

TERMS AND CONDITIONS OF PURCHASE

Aqseptence Group Japan Limited; Japan (2016)



All goods and services procured by Aqseptence Group Japan Limited (the "Buyer") shall be in accordance with the following terms and conditions, unless otherwise stated, in writing:

- ACCEPTANCE** - This Purchase Order is Buyer's offer to Seller and shall become a binding contract on the terms and conditions set forth upon the earlier of (i) Seller's acknowledgement or (ii) by Seller's full or partial performance under this Agreement.
- COMPLETE AGREEMENT** - This Purchase Order and the terms and conditions herein shall constitute the complete agreement between the parties and may not be altered or modified except in writing duly executed by each party. No terms and conditions stated in or attached to Seller's communications to Buyer, including but not limited to acknowledgements or invoices, are applicable to this Purchase Order in any way and are not to be considered Seller's exceptions to the provisions of this Purchase Order. Trade custom, trade usage and past performance are superseded by this Purchase Order and shall not be used to interpret this Purchase Order.
- CHANGES** - Buyer at any time shall have the right to make changes to its order, including, without limitation, in the quantities, specifications or delivery schedule. Any such change, which has a significant impact on Seller's time or cost of performance, shall entitle either Seller or Buyer to an equitable adjustment. However, no additional charge will be allowed unless authorized by Buyer's written consent. Information, such as technical direction or guidance provided to Seller by representatives of the Buyer in connection with the Seller's performance of this Agreement, shall not be construed either as a change within the meaning of this provision or as direction to proceed outside the scope of this Agreement.
- CANCELLATION** - Buyer reserves the right to cancel this Purchase Order in whole or in part upon written notice to Seller, without liability to Buyer for any claims of the Seller. Cancellation shall not have the effect of waiving damages the Buyer might otherwise be entitled to.
- NO PUBLICITY** - Seller shall not, without first obtaining the written consent of Buyer, in any manner advertise, publish, or disclose the fact that Seller has contracted with Buyer to furnish the goods herein ordered nor any of the details connected with this Purchase Order to any third party except as herein specified and except as may be required to perform this Purchase Order.
- DELIVERY - TIME IS OF THE ESSENCE** for delivery to Buyer hereunder. Seller shall promptly provide written notification to Buyer of any possible or actual delay in performance hereunder and shall provide all relevant information concerning the cause for such delay. Buyer reserves the right to charge a penalty of 0.5% of the purchase price of the order for each calendar week by which the delivery period is delayed up to a maximum of 5% of the purchase price of the order and to deduct this amount from the agreed purchase price. In no event, however, shall such notice relieve Seller of its obligations under this Purchase Order. Deliveries shall be strictly in accordance with the schedule set out or referred to in the Purchase Order and in the exact quantities ordered. In no event shall Buyer be liable for any excess goods shipped by Seller. Buyer reserves the right at Seller's expense to return goods shipped not in accordance with Buyer's order set forth on the face hereof.
- WARRANTY** - Seller warrants and guarantees that its goods and services (a) will comply with all relevant specifications and will be of comparable quality as all samples delivered to Buyer, if any, and (b) shall reference true weights, measures, sizes, legends or descriptions printed, stamped, attached or otherwise indicated and comply with all applicable laws, rules, regulations, ordinances, codes and or standards in accordance with applicable laws and regulations for a period of sixty-two (62) months from acceptance.
- NONCONFORMANCE** - Goods not conforming to the requirements of this Purchase Order may be rejected, at Buyer's sole option. All costs with respect to the rework, repair, replacement or refund of the nonconforming goods, including packing, packaging and freight charges, shall be at the Seller's expense as deemed equitable under the circumstances.
- PROPRIETARY RIGHTS** - Seller agrees that Buyer's designs, specifications, formulas, and manufacturing information are Buyer's sole proprietary data and shall not be disclosed to others or utilized for purposes other than those intended hereunder. Seller shall return all proprietary data and copies thereof to Buyer upon completion of Seller's obligations hereunder or upon Buyer's request at any earlier time. All shop drawings, patterns, tools (if such tools are useful only to produce goods ordered), or other items made preparatory to production of any goods purchased hereunder are Buyer's property and upon demand shall be delivered to Buyer.
- RIGHT-OF-ACCESS** - Buyer reserves the right to verify purchased goods at Seller's premises. Further, Buyer shall have the right to inspect Seller's work hereunder during normal business hours to ensure that all relevant standards and specifications are met. Buyer's inspection does not absolve Seller of the responsibility for the quality of goods, and shall not preclude subsequent rejection by Buyer.
- PACKING & SHIPPING** - No change shall be allowed for handling, packing, crating, drayage or storage without written permission of Buyer. Goods shall be packaged in a method to preserve and protect from damage and/or degradation. All goods are to be suitably prepared for shipment by Seller in accordance with acceptable commercial practices. Seller shall cause the goods to be labeled to conform to all requirements of applicable laws. Seller shall identify Buyer's purchase order number on Seller's invoice, packing list, bill of lading or on any packages. Seller shall attach an invoice to all shipments, in addition to forwarding a copy of such invoice to Buyer. Unless otherwise stated on the face hereof, all goods shall be delivered DDP Buyer's location (Incoterms® 2010).
- PRICING** - This Purchase Order must not be filled at prices higher than last quoted by Seller without Buyer's written consent. Seller represents that the prices to be paid or otherwise charged to Buyer are not any higher than the lowest price for such goods or services offered by Seller to any other of its customers. Seller shall be responsible for and pay all federal, state, and local sales, use, income, excise, property, employment, and other taxes similar to, or differing from, any of the foregoing, incurred or levied on or in connection with the manufacture of goods, provision of services, or relating to Seller's own property. Buyer shall be responsible only for taxes arising from its ownership of the goods. Seller agrees to indemnify Buyer against

any loss, liability or expense resulting from Seller's failure to pay such taxes, fees, duties, assessments, charges or conditions.

