

MIDMARK CORPORATION
PURCHASE ORDER TERMS AND CONDITIONS

1. Agreement. This Purchase Order includes these Purchase Order Terms and Conditions, the purchase order form (the "Form") and any exhibits or attachments to the Form. This Purchase Order contains the complete and final agreement between Midmark Corporation ("Midmark") and the Supplier, whose name is set forth on the Form. Acceptance of this Purchase Order is expressly limited to these Purchase Order Terms and Conditions. Midmark expressly objects to and rejects any terms or conditions in Supplier's order acknowledgment, quotation, or other documents unless Midmark expressly agrees in writing to such terms or conditions. This Purchase Order may not be subsequently modified, added to or rescinded unless Midmark expressly agrees in writing to any such modification, addition, or rescission. Accepting this Purchase Order, commencing performance, or shipment of Products, whichever occurs first, shall indicate Supplier's intent to be bound by this Purchase Order, including these Purchase Order Terms and Conditions, shall constitute an acceptance by Supplier of each of these Purchase Order Terms and Conditions, and shall form a contract under the laws of the State of Ohio.

2. Purchase Order Withdrawal/Termination.

(a) In addition to any other remedy, Midmark shall have the right to cancel this Purchase Order as to all or any portion of the undelivered Products, if Supplier: (i) fails to make deliveries at the time(s) specified; (ii) breaches any of the terms of this Purchase Order, including any warranties made by Supplier; (iii) files a voluntary petition under any state or federal bankruptcy or insolvency laws; (iv) has filed against it any involuntary petition under any state or federal bankruptcy or insolvency laws; and/or (v) makes an assignment for the benefit of creditors.

(b) This Purchase Order may be withdrawn by Midmark without penalty prior to the creation of binding contractual obligations under Section 1. Furthermore, this Purchase Order may be withdrawn as to all or any part of the Products that are subject of this Purchase Order without penalty by Midmark thirty (30) days or more prior to the delivery date set forth on the Form.

(c) In addition to the rights under Section 2(b), Midmark may terminate the performance of the work under this Purchase Order in whole or in part, at any time, or from time to time, by written notice to Supplier. Upon receipt of such notice, Supplier shall, unless the notice directs otherwise, immediately discontinue all work and the placing of all orders for materials, facilities, and supplies in connection with the performance of this Purchase Order and shall proceed to cancel promptly all existing orders and terminate all subcontracts insofar as such orders or subcontracts are chargeable to this Purchase Order. Upon the termination of work under this Purchase Order, full and complete settlement of all claims of Supplier with respect to the terminated work shall be made as follows: (i) as compensation to Supplier for such termination, unless such termination is for the default of Supplier, Midmark shall pay Supplier the percentage of the total order price corresponding to the proportion of the amount of work completed on the date of termination to the total work to be done as Supplier's full compensation for the work completed under this Purchase Order; and (ii) upon Midmark's payment to Supplier in accordance with this paragraph, title to all equipment, materials, work-in-progress, and finished products, plans, drawings, specifications, information, special tooling, and other things for which Supplier has paid shall vest in Midmark.

3. Price and Payment. The total price and unit prices shall be as specified in the Form. Payment for each delivery of Products shall be made within 30 days following the date of receipt by Midmark of both the Products at Midmark's facility and the invoice that in all respects accurately reflects the purchase, including without limitation the description, quantity and price of the Products purchased (the "Accurate Invoice").

4. Forecasts.

(a) The Form or exhibits or attachments to the Form may set forth firm and tentative periods. Any quantities stated in any tentative periods are in the nature of forecasts only and are non-binding estimates of Midmark's future needs.

(b) Any forecast that may be made by Midmark of its requirements will be made in good faith to assist Supplier for planning purposes, but such forecast shall not be deemed a commitment or guarantee by Midmark. Midmark shall not be responsible for or liable to Supplier for any costs or damages relating to Supplier's or any third-party's change, alteration, use, or fabrication of such materials.

