

TERMS AND CONDITIONS OF PURCHASE

(Seller by accepting our purchase order ("Order") agrees to the terms and conditions of Swedish Match North America and its subsidiaries.)

1. **CERTAIN DEFINITIONS.** As used on Swedish Match Purchase Orders, (i) "parties" shall mean Buyer and Seller, (ii) "Order," "hereunder," and words of similar import shall mean the terms and conditions appearing on the printed form, together with all specifications, drawings, models, samples, or other data submitted by Buyer to Seller herewith or referred to herein, all of which are incorporated by reference, (iii). "Goods" shall mean the goods ordered under the Swedish Match Order, and (iv) "Services" shall mean all services, labor, or other work performable under the Swedish Match Order. If Seller is acting hereunder as a broker or agent, then Seller's principal shall also be deemed a "Seller" of all purposes hereunder.
2. **ACCEPTANCE OF PURCHASE ORDER.** Until accepted by Seller the Swedish Match Order is not a binding commitment on Buyer and may be withdrawn. Seller shall be deemed to have accepted the Swedish Match Order when it performs Services or delivers Goods which are accepted by Buyer, or otherwise reasonably notifies Buyer of its acceptance hereof. Acceptance of the Swedish Match Order is limited to its terms and conditions, and any additional or different terms or conditions proposed by Seller, including those set forth in the form of acceptance used by Seller shall be deemed rejected unless specifically consented to in a writing signed by an authorized representative of Buyer. Acceptance by Buyer of any Goods or Services shall not constitute acceptance of any additional or different terms or conditions proposed by Seller.
3. **BUYER'S RIGHT TO MAKE CHANGES.** Buyer, at any time by written notice to Seller, may make changes within the general scope of this Swedish Match Order, including but not limited to, changes in specifications, drawings, data, quantities, time or place of delivery, and methods of shipping and packing. If any change affects the time for or cost of performance, an equitable adjustment to the delivery schedule, purchase price, or both, shall be agreed upon by the parties. All claims by Seller for such adjustment shall be made in writing, itemized in detail and fully substantiated, within 30 days of the receipt of the notice of change, unless extended by agreement of the parties, or shall be waived. Nothing herein shall excuse Seller from proceeding with performance of this Swedish Match Order as changed.
4. **ENTIRE AGREEMENT.** This Swedish Match Order contains the complete and final agreement between Buyer and Seller with respect to the Goods and Services and supersedes all previous agreements between the parties with respect thereto. Reference to any bid, quotation or proposal of Seller, if noted on this Swedish Match Order, shall not affect the terms and conditions hereof, unless specifically provided to the contrary herein. No part of the Swedish Match Order may be amended or waived except in writing and signed by an authorized representative of each part.
5. **PRICE.** If no price is stated on this Swedish Match Order, Seller agrees to invoice at the lowest prevailing market price. In the event Seller, during the performance of its obligations under this Swedish Match Order, reduces its price on Goods supplied or Services furnished of the same quantity, grade and quality, Seller agrees to give Buyer the benefit of such reduction in price.
6. **TAXES.** Seller shall pay all taxes imposed by law upon or on account of the Goods ordered and Services furnished hereunder unless otherwise specified on the Swedish Match Order.
7. **PERFORMANCE AND NONPERFORMANCE.**
 - (a) **TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THE SWEDISH MATCH ORDER.** If at any time prior to delivery of Goods or performance of Services, Seller has reason to believe that it will be unable to meet specified time schedules, Seller shall immediately provide Buyer with written notice of that fact indicating the cause of the anticipated delay and the identity of any of Seller's suppliers responsible for such delay. Seller shall use its best efforts to cure the anticipated delay and shall permit Buyer to engage in expediting activity on behalf of Seller with any such supplier. Upon receipt of notice of an anticipated delay or upon the occurrence of a delay in performance, Buyer reserves the right to: (i) direct expedited routing of the Goods, with any resulting excess costs to be paid by Seller, or (ii) cancel this Swedish Match Order by notice to Seller, effective upon receipt, as to Goods unshipped or Services not yet performed, with any resulting excess costs to be paid by Seller.
