



AIDA-AMERICA Purchase Order Terms and Conditions – TCP

These Terms and Conditions of Purchase (“TCP”) may be updated or revised by Aida at its sole discretion, from time to time, without notice and the applicable Purchase Order will be subject to the posted TCP as of the date of the Purchase Order. Aida specifically rejects and Vendor disclaims printed provisions in Vendor’s printed sales documents including associated forms and/or documents inconsistent with the TCP. These TCP shall constitute the agreement between Aida and Vendor with respect to any Purchase Order and the purchase of any products, services and/or materials. These TCP supersede any prior or inconsistent agreements or representations, written or oral. Any amendment of these TCP must be in writing and signed by Aida to be binding.

1. **Acceptance.** This Purchase Order (“Order”) expressly limits acceptance to the terms and conditions stated herein and any additional terms and conditions incorporated herein by reference or annexed hereto. Additional or different terms and conditions proposed by Seller are objected to and hereby rejected, unless expressly agreed upon in writing by AIDA. Acceptance of this Order by Seller shall occur either by Seller’s written acceptance, or by Seller’s commencement of performance or first shipment. Seller’s written acceptance or commencement of performance shall constitute acceptance, without variance, addition to, or deletion of, these terms and conditions. AIDA reserves the right to revoke this Order or any other order which is not accepted within five (5) days of its issuance by AIDA.

2. **Invoices.** Seller shall submit invoices for each payment. Such invoices shall contain the following information: AIDA’s Order number, item number, description of item, or services, quantities, unit prices, extended totals, and Seller’s packing slip number. Seller shall furnish AIDA, upon AIDA’s request, bills of lading and proofs of delivery. Payment of an invoice shall not constitute acceptance of goods or services by AIDA, and shall be subject to adjustment for errors, shortages, defects, or other failure of Seller to meet the requirements of this Order. AIDA may at any time exercise rights of set off against any amount owed to Seller or any of Seller’s affiliated companies. All payments made are to be credited by Seller against invoice(s) referenced to on AIDA’s payment.

3. **Overshipments.** AIDA will pay only for specific quantities or services ordered. Overshipments will be held at Seller’s risk and expense for a reasonable time awaiting shipping instructions. Return shipping charges for overshipped quantities will be at Seller’s expense.

4. **Packing and Shipment.** Unless otherwise specified, all goods shall be packed, packaged, marked, and otherwise prepared for shipment in a manner which is (i) commercially reasonable, (ii) acceptable to common carriers for shipment at lowest applicable rates and in accordance with any applicable laws or regulations, and (iii) adequate to prevent rust, corrosion or exposure to hazardous conditions or elements and to otherwise insure safe arrival of the goods at the named destination. Each individual part shall be identified with the appropriate AIDA part number, as referenced in this Order. Seller shall mark all containers with: (i) all necessary lifting and handling information; (ii) AIDA’s Order number(s); (iii) AIDA’s part number(s); (iv) date of shipment; and (v) names of the consignee and consignor. Each container shall contain an itemized packing sheet pertinent to the contents of each such container. An itemized packing sheet covering the contents of all containers shall also accompany each shipment where the shipment involves more than one container.

5. **Delivery.** Unless otherwise specifically provided on the face of this Order, or otherwise agreed to in writing by AIDA and Seller, ordered goods shall be delivered FCA (Incoterms 2000) Seller’s address as appears on this Order and shipped to the delivery address designated by AIDA. Deliveries to the delivery address must be made in the quantities and no later than the times specified in this Order. No partial or complete delivery shall be made hereunder more than five (5) days prior to the delivery date or dates specified in this Order, unless AIDA has given prior written consent for such earlier delivery.

6. **Warranty.** Seller warrants:

(a) That all goods and/or services sold, delivered or performed hereunder shall be free from defects in workmanship, materials, and manufacture, shall comply with the requirements of this Order, including any drawings or specifications referenced or incorporated in this Order, or samples furnished by AIDA or Seller and, where design is Seller’s responsibility, shall be free from defects in design;

(b) That all goods and/or services shall be in accordance with all applicable federal and state codes and standards;

(c) That all goods and/or services sold, delivered or performed hereunder shall be of merchantable quality, and shall be fit and suitable for ordinary commercial purposes, as well as for any special or unusual purpose intended by AIDA which are known to Seller; and

(d) That, at the time Seller accepts this Order and, at all times thereafter, until Seller’s performance of its obligations under this Order are completed Seller, shall be solvent and financially and otherwise capable of performing such obligations, including but not limited to, meeting all delivery schedules on time, and Seller agrees to promptly notify AIDA of any change in Seller’s financial or other situation which could in any way affect Seller’s ability to meet such obligations.

