

## **PURCHASE ORDER TERMS AND CONDITIONS**

- 1.0 **DEFINITIONS** - The term "Seller" as used herein shall mean the individual, firm, partnership or corporation to whom this purchase order is issued. The term "Buyer" as used herein shall mean Innotek Corporation. The term "goods" as used herein shall mean the articles, materials, goods, supplies, items, services and/or facilities to be produced and furnished by the Seller hereunder.
  
- 2.0 **MODIFICATION OF PURCHASE ORDER** – This purchase order contains the complete, final and exclusive agreement between Buyer and Seller, and no course of dealing or usage of trade, or actual course of performance shall be relevant to explain or supplement any term used herein. No modification or revision of the terms and conditions hereof shall be binding upon Buyer unless made in writing and signed by Buyer's authorized representative.
  
- 3.0 **NON- ASSIGNMENT**- Seller shall not assign this purchase order or any part thereof without prior written consent of Buyer's authorized representative.
  
- 4.0 **ACCEPTANCE** – Seller shall execute where indicated and acknowledge this purchase order to indicate acceptance subject to all its terms and conditions. In additions, delivery or furnishing of any goods, or services, under this purchase order, or a definite and reasonable expression of acceptance or written confirmation sent within a reasonable time, or the acceptance of, action upon, any release for manufacture or shipment issued by Buyer, shall, unless otherwise herein provided, constitute acceptance by the Seller of this purchase order subject to all its terms and conditions.
  
- 5.0 **SHIPPING INSTRUCTIONS**
  - a) All goods specified in this purchase order shall be properly packed, marked and shipped by an insured carrier in accordance with the requirements hereof and the common carrier transporting such goods and with such other instruction as Buyer may furnish Seller. Shipments shall be routed in accordance with Buyer's instructions and Seller shall reimburse Buyer all expenses incurred by Buyer as a result of improper packing, marking or routing or which is not in accordance with Buyers instructions.
  - b) When terms of delivery or conditions of this purchase order are f.o.b. a plant of the Buyer, all transportation charges (including switching charges) shall be prepaid by Seller.
  - c) Unless otherwise provided herein and except to the extent included in the purchase price, no charge shall be made by Seller for containers, crating, boxing, bundling, dunnage, drayage or storage.
  - d) Buyers count or its weight shall be final and conclusive on shipments not accompanied by an accurate packing list.
  - e) Delay in receiving invoices or errors or omissions on invoices will be considered just cause for withholding payment without loss of discount privileges.
  - f) Buyer assumes no obligation for goods shipped in excess of the quality ordered hereunder and not accepted by Buyer. Shipments in excess of quantity ordered hereunder and not accepted by Buyer may be returned to Seller and Seller shall pay

Buyer for all handling, storage and transportation expenses incurred in connection with such shipments.

g) Separate invoices shall be issued for shipments applying against different purchase order numbers.

6.0 RISK OF LOSS – The risk of loss or damage shall not pass to Buyer until the goods have been delivered into Buyers possession, regardless of the f.o.b. point specified, unless the Buyer expressly agrees in writing to accept the risk of loss prior to receiving possession of the goods.

7.0 INSTALLMENT DELIVERIES – Unless otherwise herein specified the goods called for by this purchase order shall be delivered in a single lot. If delivery installments are permitted, Buyer shall have the right to reject any installment which fails in any respect to conform to the requirements of this purchase order, regardless of whether or not the nonconformity substantially impairs the value of that installment, or can be cured. Buyer may treat as breach of the whole purchase order any nonconformity or default with respect to any installment which substantially impairs the value of that installment, regardless of whether or not the nonconformity or default substantially impairs the value of the purchase order as a whole.

8.0 INSURANCE – Seller shall procure insurance from a reliable insurance company covering the goods during shipment in the amount of the purchase price under this purchase order, payable to the party bearing the risk of loss at time of injury to said goods.

