



## **N.E.W. INDUSTRIES PURCHASE TERMS AND CONDITIONS**

As used in these terms and conditions, the term "Buyer" means N.E.W. Industries Inc. and the term "Seller" means any individual or entity to whom N.E.W. Industries Inc. has issued a purchase order for goods or services which purchase order states that it is subject to N.E.W. Industries' Purchase Terms and Conditions as set forth on N.E.W. Industries' website, [www.new-industries.com](http://www.new-industries.com).

1. **PURCHASE ORDERS.** Buyer may, in its sole discretion, submit purchase orders to Seller for the Materials (the "Purchase Order" or "Purchase Orders"). Each Purchase Order shall state the type and quantity of Materials ordered, the price to be paid per unit of the Materials, the required date of delivery, and the place designated for delivery. All Purchase Orders are subject to all of the terms and conditions contained in this Agreement.

2. **ACCEPTANCE.** Each Purchase Order shall be accepted by either (a) Seller's written acknowledgement to Buyer or (b) shipment of the Materials ordered. Acceptance is expressly limited to the terms and conditions set forth in this Agreement and the Purchase Order. Any provisions, terms, or conditions contained in Seller's quotation, Seller's acknowledgement, Seller's invoice or any other document used by Seller in the transaction that alter, are inconsistent with, contrary to, or in addition to the terms and conditions of this Agreement or of the Purchase Order shall have no force or effect and are not part of the contract between Buyer and Seller. Buyer objects to any such proposed changes whether major or minor in character.

3. **CANCELLATION OF PURCHASE ORDERS.**

(a) Buyer may, without any cause and in its sole discretion, at any time cancel any Purchase Order, in whole or in part, by written notice to Seller. In the event of any such cancellation prior to acceptance by Seller, Buyer shall not have any liability to Seller. In the event of any such cancellation after acceptance by Seller where cancellation is not due to the breach of this Agreement or the Purchase Order by Seller, Buyer agrees to pay Seller's reasonable costs of any special raw materials, work-in-process or finished goods under the cancelled Purchase Order. Buyer's obligation to pay reasonable costs shall be contingent upon the Seller's providing written invoices and other documentation as Buyer shall request evidencing such reasonable costs. Buyer's obligation to pay reasonable costs pursuant to this subparagraph 3(a) shall be (i) limited to such quantities of special raw materials, work-in-process or finished goods specifically acquired by Seller for the purpose of providing the goods described in the cancelled Purchase Order and the quantity of goods described in the cancelled Purchase Order and (ii) shall not include costs reflected in invoices to Seller having an invoice date greater than 90 days prior to the date of the Buyer's notice to Seller of the cancellation of the Purchase Order. Notwithstanding any other provision in this paragraph 3(a), Buyer shall not have the right to cancel a Purchase Order more than three (3) days following Buyer's receipt of the Materials at the place

designated for delivery in the Purchase Order, but nothing in this sentence shall be construed as in any way limiting Buyer's right to reject the Materials or revoke acceptance of the Materials when the Materials are nonconforming. In the event of cancellation of a Purchase Order by Buyer after delivery of the Materials to the place designated for delivery in the Purchase Order, Buyer shall bear the costs of repacking and reshipping the Materials.

(b) Buyer may, immediately upon Buyer's written notice to Seller, cancel any Purchase Order, in whole or in part and whether or not accepted, in the event that the Materials subject to that Purchase Order are not delivered on or before the date for delivery set forth in the Purchase Order. Such cancellation shall be deemed to be a cancellation for breach.

(c) Any Purchase Orders hereunder may be cancelled by Buyer, in whole or in part and whether or not accepted, at any time immediately upon Buyer's written notice to Seller in the event that:

(i) Seller makes an assignment for the benefit of creditors, or is subject to any voluntary or involuntary state, provincial, or federal receivership, insolvency, or bankruptcy proceedings, or becomes unable, or admits in writing its inability, to meet its obligations as they mature;

(ii) the licenses, permits or authorizations necessary for Seller to conduct its business in accordance with this Agreement are cancelled, suspended, or revoked;

(iii) Seller makes any materially false or misleading statement, representation or claim; or

(iv) Seller takes steps to dissolve or liquidate its business.