The foregoing warranties are cumulative and are in addition to all other warranties at law or in equity or under this Order. Seller hereby agrees to defend, indemnify and hold AIDA harmless of and from any and all costs, claims, liabilities, damages, attorneys’ fees and causes of action whatsoever arising out of or in connection with any breach by Seller of any of the foregoing warranties. All Seller’s warranties herein or by reason of law or equity shall extend to, and inure for the benefit of, AIDA, AIDA’s parent and affiliates, and to AIDA’s direct and indirect customers, successors and assigns.

AIDA’s approval of Seller’s materials, designs, or services shall not relieve Seller of the warranties set forth in this Section 6, nor shall waiver by AIDA of any drawing or specification requirement for one or more of the items or services constitute a waiver of such requirements for the remaining items or services to be delivered hereunder, unless so stated by AIDA in writing. The provisions of this Section 6 shall not limit or affect the rights of AIDA under Section 8 of this Order.

7. **Inspection.**

(a) Prior to shipping of any products or components covered by this Order, Seller shall submit to AIDA inspection reports from the manufacturer(s) and supplier(s) for such products or components. AIDA and/or its customer retains the right to perform verification at the suppliers premises.

(b) AIDA shall not be obligated to inspect or test any goods and/or services, but all goods and/or services purchased hereunder may be subject to inspection and test by AIDA prior to full acceptance. No inspection or test made prior to final inspection and acceptance shall relieve Seller from responsibility for defects or other failures to meet the requirements of this Order, and no inspection shall relieve Seller from responsibility for latent defects. If any item or service is defective in materials or workmanship, or otherwise not in conformity with the requirements of this Order, AIDA shall have the right, without waiver of any other right of AIDA, to reject it, require its correction or replacement, accept it with an adjustment in price, or return it to Seller for full credit.

(c) Any product, component or service which has been rejected or required to be corrected shall be replaced or corrected by and at the expense of Seller promptly after notice. If, after AIDA’s request, Seller fails promptly to replace or correct any defective product, component or service within the delivery schedule, AIDA may, in addition to any other remedies to which AIDA may be entitled, (i) replace or correct such product, component or service and charge to Seller the cost occasioned thereby, (ii) without further notice, terminate this Order for default in accordance with the clause hereof entitled “Termination for Default” or (iii) require an appropriate reduction in price.

8. **Changes.** AIDA may at any time, by written order, suspend performance hereunder, increase or decrease the ordered quantities, or make changes within the general scope of this Order in any one or more of the following: (i) applicable drawings, designs, or specifications, (ii) method of shipment or packing, and/or (iii) place of delivery. Any such change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment shall be made in the price or delivery schedule, or both, and the same shall be modified in writing accordingly. No claim by Seller for any adjustment hereunder shall be valid unless asserted within five (5) days from date of receipt by Seller of the notification of change. Nothing in this clause shall excuse Seller from proceeding with this Order as changed or amended.

9. **Termination for Default.**

(a) It is understood and agreed that time for delivery or performance by Seller is of the essence and under this Order, AIDA may, by written notice, terminate this Order in whole or part if Seller fails (i) to make delivery of the goods or perform the services within the specified time, or (ii) to replace or correct defective goods or services in accordance with this Order, or (iii) to perform any of the other provisions of this Order or so fails to make progress as to endanger performance in accordance with its terms. AIDA shall be the sole judge under such circumstances.

(b) In the event of termination pursuant to this clause, AIDA may procure, upon such terms and in such manner as AIDA may deem appropriate, goods and/or services similar or substantially similar to those terminated, and Seller shall be liable to AIDA for any excess costs incurred by Aida occasioned thereby.

(c) In addition to any other rights provided herein or by law or equity, AIDA may require Seller to transfer title and deliver to AIDA, in the manner and the extent directed by AIDA, any completed or partially completed goods in the possession of Seller. Payment for such goods delivered to and accepted by AIDA shall be in a reasonable amount (not to exceed the contract price), depending upon the stage of completion of such goods.

