

## Mafi-Trench Corporation PURCHASE ORDER TERMS AND CONDITIONS

- 1) **Acceptance - Agreement.** Seller's commencement of work on the goods subject to this purchase order or shipment of such goods, whichever occurs first, shall be deemed an effective mode of acceptance of this purchase order. Any acceptance of this purchase order is limited to acceptance of the express terms contained on the face and back hereof. Any proposal for additional or different terms or any attempt by Seller to vary in any degree any of the terms of this offer in Seller's acceptance is hereby objected to and rejected, but such proposals shall not operate as a rejection of this offer unless such variances are in the terms of the description, quantity, price or delivery schedule of the goods, but shall be deemed a material alteration thereof, and this offer shall be deemed accepted by Seller without said additional or different terms. If this purchase order shall be deemed an acceptance of a prior offer by Seller, such acceptance is limited to the express terms contained on the face and on the back hereof. Additional or different terms or any attempt by Seller to vary in any degree any of the terms of this purchase order shall be deemed material and are objected to and rejected but this purchase order shall not operate as a rejection of the Seller's offer unless it contains variances in the terms of the description, quantity, price or delivery schedule of the goods.
- 2) **Termination for Convenience of Purchaser.** Purchaser reserves the right to terminate this order or any part hereof for its sole convenience. In the event of such termination, Seller shall immediately stop all work hereunder, and shall immediately cause any of its suppliers or subcontractors to cease such work. Seller shall be paid a reasonable termination charge consisting of a percentage of the order price reflecting the percentage of the work performed prior to the notice of termination, plus actual direct costs resulting from termination. Seller shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided.
- 3) **Termination for Cause.** Purchaser may also terminate this order or any part hereof for cause in the event of any default by Seller or if Seller fails to comply with any of the terms and conditions of this offer. Late deliveries, deliveries of products which are defective or which do not conform to this order, and failure to provide Purchaser, upon request, of reasonable assurances of future performance shall all be causes allowing Purchaser to terminate this order for cause. In the event of termination for cause, Purchaser shall not be liable to Seller for any amount, and Seller shall be liable to Purchaser for any and all damages sustained by reason of the default which gave rise to the termination.
- 4) **Bankruptcy and Insolvency.** Upon the happening of any one or more of the following events, Purchaser will have the right to cancel and terminate this order without further liability: (a) Seller's insolvency or commission of an act of bankruptcy; (b) filing of a voluntary or involuntary petition of bankruptcy by or against the Seller; (c) the appointment of a receiver for Seller by any court of competent jurisdiction or the making by Seller of an assignment for the benefit of creditors; or (d) if at any time in Purchaser's opinion the financial condition of Seller shall be such as to endanger its ability to perform hereunder and Seller fails to procure a performance bond on demand. The acceptance of goods or performance after the occurrence of any of the above events shall not affect the right of Purchaser to cancel.
- 5) **Proprietary Information - Confidentiality - Advertising.** Seller shall consider all information furnished by Purchaser to be confidential and shall not disclose any such information to any other person, or use such information itself for any purpose other than performing this order, unless Seller obtains written permission from Purchaser to do so. This paragraph shall apply to drawings, specifications, or other documents prepared by Seller for Purchaser in connection with this order. Seller shall not advertise or publish the fact that Purchaser has contracted to purchase goods from Seller, nor shall any information relating to the order be disclosed without Purchaser's written permission. Unless otherwise agreed in writing, no commercial, financial or technical information disclosed in any manner or at any time by Seller to Purchaser shall be deemed secret or confidential and Seller shall have no rights against Purchaser with respect thereto except such rights as may exist under patent laws.