9.0 SHIPMENT OR DELIVERY SCHEDULE

a) Shipment and /or delivery must be effected within the time stated on the face of this purchase order, but if Seller makes shipment or tenders delivery more than Seven (7) days prior to the date specified, the Buyer shall have the following options:

- i. to accept delivery when tendered but may postpone payment of such early- delivered goods until the date payment would have been due had delivery not been made until the date specified, or
- ii. to refuse delivery without and liability whatsoever for any loss, damage or expense incurred or sustained by Seller in having goods returned to its plant or warehouse and reshipping at the proper time or in storing such goods locally and in redelivering the same at the proper time. If shipment and/or delivery is not made within the time stated, Buyer may cancel this purchase order in whole or in part under Paragraph 17. Neither party shall be liable for any default hereunder due to unforeseeable contingencies beyond its control and without its fault or negligence, provided, however, Seller's default shall not be excused unless written notice of any such contingency is given to Buyer within five (5) days of the time that Seller first received the knowledge of the occurrence thereof.

b) Notwithstanding the provisions of Paragraph 9a, above, Seller agrees that in the event of a labor dispute, resulting in possible delay in the performance of this purchase order, Buyer shall have the option, exercisable by written notice to Seller, to vest title in itself to tools, finished parts, raw materials or work in

process, and Seller will, upon request from Buyer, deliver any or all such tools, finished parts, raw materials and work in progress associated with this purchase order to Buyer at a point outside Seller's plant.

10.0 PAYMENTS - All payments are contingent upon receipt of fully acceptable goods or services and receipt of complete and accurate documentation including invoices with bills of lading, express receipts and bills for prepaid transportation charges attached. The discount period shall be counted from the date delivery is made or complete and accurate documentation is received, whichever last occurs, provide, however, if delivery is accepted by Buyer more than (7) days prior to the delivery or shipping date specified on the face of this purchase order, the discount period shall be computed from the delivery or shipping date specified or receipt of complete and accurate documentation, whichever last occurs. Payment of invoices will be made in accordance with those terms appearing on the face of the purchase order, herein.

#### 11.0 WARRANTIES – INSPECTION

- a) Seller expressly warrants that all goods and services covered by this purchase order will conform to the drawings, specifications, data or other description furnished or adopted by Buyer, will be merchantable, will be free from defects in design, material or workmanship and will be fit and sufficient for the purpose or use intended by Buyer. Seller agrees that this warranty shall survive acceptance of the goods and services and will run to Buyer, its successors, assigns, and customer and to all user of its products. Said warranty shall be in addition to any warranties of additional scope given to Buyer by Seller.
- b) Unless otherwise provided herein, Seller warrants that the prices named herein are as low as any net prices not given by Seller to any other customer for like goods or services under similar conditions and seller agrees that, if at any time during the life of this purchase order it quotes or sells at lower net prices like goods or services under similar conditions such lower net prices shall from that time be substituted for the prices named herein.
- c) Final inspection shall be made by Buyer after delivery at destination unless otherwise expressly provided in the purchase order. Preliminary inspection may be made by Buyer at the premises of the Seller and Seller agrees, without additional charge to provide all reasonable facilities and assistance required for convenient testing and inspection by the Buyer. The foregoing shall not relive Seller of its obligation to make full and adequate test and inspection and to furnish goods, which conform to the contractual requirement of this purchase order and are free from defects. Payment of any goods hereunder shall not be deemed and acceptance thereof.
- d) If goods or services furnished hereunder do not conform to the contractual requirements of this purchase order, the Buyer shall have the right to either to (i) reject and return the same at Seller's expense for full credit, including transportation both ways, (ii) require the replacement or correction of goods or services at Seller's expense, including transportation both ways, (iii) accept the same and either satisfactory correct if at Seller's expense or to use it in its present condition at an equitable reduction in the purchase price, which if already paid shall be refunded by Seller forthwith, or (iv) cancel this purchase order in whole

or in part under Paragraph 17. No goods returned as defective shall be replaced or corrected without Buyer's formal replace or correct order.

