

# TERMS AND CONDITIONS OF PURCHASE

Southern Rewinding and Sales

**GOODS AND SERVICES** Supplier agrees to supply the Goods and/or Services described in this Purchase Order (the "PO") to Southern Rewinding and Sales ("Purchaser") subject to these Terms and Conditions ("Agreement"). No material may be substituted in lieu of those specified without Purchaser's written assent. This PO shall be deemed to have been accepted by Supplier by any of the following: (i) receipt by Purchaser of any writing, including a fax or e-mail, indicating acceptance, or (ii) shipment of the Goods or any portion thereof, or (iii) performance of any Services hereunder. By such action Supplier shall be bound by the provisions of this Agreement, including all terms set forth on the face of the PO.

**TYPE OF ORDER** This PO constitutes a firm fixed price agreement unless otherwise stated on the face of this PO.

**PRICE AND PAYMENT** All prices on this PO are firm and are not subject to adjustment. Prices on this PO include all applicable taxes and charges. Prices must not be higher than last charged or quoted nor may quantities differ from the amount specified in this PO without written consent of the Purchaser. Unless other terms are agreed to in writing, the net amount shall be payable within 30 days after the later of (i) delivery and acceptance of Goods or Services conforming with the terms of this PO or (ii) Purchaser's receipt of Supplier's invoice.

**INVOICES** A separate invoice must be rendered in duplicate of each shipment indicating purchase order and part numbers. Invoice on final shipment must be marked "complete". Original and one copy of the Bill of Lading or express receipt must accompany invoices indicating weight and rate of all shipments F.O.B. point of origin.

**METHOD OF SHIPMENT OR PACKING** Supplier will package Goods in a manner that assures that they are protected against deterioration, contamination, or breakage. All Goods are delivered to the F.O.B. point specified on the face of the PO. Title and risks remain with Supplier until delivery.

**DELIVERY** Time is of the essence of this order. If Supplier does not complete delivery of Goods or Services by the dates specified on the face of the PO, Purchaser may, without liability, terminate this PO by notice effective when received by Supplier as to goods not yet shipped or services not yet rendered. Supplier agrees to give Purchaser prompt written notice of any projected delay in delivery. Purchaser reserves the right to refuse delivery of Goods in advance of the delivery date specified on this PO and to return such goods to Supplier at Supplier's expense. However, material may not be shipped in advance of the required delivery dates herein stipulated without the written consent of the Purchaser. If Purchaser does choose to accept early delivery, invoice payment terms will be calculated from the date of scheduled delivery.

**SERVICE WARRANTY** Supplier represents and warrants that all Services shall be provided in a professional, workmanlike manner, with the degree of skill and care that is required by current, good and sound professional procedures. Further, Supplier represents and warrants that the Services shall be provided in accordance with applicable specifications and shall be correct and appropriate for the purposes contemplated in this Agreement. Supplier represents and warrants that the performance of Services under this Agreement will not conflict with, or be prohibited in any way by, any other agreement or statutory restriction to which Supplier is bound.

**PRODUCT WARRANTY** Supplier warrants that, unless agreed to in writing, all Goods provided will be new and will not be used or refurbished. Supplier warrants that all Goods delivered shall be free from defects in materials and workmanship and shall conform to all applicable specifications for a period of eighteen (18) months from the date of delivery to Purchaser or for the period provided in Supplier's standard warranty covering the Goods, whichever is longer. Additionally, the Goods shall be subject to all written and oral express warranties made by Supplier's agents, and to all warranties provided for by the Uniform Commercial Code. All warranties shall run both to Purchaser and to its customers. If Purchaser identifies a warranty problem with the Goods during the warranty period, Purchaser will promptly notify Supplier of such problem and will return the Goods to Supplier, at Supplier's expense. Within five (5) business days of receipt of the returned Goods, Supplier shall, at Purchaser's option, either repair or replace such Goods, or credit Purchaser's account for the same. This remedy shall be in addition to all other remedies available to Purchaser in law or equity.

**INSPECTION AND REJECTION** Neither receipt of nor payment for the Goods or Services shall constitute acceptance. Purchaser shall have the right to inspect the goods and reject goods which it deems defective, damaged, nonconforming or in excess of the quantities ordered. Rejected goods will be held for Supplier's instructions and expense or, at Purchaser's option, returned to Supplier at Supplier's risk and expense. Supplier shall refund to Purchaser all amounts paid for rejected goods, or at Purchaser's option, Supplier shall replace rejected goods promptly and without expense to Purchaser. Nothing herein shall relieve the Supplier from the obligation of testing, inspection and quality control.

**EXCUSABLE DELAY** Supplier shall not be liable for failure or delay in making deliveries when such failure or delay is due to any cause beyond the reasonable control and without the fault or negligence of Supplier, so long as Supplier gives to Purchaser prompt written notice when it appears that such a cause will delay delivery. Purchaser may, at its option and without any liability to Supplier, cancel by written notice any portions of this PO thus affected. Likewise, Purchaser may delay delivery and/or acceptance due to any cause beyond its control.

**SOUTHERN REWINDING'S PROPERTY** Title to and the right to immediate possession of any property furnished or paid for by Purchaser including without limitation, patterns, tools, dies, equipment or material, shall remain with Purchaser or Purchaser's customer, as applicable. Supplier shall, at its own expense, maintain such property in good condition and shall be responsible for all loss and damage thereto while in its possession and shall use the same only for the production of goods or performance of services for Purchaser. Supplier shall maintain insurance on such property covering all risks in amounts equal to the replacement cost and shall indemnify Purchaser or Purchaser's customer, as applicable for the full repair or replacement cost at Purchaser's option of any lost or damaged property.