- 6) **Warranty.** Seller expressly warrants that all goods or services furnished under this order shall conform to all specifications and appropriate standards, will be new, and will be free from defects in material or workmanship. Seller warrants that all such goods or services will conform to any statements made on the containers or labels or advertisements for such goods or services, and that any goods will be adequately contained, packaged, marked, and labeled. Seller warrants that all goods or services furnished hereunder will be merchantable, and will be safe and appropriate for the purpose for which goods or services of that kind are normally used. If Seller knows or has reason to know the particular purpose for which Purchaser intends to use the goods or services, Seller warrants that such goods or services will be fit for such particular purpose. Seller warrants that goods or services furnished will conform in all respects to samples. Inspection, test, acceptance or use of the goods or services furnished hereunder shall not affect Seller's obligation under this warranty, and such warranties shall survive inspection, test, acceptance and use. Seller's warranty shall run to Purchaser, its successors, assigns and customers, and users of products sold by Purchaser. Seller agrees to replace or correct defects of any goods or services not conforming to the foregoing warranty promptly, without expense to Purchaser, when notified of such nonconformity by Purchaser, provided Purchaser elects to provide Seller with the opportunity to do so. In the event of failure of Seller to correct defects in or replace nonconforming goods or services promptly, Purchaser, after reasonable notice to Seller, may make such corrections or replace such goods and services and charge Seller for the cost incurred by Purchaser in doing so. None of the remedies available to Buyer for the breach of any of the foregoing warranties may be limited except to the extent and in the manner agreed upon by Purchaser in a separate agreement specifically designating such limitation and signed by an authorized representative of Purchaser.
- 7) **Invoices.** Invoices shall be submitted and shall contain the following information: purchase order number, item number, description of items, sizes, quantities, unit prices, and extended totals, in addition to any other information specified elsewhere herein. All taxes shall be stated separately. Payments of invoices shall not constitute acceptance of goods or services and shall be subject to adjustment for shortages, defects, or other failure of Seller to meet the requirements of this order.
- 8) **Inapplicability of Course of Dealing, Course of Performance and Usage of Trade.** No course of prior dealings between the parties and no usage of trade shall be relevant to explain or supplement any term used in this order. Acceptance or acquiescence in a course of performance rendered under this order shall not be relevant to determine the meaning of this order even though acquiescing party has knowledge of the nature of the performance and opportunity for objection.
- 9) **Price Warranty.** Seller warrants that the prices for the goods or services sold to Purchaser hereunder are not less favorable than those currently extended to any other customer for the same or similar goods or services in similar quantities. In the event Seller reduces its price for such goods or services during the term of this order, Seller agrees to reduce the prices hereof correspondingly. Seller warrants that prices shown on this purchase order shall be complete, and no additional charges of any type shall be added without Purchaser's express written consent. Such additional charges include, but are not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing, crating.
- 10) **Taxes.** Seller's price includes all taxes applicable to this transaction. Purchaser shall not pay taxes levied on Seller except as specifically provided in this order. All taxes billed to Purchaser shall be separately stated in Seller's invoices.
- 11) **Currency.** All billings and payments pursuant to this order shall be in United States dollars, unless otherwise specified in the order.
- 12) **Force Majeure.** Purchaser may delay delivery or acceptance occasioned by causes beyond its control. Seller shall hold such goods at the direction of Purchaser and shall deliver them when the cause affecting the delay has been removed. Purchaser shall be responsible only for Seller's direct additional costs in holding the goods or delaying performance of this order at Purchaser's request. Causes beyond Purchaser's control shall include government action or failure of the government to act where such action is required, strike or other labor trouble, fire, or unusually severe weather.
- 13) **Special Tooling.** (a) Designs, tools, jigs, dies, fixtures, templates, patterns, drawings (hereinafter collectively called "tools") furnished by Purchaser and tools (except as provided in (c) hereof) made or acquired

- by Seller for performance of this order, the cost of which is separately quoted or advertised in the unit price, shall remain or become the property of Purchaser. Such tools shall be used exclusively for production under Purchaser's orders; (b) Purchaser shall not be obligated to reimburse Seller for the cost of any tools unless specifically agreed to in writing by Purchaser; (c) Reproducible drawings for tools to be made or acquired by Seller for performance of Purchaser's orders shall be submitted to Purchaser for approval; (d) Seller will maintain the tools referred to in (a) above in first-class condition and will make replacements when necessary. Seller will not make any alterations to such tools without Purchaser's specific written authorization. Seller will be responsible for all loss or damage to such tools while in Seller's possession. Upon completion or cancellation of this order, such tools shall be disposed of as Purchaser shall direct; (e) Tools made or acquired by Seller for performance of Purchaser's order, the cost of which is chargeable to Purchaser, shall be separately identified by Seller as directed by Purchaser. Payment for such tools will not be made until goods have been received and approved by Purchaser and satisfactory evidence received by Purchaser that proper identification has been made.
- 14) **Compliance with Statutes and Regulations.** By accepting this order Seller represents and warrants that Seller will comply with all applicable National, state and local statutes, rules, regulations, and orders, including , without limitation, laws and regulations pertaining to labor, wages, hours, equal opportunity and other conditions of employment, the environment, safety, and applicable price ceilings, if any. Without limitation, Seller agrees to hold Buyer harmless from and indemnify Buyer for any losses, expenses, costs and damages resulting from Seller's breach of this warranty.
