

SCANTRON CORPORATION PURCHASE ORDER – TERMS AND CONDITIONS

1. **THE CONTRACT - ACCEPTANCE - CHANGES AND WAIVER:** The contract between Seller and Buyer is embodied in the terms and conditions of this Purchase Order ("Order"), together with any supplemental agreement, documents, specifications, drawings, notes, instructions, engineers' notices or technical data referred to herein. Buyer shall not be bound by this Order unless and until Seller executes this Order and no other form of acceptance shall be binding on Buyer. Seller accepts and shall be bound by the terms of the Order when it executes or by commencing performance hereunder. This Order expressly limits acceptance to the terms stated herein, and any additional or different terms proposed by Seller are rejected unless expressly assented to in writing by Buyer in a supplemental agreement. No contract shall exist except as hereinabove provided. The Order sets forth the entire understanding of the parties with respect to the subject matter hereof and is intended as a complete and exclusive statement of the terms of the agreement between the parties. No waiver or modification of any provision of the Order shall arise or be valid unless made in writing, duly executed by Buyer's properly designated representative, and waiver of any one default shall not waive subsequent defaults. Time is of the essence in Seller's obligations under the Order. Any provisions herein for the delivery of items, or the rendering of services by installments, shall not be construed as making the obligations of Seller severable.
2. **PRICES AND DISCOUNTS:** This Order shall not be filled at prices higher than those agreed to herein. If price is not stated herein, Seller agrees to invoice at the price last quoted or charged Buyer or at the lowest market prices available to any purchaser of Buyer's class as of the date of delivery hereunder, whichever is lowest. The credit and cash discount payment periods available to Buyer shall run from date of receipt of an acceptable invoice following receipt of the items or services at delivery point specified (the "Ship-To Site").
3. **MANUFACTURED OR SHIPMENT IN ADVANCE OR IN EXCESS OF ORDER:** All quantities shown are to be delivered net. Seller shall not deliver, and Buyer shall not be obligated to accept, any material in advance of the schedule set forth in this Order, or in excess of quantities specified in this Order. Buyer will not be responsible in the event of cancellation or change in this Order for any charges related to any manufacture done in advance of a normal flow time necessary to meet the schedule shown on this Order. Buyer, at its option, may return, shipping charges collect, all materials received at Buyer's plant in advance of or in excess of the schedule shown on this Order or may at its option retain materials received in advance with payment therefor deferred until after the scheduled date of delivery.
4. **EXTRA CHARGES:** No charges of any kind, including charges for boxing or cartage, will be allowed unless specifically agreed to by Buyer in writing.
5. **CHANGES:** Buyer reserves the right at any time to make changes in any one or more of the following: (a) Specifications, drawings and data, where the items to be furnished hereunder are to be manufactured in accordance with Buyer's drawings and specifications; (b) methods of shipment or packing; (c) place of delivery; and (d) time of delivery. If any such change causes an increase or decrease in the cost of or the time required for performance of the Order, Seller shall immediately notify Buyer and negotiate an equitable adjustment. No such adjustment shall be binding on Buyer unless agreed to in writing by Buyer.
6. **TRANSPORTATION:** Transportation charges on items sold delivered to destination must be pre-paid whenever possible. No parcel post insurance charges will be allowed unless authorized by the Buyer. If shipment by express becomes necessary in order to fulfill the Seller's delivery obligations, Seller shall pay the difference between express charges and freight charges. Unless otherwise specified herein, delivery shall be F.O.B. Ship-To Site and Seller shall bear the expense and risk of loss until such items are tendered at such destination.
7. **CANCELLATION:** Buyer reserves the right to cancel on written notice, in whole or in part, this Order: (a) in its sole discretion and without cause, or (b) in the event Seller fails to perform any of the provisions of this Order, or so fails to make progress as to endanger performance of this Order in accordance with its terms, or if shipments are not made as promised or deliveries are not made within specified time, or (c) if Seller becomes insolvent (however such insolvency may be evidenced), or any petition under the Bankruptcy Act is filed against Seller and not vacated within thirty (30) days from the date of filing, or any such petition is filed by Seller. Buyer's liability arising out of this Order shall be limited to payment of the Order price for completed items finished prior to such cancellation and delivered to and accepted by Buyer. The failure of Buyer to insist upon strict performance of any of the terms of this Order, or to exercise any rights herein conferred, shall not be construed as a waiver of Seller's right to assert or rely on any such terms or rights on any future occasion.
8. **PACKAGING AND LABELING:** All items are to be suitably boxed, wrapped or coated so as to be protected against hazards of shipment, storage and exposure. Different types of merchandise shall be separately packed, and packages shall be labeled to show the number of this Order, weight, name of item and material of which it is made. Itemized packing slips showing the number of this Order must accompany each delivery. Buyer's count shall be conclusive in the absence of a packing slip.