10. **Termination Without Cause.**

(a) AIDA shall also have the right to terminate this Order, in whole or in part, at any time, without cause, by written notice to Seller. Upon any such termination, Seller shall, to the extent and at the times specified by AIDA, stop all work on this Order, place no further orders hereunder, terminate work under any other orders outstanding hereunder, and protect all property in which AIDA has or may acquire an interest.

(b) Within twenty (20) days from such termination notice, Seller shall submit to AIDA Seller’s written claim for termination charges in the form and with the certifications prescribed by AIDA, it being understood and agreed that only Seller’s actual costs incurred and no profit shall be allowed for quantities terminated pursuant to this clause. Failure to submit a claim within such time shall constitute a waiver of all of Seller’s claims and a release of all AIDA’s liability to Seller arising out of such termination.

(c) AIDA reserves the right to verify claims hereunder, and Seller shall make available to AIDA, upon its request, all relevant books and records for inspection and audit. If Seller fails to afford AIDA its rights hereunder, Seller shall be deemed to have relinquished its claim.

(d) IN NO EVENT, UNDER THIS OR ANY OTHER SECTION OF THIS PURCHASE ORDER, OR IN CONNECTION WITH ANY TRANSACTION HEREUNDER BETWEEN, OR INVOLVING AIDA AND SELLER, OR THE GOODS OR SERVICES COVERED BY THIS PURCHASE ORDER, SHALL AIDA BE LIABLE TO SELLER (OR TO ANYONE ASSERTING A CLAIM ON SELLER’S BEHALF) FOR INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES OF ANY NATURE, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, REVENUES, AND/OR TERMINATION CHARGES PAID OR TO BE PAID BY SELLER TO ITS SUPPLIERS.

11. **Responsibility for Goods.** Notwithstanding any prior inspections, and irrespective of the delivery point named herein, Seller shall bear all risk of loss, damage or destruction to the products and components called for or covered hereunder until final acceptance by AIDA and Seller shall also bear the same risks with respect to any products and components rejected by AIDA.

12. **Waiver.** AIDA’s failure to enforce at any time any of the provisions of this Order, or to elect any option provided herein, shall in no way be construed to be a waiver of such provisions or the right of AIDA thereafter to enforce each and every such provision.

13. **Subcontracting.** No subcontracting shall be made by Seller with any other party for furnishing any of the completed or substantially completed articles, spare parts, services or work herein contracted for without AIDA’s prior written approval.

14. **Patents, and Intellectual Property Rights Claims.** All goods and/or services which are the subject of this Order shall be free from liability of AIDA for royalties, infringement of U.S. or foreign patent rights or copyrights, other third party claims of intellectual property rights, mechanic’s liens or other liens or encumbrances. Seller agrees to defend, indemnify and hold AIDA (and AIDA’s customers) harmless against all claims, costs, damages, and causes of action (including the payment of settlements, judgments and attorney’s fees), loss of sales/profits arising out of or in connection with any actual or alleged infringements by any goods or services subject to this Order, with respect to patent, copyright and other intellectual property rights in the use, sale, re-sale or lease of said goods or services, and any other breach of the foregoing warranties.

15. **Site Work.** Seller shall take such steps as may be reasonably necessary to prevent personal injury or property damage during any work hereunder that may be performed by any employees, agents, or subcontractors of Seller at AIDA’s designated site. Seller shall indemnify defend, and hold AIDA, site owner (and the site lessee), and their respective employees, agents and contractors harmless from and against loss, liability and damages arising from or caused directly or indirectly by any act or omission of Seller, its agents, employees, or subcontractors. Seller shall maintain such insurance against public liability and property damage and such employer’s liability and workers’ compensation insurance as will protect Seller and AIDA, site owner and/or site lessee against the aforementioned risks and against any claims under any workers’ compensation and/or occupational disease acts.

16. **Compliance with Laws.** Seller warrants that no law, rule, or ordinance of the United States, any state, or any other governmental agency will be violated in the manufacture, sale or use of goods and/or in the performance of the services covered in this Order. Seller will comply with all applicable laws and will indemnify, defend and hold AIDA harmless from loss, cost, or damage as a result of any such actual or alleged violation or non-compliance. Seller shall provide AIDA with Material Safety Data Sheets for any hazardous materials shipped pursuant to this Order, and shall comply with all applicable laws affecting any such shipment.

