



Purchase Order Terms and Conditions

Revised Aug. 24/2012

I. BREWS'S TERMS AND CONDITIONS CONTROL THIS AGREEMENT

This purchase order is an offer, made by Brews Supply a division of WESCO Distribution Canada LP ("BREWS") to you, the seller, to buy the goods referenced on the front side of this purchase order. The term goods in these terms and conditions shall be understood to include materials, components and facilities. This offer expressly limits your acceptance to the terms of this offer, together with such plans, specifications, or other documents as are incorporated by reference on the face of this purchase order. Contrary provisions in your quotations, acknowledgements, or any other document that you send in response to this offer, or have sent to BREWS to solicit this offer, are hereby rejected and are not binding on BREWS unless BREWS accepts them in writing, no matter whether you tender to BREWS a paper form containing your terms and conditions, whether you send your terms and conditions to BREWS electronically via e-mail or any similar electronic medium, or whether you tender your terms and conditions to BREWS by any other means.

If you submit additional and/or different terms and conditions to BREWS, or submit a counteroffer to this purchase order, BREWS's subsequent performance shall not be construed as either acceptance of your additional and/or different terms and conditions or your counteroffer.

II. ACTIONS THAT WILL CONSTITUTE YOUR ACCEPTANCE OF THIS OFFER

You will be deemed to have accepted this offer if you (a) expressly accept it by transmitting to BREWS your written or oral acknowledgement; (b) begin shipment of the goods that are the subject of this purchase order; or (c) begin manufacture of the goods that are the subject of this purchase order, if such goods are to be specially manufactured for BREWS.

III. PRICE

The price for the goods referenced in this purchase order shall be as stated on the face of this purchase order. You shall not fill this purchase order at any other price unless authorized by BREWS in writing. No charge will be allowed for boxing, packing or crating unless expressly agreed to by BREWS in writing. No charges for extras will be allowed unless they have been ordered in writing by BREWS and the price agreed upon.

You shall be responsible for arranging your design, manufacturing and shipping schedules so that the goods shall arrive at the required destination point in accordance with the delivery schedule specified in this order. Solely for purposes of determining when payment is due if the goods are delivered to the destination point early, goods shall be deemed to have not been delivered until the scheduled delivery date. The time for making payments shall be calculated from the date the invoice is received by BREWS or the date that satisfactory goods and any required documents are delivered to the destination point, whichever is later, unless alternate terms are stated on the face of this purchase order. If an invoice is held or returned for correction, the time shall run from the date the corrected invoice is received by BREWS.

IV. YOUR PROMISES TO BREWS

A. YOUR WARRANTIES TO BREWS

You warrant that you have good and marketable title to the goods. BREWS specifically rejects any of your terms that purport to limit BREWS's remedies to the repair or replacement of the goods that are the subject of this purchase order. Rather, in addition to any warranty that you have expressly extended to BREWS, you will extend to BREWS all implied warranties, including, but not limited to, the implied warranties of fitness for a particular purpose and merchantability. You further warrant that the goods sold under this purchase order will be free from defects in workmanship or materials, and shall conform to any sample, specifications, drawings or other description furnished to or adopted by BREWS and will be fit for all purposes reasonably inferable from any description or specifications forming part of this purchase order. Additionally, you warrant that all goods and services provided by you shall comply with all applicable laws, regulations, orders, directives, policies, guidelines, standards and notices of any federal, provincial or local governmental or regulatory body or court having jurisdiction. You also warrant that all goods delivered or services performed shall comply with any additional health or safety law or regulation of any federal, provincial or local governmental or regulatory body having jurisdiction in the location to which such goods are to be shipped or such services are to be performed pursuant to this purchase order.

The term of your warranties shall be the longer of (1) the term of warranty provided by the manufacturer of the final product into which the goods purchased herein are incorporated (hereinafter "Final Product") (for example, an automobile component that is installed as original equipment in a motor vehicle shall have the same warranty period extended with the motor vehicle); (2) the term mandated by applicable law; or (3) thirty-six months from the date the Final Product is first placed into operation.