**CHANGES** Purchaser may make changes in drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation upon written notice to Supplier. If any such change causes an increase or decrease in the cost or time required for the performance hereunder, an equitable adjustment shall be made. Any claim for adjustment by the Supplier shall be deemed waived unless asserted in writing within 30 days from receipt by Supplier of the change notice.

**TERMINATION** Purchaser may terminate this order or any part hereof for its convenience. Upon such termination, Supplier shall immediately stop all work and cause any of its suppliers or subcontractors to cease work. Supplier shall be paid a 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, provided it submits proof of such charges within 30 days after notice of termination. Supplier shall not be paid for any work done after receipt of the notice of termination, or for any costs incurred by Supplier's agents which Supplier could have reasonably avoided. Purchaser may also terminate this order or any part hereof in the event of any default by Supplier, including late deliveries, deliveries of defective or nonconforming goods or services, or failure to provide Purchaser, upon request, with reasonable assurance of future performance. In the event of such termination for cause, Purchaser shall not be liable to Supplier for any amount, and Supplier shall be liable to Purchaser for any and all damages sustained by reason of the default.

**CONFIDENTIALITY** If Purchaser gives Supplier any document marked "Confidential", Supplier shall keep such information confidential and shall not disclose such information except as required for the efficient performance of this PO. Supplier shall return all such information and all copies thereof to Purchaser upon Purchaser's request.

**INDEMNITY** Supplier shall indemnify, hold harmless, and at Purchaser's request, defend Purchaser, its officers, directors, customers, agents and employees, against all claims, liabilities, damages, losses and expenses, including attorneys' fees, arising out of or in any way connected with the Goods or Services provided under this Agreement, including, without limitation (i) claims by subcontractors, or agents or employees of Supplier or any subcontractor, arising from the performance of this PO or any breach or default hereunder, or (ii) claims by third parties injured or damaged by the Goods or Services provided hereunder, or (iii) any claim arising from the negligence, omissions or willful misconduct of Supplier or Supplier's subcontractors, agents or employees, and (iv) any claim by a third party against Purchaser alleging that the Goods or Services, the results of such Services, or any other products or processes provided under this Agreement, infringe a patent, copyright, trademark, trade secret or other proprietary right of a third party. Supplier shall not settle any such suit or claim without Purchaser's prior written approval. Supplier agrees to pay or reimburse all costs that may be incurred by Purchaser in enforcing this right of indemnity, including attorneys' fees.

**INSURANCE** Supplier shall maintain, and require its subcontractors and agents to maintain, insurance coverage, including comprehensive general liability and worker's compensation insurance, in amounts sufficient to cover the obligations set forth above, naming Purchaser as an additional insured. Supplier will furnish on Purchaser's request insurer's certificates evidencing such insurance with expressly provide that the insuring company will give (30) days prior written notice to Purchaser of the cancellation or expiration of such insurance.

**TAXES** Supplier agrees that all excise, sales, use, occupational and other taxes applicable to the Sale or purchase of materials or articles or to Supplier's work or Supplier's receipts for the performance of the work covered by this PO shall be paid by Supplier, and Supplier shall indemnify and save Purchaser harmless from and against all liability for such taxes.

**LIENS** Supplier shall deliver the products which are the subject matter of this PO free and clear of all claims, security interests, liens and encumbrances of any type.

**LIMITATION OF LIABILITY** Any action by Supplier arising out of or related to this purchase must be commenced within one year after the scheduled date of delivery of the goods or services ordered. Purchaser's liability on any claim of any kind arising out of or related to this PO shall in no case exceed the purchase price of the goods or services which give rise to the claim.

**COMPLIANCE** Supplier agrees to comply with all applicable provisions of federal, state and local laws, rules and regulations and warrants that all goods and services supplied hereunder will be produced or rendered in compliance with the same. Upon Purchaser's request, Supplier will provide written certification of compliance with such provisions. If this PO references a government contract number, Supplier agrees to comply with all applicable provisions of said contract, and all such provisions are hereby incorporated herein by reference. A copy of applicable provisions will be provided upon Supplier's request.

**DISPUTE RESOLUTION** Supplier agrees that the Ohio state courts located in Stark County, Ohio U.S.A (or if there is exclusive federal jurisdiction, the United States District Court for the Northern District of Ohio) shall have exclusive jurisdiction and venue over any dispute arising out of this PO or the goods or services purchased hereunder. Any action commenced in connection with this PO or the goods or services purchased hereunder shall only be brought in such courts and Supplier hereby agrees to the jurisdiction of such courts and hereby agrees to waive any objection to jurisdiction and to subject itself to the jurisdiction of such courts. This rights and duties of the parties with respect to this PO and the good or services purchased hereunder shall be governed by and construed in accordance with the laws of the State of Ohio. Reasonable attorneys' fees and costs shall be awarded to the prevailing party in the event of litigation involving the enforcement or interpretation of this PO or the goods or services purchased hereunder.

#### GENERAL TERMS & CONDITIONS

(a) No part of this PO may be assigned or subcontracted without prior written approval of Purchaser.

(b) Purchaser's failure to insist on performance of any of the terms and conditions of this PO or exercise any right shall not be deemed a waiver unless in writing signed by a Purchaser. A waiver on one occasion shall not thereafter operate as a waiver of any other terms, conditions or rights, whether of the same or similar type.

(c) Purchaser shall have the right to set off against any amounts which are due or may become due to Supplier any amount which Supplier may owe to Purchaser under this PO or otherwise.

(d) The remedies provided herein shall be cumulative and in addition to any other remedies provided by law or equity.

(e) This PO and any documents referred to on the front hereof constitute the entire Agreement between Purchaser and Supplier and may not be modified except by a written document signed by Purchaser.