 - (b) Buyer has the right to select the mode of transportation, routing, and carrier for Goods and to negotiate all carrier's tariffs and special classifications. Transportation must be prepaid on all shipments to which a delivered price applies. Charges for prepaid transportation must be substantiated by attaching to the invoice original transportation bills or comparable shipping document received by the carrier. Seller shall be liable for excess transportation charges, delays or claims resulting from Seller's deviation from Buyer's instructions. Drafts against Buyer will not be honored, nor C.O.D. shipment accepted except by agreement in writing to that effect. All Goods to be forwarded on the same day shall be consolidated into one shipment to save transportation costs.
 - (c) Unless otherwise specified in the Swedish Match Order or by written notice from Buyer to Seller, Goods shall be delivered by Seller at Buyer's facility from which they are ordered. The risk of loss of such Goods shall remain with Seller until the Goods are properly delivered and all non-conformities are either cured or accepted by Buyer. Buyer's count and weight of Goods upon receipt shall be final and conclusive as to any shipment. Buyer will have no liability for payment for Goods delivered or Services performed in excess of the quantity of Goods and scope of Services specified herein. Excess Goods and Services are subject to rejection, and excess Goods may be returned to Seller at Seller's expense, including transportation charges both ways.
8. **PACKING.** All Goods delivered by Seller under this Swedish Match Order must be so packed and prepared for shipment as to prevent damage and deterioration to the Goods. Each container must be marked to show quantity, order number, weight and content.
9. **WARRANTIES.** In addition to all warranties, express or implied established by statute or common law or set forth in the Swedish Match Order, Seller warrants that: (i) all Goods and Services shall conform to the terms conditions, instructions, specifications, drawings, data, samples, models or other descriptions contained in, furnished with, or incorporated by this Swedish Match Order; (ii) such Goods shall be of good design, material and workmanship, free from defects, merchantable, and fit for their intended purpose, (iii) such Goods shall meet all applicable industrial or governmental safety standards, including guarding and warning standards; (iv) Seller has good and merchantable title to such goods; and (v) such Services shall be performed in a good and workmanlike manner and, from the time of payment for such Services by Buyer and thereafter, the real and personal property upon which such Services are performed shall be free and clear of all liens and encumbrances to secure payment for any portion of such Services, regardless of who performed the Services. In addition, Seller shall assign or otherwise transfer to Buyer all warranties and guaranties received by Seller in connection with its acquisitions of the Goods. All warranties shall survive acceptance and payment of the Goods and Services and shall run to Buyer, its successors, assigns, customers and consumers of Buyer's products. No warranties, express or implied, shall be deemed disclaimed or excluded unless in writing signed by an authorized representative of Buyer and delivered to Seller.
10. **INSPECTION AND ACCEPTANCE OF GOODS AND SERVICES.**
 - (a) Payment for Goods or Services shall not constitute acceptance of such Goods or Services. All Goods or Services are subject to inspection by Buyer, at Buyer's facilities unless otherwise agreed before or after payment or acceptance, at Buyer's option. Buyer reserves the right to reject Goods or Services not conforming to the instructions, specifications, drawings, data, or warranties, express or implied, of this Swedish Match order. Rejected Goods shall be returned to Seller. For all rejected Goods and Services, Seller shall provide Buyer full credit or replacement at Buyer's option and at Seller's risk and expense, including transportation charges both ways. At Buyer's option substitute Goods or Services may be purchased in lieu of any rejected Goods or Services and Seller shall be liable to Buyer for the different in the cost of the substitute goods or services over the Swedish Match Order price, but less any expenses saved by Buyer in consequence of the breach.
 - (b) Acceptance by Buyer of any part of the goods or Services shall not bind Buyer to accept the remainder. Acceptance of a part or all of the Goods on Services shall not deprive Buyer of the right to revoke acceptance and return any portion of such Goods or Services accepted or the right to make any claim for damages because of any failure of the Goods or Services to conform to this Swedish Match Order, by reason of defects, latent or patent, by other breach of warranty, or by reason of damage caused by improper boxing, crating, or packing.