(c) Supplier shall maintain an inventory of finished Products, raw materials, and component parts sufficient to support Midmark's production schedules and forecasts. Inventory category levels will be mutually agreed upon by Supplier and Midmark based upon Midmark's lead-time, forecast data, safety stock requirements, and Supplier's suppliers' lead times. Midmark will provide Supplier with a weekly copy of Midmark's "Supplier Release Schedule Report" setting forth Midmark's anticipated production needs.

(d) Midmark makes no minimum commitment to purchase any Products from Supplier. Supplier is a non-exclusive supplier of Midmark and Midmark may purchase or have manufactured for it from any other supplier or manufacturer any products similar to any of the Products without any restriction.

5. Quality Assurance.

(a) Supplier shall maintain a quality system that is at all times acceptable to Midmark. Key components of a robust quality system are properly implemented quality procedures for collection and processing defects, techniques to analyze defects and identifying opportunities for corrective and preventive actions, along with evidence validation that actions effective in eliminating and preventing further defects. Supplier and its subcontractors are subject to quality assurance audit and source surveillance by the Midmark and shall be capable of providing valid evidence of compliance with all provisions of this Purchase Order. The right of surveillance access shall be extended to Midmark's customers when so authorized by the Midmark. Without limiting the generality of this section, Supplier shall measure and maintain records of the outgoing quality level of Products as mutually agreed upon between Supplier and Midmark and confirm that the Products meet the applicable specifications for the Products. Upon request by Midmark, Supplier shall submit to Midmark Supplier's Products inspection and testing records. Supplier shall immediately inform Midmark of any quality issues respecting the Products and use its best efforts, consistent with the provisions of this Section 5, to correct quality deviations without delay.

(b) Supplier shall develop and maintain a reliable system of identifying Products to assure that if a defect or non-conformance is found, Supplier will be able (i) to determine what other Products may have a common defect/non-conformance or otherwise be affected by the defect/non-conformance, (ii) to identify the time of and the location of the manufacture of defective/non-conforming Products, and (iii) to identify the specific shipments that contain defective/non-conforming Products to Midmark as well as the time and place of delivery of such shipments.

(c) In the event defective or non-conforming Products are identified, either by Supplier or by Midmark or otherwise, Supplier shall immediately analyze and implement solutions to minimize the consequences of any such defect/non-conformance. In any event, within thirty (30) days following the receipt by Supplier of samples of defective/non-conforming Products and/or a rejection report from Midmark, Supplier shall conduct detailed corrective and preventative action to correct the defect/non-conformance. Supplier shall keep Midmark fully informed of all actions taken with respect to defective or non-conforming Products.

(d) Seller shall ensure that all Company documentation is controlled and distributed with the correct revision level to the appropriate personnel that produce the Products. Seller shall be responsible for ensuring that all applicable Purchaser documentation is provided to all of the Seller's sub-suppliers involved in the supply of Good.

6. Shipment, Delivery, and Inspection.

(a) Supplier must ship Products in the manner and to the address as set forth on the Form so that the Products arrive at Midmark's plant no later than the delivery date set forth on the Form. If no delivery date is specified, then Supplier shall promptly ship such Products. Shipments arriving earlier than five (5) days prior to the delivery date may be returned at Supplier's expense. Unless otherwise specified in the Form, all shipments shall be FOB the "Ship To" destination set forth in the Form.

(b) The Products shall be packed at Supplier's expense to ensure safe and proper carriage of the Products to Midmark in an undamaged condition, and Supplier shall be responsible for any loss or damage to the Products which may arise from inadequate or inappropriate packing. The Products shall also be marked and packaged by Supplier in accordance with law, regulation, Midmark's instructions and packaging specifications and the requirements of the consolidated freight classification, exceptions to the classification or any applicable tariffs in effect on the date of shipment. A packing list shall be included with each shipment.

(c) Title and risk of loss shall remain with Supplier until Products have been delivered to and accepted by Midmark.