9. **ASSIGNMENT:** Unless otherwise indicated by the terms of another signed agreement or this Order, Seller may not assign or subcontract or delegate performance of all or any portion of this Order or Seller's rights hereunder without the prior written consent of Buyer. This limitation shall not apply to the purchase of standard commercial supplies or raw material. Claims for monies due or to become due hereunder may, however, be assigned by Seller, provided that Seller promptly supplies Buyer with copies of any such assignment and provided further that payment to an assignee of any sum due hereunder shall be subject to setoff or recoupment to the extent provided herein and otherwise by law, just as if there were no such assignment.
10. **WARRANTY:** Seller warrants that all items will be merchantable and will be free from defect in material and workmanship, and will conform to applicable specifications, drawings or descriptions furnished by Buyer. If Seller is responsible for design of the items according to performance of specifications established by Buyer as have been or are herein communicated to Seller, Seller warrants that the items will be free from defects, fit, of good quality and workmanship and sufficient for the purposes intended by Buyer. Buyer's approval of designs furnished by Seller shall not relieve Seller of its obligations under this article. The warranties of Seller, together with its service guarantees, shall survive inspection test and acceptance and shall run to Buyer and its customers. This warranty is in addition to any other warranties given by Seller and warranties created by operation of law.
11. **INSPECTION:** Irrespective of any prior payment, all items produced hereunder will be subject to final inspection and approval either upon delivery at the Ship-To Site or when operating tests are possible after incorporation into Buyer's products. Any item rejected because of defective material or workmanship or nonconformance to specifications or samples or Seller's warranties (express or implied) or otherwise pursuant to the provisions of the Order, may be returned to Seller at Seller's risk and expense, including transportation both ways, and Buyer may also charge the Seller for the cost of inspection. Buyer is not required to accept any item which does not conform to the Order, the usage of the trade and industry to the contrary notwithstanding.
12. **SET-OFF:** Buyer shall be entitled at all times to set off any amount owing at any time from Seller to Buyer or any of its affiliated or subsidiary companies against any amount payable at any time by Buyer or any of its affiliated or subsidiary companies to Seller.
13. **APPLICABLE LAW:** This Order shall be construed and its terms interpreted in accordance with the laws of the State of Minnesota, without reference to its choice of laws principles. Any action between the parties shall have venue in State of Minnesota. The parties waive application of the Uniform Commercial Code and 1980 UN Convention on Contracts for the International Sale of Goods to this Agreement and the transactions contemplated by this Agreement.
14. **TOOLS, DRAWINGS AND MATERIALS:**
 - (a) 1. Dies, tools and patterns specifically developed for and used in the manufacture of the items herein ordered shall be furnished by and at the expense of Seller, and shall be kept in good condition and, when necessary, shall be replaced by Seller, without expense to Buyer. Upon notice from Buyer, Seller shall also, at its own expense, carry fire and extended coverage insurance on such items, in an amount equal to the full replacement cost thereof.
 2. Buyer may at any time reimburse Seller for the cost of the whole or any part of said dies, tools, patterns or replacements, and become the owner and entitled to the possession of same.
 3. If the price stated on the face hereof includes separately the cost of any dies, tools or patterns, they shall become the property of Buyer, and Seller shall, to the extent feasible, identify said property as Buyer directs. When this Order has been completed, such tools shall be disposed of as Buyer may direct.
- (b) Seller agrees that any materials, designs, tools, dies, patterns, drawings, artwork, negatives, cuts, information and equipment furnished or paid for by Buyer will be used only in production for Buyer of the items called for herein and not otherwise. Buyer does not warrant the accuracy or fitness of any items furnished. All items furnished shall be kept separately from the other materials or tools and shall be clearly identified as the property of Buyer. Seller will carry fire and extended coverage insurance on items furnished in an amount equal to the full replacement cost thereof, and assumes all liability for loss or damage with the exception of normal wear or tear. On or before completion or termination of the Order all items furnished shall be returned to Buyer or disposed of in accordance with Buyer's instructions.
15. **TAXES:** Order prices include all applicable federal, state and local taxes in effect on the Order date.
16. **CONFIDENTIAL:** Seller shall not, without first obtaining Buyer's written consent, disclose the fact that Seller has furnished or has contracted to furnish Buyer with items covered hereby nor, except as is necessary for performance of this Order, shall Seller disclose any of the details connected with this Order to third parties. In no event shall Seller use Buyer confidential information except to perform any agreement arising from this Order.
17. **PATENT INDEMNITY:** Seller agrees to indemnify Buyer and its successors, assigns, customers and users of its products, against any claims, demands or liability, including costs and expenses, for or by reason of any actual or alleged patent, copyright or trademark infringement arising out of the manufacture, use, sale or disposal of goods, services or other items furnished under this Order.