17. **Non-Disclosure of Confidential Information.** Products, components or services purchased hereunder with AIDA’s specifications or drawings shall not be quoted for sale to others without AIDA’s express prior written authorization, which AIDA may grant or withhold in AIDA’s sole and absolute discretion. Any specifications, drawings, samples, or other data furnished by AIDA shall be treated as confidential information by Seller, shall remain AIDA’s property and shall be returned to AIDA on demand. Any documents or data prepared by Seller and which incorporate or disclose any confidential information of AIDA, shall be returned to AIDA upon demand, or shall be destroyed by Seller upon demand by AIDA, with Seller promptly providing AIDA a certificate attesting to such destruction.

18. **Assignments.** No right or obligation under this Order (including the right to receive moneys due hereunder) shall be assigned by Seller without the prior written consent of AIDA, and any purported assignment without such consent shall be void.

19. **License.** Notwithstanding other conditions stated herein, if Seller defaults in the performance of the terms of this Order, then Seller, as partial consideration for this Order and without further cost to AIDA, hereby grants to AIDA an irrevocable non-exclusive, royalty-free right and license to use, sell, manufacture, and cause to be manufactured or printed, any and all products embodying any and all inventions, discoveries and works of authorship made, conceived, or actually reduced to practice in connection with the performance of this Order.

20. **Tooling and Documents.** All specifications, drawings or other documents and data furnished by AIDA, and all tools, dies, molds, jigs, fixtures, patterns, hobs, electrodes, punches, artwork, screens, tapes, templates, machinery, special test equipment and gauges, which have been furnished, paid for or charged against AIDA, or which have had their cost amortized as part of the purchase/sales price quoted or charged by Seller, shall remain at all times the property of AIDA, treated as confidential information and delivered free and clear of any liens or encumbrance, and in good condition, normal wear and tear excepted, by Seller to AIDA, FCA (Incoterms 2000) Seller’s plant, or Seller’s shipping point, immediately upon demand by AIDA. Seller warrants that said items and information will not be used for any work or the production of any materials or parts other than for AIDA without AIDA’s prior written permission.

21. **Applicable Law and Venue.** This Order, and the obligations and performance of AIDA and Seller, shall be governed by the internal, substantive laws of the State of Ohio without regard to conflicts of laws principles. Seller and AIDA further agree that the United Nations Convention on Contracts for the International Sale of Goods shall not have any application whatsoever to this Order, or any purchase/sale agreement arising out of or based upon this Order, their relationship, or any sale or transfer of products covered by this Order and AIDA and Seller hereby elect to opt-out of any possible application of such Convention. Seller further agrees that any action brought by Seller regarding this Order, or relating to any goods or services or agreement arising out of or based upon this Order, shall be brought and pursued only in the state courts or the United States District Courts located in Montgomery County, Ohio. Seller consents to the personal jurisdiction of such Courts, and Seller waives any objection to such venue and personal jurisdiction.

22. **Severability; Attorneys’ Fees.** If any provision of this Order is determined to be unenforceable, the other provisions of the Order shall remain in full force and effect. If either AIDA or Seller institutes any action or proceeding to enforce or interpret any provision of this Order, the prevailing party shall be entitled to recover its reasonable attorneys’ fees and costs of suit.

23. **Hazardous Substances.** Supplier agrees to promptly furnish to Aida-America, Material Safety Data Sheets (“MSDS”) conforming to the requirements of the Occupational Safety and Health Administration’s Hazard Communications Standard Title 29 CFR Part 1910, 1200 with respect to the products supplied pursuant to this Agreement and any other applicable Purchase Order, and to furnish any other information on the parts and/or substances contained therein which is necessary to enable Aida-America to comply with the Hazard Communication Standard and/or other applicable laws pertaining to the hazardous or harmful substances. The MSDS must precede or accompany the initial shipment of any material defined as hazardous under the Act. An MSDS must also be supplied if the MSDS has changed since the previous shipment to Aida-America. A MSDS should accompany the fulfillment of the order for any product that has an MSDS, whether or not defined as hazardous under the Act.