

## STANDARD PURCHASE ORDER TERMS AND CONDITIONS

**1. ACCEPTANCE.** This order constitutes an offer by Buyer to Seller upon the terms and conditions stated herein and in the body of the order, and will become a binding contract upon acceptance either by acknowledgment or performance in whole or in part. No additional or different terms contained in any Supplier invoice, quote, proposal, sales order or other document supplied by Supplier will be binding on Buyer, and Buyer expressly rejects such additional or different terms.

**2. DELIVERY.** Time and rate of deliveries are of the essence of this order. Seller will inform Buyer immediately whenever it has reason to believe that circumstances within or beyond its control are likely to delay or prevent Seller's timely performance under this purchase order. Regardless of such notice, Seller is responsible for all Buyer costs and damages as a result of any Seller late delivery. Buyer reserves the right to cancel the order and reject the goods upon default by Seller in time or rate of delivery, or, in Buyer's sole discretion, accept a revised delivery schedule. Such revisions will be binding on Buyer only if Buyer has given its express written consent to the change. Buyer may require Seller to make late shipments via the fastest means available, shipped prepaid at seller's sole expense. Seller will not make material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet Buyer's agreed delivery schedule. Seller will not retain any security interest in goods shipped to Buyer.

**3. WARRANTIES.** Seller warrants that all goods delivered under this order or contract will be merchantable, free from defects in design, materials and workmanship (including damage due to unsatisfactory packaging), and suitable for their ordinary and intended purposes and for Buyer's particular purposes, to the extent Seller knows or should know of them (including without limitation EPA and CARB requirements). Seller warrants that all goods will be in strict compliance with Buyer's specifications, drawings and approved samples, if any. However, Seller retains full responsibility for its goods, and Seller's liability to Buyer will not be limited or excused in any way by virtue of such compliance, or Seller's reliance on any input from Buyer, or Buyer's negligence, if any, absent express written agreement to the contrary. Seller further warrants that the manufacture and sale of goods sold under this contract will not infringe any patent, trademark, copyright or other property right; nor violate any applicable legal duty or requirement.

**4. SHIPPING INSTRUCTIONS.** Except as expressly stated on this purchase order or in a separate written agreement duly executed by Buyer:

- All goods will be shipped F.O.B DESTINATION as outlined in any Buyer issued documents, including LOCs;
- All shipping and packaging expenses and customs duties or tariffs of any kind will be paid by and fully absorbed by Seller. Seller will be responsible for all excess costs beyond those expressly accepted in writing, including, without limitation, any caused by a deviation from shipping instructions;
- Seller is responsible for packing and packaging all goods (i) adequately to withstand reasonably foreseeable transportation and storage hazards during and after shipment to Buyer, and (ii) in conformance with all applicable laws, regulations and standards including, without limitation, any marking, labeling or documentation requirements relating to country of origin, health and safety hazards, disposal restrictions, etc. Seller will take all appropriate measures to protect highly polished surfaces against scratching and atmospheric deterioration;
- Each container will be marked with Baja's purchase order number, the number of the container, the total number of containers in the shipment and the number of the container in which the packing sheet has been enclosed. Goods purchased under different purchase orders will be listed on separate packing sheets; and
- Prior to or concurrent with shipment, Seller will provide documentation of all handling, storage and use limitations, and recommended precautionary measures. Where relevant, Seller will supply and up-date Material Safety Data Sheets for as long as Buyer is required to maintain them.

**5. REJECTIONS.** Buyer may inspect and test finished goods, components, materials, and any of Buyer's property at place of manufacture, storage and/or destination. Such inspections will be permitted without prior notice during normal business hours. If any goods are found at any time before, during or after delivery to be defective in material or workmanship, or damaged due to unsatisfactory packaging, or otherwise in breach of warranty, Buyer, may (a) reject and/or return such goods at Seller's expense and receive full credit for same, (b) require replacement or repair of the goods without additional cost to Buyer, (c) retain and use the goods with an equitable adjustment in purchase price, (d) repair the goods at Seller's expense. Such rights are in addition to any other rights Buyer might otherwise have.