18. **COMPLIANCE WITH LAWS:** Seller represents that the items called for herein will be produced, manufactured and delivered in accordance with all applicable Federal, state and local laws, rules and regulations, including without limitation the Fair Labor Standards Act of 1938 as amended, Seller agrees to furnish on each invoice a statement (in form approved by U.S. Department of Labor) certifying that the items covered by such invoice were produced, manufactured and delivered in accordance with said Fair Labor Standards Act of 1938, as amended, and all regulations and orders issued thereunder. Seller represents and warrants that it is in compliance with and will comply with all applicable laws, regulations and treaties.
19. **INFORMATION DISCLOSED TO BUYER:** Any knowledge or information which Seller shall have disclosed or may hereafter disclose to Buyer in connection with the purchase of the items or services covered by this Order shall not, unless otherwise specifically agreed upon in writing by the Buyer, be deemed to be confidential or proprietary information, and shall be acquired free from any restrictions (other than a claim for patent infringement) as part of the consideration for this Order.
20. **WORK ON BUYER'S OR ITS CUSTOMER'S PREMISES:** If Seller's work under this Order involves operations by Seller on the premises of Buyer or one of its customers, Seller shall take all necessary precautions to prevent the occurrence of any injury to person or property during the progress of such work and except to the extent that any such injury is due solely and directly to Buyer's or its customer's negligence as the case may be, shall indemnify Buyer against all claims, demands, liability or loss which may result in any way from any act or omission of the Seller, its agents, employees, or subcontractors, and Seller shall maintain such public liability, property damage and employers' liability and workers' compensation insurance as will protect Buyer from said risks and from any claims under any applicable Workmen's Compensation and Occupational Disease Acts.
21. **INDEMNIFICATION:** Seller agrees, at its sole cost and expense, to defend, indemnify and hold Buyer and its affiliated companies and their respective officers, agents, employees and customers harmless from any and all claims, expenses (including attorney's fees), losses, costs, damages, liabilities and suits based upon, relating to or arising from any alleged defect in the items or services provided under this Order, or any other breach of warranty or of any of the provisions of this Order, or any alleged acts or omissions of Seller or its affiliated companies and their respective officers, agents, employees or subcontractors in the performance of this Order. The remedies specified herein shall be cumulative and in addition to other or further remedies provided by law or equity. If Buyer is successful in any such action brought against Seller for such defect, breach or warranty or act or omissions, Buyer shall be entitled to such damages and other relief, as may be provided by law or equity.
22. **AFFIRMATIVE ACTION:** In connection with the performance of work under any Scantron Corporation contract or this Order, unless exempt, the Equal Opportunity Clauses as set forth in Section 202 of Executive Order 11246, as amended, 41 C.F.R. § 1.4(a), Section 402 of the Vietnam Era Veterans Readjustment Act of 1974, as amended, 41 C.F.R. § 250.5(a), Section 503 of the Rehabilitation Act of 1973, as amended, and 41 C.F.R. § 741.5(a) are incorporated by reference.
23. **PRIVACY OF SENSITIVE CUSTOMER INFORMATION:** The parties agree that Buyer may disclose to Seller certain non-public personal information and other sensitive information about Buyer's customers (and its customers' customers, patients and members) ("Information") which may fall within the provisions of the Health Insurance Portability and Accountability Act of 1996, the Gramm-Leach-Bliley Act, the Fair and Accurate Credit Transactions Act, the Fair Credit Reporting Act, and other privacy and security related Federal and state laws and regulations (the "Privacy Laws"). Seller agrees to maintain the confidentiality of all such Information. Seller further agrees not to disclose or use any such Information except to carry out the purposes for which Buyer provided such Information to Seller. Seller will maintain and monitor its policies and procedures and implement appropriate administrative, technical and physical safeguards designed to meet the following objectives: (a) to ensure the security and confidentiality of the Information in compliance with the applicable Privacy Laws; (b) to protect against any anticipated threats or hazards to the security or integrity of such Information; and (c) to protect against unauthorized access to or use of such Information that could result in harm or inconvenience to Buyer or its customers. Seller shall provide prompt notice to Buyer if Seller becomes aware of an unauthorized disclosure involving any such Information. Seller will permit a review to assess whether appropriate key controls are in place and/or will provide reasonable documentation to verify that Seller has complied with its obligations under this paragraph.
24. **INDEPENDENT CONTRACTOR:** No agency, partnership, joint venture or employer-employee relationship exists between the parties, and no party has the right to enter into a contract on behalf of or as an agent or representative of any other party.
25. **ELECTRONIC/FACSIMILE TRANSMISSION:** In the event the Order or other such sales document(s) are transmitted by either of the parties to the other party using electronic or facsimile transmission, same shall be deemed the equivalent of an originally signed document in all respects. The validity, enforceability or admissibility of electronically or facsimile transmitted documents shall not be contested by either party.
26. **CONFLICT OF TERMS:** The terms and conditions stated on this Order shall govern in the event of any conflict with any terms proposed by Seller and are not subject to change by reason of any written or oral statements by Seller in its acknowledgment of this Order unless such conflicting or additional terms are accepted in a writing under separate agreement specifically superseding this Order and signed by Buyer.