

# PURCHASE ORDER TERMS AND CONDITIONS

US031003-1

**1. GENERAL.** A. This Purchase Order ("Order"), together with the agreements, specifications or other documents noted herein ("Additional Documents"), constitutes the COMPETE AND FINAL AGREEMENT of Transport International Pool, Inc. ("Buyer") and Vendor and may not be modified or superseded except by written agreement signed by Buyer's authorized representative, notwithstanding any additional or other proposals or terms and conditions which may now or in the future appear on Vendor's invoices, quotations, acknowledgment or other forms (notification of objection thereto being given hereby), and notwithstanding any acceptance of shipments, payments or other similar acts of Buyer.

B. Any shipment, delivery or other tender of performance of Vendor shall be taken as Vendor's assent to and acceptance of these Terms and Conditions. Buyer may withdraw this Order at any time prior to receipt of Vendor's unconditional written acceptance hereof.

**2. PERFORMANCE.** A. Buyer shall have the right at any time to change this Order as to specifications, delivery, packaging or means of shipment ("Change Order"). Performance by Vendor reflecting any Change Order or failure to give Buyer notice in response to any Change Order within five (5) days, whichever occurs first, shall be deemed acceptance of the Change Order without any price or other adjustment. Vendor shall make no change in the goods, materials, services or labor covered hereby (collectively the "Goods"), whether by change in or departure from specifications, design, material, process, machinery, dies and molds, standard or method, material composition, delivery, packaging or means of shipment, without Buyer's prior written consent.

B. Time and quantity are of the essence. Unless otherwise specified, delivery times specified are the times of delivery of the Goods at Buyer's designated delivery location.

C. Vendor shall pack, mail, label and ship all Goods in appropriate and suitable manner selected by Vendor to ensure the lowest transportation cost for which Buyer is responsible, if any, in the absence of specific instructions. Buyer's count of the Goods shall be final as to all shipments not accompanied by a packing list. Vendor shall inform Buyer immediately of any occurrence expected to result in any change in delivery time or quantity.

D. To the extent that, in connection with the Goods or otherwise, Vendor's employees, associates, consultants, agents or other representatives ("Vendor's Agents") are on or present at any premises of Buyer or its customers, Vendor shall be responsible for the acts and omissions of Vendor's Agents within or about such premises and agrees to indemnify, defend and hold Buyer and its customers ("Indemnitees") harmless from liability for any claims or damages to property or injuries or death to persons arising out of acts or omissions of Vendor's Agents at or about such premises, including without limitation (i) the failure of any of Vendor's Agents to comply with all applicable rules and laws, rules or regulations (Indemnitee's or otherwise) governing security, maintenance, health, safety and the environment at or about such premises; (ii) any claim against Indemnitees by or on behalf of any of Vendor's Agents for injury or otherwise; or (iii) any claim against Indemnitees resulting from Vendor's failure to maintain worker's compensation or other public or private insurance with respect to any of Vendor's Agents.

E. In the event that any claim, demand or lawsuit is made against Buyer relating to the Goods or to Vendor's performance hereunder or to trade names, trademarks, copyrights or patents and/or are based upon unfair competition by reason of sale or use of Vendor's Goods by Buyer, Vendor shall defend all actions against Buyer, pay all costs of any lawsuit, including attorney's fees, and indemnify and hold harmless Buyer for any costs incurred by Buyer in connection herewith.

F. Vendor shall maintain such insurance as is generally required by Buyer for its vendors and shall produce certificates of insurance upon Buyer's request.

**3. PRICE, TAXES, TRANSPORTATION.** A. Except as otherwise specified herein, the Total Commitment shall be F.O.B. place of delivery (destination); inclusive of applicable taxes, excises, duties, quotation fees or any other governmental impositions on or related to the production, sale or transportation of the Goods; in compliance with any governmental price limitation; and subject to increase only with Buyer's prior written consent. The Total Commitment and invoices submitted hereunder shall not include any tax with respect to which Buyer has furnished an applicable exemption certificate. If after the date of this Order and prior to the date of delivery any taxes charged to Buyer herein (whether separately itemized or included in the Goods Prices) are increased or Vendor is exempted in whole or in part from the burden of said taxes, the Total Commitment shall be correspondingly increased or reduced.

B. Vendor shall assume all transportation costs caused by failure to comply with Buyer's routing instructions. Delivery of Goods shall be deemed complete upon tender thereof by Vendor or its consignee to Buyer, at which time risk of loss shall pass to Buyer.