Such cancellation shall be deemed to be a cancellation for breach.

(d) In the event Seller is unable to perform its obligations due to a force majeure (as described in Paragraph 15(b) below) for a period of thirty (30) consecutive days, Buyer may, in its sole discretion, cancel any Purchase Orders, in whole or in part and whether or not accepted, immediately upon written notice to Seller. Such cancellation shall be deemed to be a cancellation for breach.

4. SHIPMENT AND DELIVERY. Seller shall deliver the Materials F.O.B. to the place designated for delivery by Buyer in the Purchase Order. Seller shall follow any shipping instructions provided by Buyer and shall take such steps as are reasonably necessary to package the Materials to ensure the Materials are not damaged in transit. Notwithstanding anything in the foregoing to the contrary, title to and risk of loss of the Materials shall pass to Buyer only upon delivery of the Materials to the place designated for delivery by Buyer in the Purchase Order, and any rightful rejection or revocation of any Materials by Buyer shall immediately shift the risk of loss of such Materials, wherever located, to Seller.

5. TIME IS OF THE ESSENCE. Time is of the essence in Seller's performance with respect to the delivery dates specified in the Purchase Orders.

6. INSPECTION AND REJECTION. Buyer shall have twenty-one (21) days from receipt of the Materials to inspect the Materials and reject any Materials not conforming to the terms of this Agreement or the applicable Purchase Order. Buyer may inspect any commercial lot of the Materials consisting of numerous units of the same Materials by inspecting only a reasonable sampling of such units and Buyer may reject or revoke acceptance of, in its discretion, part or all of such commercial lot discovered to be nonconforming in any respect. Upon rejection or revocation of acceptance, Buyer shall return the Materials to

Seller at Seller's risk and expense. Seller shall be liable for all expenses of inspecting, unpacking, examining, repacking, storing and reshipping any nonconforming Materials. Materials returned are not to be replaced by Seller except on instructions from Buyer.

7. PAYMENT TERMS. Payment terms shall be Net 45 days.

8. WARRANTY. In addition to all of Seller's standard warranties, Seller warrants to Buyer that all Materials sold to Buyer: (a) will be free from defects in material, design, and workmanship; (b) will be merchantable; (c) will comply with all specifications and drawings provided to Seller by Buyer; (d) will be fit for their particular purpose; and (e) will be manufactured, produced, fabricated, furnished, and delivered to Buyer in full and complete compliance with all federal, state, and local laws and regulations. These warranties shall survive any inspection, delivery, acceptance, or payment by Buyer.

9. INDEMNITY. Seller shall indemnify and hold Buyer harmless from and defend Buyer from and against any and all suits, actions, legal proceedings, claims, demands, costs, and expenses, including attorneys' fees, caused by or arising from (a) any actual or alleged defect in the Materials, (b) Seller's failure to comply with this Agreement, (c) Seller's failure to comply with the terms of a Purchase Order, or (d) any actual or alleged infringement of any patent, trademark, copyright or any other proprietary right of any third party.

10. CONFIDENTIAL INFORMATION.

(a) Definition. The term "Disclosing Party" as used in this paragraph 10 means the party who discloses Confidential Information. The term "Receiving Party" means the party who receives Confidential Information. The term "Confidential Information" as used in this Agreement shall mean all information disclosed by Disclosing Party to Receiving Party, whether tangible or intangible and in whatever form or medium provided including, but not limited to, information relating to, referring to, containing or consisting of inventions, ideas, research, methods, processes, procedures, techniques, engineering, designs, technologies, formulas, discoveries, know-how, business plans, business development plans, products, product specifications, product data, product characteristics, product improvements, product development plans, product marketing and promotion, customer relationships, supplier relationships and financial matters. However, any and all information provided by Seller to Buyer pursuant to paragraphs 15(i) and 15(j) of this Agreement shall not be Confidential Information of Seller, but shall be Confidential Information of Buyer. Some portions of the Confidential Information may also be trade secrets as defined in the Uniform Trade Secrets Act, section 134.90 of the Wisconsin statutes, but the parties agree that the Confidential Information need not satisfy the statutory definition of "trade secret" to be protected as Confidential Information under this Agreement.