 - (c) Buyer shall not be liable for failure to accept Goods or Services for causes beyond its reasonable control. Such causes include, but are not limited to, acts of God, government action, strikes, breakdowns in employee relations, casualties, unavoidable delays in transportation, inability to obtain necessary materials or machinery or total or partial shutdown of relevant facility of Buyer for any cause.
11. **INDEMNIFICATION: DAMAGES.**
 - (a) Seller agrees to indemnify and save harmless Buyer from all liabilities, losses, incidental and consequential damages, and all litigation and other expenses, including court costs and attorney's fees, resulting from claims, charges, demands, suits, or actions which grow out of an actual or alleged breach of this Swedish Match Order by Seller, including, without limitation those made or threatened against Buyer or its customers for actual or alleged infringement of any patent, trademark or copyright by reason of the manufacture of Goods and performance of Services covered by this Swedish Match Order by Seller; the resale thereof by Buyer, or use of said Goods or Services or any part thereof for a purpose known to Seller. Upon notice from Buyer, Seller shall defend any such claims, charges, demands, suits, or actions against Buyer; provided, however, that Buyer may be represented by and actively participate through its own counsel in any such defense.
 - (b) Seller shall be liable to Buyer for all incidental and consequential damages incurred by Buyer as a result of any breach of the Swedish Match Order, regardless of whether Buyer purchases substitute Goods or Services or pursues other remedies available hereunder. Such incidental damages include (i) expenses reasonable incurred by Buyer in inspection, receipt, transportation, and care and custody of rejected Goods or Services; (ii) any commercially reasonable charges, expenses, or commissions in connection with purchasing substitute Goods or Services; (iii) expenses incurred in recalling nonconforming Goods from Buyer's customers; (iv) all litigation expenses, including court costs and attorney's fees, incurred in the prosecution of any suit brought to enforce Buyer's rights and remedies hereunder; and (v) any other reasonable expenses incident to the delay, failure to deliver, delivery of nonconforming Goods or Service, or other breach. Such consequential damages are those damages suffered by Buyer as a consequence of Seller's breach of this Swedish Match Order, including, but not limited to, loss of profits, penalties and damages caused by injury to person or property proximately resulting from any breach of warranty by Seller.
 - (c) Seller shall not be relieved from its indemnifications and other liabilities under this Swedish Match Order by purchasing from others any portion of the Goods and Services to be provided Buyer.
12. **PROPERTY OF BUYER**
 - (a) Buyer retains title to all information and material (including but not limited to, all drawings, designs, specifications, technical data, and production or product know how furnished to Seller to facilitate performance under this Swedish Match Order, and the same shall be (i) treated as Buyer's confidential information, (ii) used by Seller exclusively to complete this Swedish Match Order, and (iii) returned to Buyer at its written direction or upon completion, cancellation, or termination of this Swedish Match Order, along with all copies or reproduction thereof, unless otherwise agreed to in writing by Buyer. Seller shall not make copies or reproductions of such material unless authorized in writing by Buyer.
 - (b) All property of Buyer furnished or made available to Seller for the performance of work under this Swedish Match Order (including, but not limited to, materials, tools, tooling, equipment, and any replacements thereof) shall remain the property of Buyer, and shall be segregated from Seller's property and be individually marked and identified as Buyer's property. Such property shall be used exclusively for performance under this Swedish Match Order and returned to Buyer at its written request, or on termination, cancellation, or completion of this Swedish Match Order. Seller agrees to (i) maintain such property in good condition and assumes all risks and liability for loss or damage thereto, excepting normal wear, (ii) purchase insurance sufficient to cover the replacement costs thereof, with the proceeds payable to Buyer, (iii) furnish Buyer evidence of such insurance upon request, (iv) permit inspection of such property by Buyer or its agents at any time during Seller's normal business hours, (v) at Buyer's request, furnish to buyer detailed statements of inventory of such property, and (vi) fully cooperate and assist Buyer in any effort by it to obtain possession of such property through court proceedings or otherwise. As long as any work performed by Seller under this Swedish Match Order requires the use of Buyer's property, such property shall be considered as being under the sole custody and control of Seller.