C. Invoices shall be payable in accordance with the payment terms stated on the face of the Purchase Order following the Buyer's acceptance of the Goods. In the

event that there are no payment terms stated, the payment terms will automatically default to 2% 20 net 90. Vendor shall not submit invoices to Buyer prior to delivery. Delivery charges and sales tax shall be separately itemized. Buyer shall have no liability for charges except as set forth in this Order.

**4. INSPECTION/TESTING.** Vendor shall submit to Buyer all production, functional and quality control test reports and other data as Buyer may request. Buyer shall have the right to inspect all Goods prior to shipment in order to assess work quality and conformance with Buyer's specifications and Vendor's representations, warranties and covenants under this Purchase Order. Upon delivery, Buyer shall have the right, prior to acceptance, to inspect any Goods in a timely manner. Buyer shall have the right at any time to have any Goods tested for suitability for the purpose intended hereunder by one or more independent examiners. If such examiners conclude that any Goods or part thereof was not constructed in a manner to perform satisfactorily in its intended use, Vendor shall reimburse Buyer for the expense of such testing and at its sole cost modify each affected Goods or reimburse Buyer therefor. Goods recalled for such purposes shall be recalled and returned to the location from which recalled at Vendor's sole cost.

**5. ACCEPTANCE.** Buyer's acceptance of Goods shall be subject to Buyer's inspection thereof and Buyer shall have the right to (a) reject or revoke acceptance of any Goods not in strict conformity with the requirements hereof ("Rejected Goods") without invalidating the acceptance of other Goods or, in Buyer's sole discretion, (b) require the correction or replacement of nonconforming Goods. Buyer's acceptance of Goods shall be effective only if in writing from Buyer, and neither payment by Buyer prior to acceptance of any Goods nor failure to inspect any Goods prior to shipment shall be deemed an acceptance thereof. Regardless of any passage of risk of loss, Rejected Goods shall be held at Vendor's sole risk and expense, including all transportation and handling costs, until corrected by Vendor to Buyer's satisfaction and delivered to Buyer. At Buyer's option, Rejected Goods shall be replaced with acceptable Goods. Any payment by Buyer for Rejected Goods shall be refunded to Buyer immediately upon request therefor.

**6. SPECIFICATIONS.** Vendor acknowledges that all specifications were provided by Vendor and that by incorporating such specifications herein Buyer assumes no responsibility for the performance of the Goods in normal use. Vendor has familiarized itself with the uses to which the Goods might be used and Vendor shall be solely responsible for the means, manner and method of construction of the Goods.

**7. FORCE MAJEUR.** Either Buyer or Vendor may suspend performance during the occurrence of an excusable delay, which shall mean and include any delay not occasioned by the fault or negligence of the delayed party and which results from the acts of God or public enemy, restrictions, prohibitions, priorities or allocations imposed by governmental authority, embargoes, floods, fires, typhoons, earthquakes, epidemics, unusually severe weather, delays of similar nature or governmental causes, and strikes or labor disputes (of or involving the delayed party's employees only). Excusable delays do not include lockout, shortage of labor or lack of or inability to obtain raw materials, fuel or supplies or any other industrial disturbance. Nothing contained in this paragraph shall limit Buyer's rights hereunder in any way, except that, in the event of Vendor's excusable delay, Vendor shall not be liable for Buyer's incidental or consequential damages resulting therefrom.

**8. DEFAULT.** In addition to all other remedies set forth herein, Buyer shall have the right to cancel this Order at any time in whole or in part in the event (a) Vendor fails to ship or deliver Goods in accordance with this Order or the specifications, samples or instructions issued by Buyer in connection herewith, (b) Vendor fails to affirm in writing, within five (5) days following Buyer's request, Vendor's ability to deliver all Goods in accordance with this Order; (c) Buyer or any of Buyer's customers determine that the materials, workmanship or quality are defective or (d) other default by Vendor hereunder continues ten (10) days after Buyer's notice of default. In the event of such default, Buyer shall be entitled to all available remedies under law and in equity and Vendor shall be liable for all damages and costs of Buyer (including any damages and costs incurred by Buyer's customers) resulting from such default. Buyer shall have an unrestricted right to terminate this Order if, at any time in the sole judgment of Buyer, Vendor's financial or other business condition threatens Vendor's performance hereunder. Notwithstanding anything herein to the contrary, in the event that Vendor fails to deliver any Goods within ten days of the Delivery Date, Buyer shall have the right without further notice to refuse to accept the overdue Goods, purchase substitute Goods on the open market and hold Vendor accountable for any loss incurred in connection therewith. Cancellation of all or any part of this Order shall not cancel or waive Buyer's rights hereunder.

