

South Jersey Industries, Inc. - Terms and Conditions

1. **CHOICE OF LAW/VENUE.** This purchase order has been negotiated, executed and delivered at, and shall be deemed to have been made in, the State of New Jersey. The laws of the State of New Jersey, without giving effect to its conflict of law principles, govern all matters arising out of or relating to this purchase order, including, but not limited to, its validity, interpretation, construction, performance and enforcement. Each party agrees that the Superior Court of the State of New Jersey-Atlantic County shall have jurisdiction to hear and determine any claims or disputes pertaining directly or indirectly to this agreement and to any matter arising therefrom. Each party agrees that such court shall have in personam jurisdiction over it and consents to service of process in any manner authorized by New Jersey law. Each party waives any claim or defense that such forum is not convenient or proper.
2. The order number of South Jersey Industries, Inc., or its subsidiary or affiliate ("Purchaser"), must be entered on all invoices, shipping documents and correspondence relating to this order, and must be plainly marked on each package in less than carload shipments.
3. All merchandise supplied pursuant to this order will be shipped or delivered FOB delivery point and will be subject to Purchaser's inspection and count. Any merchandise not in accordance with the order will be returned for credit or held by Purchaser for a reasonable time awaiting Vendor's shipping directions, but at Vendor's risk and expense. Vendor shall, upon request immediately replace without charge all defective or non-conforming material and merchandise or, at Purchaser's option, issue a credit memo for the unit price of all rejected items.
4. All shipment and delivery dates are of the essence. In the event of any delay in shipment or delivery, Vendor shall notify Purchaser promptly, but no change in shipment or delivery dates will be binding upon Purchaser without its written consent.
5. In the event Vendor is unable to supply the material or merchandise, or unable to meet specified shipment or delivery dates or otherwise fails to comply with the terms hereof, Purchaser may cancel the order for cause. In the event of such cancellation for cause, Purchaser shall have no obligation to accept or pay for any merchandise or to compensate Vendor for any costs or profits.
6. Purchaser reserves the right to make changes in quantities and/or specifications, to direct the temporary suspension of shipments and/or cancel all or any portion of this order, for its own convenience, without penalty or liability except as provided herein. In the event of a change of this order, Purchaser shall reimburse Vendor for any actual costs incurred in performing the original order, but only to the extent such costs would not be applicable to the change in order. In the event of cancellation for Purchaser's convenience Purchaser shall pay the unit price for all conforming goods shipped or delivered prior to Vendor's receipt of notice of cancellation, and shall reimburse Vendor for the difference between: (a) the amount of any actual costs incurred by Vendor prior to such notice which were directly related to the performance of the balance of this order; and (b) the market or salvage value thereof. Purchaser shall have no other or further liability in the event of such cancellation or change in order.
7. **FORCE MAJEURE.** Neither Vendor nor Purchaser shall be liable for nonperformance due to causes beyond reasonable control. Where only a part of Vendor's capacity to perform is excused under this paragraph, Vendor must allocate production and deliveries among the various customers then under contract for similar goods during the period. The allocation must be made in a fair and equitable manner. Where either Vendor or Purchaser claims an excuse for nonperformance under this paragraph, it must give notice in writing to the other party. Vendor shall not be obligated to sell, nor Purchaser obligated to purchase, at a later date, that portion of the goods that Vendor is unable to deliver or Purchaser is unable to receive or use due to any excused cause. No goods are to be tendered by Vendor after the expiration of the terms specified in this Purchase Order without consent of Purchaser.
8. **NON-EXCLUSIVE AGREEMENT.** This Purchase Order is a non-exclusive contract and South Jersey Industries reserves the right to purchase same or like materials and/or services from other sources as South Jersey Industries deems necessary and appropriate.
9. **ASSIGNMENT and SET-OFF.** Vendor will not assign this agreement or any right hereunder, or subcontract any of its duties hereunder, without Purchaser's written consent. Any unauthorized assignment is void. All claims for monies due or to become due from Purchaser shall be subject to deduction by Purchaser for any set-off or counterclaim arising out of this or any other of Purchaser's purchase orders with Vendor.
10. **INSURANCE.** Vendor and its subcontractors at any tier, shall purchase & maintain insurances in accordance with Purchaser's attached "INSURANCE REQUIREMENT SCHEDULE", which is incorporated into and made a part of this purchase order. Vendor's insurance shall be Primary and endorsed to be noncontributory by Purchaser and endorse Purchaser as an additional insured. Vendor agrees to supply proof of insurances & endorsements prior to the start of any work in the form of an ACORD 25 certificate. It is agreed that performance under this Purchase Order constitutes acceptance to the terms & conditions of said Insurance Requirement Schedule. This requirement may be waived by Purchaser at its sole and absolute discretion.
11. **INDEMNIFICATION.** Vendor assumes full responsibility for, and agrees to immediately indemnify, defend and save Purchaser free and harmless from any and all claims, liabilities, damages, costs, and expenses arising out of injury (including death) to any person and damage to any property, or any allegation or claim thereof, caused by, arising out of or in any way resulting from the performance of work hereunder, or the supplying of any material or merchandise hereunder, or from any defect or deficiency therein, without regard to Vendor's negligence. Vendor further agrees to indemnify and defend Purchaser against all claims, demands, costs, liability and actions for actual or alleged infringement of patent or trademark rights in the use, sale or re-sale of all merchandise purchased hereunder.
