

SUPPLIER PURCHASE ORDER TERMS & CONDITIONS

pg. 11

1. SHIPPING INSTRUCTIONS: (a) On date of shipment, send original bill of lading, air bill or express receipt reflecting this order number to Buyer. (b) Do not deliver ahead of schedule unless authorized by Buyer. Describe shipments in accordance with the carrier's tariffs to obtain the lowest freight rate. Do not insure or declare value on shipment beyond F.O.B. point. When a shipment is subject to freight rates dependent upon value, annotate the bill of lading, air bill or express receipt to show that the shipment is released at the maximum value which applies to the lowest rate provided in applicable tariffs.

Consolidate all shipments to be forwarded on one day. Articles furnished in excess of the quantity specified or in excess of any allowable overage will be retained by Buyer at no additional cost, unless Seller notifies Buyer within 45 days after shipment that it desires the return thereof. Seller will reimburse Buyer for the full cost of returning such over shipment or a minimum charge of \$50.00, whichever is higher. Mail the invoice to Buyer's Accounting Department when articles are shipped. STATE SHIPPING POINT ON ALL INVOICES. Each case or parcel and accompanying packing list of contents must show Buyer's order number. If no packing list accompanies the shipment, Buyer's count will be conclusive on Seller.

2. EXTRA: No charge will be allowed for transportation, packaging, packing or returnable containers unless stated. All shipments must be packaged so as to permit efficient handling and to provide protection in shipment, and if tendered to a common carrier for delivery, must also conform to the packaging requirements applicable to such carrier. Damage to any articles resulting from improper packaging will be charged to Seller.

3. SPECIFICATIONS: All articles ordered to Buyer's specifications will comply with such specifications current as of the date of this order unless otherwise specified by Buyer.

4. WARRANTY: Unless otherwise agreed to in writing by the parties, Seller warrants that articles ordered to specifications will conform thereto and to any drawings, samples or other description furnished or adopted by Buyer, or, if not ordered to specifications, will be fit and sufficient for the purpose intended, and that all articles will be merchantable, of good material and workmanship, and free from defect. Such warranties, together with Seller's service warranties and guarantees, if any, shall survive inspection test, acceptance of, and payment for the articles and shall run to Buyer, its successors, assigns and customers. Buyer may, at its option, either return for credit or refund or require prompt correction or replacement of the defective or nonconforming article or part thereof. Return to Seller of any defective or nonconforming article and delivery to Buyer of any corrected or replaced articles shall not be corrected or replaced unless specified on Buyer's written order. Articles require to be corrected or replaced shall be subject to the provisions of this clause and the clause hereof entitled "Inspection" in the same manner and to the same extent as articles originally delivered under this order.

5. INSPECTION: All articles are subject to final inspection and acceptance at Buyer's plant notwithstanding any payments or other prior inspections. Such final inspection shall be made within a reasonable time after delivery.

6. RELEASE OF NEWS INFORMATION AND ADVERTISING: Seller shall not, without the prior written consent of Buyer: (a) make any news release, public announcement, denial or confirmation of all or any part of the subject matter of this order, or any phase of any program hereunder, or (b) in any manner advertise or publish the fact that Buyer has placed this order.

7. TERMINATION: Buyer may terminate this order, in whole or in part, if Seller fails to comply with any of the provisions hereof, or if Seller becomes the subject of a proceeding under state or federal law for relief of debtors or makes an assignment for the benefit of creditors.

8. PATENT, TRADEMARK, COPYRIGHT, DATA RIGHTS INDEMNITY: Seller hereby indemnifies Buyer, its successors, assigns agents, customers, and users of the articles against loss, damage or liability, including costs and expenses which may be incurred on account of any suit, claim, judgment or demand involving infringement or alleged infringement of any patent, trademark, copyright or data rights in the manufacture, use or disposition of any articles supplied hereunder provided Buyer shall notify Seller of any suit instituted against it and to the full extent of its ability to do so, shall permit Seller to defend the same ability to do so, shall permit Seller to make settlement in respect thereof. Buyer does not grant indemnity to Seller for infringement of any patent, trademark, copyright or data rights.

9. ASSIGNMENT: Neither this order nor any rights or obligations herein may be assigned by Seller nor may Seller subcontract in whole the performance of its duties hereunder without, in either case, Buyer's prior written consent. The terms and conditions of this order shall bind any permitted successors and assigns of Sellers. Any consent by Buyer to assignment shall not be deemed to waive Buyer's right to recoupment and/or set off of claims arising out of this or any other transactions with Seller, its divisions, affiliates or subsidiaries, or to settle or adjust matters with Seller without notice to permitted successors and assigns.

10. CHANGES: Buyer may, at any time, make changes in the specifications, designs or drawings, samples or other description to which the articles are to conform, in methods of shipment and packaging, or place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this order, whether changed or not changed by any such order, an equitable adjustment must be made in writing within thirty (30) days of the receipt of any such notice, provided, however, that Buyer may, in its discretion, receive and act upon any such claim so made at any time prior to final payment under this order. Nothing in this clause shall excuse the Seller from proceeding without delay to perform this order as changed.

11. GRATUITIES: Seller warrants that neither it nor any of its employees, agents or representatives has offered or given any gratuities to Buyer's employees, agents or representatives with a view toward securing this order or securing favorable treatment with respect thereto.

12. NOTICE TO BUYER OF LABOR DISPUTES: (a) Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this order, Seller shall immediately give notice thereof, including all relevant information, with respect thereto, to Buyer. (b) Seller agrees to insert the substance of this clause, including this paragraph (c), in any subcontract hereunder as to which a labor dispute may delay the timely performance of this order.

13. EFFECT OF INVALIDITY: The invalidity in whole or in part of any provision hereof shall not affect the validity of any other provision.

14. RIGHTS, REMEDIES AND WAIVER: The rights and remedies provided Buyer herein shall be cumulative, and in addition to any other rights and remedies provided by law or equity. Seller shall be liable for all incidental or consequential damages, including but not limited to, loss of profits, capital or production and personal injury or property damage, whether arising out of contract, negligence, strict tort or breach of warranty. A waiver of a breach of any provision hereof shall not constitute a waiver of any other breach. The laws of the state shown in the Buyer's address, printed on the face of this order, shall apply in the construction hereof.

15. DISPUTES: Any dispute arising under this order which is not settled by agreement of the parties may be settled by appropriate legal proceedings. Pending any decision, appeal or judgment in such proceedings or the settlement of any dispute arising under this order, Seller shall proceed diligently with the performance of this order in accordance with the decision of Buyer.

16. TAXES AND OTHER EXACTIONS: Seller assumes exclusive liability under all laws that impose taxes or other exactions on the manufacture or sale of the items to be furnished hereunder. Time is of the essence in the performance of the order by Seller. Except if title has heretofore passed to Buyer or Buyer's heirs under other provisions of this order, title to the articles shall pass to Buyer upon delivery of the articles to the F.O.B. point names herein.

17. EXCUSABLE DELAYS: Buyer shall not be liable for damages for delay in delivery arising out of causes beyond its reasonable control and without its fault or negligence, including, but not limited to, acts of God or of the public enemy, acts of the Government in either contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

This order constitutes Buyer's offer to purchase the materials, services and articles, all of which are herein called "articles," described elsewhere in this order in accordance with its provisions which include the provisions hereto and provisions incorporated herein by reference.



ZT-PUR-011 Rev A 11/08/2013

P (480) 285-3990 | (855) 289-1874 | F (480) 285-3997 | WWW.ZIPPERTUBING.COM