

# SPECIALTY PRODUCTS & INSULATION CO.

## TERMS AND CONDITIONS OF PURCHASE

1. This purchase order constitutes an offer by Specialty Products & Insulation Co. (SPI) to Seller and becomes a binding contract on the terms set forth herein when it is accepted by Seller either by acknowledgement or the commencement of performance. Acceptance of this purchase order is expressly limited to the terms of this offer. No revision to this purchase order shall be valid unless in writing and signed by an authorized representative of SPI, and no condition stated by Seller in accepting or acknowledging this purchase order shall be binding upon SPI if in conflict with, inconsistent with or in addition to the terms and conditions contained herein unless expressly accepted in writing by SPI. If this purchase order is construed to be an acceptance of Seller's offer, such acceptance is expressly conditioned on SPI's assent to any additional or different terms (from Seller's offer) contained on the front or reverse side of this purchase order. Acceptances or offers by Seller may be communicated orally, delivered in person or by telephone, or in writing, delivered by regular mail, hand delivery, overnight courier, facsimile or electronic mail. All purchases will be made in accordance with these terms and conditions (irrespective of whether Seller's accompanying documentation constitutes an acceptance of SPI's prior offer to Seller or an offer to SPI), and any questions arising relative thereto must be communicated prior to shipment of goods or performance of services.
2. Goods shall be prepared, packed and shipped in a manner that will comply with all applicable laws and regulations and in a manner that will prevent damage in transit. Shipment shall be in accordance with SPI's shipping instructions. Where excess charges result from Seller's failure to ship as specified on this order, SPI reserves the right to bill Seller for the additional cost.
3. SPI may at any time, by a written order signed by its authorized representative, make changes in any one or more of the following: (a) place or time of delivery; (b) designs or specifications; (c) quantity of items purchased; and (d) method of shipment or packing. If any such change causes a material increase or decrease in the cost or time of performance, an equitable adjustment shall be made in the price or delivery schedule or both. No claim for an adjustment to the price by Seller shall be allowed unless made in writing in detail satisfactory to SPI within 30 days from the date notice of the change is received by Seller. Nothing in this clause shall excuse Seller from proceeding with the performance of this purchase order as changed. Seller shall not change the specifications, manufacturing site, equipment, manufacturing process, manufacturing conditions, product composition or testing procedures for the manufacture of goods without the prior written consent of SPI. SPI may terminate this purchase order or withdraw any authorization granted hereunder, in whole or in part, for convenience or for any other reason, at any time upon written notice to the Seller. In such case, SPI shall be responsible only for documented out-of-pocket materials and labor costs incurred in connection herewith up to the date of such notification.
4. Should delivery of goods not be made or services not provided within the time promised, SPI may purchase such goods or services elsewhere and charge Seller with any resultant loss, unless the delay has been expressly authorized in writing by SPI. Time is of the essence of this agreement.
5. Seller agrees to grant SPI's representatives and applicable regulatory authorities access to Seller's plant and records at all reasonable times to audit, inspect and observe the manufacture, storage, disposal and transportation of the goods, and all materials related thereto or used in connection therewith, as may be necessary or desirable to monitor the Seller's compliance with the terms of this purchase order. Such representatives or authorities shall have no responsibility for supervision of Seller's employees performing such manufacture, storage, disposal or transportation operations. The foregoing access, audit and inspection rights set forth above are only for the purpose of determining Seller's compliance with the purchase order and applicable legal requirements. All such items will also be subject to inspection and approval at a reasonable time after delivery, and any items which are not then in every way satisfactory to SPI may be rejected by SPI. Items furnished in lots are subject to rejection of the entire lot based on sampling of the lot. SPI may hold any rejected items for the Seller's instructions and at Seller's risk or SPI, at its option, may return them to Seller at Seller's expense. Inspection, failure to inspect and/or payment shall not relieve Seller of any liability under its warranties or any other term or condition of this order.