B. YOU WILL INDEMNIFY BREWS AGAINST ALL LOSS

You will indemnify and hold BREWS harmless against all loss, including, but not limited to, property damage, loss of profits or revenue, loss of use of any property, cost of capital, cost of purchased or replacement power or temporary equipment, personal or bodily injury, or death arising out of any agreement that is governed by the terms and conditions of this purchase order or in any way related to the goods sold under any agreement that is governed by the terms and conditions of this purchase order. Your indemnification obligation applies whether loss is suffered by you, or whether loss is suffered by BREWS or any third party. Your indemnification obligation applies whether you alone were negligent; whether BREWS alone was negligent; whether any third party alone was negligent; whether you, BREWS, or a third-party were negligent in any combination, whether jointly or concurrently; or whether none of BREWS, you, or any third party was negligent. Your indemnification obligation extends to all loss suffered by reason of any patent or trademark infringement arising, or claimed to arise, out of any agreement governed by the terms of this purchase order. This indemnification obligation requires you to pay any judgments against BREWS, any court costs that may be assessed against BREWS, and any reasonable legal and other professional fees and disbursements incurred by BREWS in BREWS's defense. You have no right to control BREWS's defense of any claim brought against BREWS. Your indemnification obligation does not depend on the truth of any allegations made against BREWS, you, or any third party. While you are not required to indemnify BREWS against BREWS SUPPLY's intentional tortious acts, you must continue to pay BREWS's court costs and reasonable legal and other professional fees and disbursements until it has been established that the loss in question was caused solely by intentional tortious acts of BREWS.

C. BREWS'S PROPERTY

Unless otherwise agreed in writing, all tools, equipment or material of every description furnished to you by BREWS, or specifically paid for by BREWS; and any replacement thereof, or any materials affixed or attached thereto, shall be and remain BREWS's personal property. Such property and whenever practical each individual item thereof, shall be plainly marked or otherwise adequately identified by you as "Property of BREWS Distribution Canada LP" and shall be safely stored separate and apart from your property and shall remain free of liens and encumbrances. You shall not substitute any property for BREWS's property and shall not use such property except in filling BREWS's orders. While in your custody or control, such property shall be held at your risk and insured at your expense in an amount equal to the replacement cost with loss payable to BREWS and may be removed at BREWS's written request, in which event you shall prepare such property for shipment and shall deliver it to BREWS in the same condition as originally received by you, reasonable wear and tear excepted. BREWS shall have the right at all reasonable times upon prior request to enter your premises to inspect any and all such property. Your obligations under this purchase order shall include keeping premises of BREWS free from all claims, liens and encumbrances. You, all of your contractors and suppliers of any tier, waive all rights of lien against the property and premises of BREWS for labour performed or for goods furnished under this purchase order.

D. YOUR DUTIES AS TO CONFIDENTIAL INFORMATION

This purchase order and the documents incorporated herein and all information provided by BREWS to you, whether or not designated by BREWS as confidential or proprietary, shall be deemed "Confidential Information." You agree to maintain and keep all Confidential Information in confidence and not to disclose it to any third party or use such information for any other purpose, except as authorized by BREWS for the performance of this purchase order. You shall not publicize the existence or scope of this purchase order without BREWS's written consent. You shall require these same agreements on the part of any sub-supplier to whom the Confidential Information is disclosed. You shall return all Confidential Information and any documents or records prepared or retained by you containing Confidential Information on demand by BREWS.

E. YOU WILL ACT AS AN INDEPENDENT CONTRACTOR

You shall act as an independent contractor and not as an agent or employee of BREWS and shall not contract any portion of the work to be performed under this purchase order to a third party without the prior written consent of BREWS.

F. YOU WILL SERVICE THE GOODS SOLD UNDER THIS ORDER

During the term goods are supplied hereunder and for a period of 10 years after BREWS has completed the last purchase of goods, you will supply all of BREWS's service and replacement requirements for the goods at the prices most recently approved by BREWS plus any actual cost differential for manufacturing and packaging, such cost differential to be negotiated between you and BREWS but in no case to exceed 20 percent (20%).