**9. TERMINATION.** A. Buyer may terminate this Order at any time in whole or in part without cause, whereupon Vendor shall terminate work on the Goods, cease placement of further orders, terminate sub-contracts outstanding hereunder, and take all necessary action to protect any of Buyer's property in Vendor's possession, all without any further liability of Buyer.

B. With respect to Goods made specifically for Buyer that cannot be sold to other purchasers, upon termination by Buyer, Vendor shall promptly advise Buyer of the quantities of applicable work and material on hand or purchased prior to termination and the most favorable disposition that Vendor can make thereof. Vendor shall comply with Buyer's instructions regarding disposition of such work and material. All claims by Vendor based on such termination must be asserted, in writing and in full, within sixty (60) days from the date of termination. If the parties, after negotiation, are unable to agree within ninety (90) days after the termination date upon the amount of fair compensation payable to Vendor for performance under this Order prior to the termination date, Buyer shall pay Vendor: (a) the contract price for completed items and (b) the actual costs, including a fair profit, incurred by Vendor and properly allocable under generally accepted accounting practices to the portion of this Order on which work was commenced but not completed, less (c) the value of any items used or sold by Vendor and the reasonable value or cost of any defective, damaged or destroyed work or material, subject to Buyer's right to audit all elements of such costs. The payment of profit shall not exceed six percent (6%) of the actual costs incurred by Vendor in connection with the work performed hereunder and shall not include any profits anticipated by Vendor on the uncompleted portion of this Order. In no event shall total payments exceed the Total Commitment. Buyer shall have no obligation to pay any claim by Vendor hereunder which is not submitted to Buyer in writing within ninety (90) days following the termination date and Buyer's obligations under this Section shall not be applicable in the event of a termination for cause. The payment provided for in this clause shall constitute Buyer's only liability in the event this Order is terminated as provided herein.

C. With respect to Goods normally carried in inventory by Vendor ("Inventory Goods"), Buyer shall not have liability for any termination of this Order, in whole or in part, prior to actual shipment. Buyer's for cancellation of Inventory Goods liability within ten days following shipment shall be limited to returning said Goods and reimbursing Vendor for direct costs of handling and transportation.

**10. WARRANTIES.** Vendor represents that it is aware of the intended use of the Goods and acknowledges Buyer's reliance on Vendor's obligation to furnish goods suitable for such purposes. Vendor warrants (a) that the Goods, including material and work, furnished hereunder shall be of the highest grade and quality unless otherwise specified by Buyer in writing, shall not be less than merchantable and fit for the particular purposes known by or disclosed to Vendor as applicable thereto, shall meet specifications, drawings or standards agreed upon or samples submitted or approved by Buyer, and shall conform to the Additional Documents; (b) that all Goods shall be in accordance with this Order, free from defects in labor, materials, handling or fabrication; (c) that the Goods shall comply with all applicable laws, regulations, rules and orders, now existing or hereinafter enacted; and (d) that the Goods shall not infringe any patent, copyright or trademark held by any other person or legal entity. The warranties herein are in addition to those otherwise provided or implied by law or customarily given by Vendor with respect to materials, products, merchandise, services and work substantially similar to items covered by this Order. Payment by Buyer shall not constitute an acceptance of Goods or a waiver of any rights of Buyer hereunder. In the event that any Goods are not in compliance with this Purchase Order, Buyer may (without limitation of any other right) return the defective Goods to Vendor who shall refund and return to Buyer its cost plus freight to Buyer's delivery location and freight for return to Vendor or, at Buyer's option, repair, correct or replace the defective Goods at Vendor's cost and expense.

**11. TOOLING/MATERIALS ON CONSIGNMENT.** Except as otherwise provided herein, all tools, dies, fixtures, gauges, templates, equipment, materials and similar items used by Vendor in the manufacture of the Goods shall be furnished by and at Vendor's sole expense. Materials furnished by Buyer or furnished by Vendor and paid for by Buyer ("Buyer's Materials") shall be deemed to be Buyer's sole property held by Vendor on consignment, but at Vendor's sole cost and risk, and Vendor agrees to pay Buyer for any Buyer's Materials not returned to Buyer upon the completion or earlier termination of this Order in the condition delivered to Buyer, reasonable wear and tear excepted. While in the possession of Vendor, all Buyer's Materials shall be maintained in condition satisfactory to Buyer and shall be clearly identified as Buyer's property. Buyer's Materials may be disposed of only upon Buyer's written instructions and shall not be used for any production except that authorized by Buyer. Buyer's Materials shall be insured by Vendor for the full value under both fire and extended coverage while in the possession, custody or control of Vendor and while in transit from Vendor to Buyer. Vendor shall treat as confidential all Buyer's Materials, drawings, specifications and information furnished by Buyer and shall return the same to Buyer upon completion or earlier termination of this Order.