- 15) **Waiver of Mechanic's Liens.** Seller hereby waives its rights to any mechanic's lien under any applicable statutes or otherwise for work done or materials furnished in connection with the goods. Seller shall obtain from any subcontractor or materialman prior to the performance of any work on the goods or to the furnishing of any materials for the goods, a written waiver satisfactory to Purchaser of such subcontractor's or materialman's right to any such lien and shall deliver such waiver to Purchaser promptly upon receipt thereof. Seller shall reimburse Purchaser for all costs and damages including attorney's fees and any special, indirect, incidental, or consequential damages incurred by Purchaser in connection with or as a result of the existence or discharge of any such lien.
- 16) **Patents.** Seller agrees upon receipt of notification to promptly assume full responsibility for defense of any suit or proceeding which may be brought against Purchaser or its agents, customers, or other vendors for alleged patent infringement, as well as for any alleged unfair competition resulting from similarity in design, trademark or appearance of goods, or services furnished hereunder, and Seller further agrees to indemnify Purchaser, its agents and customers against any and all expenses, losses, royalties, profits and damages including court costs and attorneys' fees resulting from any such suit or proceeding, including any settlement. Purchaser may be represented by and actively participate through its own counsel in any such suit or proceeding if it so desires, and the costs of such representation shall be paid by Seller.
- 17) **Services on Site.** In the event that Seller's obligations hereunder require or contemplate performance of services by Seller's employees, or persons under contract to Seller, to be done on Purchaser's property, or property of Purchaser's customers, Seller agrees that all such work shall be done as an independent contractor and that the persons doing such work shall not be considered employees of Purchaser. Seller shall indemnify and save harmless and defend Purchaser from any and all claims or liabilities arising out of the work covered by this paragraph.
- 18) **Indemnification; Insurance.** Seller shall indemnify and hold Purchaser harmless against all expense (including attorney's fees), claims, damages, demands or liabilities arising out of Seller's breach in the performance of this order. In furtherance of the foregoing indemnity and not in limitation thereof, Seller agrees that: (a) Purchaser shall be entitled to all incidental damages resulting from a breach by Seller, including, but not limited to, all expenses reasonably incurred in inspection, receipt, transportation, and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses, or commissions incurred in effecting cover, and any other reasonable expense incident to a delay or breach by Seller; (b) Purchaser shall also be entitled to consequential damages resulting from a breach by Seller for any loss resulting from general or particular requirements and needs of Purchaser of which Seller is aware at the time of executing this order, and which reasonably cannot be prevented by cover or otherwise, and damages sustained by Purchaser from any injury to person or property proximately resulting from any breach of warranty by Seller. This indemnification shall be in addition to the warranty obligations of Seller. Seller shall maintain such public liability insurance, including products liability, completed operations, contractors liability and protective liability, automobile liability insurance (including non-owned automobile liability) and Workers' Compensation, and employer's liability insurance as will adequately protect Purchaser against such damage, liabilities, claims, losses demands, and expenses (including attorneys' fees). Seller agrees to submit to Purchaser certificates of insurance, evidencing its insurance coverage when requested by Purchaser.
- 19) **Changes.** Purchaser shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation. If any such changes cause an increase or decrease in the cost, or the time required for the performance, an equitable adjustment shall be made and this order shall be modified in writing accordingly. Any claim by Seller for an adjustment must be asserted in writing by Seller to Purchaser within thirty (30) days after receipt by Seller of notification of the change. Seller agrees to accept any such changes subject to this paragraph.
- 20) **Inspection/Testing.** Payment for the goods delivered hereunder shall not constitute acceptance thereof. Purchaser shall have the right to inspect such goods and to reject any or all of said goods which are in Purchaser's judgment defective or nonconforming. Goods rejected and goods supplied in excess of quantities called for herein may be returned to Seller at its expense and, in addition to Purchaser's other rights, Purchaser may charge Seller all expenses of unpacking, examining, repacking and reshipping such goods. In the event Purchaser receives goods whose defects or nonconformity is not apparent on examination, Purchaser reserves the right to require replacement, as well as payment of damages. Nothing contained in this purchase order shall relieve in any way the Seller from the obligation of testing, inspection and quality control.
