

TERMS AND CONDITIONS – RHETECH



1. **ACCEPTANCE.** Unless otherwise provided herein it is agreed that this Purchase Order is an offer by Rhetech ("Buyer") to Seller and creates in Seller a binding power of acceptance. The submission and/or delivery by Seller, or the commencement of any work or performance of any services hereunder by Seller, including with respect to samples, shall constitute an acknowledgement by Seller of Seller's acceptance of this Purchase Order and all of the terms and conditions, and that this agreement and any performance hereunder is expressly limited to such terms and conditions of the Purchase Order, and shall not be modified except in writing signed by the Buyer.

2. PACKING, MARKING AND SHIPPING.

A. All material shall be properly packed, marked and shipped in accordance with the requirements of common carriers in a manner to secure lowest transportation rates. No charges will be allowed for transportation unless otherwise indicated. Seller shall route shipments in accordance with Buyer's instructions on front of this order.

B. Unless otherwise specified herein, Seller shall properly mark each package with Buyer's order number and part number where multiple packages comprise a single shipment, each package shall also be consecutively numbered. Seller's name must appear on all packages, All packages must contain individual gross and net or tare and net weights.

3. PACKING SLIPS, BILLS OF LADING AND INVOICES.

A. Each packing slip, bill of lading and invoice shall bear the applicable purchase order number and the location of the plant to which materials are to be shipped and the Seller's name. Final packing slips, packages and invoices shall be marked, "This completes your order."

B. Original bill of lading or other shipping receipt for each shipment shall be promptly forwarded by Seller to Buyer's Purchasing Department and/or administration office.

C. Two (2) copies of Seller's invoice showing prices and extensions, must be mailed in accordance with directions appearing on the face of this Purchase Order. Separate invoices are required for each individual shipment unless otherwise approved by Buyer, and Seller must provide Buyer with the date, bill of lading for the shipment, weight and number of packages in each invoice. Any cash discount period available to Buyer will begin from Buyer's receipt of the invoice, or the receipt of the materials and/or labor, whichever is later. If an invoice is returned to Seller for correction, the cash discount period will begin from the receipt of the corrected invoice.

4. **SHIPPING RELEASES.** Unless specific delivery dates are provided in this purchase order, Seller shall not fabricate any of the supplies covered by this purchase order or procure any of the materials required in their fabrication or ship any of such materials to Buyer, except to the extent authorized in written instructions furnished to Seller by Buyer. Shipments in excess of those authorized may be returned to Seller and Buyer may deduct for reasonable packing, handling, sorting and transportation expenses incurred in connection with such shipments.

5. **INSPECTION.** All articles ordered and all parts, materials and workmanship related to this Purchase Order may be inspected and tested by Buyer during normal business hours prior to Acceptance by Buyer. If any of the articles ordered are defective in material or workmanship or otherwise not in conformity with the requirements of this Purchase Order, Buyer in addition to all other rights, may reject the same for full credit and require prompt action or replacement at Seller's expense. Rejected supplies and/or materials may be returned to Seller a Seller's risk and at Seller's expense.

6. **TOOLS.** Unless otherwise herein agreed. Seller at its own expense shall keep in good condition all tools, gauges, fixtures, and patterns necessary for the production of the material ordered. The cost of changes in the aforementioned items necessary to effect design or specification changes ordered by the Buyer, shall be paid for by Buyer but only to the extent expressly approved by Buyer in writing. Seller shall not sell or otherwise dispose of said tools, gauges, fixtures and patterns without the prior written consent of the Buyer.

7. **CONSIGNED PROPERTY.** Unless otherwise provided in this Purchase Order or in any other written agreement signed by Buyer and Seller, all supplies, materials, facilities, tools, jigs, dies, fixtures, patterns and equipment furnished to Seller by Buyer to perform this Purchase Order shall remain the property of Buyer. Seller agrees to indemnify and hold harmless the Buyer from any and all claims, costs and expenses, including attorneys' fees, damages and liabilities arising out of or in any

way related to any loss, destruction or claim applicable thereto. Seller shall protect Buyer against loss of such property by fire or other hazard by means of proper insurance. Such property shall at all times be properly housed and maintained by Seller, shall be deemed to be personally, shall be so marked by Seller, shall not be commingled with the property of Seller or with that of a third person, and/or shall not be moved from Seller's premises without Buyer's prior written approval. Upon request of Buyer all such property shall be delivered to Buyer by Seller, at any location designated by Buyer, at Seller's risk and expense, and shall be properly packed and marked in accordance with the requirements of the carrier selected by Buyer to transport such property. Buyer shall have the right to enter onto Seller's premises at all reasonable times to inspect such property.