**6. PAYMENT.** Absent contrary terms included on this purchase order or in a separate duly-signed written agreement, payment will be due 2% sixty (60) days or NET ninety (90) days from the actual date of delivery, the scheduled date of delivery under this purchase order or the date of receipt of a proper invoice, whichever is later; for conforming Products that are delivered on time at delivery point and not subject to any port holds and/or seizures—regardless of inspection outcomes. The date for cash discount, if any, will be calculated from the same date. Unless otherwise requested by Buyer, invoices will be rendered separately for each delivery and will include all necessary information identified in Buyer's instructions to Seller.

**7. INDEMNIFICATION.** Seller will and does defend, indemnify and hold harmless Buyer and its officers, employees, agents, successors, and assigns from and against any and all claims, demands, suits, causes of action, damages (including compensatory, punitive, and special damages to the extent allowed by applicable law), losses, costs and expenses, including reasonable attorneys' fees and fines, penalties, and product warranty and recall expenses, arising directly or indirectly from or out of the design, manufacture, advertising, promotion, distribution, sale, use, or misuse of any products supplied by Supplier, including but not limited claims of patent or other intellectual property infringement, or any alleged action or omission of Supplier or its officers, directors, employees, agents, successors, subcontractors, and any of its and their assigns or from or out of the presence on Buyer's premises of any of Supplier's employees, agents, or subcontractors.

**8. SURVIVAL OF INDEMNIFICATIONS AND WARRANTIES.** Seller's warranty and indemnification obligations and Buyer's rights and remedies in connection therewith, are not exclusive. All such terms will survive acceptance and payment and resale to third parties.

**9. PRICING.** Seller warrants that the prices and conditions Seller charges to Buyer are not less favorable than those currently extended to any other customer, as a whole, for the same or like articles in any quantities or for services of the same or like scope. If Seller reduces its price or conditions for such articles or services for other customers during the term of this order, Seller agrees to reduce the price or adjust conditions hereof correspondingly. Any applicable federal, state or local taxes shall in all cases be paid by Seller and fully absorbed by Seller. However, Seller's invoice will show the amount of such taxes, as confirmation that the taxes have been or will be paid.

**10. CHANGES AND CONTINGENCIES.** Except as expressly agreed in writing, Buyer has the right to make changes in the order (including, without limitation, reductions in quantity and duration) by written notice. Seller may object to the changes or request revisions in the changes. Such requests may include an equitable adjustment in the pricing or delivery schedule. All such objections and requests must be received by Buyer within fifteen (15) days after Seller receives first notice of the change. Buyer may either (a) accept Seller's reasonable requests for revision, or (b) withdraw the affected change, whereupon Seller will proceed with the performance of the order; or (c) terminate the order with no further liability except an equitable credit to cover Seller's reasonable, documented actual costs necessarily incurred prior to termination for finished goods, work in progress, and raw materials ordered and specifically identified to this purchase order, less any remaining value of same. Seller will use its best efforts to minimize such costs. Buyer will have the option, at its discretion and without liability of any kind, to direct suspension of shipments or materials covered by this order to cancel the order in whole or in part, based upon the actions or requirements of the government or military, acts of the public enemy, labor disputes, accidents, unavailability of transportation facilities and any other "force majeure" beyond its control.

**11. ASSIGNMENT AND SUBCONTRACTING.** No assignment of this order will be binding upon Buyer without Buyer's written consent. Seller will not procure or contract to procure any item covered by this order in completed or substantially completed form from any third party without Buyer's written consent. Regardless of the date of assignment or Buyer's consent, no assignment will impair Buyer's remedies against Seller or limit its ability to make deductions from payments made under this purchase order as a setoff or recoupment.

**12. INSURANCE.** Seller will obtain and maintain for a period of three (3) years after the date of this purchase order, at its expense, general liability insurance for claims based upon goods sold by Seller to Buyer during the term of the policy with vendor's endorsement in such form and amount as may reasonably be required by Buyer, in an amount of no less than FIVE MILLION DOLLARS (USD 5,000,000) and insurance covering any injuries sustained by its employees and the employees of its agents and/or subcontractors who may enter Buyer's premises or provide services thereon on Seller's behalf. All policies obtained in compliance with this requirement must be issued by good and solvent insurance companies in amounts satisfactory to Buyer. Upon request, Seller will provide Buyer with satisfactory evidence of such insurance and endorsement, and if requested, will have Buyer listed as an additional insured with a requirement of as least thirty (30) days notice to Buyer prior to cancellation. Such insurance will be written as primary insurance coverage and not contributory with or in excess of any coverage that Buyer may have.

