



American Bath Group Purchase Order Terms and Conditions

CONTRACT: (a) The work described in this Purchase Order shall be performed in accordance with the terms and conditions contained herein and any quote, specification, drawing, or other details exchanged between Buyer and Seller. (b) In the event that the parties have exchanged no other quote, specification, drawing, or other details, this Purchase Order constitutes the entire contract between the parties. Acceptance is limited to the terms hereof and no revisions, deletions, or additions to any of the terms and conditions of this Purchase Order shall be effective (whether or not in Seller's acknowledgement or other form) unless agreed to in writing by Buyer's authorized representative. Shipment of any of the materials ordered or performance of any work hereunder constitutes acceptance of all the terms and conditions hereof whether or not Seller has acknowledged this Purchase Order. (c) Buyer shall have the right to make changes within the general scope of this Purchase Order, but no additional charge will be allowed unless authorized in writing by Buyer. If such changes affect the delivery schedule or the amount to be paid by Buyer, Seller shall notify Buyer immediately and negotiate an adjustment. (d) In the event that any portion of these terms and conditions are deemed invalid or unenforceable by a court of law, administrative agency or body, public policy or statute, such finding shall not affect the validity and enforceability of any other portion of these terms and conditions. Buyer's rights under these terms and conditions shall be cumulative and Buyer's failure to exercise any rights given hereunder shall not operate to waive or forfeit any other rights under these terms and conditions.

QUALITY: Any manufacturing or other specification referred to in this Purchase Order is hereby made a part thereof, as if fully set forth herein. All goods, materials, and articles ordered hereunder will be

accepted subject to Buyer's inspection within a reasonable time after arrival at destination.

SHIPPING and DELIVERY: Time is of the essence. Except as herein otherwise provided, failure to deliver the specified goods and/or services of the quality, in the quantity and within the time specified shall, at Buyer's option, relieve Buyer of any obligation to accept delivery of and pay for such goods and/or services as well as any thereafter to be delivered hereunder, without prejudice to Buyer's rights to claim damages or to enforce any other remedy provided by law. Upon such failure to deliver, unless deferred delivery is arranged for and agreed by Buyer in writing, Buyer may buy elsewhere, or change shipping instructions to speed up delivery and charge Seller with any loss incurred. Any failure by Buyer to exercise this option with respect to any commodities shipped hereunder shall not constitute a waiver of any of Buyer's rights, in respect to such goods and/or services thereafter to be delivered hereunder. Seller will ship all Goods DDP (Incoterms 2010) to Buyer's selected location(s), at which point the title transfers to the Buyer, unless, indicated otherwise on the face of this Purchase Order. Seller shall comply with all export regulations of the country of manufacture and all regulations of the customs agency or department of the importing country. Buyer shall not be liable for any loss or damage due to delays caused by acts of government, strikes, lockouts, fire, explosion, theft, floods, riots, evil commotion or disorder, war, malicious mischief, acts of God, inability to procure material or labor, delay, damage, or loss in transportation, delays in the building or procurement of materials/parts, or any cause beyond Buyer's control, and in no event, shall Buyer be liable for any penalties, consequential or liquidated damages sought to be imposed upon it, and Seller shall remain liable for such loss, damage, and penalties.

SUPPLY CHAIN SECURITY: If the goods are delivered across international borders, Seller agrees to be compliant and maintain compliance with the guidelines of the applicable supply chain security programs of the importing country.

CONTAINERS: All return able containers shall be billed on separate memorandum invoice, subject to return in good condition as promptly as possible, transportation charges collect.

PACKING and CARTAGE: A packing list, bearing shipper's name and address, shipper's package number and Buyer's purchase order number shall be placed in each box, container, or package. No charge will be allowed for packing, boxing, or cartage, unless so stipulated herein, but damage to any commodities not packed to insure proper protection to same, if accepted by Buyer, will be charged to Seller.

PAYMENT, INVOICES, PRICE and DISCOUNTS: The order shall not be filled at higher prices than specified herein. If price is omitted, the order shall be billed at price last quoted or paid, or at the prevailing market price, whichever is lower. Seller must send all invoices, with bill of lading to Buyer at the address contained on the face of this Purchase Order on the day of shipment. If material on invoices subject to cash discount is not received within the allotted period, same will be paid as soon as material is received and checked with invoice, and discount taken as per terms on invoice. If Seller desires to take freight into consideration before computing cash discount, Seller's invoice should so state, and the amount of freight must be shown or the discount will be taken from the full amount of the invoice. Make separate invoice for each order, and show on same the cash discount allowed and the point from which shipment was made. Invoice must show whether freight is paid or not. When freight charges are included in quoted price, these charges must be separately stated on the invoice. Unless the Purchase Order states otherwise, (a) Buyer agrees to pay for the Goods within 90 days following the date that a correct and valid invoice for the goods is received by the Buyer, and (b) Buyer will apply a 1.5% discount to all invoices that are paid within 30 days following the calendar month in which a correct and valid invoice for the Goods is received by the Buyer. Invoices may not be dated prior to ship date

ASSIGNMENT: No assignment of this order or of monies due or to become due hereunder shall be made without Buyer's prior written consent.