(b) Restrictions on Use and Disclosure. Any Confidential Information disclosed may be used by Receiving Party solely for the purpose of performing its obligations under this Agreement and the Purchase Orders ("the Permitted Purpose") and for no other purpose. The Confidential Information shall not be reproduced without the written consent of Disclosing Party except as may be reasonably necessary for the Permitted Purpose. The Confidential Information shall not be disclosed to third parties without the prior written consent of Disclosing Party and then only after obtaining from the third party written confidentiality undertakings equivalent in all respects to those contained herein. Notwithstanding any other provision in this Agreement or any Purchase Order, Receiving Party may disclose Confidential Information to its employees on a need-to-know basis but only for the Permitted Purpose. Any failure of an employee of Receiving Party to comply with Receiving Party's obligations under this Agreement shall be deemed to be a breach by Receiving Party of its obligations under this Agreement and Receiving Party unconditionally guarantees its employees' compliance with the terms of this Agreement. Nothing in this Agreement or any Purchase Order shall be construed as limiting, or in any way modifying, any of Disclosing Party's statutory rights and remedies with respect to the misappropriation of trade secrets. In the event Disclosing Party's statutory rights and remedies are

broader than its rights under this Agreement, Disclosing Party shall be entitled to the benefit of its statutory rights.

(c) Exceptions. The restrictions in this paragraph 10 shall not apply to information where Receiving Party can demonstrate that such information is:

(i) in or comes into the public domain at any time, or is made available to the general public without restrictions by Disclosing Party;

(ii) independently developed by Receiving Party or its employees without reference to or use of Disclosing Party's Confidential Information;

(iii) rightfully received from a third party without restriction and without breach of this Agreement; or

(iv) required to be disclosed in satisfaction of any Court order, subpoena, regulation or legislative enactment.

(d) Obligations Upon Termination. Upon termination of this Agreement or upon the request of Disclosing Party at any time, Receiving Party shall promptly deliver to Disclosing Party the originals and all copies of all documents, records and property of any nature whatsoever, whether tangible or intangible and in whatever form or medium provided, relating to, referring to, containing or consisting of Confidential Information disclosed by Disclosing Party pursuant to this Agreement or any Purchase Order.

(e) Ownership of Confidential Information. Nothing in this Agreement or any Purchase Order shall be construed as granting to Receiving Party, either expressly or by implication, estoppel or otherwise, any right, license or interest in the Disclosing Party's Confidential Information except for their right to use the Confidential Information solely for the purpose of performing Receiving Party's obligations under this Agreement or any Purchase Order.

11. INSURANCE. Seller shall maintain comprehensive general liability insurance, including product liability coverage and contractual liability coverage, for claims of bodily injury (including death) and property damage. Such insurance shall not be less than \$2 million per occurrence. Seller shall ensure that Buyer is named as an additional insured on such general liability policy. Seller shall also maintain worker's compensation insurance in the amount required by law. Seller shall maintain such insurance in full force and effect at all times. Upon written request by Buyer, Seller shall furnish a certificate of insurance indicating its compliance with these obligations.

12. TAXES. The prices stated on the face of the Purchase Orders shall include any and all taxes and other governmental charges, now imposed or hereafter becoming effective, upon the production, sale, shipment, or use of the Materials and Seller shall pay and discharge all such taxes and charges without reimbursement from Buyer.

13. ASSIGNMENT. Seller shall not assign any of its rights, nor delegate any of its duties under this Agreement or any Purchase Order to any other party without the prior written consent of Buyer.

14. NOTICES. All notices permitted or required by this Agreement or any Purchase Order shall be in writing and shall be delivered by an express, next day delivery service to the respective parties at the following addresses:

If to Buyer:

N.E.W. Industries, Inc.  
905 S. Neenah Ave.  
Sturgeon Bay, WI 54235

If to Seller:

Address as set forth in purchase order

The parties may change the address and recipient of notices under this paragraph by giving written notice of a change to the other party. All notices shall be deemed to be accepted when received.

15. GENERAL PROVISIONS.

(a) No Partnership or Agency. Nothing contained in this Agreement shall be construed as creating a partnership or joint venture between the parties or to make a party an agent of another party for any purpose.