13. **REFUND.** If any imported material is supplied by Seller in the fulfillment of this Swedish Match Order, Seller shall credit Buyer with the amount of refund (drawback) of the import duty, or if such refund is for Buyer's account, Seller shall furnish Buyer promptly with certificate of delivery of manufacture.
14. **FORCE MAJEURE.** No liability shall result from delay in performance or nonperformance caused by circumstances beyond the reasonable control of the party affected, including, without limitation, acts of nature, fire, flood, war, riots, accidents, labor strikes, and acts, laws, judicial decisions, rules and regulations of local, state and federal governmental agencies and other bodies having jurisdictions over either party. The affected party may omit purchases or deliveries during the period of continuance of such circumstances and the Swedish Match Order quantity shall be reduced by the quantities so omitted, but this Swedish Match Order shall otherwise remain unaffected.
15. **NO WAIVER.** Failure of Buyer to insist on strict performance or observance by Seller of the terms and conditions of the Swedish Match Order or of Buyer's rights in any one or more instances shall not constitute a waiver by Buyer of such performance, terms, conditions or rights either then or for the future.
16. **NON-ASSIGNMENT.** This Swedish Match Order may not be assigned or transferred by Seller, in whole or in part, nor may Seller subcontract for Goods or Services, without the prior written consent of Buyer.
17. **EQUAL OPPORTUNITY CLAUSE.** The seller agrees in connection with the performance of work under this order, not to maintain or provide for its employees any segregated facilities at any of its establishments and not to permit its employees to perform their services at any location under seller's control, where segregated facilities are maintained. Further, seller agrees also in connection with their performance of work under this order not to discriminate against any employee or application for employment because of race, sex, religion, color, national origin, handicap or status as a disabled veteran or veteran of the Vietnam era. Unless specifically exempted, Section 202 Paragraphs 1 through 7 of Executive Order 11246, as amended, and the affirmative action clauses as set forth in 41 C.F.R. 60-741 4 (for contracts of \$2,500 or more) and 41 C.F.R. 60-250 4 (for contracts of \$10,000 or more) are incorporated herein by reference.
18. **CANCELLATION.** This Order may be cancelled by Buyer at any time prior to receipt of Seller's acceptance. Buyer's notice of cancellation may be made by telephone, telegram, teletypewriter, letter or any other means of an equivalent nature, in addition, Buyer has the right to cancel for default this Swedish Match Order with respect to all or an part of undelivered Goods or unperformed Services if Seller (i) does not meet the delivery or performance schedule, (ii) breaches any of the terms thereof, including warranties, or (iii) becomes insolvent or commits an act of bankruptcy. Such right of cancellation does not apply in instances where Seller's failure to perform is due to unforeseeable causes beyond the control and without the fault or negligence of Seller (other than insolvency or an act of bankruptcy), provided, however, that if such causes are due to delays and defaults of subcontractors they are excluded only if the causes are beyond control of both Seller and the subcontractor and without the fault or negligence of either of them and if the Goods or Services to be furnished by the subcontractor were not obtainable from other sources in sufficient time to permit Seller to meet the delivery schedule of this Swedish Match Order.
19. **BUYER'S REMEDIES CUMULATIVE.** Any right or remedy of Buyer provided herein is in addition to Buyer's other rights and remedies provided herein or by law, and all of Buyer's rights and remedies hereunder are cumulative and nonexclusive.
20. **COMPLIANCE WITH APPLICABLE LAWS.** Seller agrees that in connection with its performance hereunder it will comply with all applicable federal, state, municipal, and local laws, rules and regulations and any provisions required thereby to be included herein shall be deemed to be incorporated herein. Nothing in paragraph 20 shall be deemed to limit the requirement of paragraph 17 hereof.