(d) Midmark shall have the right to inspect all Products for a reasonable time after receipt. The payment of any invoice shall not constitute acceptance of the Products. Midmark may accept or reject the whole or any unit of non-conforming Products. Supplier shall replace or shall refund the invoice price associated with any nonconforming Products, at Midmark's option. Midmark's only obligation as to Products which Midmark has rejected or as to which Midmark has revoked acceptance shall be those provided by law. All transportation charges and other costs for the return and, if applicable, the replacement of Products shall be paid by Supplier.

7. Engineering/Design Changes.

(a) Midmark reserves the right at any time to make engineering and/or design changes as to any Products and/or work covered by this Purchase Order. Any difference in price or time for performance resulting from such changes shall be equitably adjusted, and the contract shall be modified in writing accordingly. Any price adjustment shall conform to the current standard prices.

(b) Supplier may make engineering and/or design changes to an item of Products or the production processes used in its manufacture, which may affect the performance, reliability, safety, serviceability, appearance, dimensions, tolerances, firmware/software, or composition of bills of materials or material sources only in accordance with this section. Supplier shall notify Midmark of any such proposed engineering and/or design change and shall supply a written description of the expected effect of the proposed engineering and/or design change on the item of Products, including its effect on price, performance, reliability, capability, and serviceability. Midmark may elect to evaluate parts and/or designs specified as part of the proposed change. Supplier shall not change or modify any item of Products without Midmark's prior written consent. If Supplier proposes to make any engineering and/or design change in any product manufactured by Supplier that is similar to an item of Products, then Supplier shall promptly notify Midmark of each such proposed change and afford Midmark the opportunity to incorporate the engineering and/or design change into the similar item of Products in the manner provided in this section.

(c) Seller shall notify Purchaser in writing prior to moving Products or Production Tools to a alternate manufacturing facility or subcontractor. First article samples, in quantities satisfactory to Purchaser, must be submitted to Purchaser for evaluation. Seller agrees not to use an alternate manufacturing facility or subcontractor in the manufacturing of the Products without Purchaser's prior written consent. Seller has the sole responsibility and liability for the performance and non-performance of subcontractor(s).

8. Tooling and Equipment. Unless otherwise specified in this Purchase Order, Supplier shall at its own expense furnish all material, tools, test equipment, jigs, and other equipment and facilities required to furnish the Products which are subject to this Purchase Order. Title to and the right of immediate possession of any property, including, without limitation, patterns, tools, jigs, fixtures, dies, gages, equipment, or material furnished or paid for by Midmark shall be and remain in Midmark. Supplier shall, at Supplier's expense, keep in good condition and shall repair and replace when necessary and shall store, protect, and preserve all patterns, tools, jigs, fixtures, dies, gages, and equipment necessary for the production of the Products ordered, whether or not owned by Supplier or Midmark. Title to and the right of immediate possession of any replacements of any such items owned by Midmark shall be and remain in Midmark. Supplier shall insure Midmark's interest in such property against loss or damage by reason of fire and the perils included in extended coverage and shall furnish certificates of such insurance to Midmark upon request. Supplier shall not use any such property furnished or paid for by Midmark for any purpose other than manufacturing Products for Midmark without Midmark's written consent.

9. Warranties.

(a) Supplier expressly warrants that all Products shipped pursuant to this Purchase Order shall be new; shall conform to applicable specifications, drawings, other data and descriptions furnished, and samples; shall be merchantable; shall be free of defects in design, material and workmanship; and shall be fit for the purpose intended. These warranties shall run to Midmark, its successors, assigns, customers, and users of the Products. Without limiting these warranties or the remedies to which Midmark may be entitled, Supplier shall, at Midmark's option, replace or refund the invoice price of any Products that do not conform to Supplier's warranties. All transportation charges and other costs for the return and, if applicable, the replacement of Products shall be paid by Supplier.

(b) Supplier warrants all Products against Epidemic Failure. An "Epidemic Failure" means a Products failure exhibiting the same root cause symptom as reasonably determined by Midmark. In the event of an Epidemic Failure, Supplier shall promptly establish, in a manner fully satisfactory to and agreed upon by Midmark, a procedure to resolve and replace all defective Products, the full cost of which procedure shall be borne by Supplier.