G. YOUR AUTHORITY AND CAPACITY

You represent and warrant that you have both the authority and the capacity to enter any agreement that is governed by the terms and conditions of this purchase order and, if applicable, to bind your employer and/or principal.

H. INDUSTRIAL PROPERTY

You shall indemnify and save harmless BREWS from any claim or action arising from the alleged infringement of any claim of any Patent or Trade Mark as a result of the use or sale of the goods. In case the goods or their use are held to constitute an infringement and their use is enjoined, you shall promptly secure for BREWS the right to continue using the goods, replace the goods with non-infringing goods, or, if unable to do any of the foregoing, remove the infringing goods and refund all monies paid therefor.

I. ALLOCATION

In the event of a partial failure of your sources of supply of the goods purchased hereunder, you shall first meet all of BREWS's requirements hereunder prior to any allocation among your other customers.

J. WELDING.

If the material, or any part of it, covered by this order is of welded construction, the welding must conform to the requirements of C.S.A. Standard W59/latest revision and be undertaken by a fabricator fully approved by the Canadian Welding Bureau to the requirements of C.S.A. Standard W47.1/latest revision.

V. BREWS'S RIGHTS UNDER THIS PURCHASE ORDER

A. CHANGES

BREWS shall have the right to make changes in the specifications and drawings for goods or services covered by this purchase order by giving notice in writing. If you believe that any such change affects the price or delivery date for such goods or services, you shall so notify BREWS in writing, with adequate supporting documentation, within five (5) calendar days after receipt of notice of BREWS's change. You shall suspend performance of the change unless thereafter released, in writing, by BREWS to perform the change, and BREWS and you shall mutually agree, in writing, upon an equitable adjustment in the price and/or delivery date to reflect the effect of such change. Your request for any adjustments shall be deemed waived unless submitted in writing within such five (5) calendar days after you receive notice from BREWS to make such changes. You shall not suspend performance of the unaffected portion of this purchase order while BREWS and you are in the process of negotiating or making such changes and any related adjustments, or at any time thereafter unless so instructed in writing by BREWS. If released in writing by BREWS, you shall comply with and perform such change in accordance with the terms of this purchase order. The failure of you and BREWS to agree on an equitable adjustment for the change will in no way affect your responsibility to comply with and perform such change in accordance with the remaining terms of this purchase order.

B. PROGRESS PAYMENTS

Title in and to all payments or accountable advances or otherwise, title in and to all materials, parts, work-in-process and finished work paid for by such payments or accountable advances or otherwise shall vest and remain in BREWS (but at your risk) providing such vesting of title shall not constitute acceptance by BREWS of such materials, parts, work-in-process and finished work and shall not relieve you of your obligation to perform the services or deliver the goods in conformity with the requirements of this purchase order or any agreement resulting herefrom. If BREWS makes any advance or progress payment to you under this purchase order, upon BREWS's request, you agree to execute and deliver to BREWS a security agreement and financing statement (both in form satisfactory to BREWS) granting a security interest to BREWS, effective in all Provinces or other jurisdictions of fabrication or manufacture, in the proceeds, raw materials and goods which are, or which are sought to be, purchased, manufactured or otherwise obtained pursuant to this purchase order.

C. SETOFF

BREWS shall have the right to set off the amount of return credits or other sums owed to BREWS's customers arising out of goods sold to BREWS under any agreement governed by this purchase order or any other agreement between you and BREWS from amounts owed to you under any agreement governed by this purchase order or any other agreement between you and BREWS.

