

## **Opti Temp Standard Terms and Conditions of Purchase**

### **1. Acceptance**

Acceptance of this order is expressly limited to the terms and conditions contained herein, including all terms and conditions set forth of the face hereof. This Agreement including any attachments and documents incorporated herein or referenced to on the face hereof, constitutes and is intended as complete, final and exclusive statement of the terms of the agreement between the parties, and supersedes all prior representations, understandings, and agreement relating to the subject matter hereof. Acceptance of this order by Seller may be made by signing and returning to accept this order, it is understood that said form shall be used for convenience only and any terms or conditions contained therein inconsistent with or in addition to those contained herein shall be of no force or effect whatsoever between the parties hereto.

### **2. Shipping Instructions**

The goods covered by this Agreement shall be shipped the least expensive way by the Seller unless otherwise stated on the face hereof. All parcel post shipments shall be insured at minimum valuations unless otherwise stated on the face hereof. Shipments sent C.O.D. without Opti Temp Corporation written consent will not be accepted. Risk of loss on all goods shall remain on Seller until acceptance of goods by Opti Temp at Opti Temp Corporation facilities.

### **3. Invoices, other Documents and Charges**

Seller shall invoice one copy. Originals of all invoices, government and commercial bills of lading and rail and air express receipts shall be mailed to the Opti Temp Corporation Accounts Payable Department when goods are shipped. Packing slips must accompany each case, parcel or container, showing Opti Temp order number, item number, and a complete description of its contents. Except as otherwise provided on the face hereof, the contract price includes all costs and charges to be incurred by Opti Temp, including without limitation, all applicable federal, state, and local taxes and duties and all charges for packing, loading, and transportation. Transportation charges and federal, state and local taxes and duties, when applicable, and when agreed on the face hereof to be borne by Opti Temp, shall be billed as separate items on Seller's invoice.

### **4. Cancellation for Nonconformity**

Because the goods and services covered by this Agreement will in some cases be used for Medical, Military and other applications, it is essential that such goods and services completely and accurately confirm to the contract. Accordingly, such complete and accurate conformity is a condition precedent to the acceptance of such goods and services and nonconformity in any lot or installment delivered hereunder shall constitute grounds for rejection or revocation by Opti Temp of such lot or installment. In addition, Opti Temp may cancel the entire Agreement for any nonconformity in any lot or installment delivered hereunder.

### **5. Delivery and Overship-Certificate Price**

Time is of the essence under this Agreement and Opti Temp reserves the right to cancel all or any part of this Agreement if performance, in whole or in part, is not made on the date or dates specified on the face hereof. Unless agreed in writing by Opti Temp, Seller shall not purchase, or make material commitments, in excess of the amount, or in advance of the time, necessary to meet Opti Temp delivery schedule. Overshipments are subject to rejection and return at Sellers expense. By acceptance hereof Seller certifies its compliance with the Additional Fair Labor Standards Act. Seller agrees that any price reduction made in the goods or services covered by this Agreement subsequent to the placement of this order will be applicable to this Agreement.

### **6. Changes & Termination**

By written order, Opti Temp may, from time to time, order work suspension or make changes in quantities, drawings, designs, specification, place of delivery or delivery schedules, and methods of shipment and packaging. If any such change causes an increase or decrease in the cost of this purchase order to Seller or in the time required for its performance, Seller shall promptly notify Opti Temp thereof and an equitable adjustment shall be made in the price or delivery schedule or both. Any claim by Seller for adjustment under this paragraph shall be deemed waived unless such claim is asserted in writing within thirty (30) days after the change is ordered, provided however, that nothing in this paragraph shall excuse Seller from proceeding immediately with the purchase order as changed. Whether made pursuant to this paragraph or by mutual agreement, changes, shall only be binding upon Opti Temp when confirmed in writing by Opti Temp, such confirmation to state expressly that it constitutes an amendment or change to this purchase order.

### **7. Warranties and Indemnity**

Seller warrants the goods and services covered by the Agreement shall be free from defects in workmanship and materials, and shall be on conformity with the specifications, drawings, samples and descriptions attached hereto or referred to on the face hereof, if any. Seller warrants that the goods and services covered by this agreement shall be manufactured in accordance with good manufacturing practices and shall be suitable for all industry applications and shall be for such other particular purposes and uses, if any, as are specified by Opti Temp. All warranties contained herein shall survive inspection, test and acceptance by Opti Temp. Seller agrees, at its own expense, to defend and indemnify Opti Temp, its agents and employees from and against any and all liability, loss expense, including attorney fees, and claims made against Opti Temp based upon, relating to or arising out of the goods or services ordered hereunder, whether or not

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arising out of Seller's negligence, whether or not arising out of Opti Temp negligence, active or passive, or strict liability in tort, or otherwise, and whether or not brought by an employee or Seller or Opti Temp.

### **8. Proprietary Information**

Seller agrees that any information disclosed by Opti Temp to Seller for the purpose of this Agreement which is identified as proprietary or confidential shall be held in confidence by Seller and used only for the performance of this Agreement. All tools, plans, designs, or specifications and other items furnished by Opti Temp to Seller or produced by Seller at Opti Temp's request and expense, shall be and remain the property of Opti Temp, shall be returned to Opti Temp promptly upon request, and shall be held at Seller's risk until delivery thereof to Opti Temp at Opti Temp's plan. In the event Seller devised and incorporates any new features of design into any goods made under this Agreement, Seller grants to Opti Temp the right of reproduction of such goods, together with royalty-free, non-exclusive, irrevocable license to use such new features of design.

### **9. General Provisions**

- a. Seller and Opti Temp shall be independent contractors in all matters. Neither party is the agent or representative of the other. The personnel of Sellers are its employees and not the employees of Opti Temp
- b. This Agreement shall be construed in accordance with and all disputes hereunder shall be governed by the laws of the State of Michigan.
- c. The invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity or enforceability of any other of its provisions.
- d. Any notice or other communication required or permitted hereunder shall be sufficiently given if sent in writing by registered or certified mail, postage prepaid, to the other party hereto at its respective address set forth on the front hereof.
- e. This Agreement may not be assigned or otherwise transferred by Seller, voluntarily or by operation of law, without the prior written consent of Opti Temp, and any such assignment or transfer without such prior written consent shall be null and void and of no force in effect whatsoever.
- f. Seller shall immediately notify Opti Temp of any governmental regulatory agency inspections which may affect the goods and services covered by this Agreement.
- g. Seller shall allow right of entry for purposes of source/survey inspection to Opti Temp, Opti Temp customers, or regulatory agencies as it is deemed necessary to verify the quality of product, processes, quality records, or material records relating to Opti Temp purchase orders.

### **10. Employee Right to Know**

Seller shall supply Opti Temp with federal OSHA Form 20 MSDS or its equivalent concerning each hazardous substance contained in the goods delivered under this agreement, when such goods are shipped.

### **11. Insurance**

If this agreement covers services performed on Opti Temp premises, the following clause applies without in any way limiting Seller's liability under the remainder of this Agreement: Seller shall obtain liability insurance which shall expressly name Opti Temp as an additional insured. The insurance shall cover any and all liability for personal injuries, death and property damage of both Seller and Opti Temp arising out of or in any way connected with services performed. Such insurance shall be in amounts acceptable to Opti Temp and shall cover Opti Temp for its sole negligence pertaining to performance of the services.

### **12. Substitutions**

Seller shall not substitute for part number ordered. If seller is offering a substitute product the replacement product must be approved by Opti Temp purchasing department in writing. Parts supplied that are substitutions will be returned to seller at seller's shipping expense.