- 12.0 PATENTS – By accepting this purchase order, Seller guarantees that the goods or services described herein, except such as are made to Buyer's detailed designs, and the sale or use of them, will not infringe or contribute to the infringement of any United States patent or copyright and Seller agrees that it will, at its own expense, defend, protect and save harmless Buyer, its successors, assigns and customer and all users of its products against all suits at law or in alleged infringement or any patent or copyright provided the Seller is promptly notified of such suit and the papers and other legal documents served on Buyer with regard thereto are delivered to Seller.
- 13.0 COMPLIANCE WITH LAWS – Seller agrees to comply with all applicable Federal, State and local laws and to indemnify Buyer against all liability for Seller's failure to comply. Seller further agrees that it will comply with the requirements of the Fair Labor Standards Act of 1938, as amended, in producing the goods or performing the services to be furnished hereunder, and unless otherwise agreed in writing Seller shall insert a certificate on all assurance: "Seller represents that it has complied with the Fair Labor Standards Act of 1938, as amended in producing the goods or performing the services cover by this invoice."
- 14.0 IDENTIFICATION OF GOODS – If this purchase order is for the sale of goods, not presently in existence, Buyer may at any time after the date hereof designate to Seller, orally or in writing, the particular goods to which this purchase order refers, and this designation, although not affecting the passage of the title or risk of loss, shall constitute an identification of the goods to this purchase order within the meaning of Section 2-501 of the Uniform Commercial Code.
- 15.0 DESTRUCTION OF GOODS – Seller shall not be excused from performing his obligation under this purchase order if the goods identified are destroyed. Substitute goods of equal quantity and quality shall be tendered by Seller.
- 16.0 IMPOSSIBILITY CAUSED BY OTHER EVENTS – Seller waives any right to void its commitment under this purchase order by the allocation of production and delivery among its customers as set forth in Section 2-615 of Uniform Commercial Code.
- 17.0 TERMINATION FOR DEFAULT OF SELLER
- a) The Buyer requires strict performance of each and every term and condition of the purchase order, and if goods or services are rejected by buyer as nonconforming, the seller shall have no right to cure. Buyer may by written notice to seller cancel for default this purchase order, in whole or, from time to time in part (i) if the Seller fails to deliver goods or to perform the services within the time specified in this purchase order, (ii) if the Seller fails to deliver goods which conform to the contractual requirements or to perform any of the provisions of this purchase order, or so fails to make progress as the Seller becomes insolvent or commits and act of bankruptcy or if reorganization proceedings are commenced by or against the Seller.

- b) If this purchase order is cancelled for default, Buyer shall have any and all rights and remedies which the law provides for failure to perform in accordance with contract requirements, including the right to charge Seller with the costs incurred by Buyer in fabrication or procuring from other sources goods or services which Seller fails to furnish Buyer in accordance with this purchase order to the extent that such costs shall exceed the purchase price set forth herein, and Buyer may set off any such charge against any amounts which may become payable by Buyer to Seller, under this purchase order or otherwise.
- 18.0 TERMINATION AT OPTION OF BUYER – At its option, Buyer may terminate all or part of the work under this purchase order. In such case Buyer shall have no liability with respect to goods or components thereof procured or work done, or goods partially fabricated in excess of authority contained in the purchase order. In no event shall Buyer be liable for prospective or anticipated profits by reason of such termination.
- 19.0 SPECIAL TOOL EQUIPMENT - If this purchase order calls for goods which are not at Seller's design, Buyer shall have the right, in case of cancellation or termination of this purchase order to the immediate possession of any or all of the tools, dies, jigs, fixtures, patterns or other items of equipment which Seller has acquired specially for the manufacture of such goods and following receipt of possession Buyer agrees to pay Seller the original cost thereof, less depreciation.
- 20.0 BUYER DESIGN - Buyer retains all rights in designs and drawings furnished Seller in connection with this purchase order and no such design or drawing shall, without Buyer's written permission, be disclosed or furnished to others or be incorporated in, or used in connection with goods furnished to others.
- 21.0 PRODUCTS, METHODS AND MANUFACTURING PROCESSES – Any unpatented knowledge and information concerning Seller's products, methods or manufacturing processes which Seller may disclose to Buyer incident to the manufacture of the goods or performance of the services covered by this purchase order shall, unless otherwise specifically agreed in writing, be deemed to have been disclosed as a part of the consideration for this purchase order, and Seller agrees not to assert any claim (other than a claim for patent infringement) against Buyer by reason of Buyer's use or alleged use thereof.
- 22.0 CHANGES – Buyer may at any time make changes in the drawings, designs or specifications, method of shipping or packing and place of delivery of any goods or services covered hereby. If any such change causes the increase or decrease in the cost of performing this purchase order, an equitable adjustment shall be made in price and this purchase order shall be notified in writing accordingly. No such change shall be valid or binding upon Buyer unless incorporated in a change order or additional order signed by an authorized representative of the Buyer.
- 23.0 TAXES – Buyer will not pay Seller any state or local sales, use or similar tax unless separately stated and itemized in this purchase order, or any Federal Excise Tax unless included in the price or prices stated herein, and Seller agrees that except as otherwise provided herein all such taxes which at the date hereof Seller is required by law to