8. **SELLER'S WARRANTIES.** Seller expressly warrants that all articles, materials, or parts ordered, and services covered by this Purchase Order, will conform to the specifications, drawings, samples or other description furnished or adopted by Buyer and will be merchantable of good workmanship and material and free from defect. Any claimed breach of warranty by Buyer shall be given to Seller within a reasonable time. Buyer's approval of Seller's design, material or services provided shall not be construed to relieve Seller of the warranties set forth herein.

9. **RISK OF LOSS.** Seller assumes all risk of loss or damage to articles ordered, work in process, until delivery and acceptance by Buyer.

10. **MODIFICATION OF PURCHASE ORDER.** This Purchase Order may only be amended or modified in writing and supersedes all prior understandings, transactions, and communications or writings with respect to the matters referred to herein. In the event of a conflict in terms, the terms of this agreement shall exclusively control the transaction(s) between the parties related to this Purchase Order.

11. **GOVERNING LAW, JURISDICTION AND VENUE.** This Purchase Order and the Performance hereunder and all lawsuits, arbitration, remedies, special proceedings, or other proceedings in any way connected with, by reason of or in relation to this Purchase Order, shall be construed, governed and enforced in accordance with, under and pursuant to the laws of the State of Michigan to the exclusion of the law of any other forum. The Buyer and Seller hereby stipulate and consent to the jurisdiction of courts of the State of Michigan and venue in the County of Oakland, State of Michigan

12. **DISCLAIMER.** Buyer assumes no liability or responsibility for any loss or damage which results from the use of any product or service related to this Purchase Order. Buyer shall not be liable for special, incidental or consequential damages. No statement contained herein is to be construed as a recommendation to use any product or process in conflict with any patent. Any representations and/or results reported are typical and believed to be accurate based on reasonably reliable procedures.

13. **INDEMNIFICATION.** Seller hereby agrees to indemnify and hold Buyer harmless from any and all claims, actions, suits, proceedings, costs and expenses, including attorneys fees, damages, and liabilities at law or in equity, arising out of, connected with or resulting from this Purchase Order including, but not limited to, any such claims, actions, suits, proceedings, costs and expenses arising out of or in any way connected with the providing of services and/or labor by Seller, or the performance by Seller under a subcontract arrangement. Seller's obligation to indemnify and hold harmless the Buyer will survive the expiration of the Purchase Order and the completion an/or delivery of products or services provided or in any way related to the Purchase Order.

14. **REMEDIES OF BUYER UPON SELLER'S DEFAULT.** Seller shall, without limitation, be in default of this Purchase Order if Seller shall become insolvent, if at any time the property of the Seller is seized or otherwise in the possession of a receiver or trustee; or if Seller shall fail to ship goods to Buyer at the time requested; but Seller shall not be in default for non-performance due to fire, natural disaster, strike, riot, federal or state laws or regulations, acts or defaults of common carriers or other causes beyond the reasonable control of Seller provided Seller provides Buyer prompt written notice thereof.

In the event of Seller's default, Buyer may exercise the following remedies: (a) terminate this Purchase Order; or (b) terminate this Purchase Order as to the portion of goods in default only and purchase an equal quantity of goods of the same kind and grade (or character) and recover from Seller the excess of the price so paid over the purchase price set forth in this Purchase Order, plus any incidental loss or expenses; or (c) terminate this Purchase Order as to any unshipped balance and recover from the Seller 20% of the purchase price of the unshipped balance a liquidated damages. In addition, Buyer shall also have all of the remedies provided by the Uniform Commercial Code as enacted in the State of Michigan.