- HAZARDOUS MATERIALS** - Seller shall notify Buyer in writing upon acceptance of this Purchase Order if goods furnished are subject to laws or regulations relating to hazardous or toxic substances, or when disposed of, to regulations governing hazardous wastes, or any other applicable environmental, health, or safety laws or regulations. Instruction for handling, warnings, and material safety data sheets shall be provided with each shipment. Seller shall submit to Buyer with each shipment, a copy of all relevant MSDS sheets.
- PAYMENT** - Buyer shall remit payment to Seller within one hundred fifty (150) days of Buyer's receipt of Seller's invoice. Payment by Buyer hereunder shall not be deemed an acceptance of the goods, or work, performed hereunder by Seller.
- TITLE** - Seller warrants full and unrestricted title for all goods and/or related services furnished by Seller hereunder, free and clear of any and all liens, restrictions, reservations, security interests, and encumbrances. Care, custody and control of such goods remains with Seller until such time as Buyer takes physical possession or otherwise agrees in writing. Seller shall carry on its work and manufacture of goods at its own risk until the goods are fully completed and accepted by the Buyer. In the case of any accident, destruction or injury to the goods before the final completion and acceptance, Seller shall repair or replace such goods at its own expense and to the Buyer's satisfaction.
- PATENTS** - Seller warrants that the manufacture, use and/or sale of the goods provided does not infringe any claims of any patent, trademark, trade name, copyright or other property right of any third-party. Seller agrees to defend, indemnify and hold the Buyer (and its agents, representatives, employees, officers, directors, affiliates, successors and assigns, and customers) harmless from any and all claims, demands, actions, damages and liabilities (including attorney's fees) involving the infringement of any patent, trademark, copyright or other intellectual property right, or the misappropriation of any trade secret of any third party, by reason of the manufacture, use, or sale of said goods or services by Buyer.
- INDEMNITY & INSURANCE** - Seller agrees to defend, indemnify and hold the Buyer (and its agents, representatives, employees, officers, directors, affiliates, successors and assigns, and customers) harmless from all claims, demands, actions, damages, and liabilities (including reasonable attorney's fees) arising out of any injury (including death) to any person or damage to any property in any way connected with the goods or services provide to Buyer hereunder, or any act or omission of Seller, its agents, employees, or subcontractors. Seller agrees to maintain Comprehensive General Liability and Product Liability insurance, including property damage coverage, in an amount and form satisfactory to Buyer. Upon request, Seller agrees to provide Buyer with certificates evidencing that such insurance is being maintained.
- LIMITATION OF LIABILITY** - In no event shall Buyer be responsible or held liable to Seller for punitive, indirect, incidental or consequential damages, including without limitation, liability for loss of use, loss of profits, loss of the goods or business interruption however the same may be caused, including fault or negligence of Buyer. Buyer's liability on any claim of any kind for any loss or damage arising out of or in connection with this Purchase Order or from the performance or breach thereof shall in no case exceed the price allocable to the goods or service ordered hereunder. Any action resulting from any alleged breach by Buyer must be commenced within one year after the cause of action has accrued, or Seller shall be deemed to have waived any such claims.
- COMPLIANCE WITH LAWS AND CODE OF CONDUCT** - Seller, in its performance hereunder, shall comply with all applicable laws, regulations, codes, standards, ordinances and orders. The Code of Conduct for Sub-suppliers of the Aqseptence Group shall apply to these Terms and Conditions.
- ASSIGNMENT** - Seller acknowledges that the goods and/or services to be provided to Buyer hereunder are unique and personal. Accordingly, Seller shall not assign this Agreement or any rights hereunder without the prior written consent of Buyer. Any attempted assignment without such written consent shall render this Agreement null and void.
- WAIVER** - No failure to exercise, and no delay in exercising, on the part of Buyer any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege hereunder preclude further exercise of the same right, power or privilege.
- VALIDITY OF PROVISIONS** - In the event any provision or any part or portion of any provision of this Purchase Order shall be held to be invalid, void or otherwise unenforceable, such holding shall not affect the remaining part or portions of that provision, or any other provision hereof.
- JURISDICTION AND DISPUTES** - Any and all disputes arising under or in connection with this Agreement that cannot be resolved amicably shall be settled finally and bindingly for all Parties by arbitration court proceedings in accordance with the rules of Japanese commercial law. The arbitration proceedings shall be held in Yokohama Japan. The parties hereby acknowledge that the rules of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply hereto and shall not be used for interpretation of the sale of goods hereunder.