collect from Buyer are so included or separately stated or itemized, and agrees that the priced stated herein do not and the amounts hereunder will not include and tax with respect to which exemption is available or is indicated by Buyer hereon or otherwise, or any Federal Excise Tax with respect to which Buyer has furnished Seller and exemption certificate. The Seller agrees to pay any and all personal property and/or ad valorem taxes assessed or otherwise levied against any and all property placed in the hands of the Seller by the Buyer for the purpose of fulfilling this purchase order. In case it shall ever be determined that any tax included in the prices herein was not required to be paid by Seller, Seller agrees to notify Buyer and to make prompt application for the refund thereof, to take all proper steps to procure the same and when received to pay the same including interest, if any to Buyer.

- 24.0 INDEMNITIES – If this purchase order covers the performance of services at the Buyer’s plants or the premises of one of its customers, or if the performance of services by Seller at Buyer’s plants or the premises of one of its customers results from or is incident to Seller’s finishing of the goods or services covered by this purchase order, the Seller agrees to indemnify and hold the Buyer harmless from and against all liabilities, claims or demands for injuries or damages to any person or property growing out the performance of the purchase order, and to pay Buyer’s costs and expenses in connection with any thereof, whether such liabilities, claims, demands, cost or expenses growing out of the negligent act or omission of the Buyer or the Buyer’s agent or otherwise. Seller shall maintain such public liability, property damage and employer’s liability and compensation insurance as will protect Buyer from said risk and from any claims under any applicable Workmen’s Compensation and occupational disease acts. Seller further agrees to furnish a Certificate from its insurance carriers showing that it carries adequate Workmen’s Compensation public liability and property damage insurance. Said Certificate must show the amount of coverage, number of policy and date of expiration. If Seller is a self-insurer he must have the Department of Labor or Industry in the state in which said services are to be performed furnish a Certificate of same to Buyer.
- 25.0 SET OFFS - Seller agrees that Buyer shall have the right to set off against any amounts which may become payable by Buyer to Seller under this purchase order or otherwise, any amounts which Seller may owe to Buyer, whether arising under this purchase order or otherwise.
- 26.0 NEW MATERIAL – Except as to any goods and components thereof which it is herein expressly provided need not be new. Seller represents that the goods and all components thereof to be furnished under this purchase order are new (not used or reconditioned and not of such age or so deteriorated as to impair their usefulness or safety). If at any time during the performance of this purchase order, Seller believes that furnishing of goods or components thereof which are not new is necessary or desirable, it shall notify Buyer immediately, in writing, including the reasons therefor and proposing any consideration which will flow to Buyer if authorization to use such goods or components therefor is granted.
- 27.0 WAIVER - The failure of Buyer to insist in any one or more instances, upon the performance if any of the terms, covenants or condition of this purchase order, or to

exercise any right hereunder shall not be construed as a waiver or relinquishment of any of other terms and conditions of this purchase order nor of the future performance of any term, covenant or conditions or the future exercise of any such rights.

28.0 NOTICES – Notices to Buyer required under this purchase order shall be sent by mail to the attention of the Materials Department, Innotek Corporation at the address specified on the face of the purchase order.

29.0 LAW GOVERNING – This purchase order shall be governed by the Uniform Commercial Code, as adopted and in forced on the date of this purchase order in the State shown in the address of the Buyer on the face of this purchase order.

30.0 U.S. GOVERNMENT CONTRACTS AND SUBCONTRACTS – If this purchase order covers articles or materials for a U.S. Government contract or subcontract, the additional clauses set forth in BP-20 (Supplement) shall also apply to this purchase order.