

SIMONA-AMERICA Inc. Purchasing Terms and Conditions

1. Entire Agreement – The terms, specifications and drawings included in this order when daily executed constitute the entire agreement between the parties, unless otherwise stated on the face of the order. No modification or waiver of terms of this agreement shall be binding, unless in writing, signed by a duly authorized representative of the Buyer (SIMONA-AMERICA Inc.) and confirmed by such a representative of the Seller. This agreement shall be interpreted in accordance with the laws of the State of Delaware.
2. Deliveries – In the event of failure to deliver material of the quality or within the time specified, Buyer may buy elsewhere and charge Seller with the resulting loss, unless deferred shipment is agreed upon in writing; Failure of Buyer to exercise this option with respect to any installment shall not be deemed a waiver with respect to future installments, if any.
3. Inspection – Materials shall be received subject to Buyer's right to inspect and test all materials at destination before acceptance. Seller shall pay transportation costs and the cost of inspecting and testing of materials which are rejected.
4. Acceptance – Payment for the goods covered by this order shall not constitute acceptance thereof. Shipment of any part of this order without written acceptance constitutes Seller's acceptance of order and its conditions.
5. Contingencies – Neither party shall be liable for delays or defaults due to acts of God, governmental authority or public enemy, war, fires, floods, epidemics, strikes, labor troubles, freight embargos or contingencies reasonably beyond its control. The party so affected, upon prompt written notice to the other party, shall be excused from making or taking deliveries hereunder to the extent of such prevention or restriction. At Buyer's option, delivery so omitted shall be made on notice thereof to the Seller, upon cessation of such contingency, even though such might have been operative at the date of this order.
6. Indemnity government regulations – Seller agrees to indemnify and hold Buyer harmless from and against any liability arising out of the use or resale of the materials specified herein, including the cost of litigation or settlement of claims, except liability solely and directly attributable to Buyer's gross negligence. Seller warrants that all applicable laws and regulations of governmental authority covering the production, sale and delivery of the materials specified herein have been complied with and Seller shall save Buyer harmless from and against any liability or loss resulting from Seller's failure to do so.
7. Taxes – Seller agrees to pay any taxes imposed by law upon or on account of the within material unless otherwise agreed, except taxes required by law to be paid or borne by the Buyer.
8. Provisions – The provisions of this purchase order shall apply despite any conflicting provisions of any printed acknowledgment of this order, or other form used in processing Buyer's order, unless such different provisions are brought to the special attention of Buyer's representative and agreed to by Buyer in writing.
9. Warranties – In addition to all warranties, established by statute or common law, or set forth elsewhere in this order, Seller expressly warrants that all materials or services covered herein shall conform to all specifications, drawings, samples and descriptions furnished or adopted by Buyer, and shall be of the best quality and fit and sufficient for the purpose for which purchased, if specified hereon, merchantable, of good material and workmanship and free from all patent and latent defects. Buyer's failure to give notice to Seller of any breach of warranty shall not discharge Seller's liability therefore. Without limiting the generality of the foregoing, Seller agrees to be responsible for all defects in design, workmanship and materials which may become apparent within twelve months of receipt by Buyer. These warranties shall run to the Buyer, its successors, assigns, customers and the users of its products.
10. Patents – Seller shall protect and indemnify Buyer against all claims, judgments and expenses arising from infringement or alleged infringement of any patent, by any of the goods delivered hereunder. Seller shall defend or settle at its own expense any proceeding brought against Buyer for such infringement provided Seller is notified promptly of the commencement of such proceeding and is given authority, information and assistance by the Buyer for the defense or settlement thereof. Seller's said warranty against patent infringement shall not extend to the use made by the Buyer of the purchased materials in combination with other materials or in the operation of any process.
11. Installation – If this order requires the services of Seller experts or employees on Buyer's premises, Seller agrees, whether or not separate charge is made, therefore, that such experts or employees shall not thereby be deemed to be the agents or employees of Buyer. Such parties shall be subject to Buyer's safety rules and fire regulations. Seller shall furnish certificates of insurance satisfactory in form to Buyer as to Workmen's Compensation, Manufacturer's Public Liability and Automobile Public Liability Insurance. Seller assumes full responsibility for their acts and omissions and agrees to save Buyer harmless from any claims arising therefrom and to accept exclusive liability for payroll and other taxes imposed upon the employer by law.

Seller will undertake to keep the materials and premises involved free from any lien whatever for materials and labor incident to the performance of Seller's obligations hereunder. If Seller furnishes material and services for construction and improvement of realty and the installation of personality for a lump sum amount, Seller agrees to furnish an analysis thereof as Buyer may reasonably require for accounting purposes. Seller shall be solely responsible for material furnished by Buyer on other than a charge Basis in connection with this order.
12. Non-disclosure – Without prior written consent of the buyer in each instance, Seller shall not reveal to a third party the details, characteristics or any information on materials made to the special order of Buyer or use reproductions thereof in any promotional media or reveal that Buyer is purchasing the materials ordered hereunder.

13. Assignment – Seller shall not assign this order or any part thereof without consent of the Buyer. Such consent will not relieve Seller from its obligations and liabilities.
14. Changes – Buyer reserves right to change specifications and delivery dates. Any resultant contract difference shall be equitably adjusted in writing.
15. Regulatory – The Equal Opportunity clause in Section 202 of Executive Order 11246, as amended, the Employment Assistance to Veterans clause of Executive Order 11598 and 11701, as amended, the Rehabilitation Act 1973, as amended and the Vietnam Veteran ERA Act, as amended, are incorporated herein and binding upon Sellers.

(01/2009)