- 21) **Assignments and Subcontracting; Setoff.** (a) Performance of this order shall not be assigned by Seller, in whole or in part, without the prior written consent of Purchaser. Any prohibited assignment by Seller shall be null and void, shall be deemed a material breach of this order, and Seller shall remain liable to Purchaser for full performance of Seller's covenants, duties, liabilities and obligations hereunder. (b) Claims for money due or to become due to Seller from Purchaser arising out of this order may not be assigned, unless such assignment is made to one assignee only and covers all amounts payable under this order and not already paid. Any such assignment shall be subject to Purchaser's rights under paragraph (c) hereof. Purchaser shall be under no obligation to pay such assignee unless and until Purchaser shall have received written notice of the assignment from Seller, a certified copy of the instrument of assignment, and suitable documentary evidence of Seller's authority to so assign. However, any payments made to a third party subsequent to Purchaser's receipt of notice that any claims for money due or to become due hereunder have been assigned or should be paid thereto shall fulfill Purchaser's requirements to make any such payments hereunder. (c) All claims for money due or to become due from Purchaser shall be subject to deduction or setoff by Purchaser by reason of any counterclaim arising out of this or any other transaction with Seller.
- 22) **Shipment.** Seller shall enclose a packing slip not showing prices in each container and on shipments not so accompanied, Purchaser's count or weight shall be conclusive. Buyer's order number, Seller's name, packing slip number, piece number and other identification as Purchaser shall require shall appear on all containers, invoices, correspondence, bills of lading, and other shipping papers, and where Seller and shipper are not the same, the names of both shall be shown thereon. Seller shall not make the C.O.D. shipments unless requested by Purchaser or issue drafts against this order. Unless provided herein, no charge shall be made for boxing, crating, handling damages, carting, drayage, storage, or other packing requirements. All goods shall be packaged, marked, and prepared for shipment in the manner which is (a) in accordance with good commercial practice, (b) acceptable to common carriers for shipment at the lowest rate for the particular goods, and in accordance with applicable delivery requirements, and (c) adequate to ensure safe arrival of goods at the named destination. Seller shall mark all

- containers with necessary lifting, handling, and shipping information. No partial or complete delivery shall be made prior to the date shown on this order unless Purchaser has given prior written consent thereto, nor shall deliveries exceed the quantities specified. Unless provided otherwise in this order, goods ordered shall be delivered on an F.O.B. destination basis to Purchaser's designated plant or plants. If in order to comply with Purchaser's required delivery date it becomes necessary for Seller to ship by a more expensive way than specified in this purchase order, any increased transportation costs resulting therefrom shall be paid for by Seller unless the necessity for such rerouting or expedited handling has been caused by Purchaser.
- 23) **Waiver.** Purchaser's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or Purchaser's waiver of any breach hereunder shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type.
- 24) **Delivery.** Time is of the essence of this order, and if delivery of goods or rendering of services is not completed by the time promised, Purchaser reserves the right without liability and in addition to its other rights and remedies to terminate this order by notice effective when received by Seller as to goods not yet shipped or services not yet rendered and to purchase substitute goods or services elsewhere and charge Seller with any loss incurred.
- 25) **Late Delivery Notification.** Seller must notify Buyer within five (5) days after the beginning of any cause that my delay performance or delivery under this purchase order. Such notification may be initially made by phone but must be followed in writing within two (2) business days.
- 26) **Cancellation upon Bankruptcy.** Purchaser shall also have the right to cancel this purchase order or any part thereof if Seller becomes insolvent or if a bankruptcy petition is filed which is not vacated within thirty (30) days from the date of filing.
- 27) **Limitation on Purchaser's Liability - Statute of Limitations.** In no event shall Purchaser be liable for anticipated profits or for incidental or consequential damages. Purchaser's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this order or from the performance or breach thereof shall in no case exceed the price allocable to the goods or services or unit thereof, which gives rise to the claim. Purchaser shall not be liable for penalties of any description. Any action resulting from any breach on the part of Purchaser hereunder must be commenced within one year after the cause of action has accrued.
- 28) **Remedies Cumulative.** Purchaser's remedies shall be cumulative and remedies herein specified do not exclude any remedies allowed by law. Acceptance of any goods or payment therefore shall not waive any breach.