D. INSPECTION AND TESTING

BREWS reserves the right to review your quality assurance and quality control procedures, and you shall at your expense furnish to BREWS a reasonable number of samples. BREWS may inspect and witness the progress of the work and, to ensure that the goods are being furnished in accordance with this purchase order, your testing: BREWS shall be granted access to all parts of your plant(s) or your sub-supplier's plant(s) engaged in the manufacturing or processing of this purchase order. The representative's inspection and witnessing of testing, the lack thereof, or lack of comment or other response from the representative shall in no way release you from any of your obligations under this purchase order. You shall ensure that this term becomes a part of your purchase orders to sub-suppliers for all goods or services which are used in the products purchased under this purchase order. You and your sub-supplier shall notify BREWS at least five (5) calendar days in advance of the date any inspection or test can be made. If, for any reason, the date should be set back, you shall telephone or wire BREWS immediately. Complete and accurate information is required to maintain the overall schedule. Unless otherwise stated, you shall furnish the status of engineering, material procurement, production and shipping information every fourteen (14) days, at minimum. **YOU SHALL NOT SHIP THE GOODS FURNISHED UNDER THIS PURCHASE ORDER WITHOUT BREWS'S FINAL INSPECTION OR A PRIOR WRITTEN WAIVER OF INSPECTION FROM BREWS. VIOLATION OF THIS REQUIREMENT MAY RESULT IN AN AUTOMATIC REJECTION OF THE GOODS WITH SUBSEQUENT COSTS FOR RETURN OR OTHER ACTION AS WARRANTED TO YOUR ACCOUNT. EXCEPT AS OTHERWISE AGREED IN WRITING, ALL SHIPMENTS SHALL BE SUBJECT TO FINAL INSPECTION BY BREWS AFTER RECEIPT BY BREWS AT DESTINATION.**

If at any time after delivery of the goods to the destination point any defect or deficiency should appear due to faulty workmanship, material or design or if the goods or any part thereof fail to meet the requirements of this purchase order, BREWS shall have the right, in addition to any rights it may have hereunder, to reject and return such goods for either full credit or refund of monies paid, at its choice, all charges collect including incoming charges. Without limiting the foregoing right, BREWS shall have the additional right to require you promptly to replace, repair, or restore any faulty workmanship, material or design at your expense and risk. You shall pay all transportation costs, if any, both ways between your plant or repair depot and the destination point. If you are unable or unwilling to effect such prompt replacement, repair or restoration, BREWS may do so by using its own facilities or by outside contract and shall be entitled to charge you for its expenses directly or indirectly occasioned thereby. The provisions of this paragraph shall not be deemed to diminish, restrict or exclude the operation of any warranty implied or imposed by law. The making or failure to make any inspection of or payment for the goods or services covered by this purchase order shall in no way impair BREWS's right to reject goods or services, nor be deemed to constitute acceptance by BREWS of the goods or services, nor in any way affect your obligations or BREWS's rights under this purchase order, notwithstanding BREWS's knowledge of any non-conformity or defect, the substantially or ease of discovery of any such non-conformity or defect, nor BREWS's failure to earlier reject the goods or services.

E. CONSENT TO ASSIGNMENT OF PAYMENT

None of this purchase order, any agreement governed by this purchase order or any right to receive payment or other right hereunder or thereunder, shall be assignable or transferable without BREWS's prior written consent.

F. SUSPENSION

BREWS may, at any time, by written notice to you, suspend further performance of all or any portion of this purchase order by you. Such suspensions shall not exceed one hundred eighty (180) consecutive calendar days each. Upon receiving any such notice of suspension, you shall promptly suspend further performance of this purchase order to the extent specified and, during the period of such suspension, shall properly care for and protect all work in progress and materials, supplies and equipment you have on hand for performance of this purchase order. You shall use your best efforts to utilize your material, labour and equipment in such a manner as to mitigate costs associated with suspension. BREWS, may, at any time, withdraw the suspension as to all or part of the suspended performance by written notice to you specifying the effective date and scope of withdrawal, and you shall, on the specified date of withdrawal, resume diligent performance of the work for which the suspension is withdrawn. If you believe that any such suspension or withdrawal of suspension justifies modification of the purchase order price or time for performance, you shall comply with section V.A., entitled "CHANGES." In no event shall you be entitled to any loss of prospective profits, contributions to overhead or any incidental, consequential or other damages because of such suspension or withdrawal of suspension.