10. Service Parts. Supplier agrees to provide warranty and service parts with respect to Products sold to Midmark under this Purchase Order for a period of at least ten (10) years from the date of this Purchase Order as may be requested from time to time by Midmark under reasonable prices and terms. These Purchase Order Terms and Conditions shall apply to purchases by Midmark of such warranty and service parts.

11. Country of Origin. Supplier shall provide Midmark with certificates of origin as to all Products purchased under this Purchase Order, if requested by Midmark.

12. Regulatory Compliance.

(a) Supplier shall comply, and shall cause all Products furnished hereunder to comply, with all applicable national, state, and local laws, rules, regulations, and standards including, without limitation, the provisions of the Occupational Safety and Health Act of 1970 (OSHA) and the standards and regulations issued thereunder and amendments thereof; the Americans with Disabilities Act of 1990 (42 USC 12101); the Fair Labor Standards Act of 1938; and all applicable orders issued by the Secretary of Labor; and Supplier shall certify, in writing, such compliance at Midmark's request.

(b) Supplier certifies that it has complied with and will continue to comply with the terms and conditions required by the United States Government for eligibility to furnish articles, materials, and supplies for use on public contracts.

13. Indemnification and Insurance.

(a) Supplier shall indemnify and save harmless Midmark, its successors, assigns, customers, and users of its products, from and against all loss, liability, and damages, including costs and expenses, resulting from any claim that the manufacture, use, sale, or resale of any Products supplied under this Purchase Order infringe any patent or patent rights, copyright, or other intellectual property rights, and Supplier shall upon notice and demand from Midmark defend any action or claim of such infringement at its own expense and with legal counsel acceptable to Midmark.

This obligation shall not apply to any Products or parts purchased by Supplier at the specific direction of Midmark or manufactured to Midmark's design, or to a claim of infringement arising from the use of any Products in conjunction with any other Products as a combination not furnished by Supplier.

(b) Supplier agrees to indemnify, defend, and hold Midmark harmless from and against any and all damages and claims for damages, costs, and expenses (including reasonable attorney fees) resulting from or arising out of (i) the breach by Supplier of its obligations, representations or warranties made in this Purchase Order; or (ii) the death or injury to any person or damage to any property alleged to have resulted from the Products sold by Supplier under this Purchase Order; or (iii) any FDA or other governmental recall, product correction, seizure, or similar action resulting from the Products sold by Supplier under this Purchase Order. The obligations under (ii) and (iii) shall not apply if such injury or damage or recall obligation is caused solely by a negligent act or omission of Midmark.

(c) In the event that this Purchase Order requires Supplier to perform labor or services on any property of Midmark, Supplier shall be responsible for any damages or injuries to persons or property, including Midmark's employees and property that occur as a result of the fault or negligence of Supplier, its agents, servants, or employees in connection with the performance of such work, and the Supplier shall defend, indemnify, and save Midmark harmless from and against any liability for such damages or injuries, including all costs and expenses.

(d) Supplier agrees to maintain commercial general liability insurance in an amount not less than \$1,000,000 per occurrence and \$2,000,000 aggregate, and statutory workers compensation and employers liability insurance in an amount not less than \$1,000,000 each accident and \$1,000,000 each employee. Supplier shall name Midmark as an additional insured and provide certificates of insurance evidencing such coverage. All such insurance shall (a) cover all Products provided by Supplier to Midmark in connection with this Purchase Order, whether at the premises of Supplier or Midmark or any of Midmark's customers, (b) provide waiver of subrogation in favor of Midmark, and (c) be primary over any other insurance available to Midmark or any self-insurance program of Midmark.

