

Purchase Order Terms & Conditions

TERMS AND CONDITIONS OF PURCHASE (N.F. SMITH AND ASSOCIATES, L.P.)

By accepting a purchase order ("PO") from NF Smith and Associates, L.P., its affiliates or assigns ("Smith"), Supplier agrees that all purchases shall be subject to the terms and conditions contained herein:

1. GENERAL

All sales by Supplier to Smith of goods, services, materials, products, and other tangible or intangible items ("Products") shall be made only upon these Terms and Conditions of Purchase and NOT any terms and conditions or other documents of Supplier. Smith objects to all additions, exceptions, or alterations to these Terms and Conditions of Purchase, whether contained in any printed form of Supplier, online, or elsewhere. Smith's failure to object to any terms which conflict with these Terms and Conditions of Purchase shall not be deemed a waiver of objection thereto. Any change to these Terms and Conditions of Purchase must be specifically agreed to in writing by a duly authorized representative of Smith and such writing must identify these Terms and Conditions of Purchase and the specific section to be modified. Smith reserves the right to correct any typographical error(s). Supplier shall not assign its rights or duties hereunder without the express prior written consent of Smith. Smith reserves the right to assign this order upon notice to Supplier.

2. PRICES

Prices shall include sales and use taxes, duties, freight, or packaging.

3. PACKAGING AND PACKING

Supplier shall properly package Products. Each container and/or package shall be clearly labeled to indicate the applicable PO number(s), Smith part numbers and quantities of Products. An itemized packaging slip for each PO shall accompany each delivery.

4. DELIVERY

TIME AND DATE OF DELIVERY ARE OF THE ESSENCE. Unless otherwise specifically set forth in the PO, delivery shall be DDP Destination. Smith may refuse delivery of Products made in partial shipments or made more than one week in advance of the delivery date specified in the PO and may return such Products at Supplier's expense. Supplier shall notify Smith immediately when Supplier has knowledge of any potential delay in delivery. Smith may cancel, at its discretion, and without any liability if Products are not delivered by the date specified by Smith.

5. PAYMENTS

Supplier shall submit invoices only upon delivery of Products. Smith shall issue payment within 30 days of receipt of a correct invoice provided Supplier has delivered conforming Products. Smith's tender of payment does not constitute acceptance of Products. Smith reserves the right to set off any amounts owing from Supplier to Smith or its affiliated companies against any undisputed amounts owed by Smith to Supplier.

6. INSPECTION AND ACCEPTANCE

Supplier shall inspect all Products prior to shipment to Smith. Products which fail to pass Smith's incoming acceptance test may be rejected by Smith and returned to Supplier at Smith's option.

7. WAIVER

Smith's failure or delay to insist upon strict performance of any of the provisions of these Terms and Conditions of Purchase or to exercise any rights or remedies under the PO shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely on any such provisions, rights or remedies in that or any other instance; rather the same shall be and remain in full force and effect.

8. CANCELLATION; TERMINATION

Smith may cancel this PO in whole or in part at any time by written notice if Supplier: (1) fails to timely deliver the Products and/or comply with any provision(s) of this PO; (2) becomes insolvent or makes an assignment for the benefit of creditors, or a receiver or similar officer is appointed to take charge of all or part of Supplier's assets and such condition(s) is not cured within 60 days; (3) merges with or is acquired by a third party; or (4) attempts to assign any its rights or obligations under this PO. Smith shall have no liability to Supplier beyond payment for Products delivered to and accepted by Smith prior to Supplier's receipt of notice of cancellation.

For Convenience: Unless Smith agrees in writing that the PO is non-cancelable, non-returnable at the time of the PO, Smith has the right to cancel the PO, in whole or in part, without cause and without liability, upon notice to Supplier prior to delivery, or if delivered, within forty-five (45) days following delivery. If Product has been delivered, Smith shall pay for the return shipment to Supplier.

9. CONFIDENTIAL INFORMATION

Supplier shall not disclose to any person, nor use for purposes other than performance of the PO, any information pertaining to the terms of the PO, including but not limited to specifications, descriptions, and demand.

10. COMPLIANCE WITH LAWS

All Products supplied and work performed shall comply with all applicable United States and foreign laws and regulations. Upon request, Supplier agrees to certify compliance with any applicable laws or regulations. Supplier's failure to comply with any of the requirements of this section may result in material breach of these Terms and Conditions of Purchase.

11. INDEMNITY

Supplier shall defend, indemnify and hold harmless Smith from any and all claims, liabilities, damages, costs and expenses (including, but not limited to, attorneys' fees) arising or alleged to arise out of or in connection with: (i) Supplier's breach a PO or these Purchase Order Terms & Conditions; (ii) any act, error, omission, fault, strict liability, breach of warranty, product liability or negligence of Supplier or any of its suppliers; or (iii) any personal injury, death or damage to property or environment in connection with the sale of Products to Smith.

12. WARRANTY

Supplier warrants that each Product: (1) is free of all liens and title encumbrances, (2) is free from defects in design, material and workmanship, (3) conforms to all specifications, drawings, samples, or other descriptions referenced on the face of the PO, (4) is in first-class condition; and (5) and fit for its ordinary purpose or any purpose Smith has made known to Supplier. If Supplier provides Smith, or Smith's customer, with any specifications, drawings, samples, or other

descriptions of the Product, Supplier warrants the Product will confirm, in all ways, to the provided specifications, drawings, samples, or other descriptions of the Product. Supplier agrees to transfer any Product manufacturer's warranty to Smith. In addition to any rights and remedies available to Smith at law or in equity, Supplier's obligations under this warranty are, at Smith's option, the replacement or refund of Products within 30 days of notice of such condition. All expenses associated with the return to Supplier of such Products and the delivery to Smith of repaired or replacement Products shall be borne by Supplier. Furthermore, Supplier shall be liable for all costs incurred by Smith that arise from Supplier's breach of this warranty. The above warranties shall survive any delivery, acceptance, payment, termination, or expiration of these Terms and Conditions of Purchase and shall run to Smith, its successors, assigns, customers, and users of its Products. If at any time during the warranty period Supplier receives from Smith written notice of any failure to comply with the warranty set forth above, Supplier shall promptly correct such noncompliance and remedy any damage to other parts of the work or any other property resulting from such noncompliance.

13. LAW, MEDIATION, WAIVER

This agreement is entered into in Harris County, Texas and is governed by the laws of the state of Texas without giving effect to the principles of conflict of laws. All disputes which arise between Supplier and Smith shall be determined by the state district court of Harris County, Texas, without prejudice to Smith's right to bring such dispute before any other competent court. Supplier hereby expressly submits and consents to jurisdiction of the state district courts of Harris County, Texas for the purpose of legal resolution. Before any court action or any proceeding is filed by either party involved in this transaction, the parties will endeavor to resolve the matter in mediation which will last a minimum of four (4) hours. The parties shall equally bear the cost of the mediator. If any of the terms and conditions contained herein are determined to be unenforceable, then the other terms and conditions contained herein shall remain in full force and effect.