**12. COMPLIANCE.** Vendor represents, warrants, certifies and covenants that: (a) it shall perform all activities required under this Purchase Order in compliance with all applicable national, state and local environmental, health and safety laws and regulations; (b) it will take appropriate actions to provide a safe and healthy workplace, and to protect local environmental quality; (c) each chemical substance constituting or contained in goods sold or otherwise transferred to Buyer hereunder is on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act (15 USC Section 2601 et seq.) as amended and the European Inventory of Existing Commercial Chemical Substances (EINECS) or the European List of Notified Chemical Substances (ELINCS) or equivalent lists in any other jurisdiction which Buyer informs Vendor the goods will likely be shipped; (d) no products supplied under this Purchase Order have been or will be produced utilizing forced, indentured or convict labor or utilizing the labor of persons in violation of the minimum working age law in the country of manufacture, or in violation of minimum wage, hour of service, or overtime laws of the country of manufacture; (e) it has established an effective program to ensure any Vendors it utilizes to provide any goods or services that will be incorporated into products supplied under this Purchase Order will be in conformance with clauses (a) through (e) above; (f) if any goods or other materials sold or otherwise transferred to Buyer hereunder contain hazardous materials, Vendor shall provide all relevant information pursuant to Occupational Safety and Health Act (OSHA) regulations 29 CFR 1910.1200 including a completed Material Safety Data Sheet (OSHA Form 20) and mandated labeling information, and goods and other materials sold or otherwise transferred to Buyer hereunder shall not contain arsenic, asbestos, benzene, carbon tetrachloride, lead, cadmium, or chemicals restricted under the Montreal Protocol unless Buyer expressly agrees otherwise in writing; and (g) Vendor will indemnify, release, defend and hold harmless Buyer, its directors, officers, employees, agents, representatives, successors and assigns, whether acting in the course of their employment or otherwise, against any and all suits, actions, or proceedings, at law or in equity, and from any and all claims, demands, losses, judgments, damages, costs, expenses, or liabilities (including without limitation claims for personal injury or property damage) resulting from or in any way connected with Vendor's breach of any of the representations, warranties or covenants contained in this Purchase Order. Vendor agrees to include clause (g) in any subcontracts issued hereunder. From time to time, at Buyer's request, Vendor shall provide certificates to Buyer relating to any applicable legal requirements or to update this Section, in each case in form and substance satisfactory to Buyer.

**13. ASSIGNMENT & WAIVER.** Vendor shall not assign or sub-contract any substantial part of this Order without Buyer's prior written permission. The failure of Buyer to insist at any time upon the strict performance of any of the terms, covenants or conditions of this Order or to exercise any right or remedy herein, or the waiver by Buyer of any breach of any of the terms, covenants or conditions of this Order shall not be construed as thereafter waiving any such terms, covenants, conditions, rights or remedies.

**14. NOTICES.** Any notice, request or demand given under this Order, whether or not required, shall be valid only if in writing and shall be deemed effective three (3) days following deposit in a United States Post Office if mailed by certified mail, return receipt requested, postage prepaid, to Buyer to the attention of the VP Sourcing, Transport International Pool, Inc., 530 East Swedesford Road, Wayne, PA 19087, and to Vendor at the address set forth above. If given in any other manner, notice hereunder shall be effective upon receipt.

**15. MISCELLANEOUS.** This Order, together all amendments, schedules and addenda, constitutes the entire agreement between the parties hereto and supersedes all prior agreements and understandings of the parties, but without prejudice to Buyer's rights with respect to any breach or default by Vendor under any such prior agreements, and shall be binding upon each party and its respective representatives, successors, and assigns. In the event that any provision hereof is in violation of or prohibited by any law, statute or ordinance, such provision shall be deemed amended to conform to such law, statute or ordinance without invalidating any provisions of this Order. Vendor's indemnification obligations under this Order shall survive the termination of this Order. This Order and the parties' rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania. Vendor hereby submits to jurisdiction and venue of courts having situs in the Eastern District of Pennsylvania or Chester County. Section headings are for convenience only and shall not affect the construction or interpretation of this Order.