**13. CANCELLATION.** Buyer may cancel this order in whole or in part by written or facsimile-transmitted notice: (a) if the Seller becomes insolvent or makes a general assignment for the benefit of creditors, or if a receiver or liquidator for Seller is appointed or applied for, or if Seller admits in writing its inability to pay its debts as they become due; or (b) if any proceeding under any applicable federal or state bankruptcy or insolvency law is brought by or against Seller; or (c) if, at any time, Seller defaults in the performance of any term or condition which it is obligated to perform hereunder. Upon notice of any such event, Buyer, at its option, may require the Seller to transfer title and deliver to Buyer any satisfactorily completed work and/or any work in process as to which the Seller has specifically completed production or specifically acquired performance. Upon any cancellation pursuant to this clause, if the cost of completing or replacing the goods or services exceeds the contract price, then Seller will be liable for such excess. Alternatively, Buyer may refuse to accept further delivery of goods and/or performance of services, recover any prepayments made for goods or services refused, rejected, or not received, and/or cover its losses by the purchase of goods or services elsewhere. In the event of any default by Seller, Buyer may charge Seller with Buyer's resultant losses, including incidental and consequential damages and reasonable attorney's fees incurred in the enforcement of Buyer's rights. The rights and remedies of Buyer provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

**14. BUYER'S PROPERTY.** Except as otherwise agreed in writing, all models, equipment, tooling, gauges, patterns, designs, materials, documents, information and other property, tangible or intangible utilized in the performance of this agreement, are the property of Buyer. This agreement grants Seller no express or implied rights or licenses with respect to such property, except to the extent of its use in filling Buyer's orders. To the fullest extent practical, all property and documents containing proprietary information will be plainly marked individually or otherwise identified by Seller as property of Buyer, will be safely stored separately from Seller's property and will be subject to examination by Buyer upon demand. Seller will not substitute any property for Buyer's property. Buyer's property while in Seller's custody or control will be maintained in good condition at Seller's expense, held at Seller's risk and kept insured by Seller at Seller's expense in an amount equal to the replacement cost with loss payable to Buyer. Seller will furnish Buyer a copy of the insurance policy on request. Such property will be subject to removal at Buyer's request, in which event Seller will prepare such property for shipment and will redeliver it to Buyer in the same condition as originally received by Seller, reasonable wear and tear excepted.

**15. PATENT RIGHTS.** Any and all discoveries, inventions, and/or designs, whether or not patentable or subject to copyright, conceived or reduced to practice by Seller or its employees in connection with the supply of any item pursuant to this Purchase Order at any time are deemed property of the Buyer. Seller and its employees will, on simple request, execute all papers necessary to assign such discoveries, inventions and designs to Buyer, and to cause patent applications to be filed thereon in favor of Buyer. The decision whether to file patent applications and to prosecute same will be made solely by Buyer. Seller grants Buyer a royalty-free, non-exclusive, irrevocable license under any patents covering any other new features of design or inventions conceived in the performance of this purchase order or any derivatives thereof. Seller may not file for a patent or any other intellectual property right in any aspect of products supplied to Buyer in any country in the world without Buyer's prior written approval.

**16. CONFIDENTIALITY.** Seller agrees that it will keep confidential the features of any equipment, tooling, gauges, patterns, designs, documents, information, engineering data or other technical or proprietary information and property pertaining to the performance of this agreement, and that Seller will use such items only in the production of items under this order or other orders from Buyer, and not otherwise unless Buyer's written consent is first obtained. Upon completion or termination of this order, or sooner if requested by Buyer, Seller will return all such items to Buyer or make such other disposition thereof as may be directed or approved by Buyer.

**17. MODIFICATION OF AGREEMENT.** This order contains all of the agreements and conditions of these transactions and no agreement or other understanding in any way modifying the conditions hereof will be binding upon Buyer unless made in writing and signed by Buyer.