12. **TAXES.** Vendor agrees to cooperate with Purchaser in opposing the imposition of any tax on any article covered by this Purchase Order, the legality of which is questioned by Purchaser, and in securing any abatement or any refund thereof sought by Purchaser. Vendor shall pay all excise, sales and other taxes arising from and applicable to the manufacture, sale or shipment of all material and merchandise.
13. **WARRANTY.** Unless a greater warranty is provided by Vendor, or by law, Vendor hereby warrants that all material merchandise and workmanship supplied hereunder shall be good and merchantable quality, free from any defects or deficiencies, and fit for Purchaser's intended purpose. Without limitation upon Vendor's obligations hereunder, Vendor agrees to repair, replace or refund the price, at Purchaser's sole option, of any and all merchandise which is defective in material or workmanship or unfit for Purchaser's intended use, within a period of one year after delivery thereof to Purchaser.
14. **LIMIT OF LIABILITY.** To the extent permitted by applicable law, in no event will Purchaser (including Purchaser's officers, directors and employees) be liable for any lost revenues, lost profits, incidental, indirect, consequential, special or punitive damages. Purchaser will not be liable for finished work, work in progress, or raw materials fabricated or procured by Vendor unnecessarily in advance or in excess of Purchaser's delivery requirements.
15. In the performance of this order, Vendor shall comply with all applicable federal, state and local laws, rules, orders and regulations.
16. Individual invoices must be issued for each shipment. **VENDOR MUST CLEARLY STATE DISCOUNTS FOR CASH.** Delay in receiving any invoice, or invoicing for material shipped ahead of a specified schedule, or invoices submitted with errors or omissions or in advance of shipment, will be considered as just cause for Purchaser to withhold payment without losing discount privileges. Discount privilege will apply from date of scheduled delivery, date of actual receipt of goods, or date of receipt of proper invoice, whichever is later.
17. **TERMINATION.** Purchaser may at any time cancel this agreement in whole or in part by written notice, whereupon Vendor shall terminate work pursuant to the terms of such notice and without further liability of Purchaser. Purchaser must acknowledge non-cancelable, non-returnable material at the time of order placement. If such goods ordered can not be sold to other purchasers, Vendor shall promptly advise Purchaser of the quantities of applicable work and material on hand or purchased prior to termination and the most favorable disposition that Vendor can make. Vendor shall comply with Purchaser's instructions regarding disposition of such work and material. Payment for non-cancelable, non-returnable material shall constitute Purchaser's only liability in the event this order is terminated. The provisions of this section shall not apply to termination by Purchaser for default of Vendor.
18. Supplier certifies that it does not discriminate against its employees or applicants for employment or in its business dealings in compliance with all federal, state and local laws, rules and regulations regarding discrimination and civil rights, including, but not limited to: Title VII of the Civil Rights Act of 1964, as amended; the New Jersey Laws Against Discrimination; Executive Order 11246, which prohibits federal contractors and federally-assisted construction contractor and subcontractors who do over \$10k in business in one year from discriminating in employment decisions; Section 503 of the Rehabilitation Act of 1973, which holds that any contract in excess of \$10k entered into by any Federal department or agency for the procurement of personal property and non-personal services for the US shall contain a provision requiring that the party contracting with the US take affirmative action to employ individuals with disabilities; the Vietnam Era Veteran's Readjustment Assistance Act of 1974, as amended, which holds that covered contracts shall contain a provision requiring the party contracting with the US to take affirmative action to employ qualified special disabled veterans, veterans of the Vietnam era and any other veterans who served on active duty during a war or in a campaign or expedition; and the Americans with Disabilities Act of 1990 which prohibits discriminating against qualified individuals with disabilities.
19. **AMENDMENTS.** No change of any term or condition of this order, or any specifications of material or merchandise, shall be binding upon Purchaser unless pursuant to a written **CHANGE IN ORDER** signed by Purchaser's authorized representative, or in a writing signed by the parties.
20. **ENTIRE AGREEMENT.** Reference to Vendor's bids or proposals, if noted on this purchase order shall not affect the terms and conditions hereof, which shall supersede all prior writings. This purchase order constitutes the final agreement between the parties. It is the complete and exclusive expression of the parties' agreement on the matters contained in the Purchase Order. All prior and contemporaneous negotiations and agreements between the parties, whether oral or written, on the matters contained in this Purchase Order are expressly merged into and superseded by this Purchase Order. The provisions of this Purchase Order may not be explained, supplemented or qualified through evidence of trade usage or prior course of dealings. In entering into the terms of the Purchase Order, neither party has relied upon any statement, representation, warranty, or agreement of the other party except for those expressly contained in this Purchase Order.
21. **SEVERABILITY.** If any provision of this Purchase Order is determined to be invalid, illegal or unenforceable, the remainder of this Purchase Order shall remain in full force and effect if the essential terms and conditions of the Purchase Order for each party remain valid, legal and enforceable.
22. **WAIVER.** The Purchaser's failure to enforce any of the provisions of the Purchase Order does not constitute a waiver of any of its rights provided by the Purchase Order.