14. Confidentiality. Midmark and Supplier shall each indefinitely hold in confidence the other party's Proprietary Information, shall not use or exploit the other party's Proprietary Information other than in the course of carrying out the party's obligations under this Purchase Order and shall not disclose the other party's Proprietary Information to any person or entity other than its employees and contractors who need to know the Proprietary Information for purposes of carrying out the party's obligations under this Purchase Order and who are legally bound to protect confidentiality of such Proprietary Information. "Proprietary Information" includes without limitation all of a party's trade secrets, confidential or proprietary information, drawings, specifications, data, and all other information provided by one party to the other party, and all information prepared by a party containing or derived from the Proprietary Information of the other party, in any form, in connection with this Purchase Order. The pricing and pricing terms in or related to this Purchase Order, the fact that Supplier and Midmark have entered into this Purchase Order or that Supplier is providing Products to Midmark, and the provisions of this Purchase Order shall be deemed Proprietary Information of Midmark. Upon the termination of this Purchase Order each party shall return the other party's Proprietary information and shall not retain any such Proprietary Information or copies of information that is derivative of Proprietary Information; and upon the earlier request of Midmark, Supplier shall return Midmark's Proprietary Information to Midmark and shall not retain any such Proprietary Information or copies of information that is derivative of Proprietary Information. Notwithstanding anything to the contrary in this section, Proprietary Information shall not include information: (i) that is already known to the receiving party prior to receipt from the disclosing party; or (ii) that is or becomes publicly known through no fault or act of the receiving party or any representative or agent of the receiving party; or (iii) is received by the receiving party from a third party which to the receiving party's knowledge is not subject to any confidentiality agreement with the disclosing party or under any other legal obligation prohibiting disclosure of the information; or (iv) that is approved for public release by the written authorization of the disclosing party; or (v) information that the receiving party can establish was independently developed without breach of this Purchase Order or use of Proprietary Information.

15. Marks. Supplier consents to the use by Midmark of Supplier's name, likeness, and trademarks in written materials and oral presentations to current or prospective customers or others.

16. Taxes. All taxes arising out of the transactions covered by this Purchase Order shall be borne by Supplier except as otherwise specified by the parties in writing.

17. General Matters.

- (a) Supplier agrees that time is of the essence in its performance of its obligations under Purchase Order.
- (b) Supplier shall not delegate any obligations nor assign any rights or claims hereunder without the prior written consent of Midmark in each instance. Any attempted delegation or assignment without such written consent shall be void.
- (c) Except as otherwise provided in this Purchase Order, this Purchase Order shall inure to the benefit of and be binding upon the parties, and their respective successors and assigns.
- (d) This Purchase Order shall be governed by the internal laws of Ohio, U.S.A. without regard to its conflicts of laws principles. All matters of controversy arising hereunder which cannot be resolved by the parties shall be subject to the exclusive jurisdiction and venue of the Darke County, Ohio, Common Pleas Court. The parties agree that the United Nations Convocation on the International Sale of Products shall not apply to any purchase or sale of Products between Supplier and Midmark.
- (e) Any rights or remedies granted to Midmark herein shall not be exclusive of, but shall be in addition to, any other rights or remedies that Midmark may have at law or in equity.
- (f) The performance by either party of any covenant or obligation on its part to be performed hereunder shall be excused by floods, strikes, or other labor disturbances, riots, fires, accidents, wars, embargoes, delays of carriers, inability after due diligence to obtain materials, failure of power or of natural sources of supply, acts, government actions enjoining or preventing the manufacture, distribution, and/or sale of the Products or any cause preventing such performance beyond the reasonable control of the party bound by such covenant or obligation. Provided, however, that the party affected shall exert its best efforts to eliminate, cure, or overcome any of such causes and to resume performance of its covenants or obligations with all practical speed. If Supplier is unable to accept orders or to ship Products for a continuous period of sixty (60) days because of any reason enumerated in this section, Midmark may, at its option, cancel orders for all unshipped Products.
- (g) This Purchase Order constitutes the entire agreement between the parties hereto and it may not be released, discharged, changed, or modified except by an instrument in writing signed by a duly authorized representative of both parties. Any representation, promise, or condition not contained herein shall not be binding upon Supplier or Midmark. Acceptance of this Purchase Order is expressly limited to the terms hereof.
- (h) The covenants, representations, and warranties of Supplier and Midmark under this Purchase Order shall survive the expiration or termination of this Purchase Order.
- (i) Supplier shall not refer to Midmark in any advertisement, publication, or in any other form in connection with this Purchase Order without obtaining clearance in writing from the Midmark in each instance.