6. Seller warrants that all items and/or services supplied hereunder will conform to applicable specifications, drawings and samples, will be free from defects in material and workmanship and will be merchantable and fit for their intended use. In no event shall substitutions for the goods or services covered by this purchase order be acceptable absent the prior written consent of SPI. Supplier shall not deliver, rework or reprocess any non-conforming goods without the prior written approval of SPI. In the event Seller discovers that goods are nonconforming after shipment thereof, Seller shall immediately notify SPI in writing of such nonconformity. Said warranties, together with Seller's service warranties and guarantees, shall inure to the benefit of SPI, its successors, assigns and customers. Seller agrees to indemnify hold harmless and defend SPI, its successors, assigns and customers from all liability, loss, cost, damage or expense, including costs of suit and attorneys' fees, which any one or more of them may suffer or incur as the result of Seller's breach of any such warranty or any term or condition of this purchase order.
7. Seller shall mail invoices and other documents promptly to SPI. The time for any payment discount will be computed from the date of delivery of goods at the specified destination after final inspection and acceptance, from the date of completion of services, or from the date the correct invoice is received, whichever is later.
8. If the price is not stated in this purchase order, it is agreed that the goods and/or services shall be billed at the price last quoted, or the prevailing market rate, whichever is lower. In no event shall the prices exceed current selling prices to other customers for the same or substantially similar items in comparable quantities. Any excise, levies or taxes which the Seller is required to pay or collect, under any existing or future law or regulation (domestic or foreign), upon or with respect to the sale, purchase, delivery, storage, processing, use, consummation or transportation of any of the materials or services covered hereby, shall be included in any price quoted for the materials or services to be provided hereunder. SPI shall be entitled to set off any claims it may have against the Seller against any payments to be made hereunder. If at any time during the term of this purchase order, SPI can purchase goods which are the subject of this purchase order, or substantially similar goods of equal quality and performance (collectively, "Alternative Goods") from a third party(s) at a lower price, then SPI will notify Seller in writing (an "Alternative Goods Notice") and Seller will have the opportunity to provide SPI with a similarly reduced price for the goods on substantially the same terms as the third party(s). If Seller fails to notify Buyer in writing within thirty (30) days of Seller's receipt of the Alternative Goods Notice that it will provide SPI with a similarly reduced price for the goods, then SPI may purchase the Alternative Goods from the third party(s) at the lower price and the obligation of SPI to Seller hereunder for the purchase of the goods will be reduced accordingly.
9. Seller agrees to indemnify, hold harmless and defend SPI, SPI's successors, assigns and customers from all liability, damages and lawsuits including attorneys fees for the actual or alleged infringement of any patent, trademark, trade name, trade secret or copyright arising from the manufacture, delivery, sale or use of the goods and/or services supplied pursuant to this purchase order.
10. In the event Seller, its employees, agents or subcontractors enter premises occupied or under the control of SPI in the performance of this purchase order, Seller shall indemnify, hold harmless and defend SPI from and against all liability, damages, costs and expenses arising on account of any personal injury or death or any property damages occurring as a result or in the course of such entry. Seller shall comply with all applicable SPI safety rules and regulations and will restrict its employees and agents to SPI designated work areas and access roadways. Seller will maintain and carry liability insurance which includes, but is not limited to, employer's liability, workers' compensation, general liability, public liability, property damage liability, products liability, completed operations liability and contractual liability in amounts acceptable to SPI and such insurance shall name SPI as an additional insured and provide for at least ten (10) days' prior written notice to SPI prior to cancellation. Seller will, if requested by SPI, furnish certificates of insurance indicating the foregoing coverage.
11. Seller agrees to indemnify, hold harmless and defend SPI from and against all laborers', materialmen's, mechanics', or other liens arising from the performance of Seller's obligations under this purchase order and shall keep the premises of SPI free from all such claims, liens, and encumbrances. To the full extent permitted by applicable law, Seller, for itself and all of its suppliers of any materials or services, waives all rights of lien against the property and premises of SPI for labor performed or for goods furnished for the work.
12. Seller warrants that (a) any and all work performed and any goods delivered under this purchase order shall comply with (i) all requirements of the Fair Labor Standards Act of 1938, as amended, (ii) all applicable federal standards prescribed by the Occupational Safety and Health Act of 1970, as amended, and (iii) all requirements of any applicable health or safety statute or regulation of any state or local government having jurisdiction in the location to which such equipment or material is to be shipped or such work is to be performed pursuant to this agreement, and (b) it will comply with applicable laws, rules and regulations of federal, state and local governments and agencies thereof.