G. CANCELLATION

BREWS shall have the right to cancel this purchase order and any agreement governed by this purchase order at any time upon payment of such reasonable charges in accordance with your policies established at the time of your acceptance of this purchase order, or as later agreed by you and BREWS in writing. However, BREWS may cancel with no liability for expenses incurred by you if delivery is not completed within the time stated on the reverse side of the purchase order or, if no time is stated, within a reasonable time. Such rights of cancellation are in addition to all rights of cancellation provided by law. Notwithstanding any cancellation or termination of this purchase order and any agreement governed by this purchase order, the provision of items IV A to D of this purchase order shall survive.

VI. INTERPRETATION OF THIS AGREEMENT

A. NO ORAL MODIFICATION

None of BREWS's employees or agents have any authority to orally modify or alter in any way the terms and conditions of this purchase order.

B. PRIOR COURSE OF DEALINGS IRRELEVANT

Regardless of how many times BREWS purchases or has purchased goods from you by any means, each time you accept this purchase order by any means constitutes a separate agreement that shall be interpreted without reference to any other agreement between you and BREWS, or what you may claim to be a course of dealing that has arisen between you and BREWS.

C. A USAGE OF TRADE SHALL NOT VARY TERMS AND CONDITIONS

No usage of trade shall vary any of these terms and conditions.

D. NO PRIOR OR CONTEMPORANEOUS AGREEMENTS

Except as expressly provided herein, there are no prior or contemporaneous agreements, representations, warranties, or understandings that affect in any way this purchase order or any agreement that is governed by the terms and conditions of this purchase order.

E. DELAY

Time shall be of the essence of this order or any contract following thereupon.

F. AUTHORITY

Wherever the word "BREWS" appears in these terms and conditions with respect to any authorization or notice, the word is deemed to mean, and only mean BREWS's Purchasing Department. No other person or department of BREWS is so authorized to act.

VII. SHIPMENT OF GOODS

Shipment of all goods sold under any agreement that is governed by the terms and conditions of this purchase order will be made F.O.B. to the point of destination, as shown on the face of this purchase order. You will bear the risk of loss until delivery of the goods to the point of destination and title shall pass upon such delivery.

You will mail invoices and bills of lading to BREWS's mailing office, indicating on the invoices cash discount terms for prompt payment and a separate invoice shall be rendered for each order or shipment. You will show the purchase order and item number(s) on all invoices, packages, bills of lading, etc., and all communications in reference thereto. All goods shall be properly classified, described, packaged, marked and labelled by you for shipment, and shall be in proper condition for transportation in accordance with any applicable federal, provincial or local laws or regulations, and you shall indemnify BREWS from any claims, penalties or damages incurred by BREWS as a result of the improper shipment of the goods.

Any shipping dates given in advance of actual shipment are warranted by you to be firm. You will bear all costs arising out of any delay in shipment of the goods sold under this purchase order to BREWS. If BREWS becomes aware of any event that reasonably suggests to BREWS that you might not meet the delivery date that you and BREWS have agreed upon,

BREWS will have the right to instruct you to ship the goods to BREWS, or any third party, by the most expeditious manner possible, and you will be solely responsible for any additional cost incurred thereby.

VIII. GOVERNING LAW

Any agreement that is governed by the terms and conditions of this purchase order will be governed by the law of the Province where BREWS's office issuing this purchase order is located and the Courts of such Province shall have sole jurisdiction, except for such jurisdiction's choice of law rules. You consent to extra-territorial service of process on you.

IX. NO WAIVER OF BREWS'S RIGHTS UNDER APPLICABLE LAW

Nothing contained herein shall be construed to limit or waive any rights of BREWS under applicable Federal, provincial, or local laws. No waiver of any right or remedy in respect of any occurrence on one occasion shall be deemed a waiver of such right or remedy in respect of such occurrence on any other occasion.

X. SEVERABILITY

Should any part of these terms and conditions be held invalid or unenforceable, that portion shall be construed consistent with the law governing the agreement resulting from this purchase order, and the remaining portions – be they entire clauses, paragraphs within clauses, sentences, or portions of sentences – shall remain in full force and effect. The term "clause" as used herein refers to the entire text contained below a bolded heading. For example, all the text under the words "X. SEVERABILITY" constitutes a "clause."