- 29) **Jurisdiction; Applicable Law.** This order and the rights and obligations of the parties hereunder or arising out of the purchase and sale of the goods or services pursuant hereto shall be governed and construed in accordance and governed by the laws of the State of California, excluding conflict of law provisions. Any legal action or proceeding with respect to this order shall be brought and maintained exclusively in the appropriate Court of the State of California in and for the County of Santa Barbara or the Federal District Court for the Central District of California, located in Los Angeles, California, and Seller and Purchaser hereby accept for itself and in respect of its property, generally and unconditionally, the personal and subject matter jurisdiction of aforesaid Courts. Seller irrevocably consents to the service of process by the aforementioned Courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to it at its address as set forth in this order. Each of Purchaser and Seller hereby irrevocably waives any objection that it may now or hereafter have to the laying of venue in any actions or proceedings arising out of or in connection with this order in any such Court that any such action or proceeding brought in any such Court has been brought in an inconvenient forum. In the event of any legal dispute between the parties relating to this order, the prevailing party shall be entitled to all costs and legal expenses including, but not limited to, reasonable attorneys' and accountants' fees, court costs and expert witness expenses.
- 30) **Provisions Applicable to International Contracts.** In the event the goods or services purchased pursuant to this order are being manufactured or provided by Seller in a country other than the United States, the following provisions shall apply and shall supersede any of

the terms and conditions set forth herein which are in conflict therewith:

- (a) **Duties.** In the event the importation of the goods results in the assessment of a countervailing duty on Purchaser as the importer, Seller shall reimburse such countervailing duty to Purchaser, provided such reimbursement is permitted under United States law and regulations.
- (b) **Gratuities.** Seller represents and warrants to Purchaser that Seller has not accepted any gratuity of any kind from any employee or representative of Purchaser in connection with the placement or performance of this order.
- (c) **Certain Taxes.** If any manufacturer's tax, value added tax, or other tax measured by the selling price of the goods or services is included in or added to the price of the goods or services paid by Purchaser, then, in the event all or any part of that tax shall be refunded to Seller, Seller shall promptly remit such refund in full to Purchaser.
- (d) **Disputes.** All disputes, claims and controversies concerning the validity, interpretation, performance, termination or breach of this order shall be referred to arbitration in Zurich, Switzerland, under the Rules of Conciliation and Arbitration of the International Chamber of Commerce (the "Rules"). In the event of any conflict between the Rules and this paragraph, the provisions of this paragraph shall govern. This provision shall survive any termination of this order. All questions concerning the validity, interpretation, performance and termination or breach of this order shall be governed and decided in accordance with the laws of the United Nations Convention on Contracts for the International Sale of Goods. The language to be used throughout the arbitration proceeding shall be English. Each party shall appoint one (1) arbitrator within thirty (30) days after receipt by respondent of the notice of arbitration. The two (2) arbitrators appointed by the parties shall, within thirty (30) days after their appointment, appoint a third, presiding arbitrator who may not be a citizen or a resident of the United States or the country in which Seller or the parent company of Seller, is organized or has its principal place of business. If either party fails to nominate an arbitrator, or if the two (2) arbitrators appointed by the parties are unable to appoint a presiding arbitrator within the stated periods, such arbitrator(s) shall be appointed by the International Chamber of Commerce in accordance with the Rules. All arbitrators shall be fluent in English. The arbitrators shall, by majority vote, render a written decision with stated reasons therefore within six (6) months after respondent receives the request for arbitration. Any cash award shall be payable in United States dollars. The prevailing party shall be entitled to recover its reasonable attorney's fees and costs of the arbitration, as determined by the arbitrators. The award shall be deemed a United States award. The award shall be final and enforceable and may be confirmed by the judgment of a court of competent jurisdiction. The prevailing party shall be entitled to recover its costs and attorneys fees in any proceedings to enforce the award or to confirm the judgment. All notices by one party to the other in connection with the arbitration shall be in writing and shall be deemed to have been duly given or made if delivered, or mailed by registered airmail, return receipt requested, or transmitted by facsimile, with confirmation of sending, or sent by reputable overnight delivery service, to the parties at the addresses set forth in this order, or such other address as such party shall have given notice to the other party in the manner aforesaid.
- 31) **Effect of Invalidity.** The invalidity in whole or part of any terms or conditions of this purchase order shall not affect the validity of any other terms or conditions.
- 32) **Entire Agreement.** This purchase order and any documents referred to on the face hereof, constitute the entire agreement between the parties. This agreement may be amended only in a writing signed by authorized representatives of both parties.