CANCELLATION: Buyer reserves the right to cancel all or any part of a purchase order without payment or further liability if Seller breaches any of this Agreement, or if, in the Buyer's reasonable discretion Buyer determines that timely delivery in accordance with the purchase order is endangered. Buyer reserves the right to cancel all or any part of a

purchase order for convenience upon written notice to Seller. When cancellation is for convenience, Buyer will pay Seller's verified claims for: (a) previously delivered unpaid Goods conforming to the purchase order; (b) any outstanding balance of Buyer's property (c) undelivered finished goods conforming to the purchase order and produced in accordance with Buyer's ; and (d) actual costs incurred for work-in-process and raw materials ordered in accordance with Buyer's delivery or release schedules which **Seller** cannot use to produce goods for itself or other customers. Payment under this paragraph is conditional upon Buyer's receipt of (i) all verified Seller documentation within 30 days of the cancellation, (ii) the finished and unfinished Goods, (iii) Buyer's property, and (iv) **WORK**-in-process and raw materials. Any cancellations of the agreement does not excuse Seller from its performance of any obligations accrued prior to such cancellation.

INSOLVENCY: Buyer may cancel this order if Seller files a voluntary petition under any Federal or State Bankruptcy Act, or is adjudicated as bankrupt or if Seller becomes insolvent or commits an act of bankruptcy.

PATENTS: Seller agrees to defend, indemnify, and save the buyer and its customers harmless against all suits, claims, and demands for actual or alleged infringements of any patent, trade secret, or copyright arising from the use of the goods, materials, articles, and services or work performed under this order.

INTELLECTUAL PROPERTY: Buyer shall own, and hereby exclusively owns, all rights in ideas, discoveries, inventions, original works of authorship, strategies, plans and data created in, or, resulting from Seller's performance under any Buyer purchase order, including all patent rights, copyrights, moral rights, rights in proprietary information and trade secrets, database rights, trademark rights, mask works, and other intellectual property rights. All such intellectual property that is protectable by copyright will be considered work(s) made for hire for Buyer (as the phrase "work(s) made for hire is defined in the United States Copyright Act (17 U.S.C. 101)) or will give Buyer "first owner" status to the work(s) under local copyrights law where the work(s) was created. Seller agrees to disclose all such intellectual property promptly to Buyer upon creation. If by operation of law any of such intellectual property is not owned in its entirety by Buyer automatically upon

creation, then Seller agrees to transfer and assign to Buyer, and hereby transfers and assigns to Buyer, the entire right, title and interest throughout the world to such intellectual property.

BUYER'S PROPERTY: Any property, including but not limited to equipment, tools, fixtures, dies, jigs, patterns, gauges or materials, furnished either directly or indirectly by Buyer to Seller in connection with this Agreement, or which Buyer buys from, or gives reimbursement to, Seller in whole or in part (collectively, "Buyer's Property") is the sole property of Buyer and will be held by Seller on a bailment basis. Seller agrees that Buyer has the right at any time, to retake possession of Buyer's Property. While in Seller's custody or control, Seller bears the risk of loss, theft and damage to Buyer's Property. Seller agrees to keep Buyer's Property free from all liens and encumbrances and insure Buyer's Property against loss or destruction. Seller must permanently mark all Buyer's Property as "Property of Buyer." Seller will (a) use Buyer's property only for the performance of this Agreement, (b) not deem Buyer's Property to be personal, (c) not move Buyer's Property from the address designated on the purchase order without prior written approval from the Buyer, and (d) not sell, transfer or otherwise dispose of Buyer's Property without the prior written consent of Buyer. Buyer has the right to enter Seller's premises at all reasonable times to inspect Buyer's Property and Seller related records.

WARRANTIES: Seller warrants that the goods, materials, articles, and services or work performed herein will be free from defects in material and workmanship and will conform to the specifications contained or referred to herein and/or to samples, drawings, designs, or other specifications approved or adopted by Buyer, and unless otherwise specified herein, to recognize the commercial standards of quality and function for the kind of goods, materials, articles, services or work performed hereunder. Such goods, materials, articles, services or work performed shall also be subject to all statutory warranties and all express or implied warranties created by acts or statements of Seller, Seller shall, at his own expense, repair or replace, as Buyer may direct, any defective or deficient goods, materials, articles, services, or work performed, immediately on notice from Buyer or within one (1) year

from date of final delivery of the goods and/or services described on the face of this Purchase Order, whichever occurs later.

QUALITY CONTROL: Seller must meet the requirements of TS16949, ISO9001, all provision of Buyer's Supplier Requirements Manual, Supplier Code of Conduct, and Buyer's quality and other specifications stated on the purchase order for goods. Seller agrees to provide and maintain inspection and quality control systems covering the Goods that are acceptable to the Buyer. Buyer and Seller agree to maintain records of all inspection work and make them available to the other party upon request. Goods which do not conform to the purchase order ("Nonconforming Goods") and Goods which do not meet warranty requirements or are otherwise defective ("Defective Goods") will be returned for credit to Seller at Seller's expense and risk. Payment for Goods on any purchase order will not constitute Buyer's acceptance thereof, nor will acceptance be deemed a waiver of Seller's liability for defects and nonconformance.