(b) Force Majeure. No party will be liable to the other for its failure to perform or for delay in the performance of its obligations to the extent such failure or delay results from causes beyond its reasonable control, such as acts of God, fires, explosions, wars or other hostilities, insurrections, revolutions, earthquakes, floods, epidemics or quarantine restrictions, unforeseeable governmental restrictions or controls, or transportation embargoes or interruptions.

(c) Governing Law; Jurisdiction. This Agreement, all transactions executed hereunder, and the legal relations between the parties shall be governed and construed solely in accordance with the laws of the State of Wisconsin, without reference to the conflict of laws principles of such state. To the extent either party commences litigation, the parties agree that neither party shall commence any such litigation against the other except in a state or federal court in Wisconsin and the parties each consent to jurisdiction over them by, and exclusive venue in, those courts.

(d) Severability. Should any provision of this Agreement be found by any court of competent jurisdiction or any other competent governmental authority to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions contained in this Agreement will not be affected or impaired.

(e) Waiver. No waiver of any rights or breach of any provision of this Agreement will constitute a waiver of any other right or breach of any other provisions, nor will it be deemed to be a general waiver of such provision by the waiving party or permit any subsequent breach of the other party.

(f) Binding Effect. This Agreement shall be binding upon and for the benefit of the parties and their respective successors and permitted assigns.

(g) Modification. This Agreement may not be altered or modified except in writing, duly executed by an authorized representative of each party, which specifically references this Agreement.

(h) Survival. The termination of this Agreement for any reason or cancellation of any Purchase Order for any reason shall not relieve any party hereto from obligations which are intended or understood by their nature to survive termination, including but not limited to, the obligations set forth in Paragraphs 8, 9, 10, 11, 15(i), 15(j) and 15(k) of this Agreement.

(i) Property. The title to any tangible property, including but not limited to material, goods, equipment, apparatus, documents, and literary property (e.g. drawings, manuscripts, artwork, motion pictures, video programs, computer software, and electronic data), provided to Seller by Buyer or produced by Seller in submitting a bid or estimate or in carrying out a Purchase Order for Buyer shall be vested in Buyer, and Seller agrees to return or deliver such tangible property to Buyer upon Buyer's written request. Seller hereby irrevocably assigns and transfers to Buyer all right, title and interest, including copyright ownership, in and to all copyrightable works produced by Seller for Buyer.

(j) Tooling. Any tooling for which Buyer is invoiced separately or the price for which is amortized into the Material's price will become the property of Buyer, and title shall transfer to Buyer upon Buyer's payment. If Buyer decides to remove tooling from Seller's premises, the only additional charge to the Buyer will be for freight (F.O.B. Seller's plant where the tooling is located). Seller will also provide to Buyer one complete set of engineering bill of materials, drawings, prints and last parts made covering the tooling.

(k) Configuration. The items described in specifications and drawings provided by Buyer are the only configurations approved by Buyer. No changes shall be made to any part, sub-component, process, or manufacturing location without prior written notification to Buyer and prior written approval from Buyer. All requests for change shall include the reason for change and written assurance that the change will not affect fit, form, or function, supported by testing and/or analysis. Any costs incurred by Buyer for unauthorized changes will be charged to Seller.

(l) Remedies Cumulative. All of Buyer's remedies referred to in this Agreement are separate and cumulative, and no one of them, whether or not exercised, shall be deemed to be an exclusion of any of the other rights and shall not limit or prejudice any other rights and remedies as may be available to Buyer under law or equity.

(m) Costs of Enforcement. In the event a party breaches this Agreement or a Purchase Order, the non-breaching party shall be entitled to recover from the breaching party all costs incurred by the non-breaching party in enforcing this Agreement or the Purchase Order, including attorneys' fees.

(n) Application of this Agreement. This Agreement shall apply to any and all Purchase Orders issued by Buyer to Seller following the Effective Date.

(o) Entire Agreement. This Agreement, together with the Purchase Orders, constitutes the entire, full, and complete agreement between the parties. This Agreement supersedes and replaces all previous agreements between the parties and all previous agreements are cancelled. The parties each acknowledge that they have not entered into this Agreement based on any representations made by the other party except for the representations set forth in this Agreement.

(p) Counterparts. This Agreement may be executed in any number of counterparts, each of which will be binding upon all parties, their successors and assigns.