13. Seller warrants that each and every chemical substance, whether by itself or as a part of a mixture or article delivered under this purchase order shall, at the time of delivery to SPI, be on the inventory list of chemical substances compiled and published by the Administrator of the Environmental Protection Agency pursuant to Section 8 of the Toxic Substances Control Act (Public Law 94-469). Seller shall indemnify, hold harmless and defend SPI from any liability arising out of Seller's failure to so list its chemical substances or otherwise comply with the Act.
14. Seller agrees to furnish promptly to SPI Material Safety Data Sheets as required by 29 CFR 1910.1200, state and local law and, upon written request, a list of all ingredients and their quantities which are contained in goods purchased hereunder.
15. SPI shall have the full and unrestricted right to use or disclose all drawings, data, designs, manuals or other technical information supplied by Seller hereunder. All drawings, data, designs, specifications or other information supplied by or on behalf of SPI, or prepared by Seller specifically in connection with the performance of this purchase order, shall be and remain the property of SPI. Neither Seller nor any of its employees shall use or disclose said drawings, data, designs, specifications or other confidential or proprietary information of SPI obtained as a result of the performance of this purchase order except in the performance of this purchase order for SPI and shall return all copies of same at SPI's request. The Seller may not disclose that it is a supplier of SPI, or the terms and conditions of this purchase order, without the prior written consent of SPI.
16. Seller may not assign its rights or delegate its performance hereunder without the prior written consent of SPI, and any attempted assignment or delegation without such consent shall be void. In the event of any permitted assignment or delegation, Seller (a) shall require the third party involved to (i) grant the access, audit and inspection rights in Paragraph 5 above to SPI and applicable regulatory authorities and (ii) comply with the confidentiality and other obligations in Paragraph 15 above. (b) shall make such third parties aware of, and shall require compliance with, the terms of this purchase order and other key characteristics of the purchase arrangement identified by SPI and (c) shall remain liable for the performance of such third party.
17. These terms and conditions and purchase documentation of SPI accompanying them shall be governed by, and construed in accordance with the laws of the Commonwealth of Pennsylvania, without application of the conflict of law principles thereof. The parties agree that any claim, dispute or controversy arising from or relating to any contract for Seller's goods or services, directly or indirectly, shall be brought only in the state and federal courts located in the Commonwealth of Pennsylvania, and the parties hereto consent to be subject to the jurisdiction of such courts. Seller understands and acknowledges that any disclosure or misappropriation of the confidential information referenced in Paragraph 15 above, in violation of this agreement, may cause irreparable harm to SPI, the value of which may be difficult to ascertain, and therefore, Seller agrees that SPI shall under those circumstances have the right to apply to the court of competent jurisdiction for appropriate equitable remedies as well as any other relief as may be appropriate.
18. Seller shall not be responsible for any prohibition, failure, interruption or delay in manufacture or delivery which may be caused by sabotage, fire, flood, explosion, labor dispute, strike, work stoppage, riot, insurrection, war, act of God, or any similar cause beyond Seller's control. In the event of any such prohibition, failure, interruption or delay, SPI may, at its option, extend the delivery time or, upon written notice to Seller by SPI after determining the foreseeable delay estimated by Seller is inconsistent with SPI's needs, cancel the order, in whole or in part.
19. Title and risk of loss shall pass to SPI only upon delivery of the goods to, and acceptance by, SPI.
20. To the extent this purchase order relates to services to be provided to SPI, the Seller hereby acknowledges and agrees that the Seller is an independent contractor of SPI for all purposes and that nothing contained herein shall be construed to deem the Seller to be an agent, partner or joint venturer of or with SPI. No employees of the Seller shall be deemed employees of SPI, and the Seller shall be responsible for all of the wages and benefits of its employees, shall maintain all payroll records as it deems necessary for its employees which are employed by the Seller to provide goods and services to SPI and shall withhold and pay over all federal and state withholding taxes as appropriate and provide workers' compensation insurance for such employees.
21. These terms and conditions constitute the entire contract between Seller and SPI. To the extent any terms in the foregoing conflict, the terms providing SPI with the greatest benefit shall control and prevail. No modification hereof shall be of any force and effect unless in writing and signed by the party claimed to be bound thereby. A waiver of any of the terms or conditions hereof shall not be deemed a continuing waiver, but shall apply solely to the instance to which the waiver is directed.