Buyer in writing of the change at least one hundred eighty (180) days before its implementation and Buyer agrees to the change in writing. Seller will be liable for all losses and damages that Buyer may suffer if Seller does not comply with the requirements of the preceding sentence. At Buyer's request, Seller will provide free samples of Product with the proposed change to test in Buyer's manufacturing.

## **11. CUSTOMS AND TRADE**

a. Unless otherwise agreed by Buyer in writing, Buyer will not be a party to the importation of Products. All purchases under the Purchase Agreement will be consummated subsequent to importation, prices will be inclusive of all duties and other costs of customs clearance. Seller will not take any action that would cause Buyer to be shown as "importer of record" on any customs declaration. In any case where Buyer agrees to be the importer of record, Seller will provide all information needed to affect customs entry into each country into which the Products are to be imported.

b. Seller will provide such documentation and other assistance as Buyer may request to allow Buyer to claim drawback of duties and taxes on Products or articles manufactured from Products provided under the Purchase Agreement.

c. Seller will accurately indicate the country of origin of the Products on the customs invoice and other applicable documentation. Seller will provide certificates of origin relating to such Products within the

meaning of the rules of origin of the NAFTA preferential duty provisions and execute such other documents as may be necessary for Buyer to claim duty preference under any applicable programs.

## **12. SERVICES/LIENS; SITE RULES; INSURANCE**

a. Seller will obtain from all of its subcontractors waivers and releases of all liens which may be imposed by them against the Products or Buyer's premises or the improvements thereon, and Seller will defend, indemnify, and hold harmless Buyer with respect thereto.

b. Prior to performing any services on Buyer's premises, Seller will obtain, and thereafter maintain at all times, the following minimum insurance coverages: (i) Worker's Compensation insurance as required under the applicable laws of the jurisdiction in which the services are to be performed; (ii) Employers' Liability insurance as required under the applicable laws of the jurisdiction in which the services are to be performed, with minimum coverage of \$1,000,000; (iii) Comprehensive General Liability insurance with minimum coverage of \$2,000,000 for bodily injury and property damages; (iv) Automobile insurance for owned or hired vehicles covering bodily injury, death and property damage, with minimum coverage of \$1,000,000 per occurrence and in the aggregate and (v) Additional Umbrella Coverage with minimum coverage of \$5,000,000. All required insurance must be with companies licensed in the jurisdiction in which the services are performed and acceptable to Buyer.

c. Seller in rendering any services on Buyer's premises, is an independent contractor and that neither Seller nor any principal, partner, agent or employee of Seller is the legal representative of Buyer and has no right or authority to assume or create, by action, in writing or otherwise, any obligation of any kind, express or implied, in the name of or on behalf of Buyer. Neither Seller nor any principal, agent or employee of Seller is entitled to or be eligible to participate in any benefit program extended by Buyer to its employees.

d. All Sellers' employees provided services under the Purchase Agreement must be authorized to work in the jurisdiction where the services are performed.

## **13. INDEMNIFICATION**

Seller will fully defend, indemnify, hold harmless and reimburse Buyer, its officers, directors, shareholders, employees, agents, customers and assigns from and against all claims, suits, action, proceedings, damages, losses and expenses, including attorneys' fees, arising out of, related to, or resulting from: (i) any breach of any representation, warranty, certification, covenant or agreement

made by Seller in the Purchase Agreement; (ii) any negligence or willful misconduct of Seller, or its agents or subcontractors in connection with performance under the Purchase Agreement; (iii) any litigation, proceeding or claim by any third party relating to the obligations of Seller under the Purchase Agreement; and (iv) Seller's use, control, ownership, or operation of its business and facilities, except to the extent caused by the negligence of Buyer. Seller agrees to include this clause in any subcontracts issued hereunder.

#### **14. BUYER'S PROPERTY**

Unless Buyer otherwise agrees in writing, all tools, equipment or other materials furnished to Seller by Buyer are the personal property of Buyer. Seller will adequately identify Buyer's property and safely store it separate and apart from Seller's property. Seller will not substitute any property for Buyer's property and will use such property only for fulfilling its obligations under the Purchase Agreement. While in Seller's custody or control, Buyer's property will be held at Seller's risk and kept fully insured by Seller.

#### **15. FORCE MAJEURE**

a. Any non-performance or delay in performance of any obligation of Seller or Buyer under the Purchase Agreement will be excused to the extent such failure or non-performance is caused by "Force Majeure." "Force Majeure" means any cause preventing performance of an obligation under the Purchase Agreement which is beyond the reasonable control of the Seller or Buyer, and which, by the exercise of due diligence, could not be overcome, including without limitation, fire, flood, sabotage, shipwreck, embargo, explosion, strike or other labor trouble, accident, riot, acts of a government authority, and acts of God. In no event shall Seller's ability to sell Products at a better price or Seller's economic hardship in buying raw materials necessary to manufacture Products at a commercially reasonable price constitute Force Majeure.

b. If Buyer or Seller is affected by Force Majeure, it will (i) promptly provide notice to the other party, explaining the full particulars and the expected duration of the Force Majeure and (ii) use its commercially reasonable efforts to remedy the interruption or delay if it is reasonably capable of being remedied. If a Force Majeure event, deliveries or acceptance of deliveries of Products which have been suspended will not be required to be made up on the resumption of performance. To the extent not otherwise permitted under the Purchase Agreement, Buyer will have the right to purchase Products and services from other sources during the period of Force Majeure. If a Force Majeure extends for more

than sixty (60) days, the Purchase Agreement may be terminated upon written notice by the party not declaring Force Majeure without any liability on its part.

c. If a Force Majeure compels Seller to allocate deliveries of Products, Seller will make such allocation in a manner that ensures Buyer at least the same proportion of the Seller's total output as was purchased by Buyer prior to the Force Majeure. Seller will use commercially reasonable efforts to source Products or other items, at Seller's expense, from its own or its affiliates' global operations or the market in order to meet Buyer's required delivery dates.

## **16. TERMINATION**

Buyer or Seller may terminate the Purchase Agreement upon thirty (30) days' prior written notice if the other party breaches any material term thereof or files for bankruptcy; provided, however that during such notice period, the party in default may cure its default and thereby abate the termination. In the event Seller has not complied in any respect to Sections 7, 8 or 9 above, Buyer shall have the right to immediately terminate the Purchase Agreement.

## **17. ACCESS AND AUDIT**

In Order to assess Seller's work quality and compliance with the Purchase Agreement, Seller will permit Buyer reasonable access to (i) all locations where work is performed in connection with the Products provided for in the Purchase Agreement, and (ii) Seller's books and records relating to the Purchase Agreement.

## **18. MISCELLANEOUS**

The following definitions apply to these Std Terms: (i) any reference to Section followed by a number means a section of the Std Terms, (ii) including, includes and similar terms means "including but not limited to" and does not limit references to examples listed, (iii) singular includes plural and vice-versa, (iv) one gender includes all genders, (v) writing means letter, purchase order, memorandum, text, email or similar verifiable communication.