**18. NO WAIVER OF CONDITIONS.** Failure of Buyer to insist upon strict performance of any of the terms and conditions of this order will not constitute a waiver of such terms and conditions or a waiver of any default.

**19. COMPLIANCE WITH LAWS.** Seller will comply with all federal, state and municipal laws, rules and regulations that may be applicable to this order, including, without limitation, all federal and state labor and industrial laws, all applicable OSHA and Consumer Product Safety Act standards, and all environmental laws and regulations. Seller will not discriminate against any employee or applicant for employment on the basis of race, creed, color, national origin or handicap, but shall take all appropriate steps to provide equal opportunity employment in all respects. Nor will Seller knowingly use or knowingly purchase goods or services from companies which use forced labor or employees who are below legally applicable minimum age limits.

**20. EMPLOYEES.** Seller warrants that neither Seller nor any of its agents, employees, subcontractors or vendors will be deemed employees of Buyer under any statutory definition including those related to wages, compensation, insurance, social security, etc.

**21. PUBLICITY.** No information related to this order, including its existence, or provisions, shall be divulged as a news release or other public announcement, or employed in any form by the Seller in any advertising, marketing, or other display of its products or technology without the prior written consent of Buyer.

**22. TOXIC SUBSTANCES.** Seller will provide Buyer with a properly completed "Material Safety Data Sheet" (form OSHA-20) for all chemical and other substances delivered as part of this order which are listed in the NIOSH Registry and any other chemicals or substances which have yielded evidence of acute or chronic health hazards in humans, animals or biological testing. Seller will not use generic terms to describe the properties of the chemicals or substances. Said Material Safety Data Sheet shall be provided to Buyer's Purchasing Department, at least three (3) business days prior to the delivery of the chemicals, substances or goods in which the chemicals or substances are incorporated.

**23. CHOICE OF LAW, JURISDICTION AND VENUE.** This purchase order will be governed by and construed under the laws of the State of South Carolina without regard to any choice of law principles. Any action brought to enforce the terms of this purchase order or to adjudicate any dispute between the parties regarding the subject matter hereof must be brought exclusively in the state or federal courts of South Carolina, and Seller waives any objections to personal or other jurisdiction in said courts. The parties acknowledge that all directions issued by the forum court or tribunal, including all injunctions and other decrees, will be binding and enforceable in all jurisdictions and countries.

**24. QUALITY ASSURANCE.** Seller will comply with Buyer's quality assurance program and any certification required in connection with that program. At the time of any inspections by Buyer, Seller will make available all relevant drawings, specifications, production data, and data relating to process preservation and packing, and will provide reasonable facilities and assistance for the safety and convenience of the inspectors. In all cases, Buyer's reasonably exercised discretion in the interpretation of Buyer's specifications and quality assurance requirements will control.

**25. EXCLUSIVITY.** Unless otherwise agreed in writing between the parties, Supplier shall manufacture and supply EPA and DOT (US and Canada) compliant versions of the Products (whether or not certificated or homologated as such) solely and exclusively to Baja. Supplier shall not, directly or indirectly whether by itself or through or with a third party, copy, develop, manufacture, tool, sell, resell, accept orders for, or otherwise dispose of the Products or any products which are the same as or similar to the Products, or any component or part thereof, other than for sale to Baja during the Term of the Agreement and for a period of five (5) years after the expiry or termination of this Agreement, without Baja's written consent.

**26. BAJA PROPERTY:** Any and all materials (where applicable, including but not limited to tools, jigs, fixtures, patterns, moulds, prototypes, gauges), tooling and/or equipment owned and supplied by Baja or developed or procured by Supplier at Baja's expense ("Baja Property") that has been or is being placed into the possession of Supplier shall remain the property of Baja and shall (i) be clearly marked or tagged as the property of Baja for identification purpose, (ii) be subject to inspection and removal by Baja at any time, (iii) be used only in filling Purchase Orders from Baja, (iv) be kept free by Supplier of liens and encumbrances, (v) not be modified in any manner by Supplier without the prior written approval of Baja and (vi) be maintained by Supplier in good working and repair condition.