CONFIDENTIAL INFORMATION: Seller acknowledges the Buyer considers all information delivered to Seller by Buyer in any form, to be confidential and proprietary ("Confidential Information"). All Confidential Information, which includes intellectual property remains the property of Buyer, and must be returned to Buyer (or destroyed with written confirmation of such destruction) promptly upon Buyer's request. Seller agrees to maintain the confidentiality of such information indefinitely unless such information: (a) is or becomes public knowledge other than through authorized disclosure by Seller; (b) is received legally without restriction on disclosure from a third party who has the right to make such disclosure; or (c) is required to be disclosed to comply with a judicial order or decree. Confidential Information may only be used by those employees of Seller who have a need to receive it in order to fulfil Seller's obligation under this Agreement. Seller is prohibited from filing a patent application based on Confidential Information. Seller is responsible for any disclosure of Confidential Information by its employees.

LIABILITY FOR DAMAGES: In consideration of Buyer's order and/or purchase of the goods and/or services set forth on the face of this Purchase Order and provided by Seller pursuant to this Purchase Order,

Seller expressly agrees to indemnify, defend, save harmless, discharge, release, and forever acquit Buyer, their respective directors, officers, agents, employees, attorneys, affiliates, insurers, and suppliers (hereinafter the "indemnified parties") from and against any and all claims, demands, suits, costs, and expenses (including attorney's fees and court costs) and proceedings of any nature whatsoever, including, but not limited to, all claims, demands, suits, costs, and expenses (including attorney's fees and court costs) and proceedings relating to and/or associated with (a) damage to property (including the items provided by Seller pursuant to this Purchase Order), (b) injury (including death) to persons and/or (c) economic loss of any type or kind, alleged to have arisen from and/or in connection with any of the following: (i) the purchase, use, misuse, handling, application, installation, removal, presence, maintenance, manufacture, design, condition, or operation of any of the goods and/or the provision of any of the services ordered by Buyer and provided by Seller, (ii) any breach of warranty or other default of Seller in the manufacture, shipment and/or sale of the goods and/or the provisions of any services ordered by Buyer and provided by Seller; or (iii) any breach by Seller in the performance of its obligations as set forth in this Purchase Order. Seller's obligations described above specifically include any and all claims, demands, suits, expenses, proceedings, or losses alleged or proven to have arisen from the joint or sole negligence of any of the indemnified parties. Seller hereby waives the right of subrogation against the indemnified parties. Whenever Seller shall, by virtue of this Purchase Order, have Buyer's property in its possession, Seller shall be deemed insurer thereof, and shall be responsible for its safe return to Buyer.

INSURANCE: Seller represents that it has the following insurance policies in effect: (a) commercial general liability and product liability insurance with carries acceptable to Buyer, in a minimum amount of two million dollars (U.S. \$2,000,000) per occurrence per year with a minimum aggregate amount per year of five million dollars (U.S. \$5,000,000), and (b) workers compensation insurance or other similar compensation insurance in the amounts required by law. Seller's purchase of any insurance coverage or furnishing of certificates does not in any manner limit Seller's liability hereunder or in any way modify Seller's obligation to Buyer of any of the Indemnified Parties. Seller shall provide Buyer

with certificates of insurance the (x) indicate that the policies shall not change or terminate without at least thirty days written notice to Buyer, (y) name Buyer as an additional name to the indemnified parties as additional insureds in Seller's liability and all excess (umbrella) liability policies. Such insurance must insure the indemnified parties for those claims or losses referenced in the above paragraph. Such insurance must be primary and non-contributory.

TAXES and LICENSES: Unless otherwise provided herein, prices on this order are deemed to include all taxes not expressly imposed by law on the Buyer of the materials or the work to be performed hereunder.

LAWS and ORDINANCES: In the performance of this contract, the Seller shall comply with all Federal, State, and Local laws, ordinances, rules, and regulations applicable thereto. Seller certifies to Buyer that the materials being purchased by Buyer hereunder were produced in compliance with all applicable laws, ordinances, rules, and regulations.

TITLE: Title to, and risk loss of materials purchased under this order shall rest upon Seller until such materials are delivered at the F.O.B. point specified on the face of this Purchase Order, or if no such point is given, then when they are delivered to a public carrier consigned to Buyer or are delivered to Buyer, whichever delivery shall occur first. However, if materials purchased are of an explosive, inflammable, toxic, or otherwise dangerous nature, Seller shall indemnify, defend, and hold Buyer harmless against any claims asserted against Buyer on account of any personal and property damages caused by such materials or by the transportation thereof prior to the completion of unloading at Buyer's plant or warehouse, including claims or losses determined to be caused by the Buyer's sole negligence.

COSTS: In the event a third party is retained to enforce, construe, or defend any of these terms and conditions or to collect any monies due hereunder, either with or without litigation, the prevailing party shall be entitled to recover all reasonable attorney's fees, associated expenses, and court costs.