

PACIFIC PLUMBING SUPPLY CO.
STANDARD TERMS AND CONDITIONS OF PURCHASE

PACIFIC PLUMBING SUPPLY CO. is herein referred to as the Buyer, and the customer or person or entity selling goods and/or services ("Products") to Buyer is referred to as the "Seller." This purchase order constitutes Buyer's offer to purchase from Seller. BUYER EXPRESSLY OBJECTS TO AND EXPRESSLY REJECTS ANY PROVISIONS ADDITIONAL TO OR DIFFERENT THAN THE TERMS HEREOF THAT MAY APPEAR IN SELLER'S QUOTATION, ACKNOWLEDGMENT, CONFIRMATION, INVOICE OR IN ANY OTHER PRIOR OR LATER COMMUNICATION FROM SELLER TO BUYER UNLESS SUCH PROVISION IS EXPRESSLY AGREED TO BY BUYER IN A WRITING SIGNED BY BUYER.

1. **Payment.** Seller shall invoice each order in duplicate and mail an invoice with the bill of lading to Buyer c/o Accounts Payable the same day each shipment is made. BUYER WILL NOT PROCESS FOR PAYMENT WITHOUT PROOF OF SHIPMENT TO DESTINATION. All invoices must bear Buyer's purchase order number and shipment date to be processed for payment.

2. **Prices and Discounts.** For discount purposes, shipments made or invoiced after the 24th of the month as well as invoices received after the 24th day of the month will be considered dated as of the first of the succeeding month. Buyer must have at least eight (8) working days to process invoice payment by due date. If invoices are not received at Buyer's administrative offices as provided above, the period for Buyer to receive a cash discount will be extended accordingly. Partial shipments will be considered full shipments for purposes of pricing, discounts and freight allowances. If Buyer demonstrates that the prevailing market price for the goods has decreased by more than 5% between the time of ordering and when the goods are delivered to Buyer, Seller agrees to review the information in good faith and adjust the price proportionately.

3. **Termination/Suspension for Buyer's Convenience.** Buyer reserves the right to cancel or suspend all or any unshipped order for its sole convenience with no penalty whatsoever. Buyer also reserves the right to cancel or suspend all or any undelivered or unexecuted portion of this order for its sole convenience. Buyer will reimburse Seller for Seller's substantiated expenses (which shall not include lost profits) resulting directly from such cancellation or suspension, which amount shall in no event exceed the actual direct costs for the percentage of work performed prior to the notice of cancellation or suspension. Seller shall not be paid for any work done after receipt of the notice of cancellation, nor for any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided. The foregoing states the Buyer's entire liability and the Seller's exclusive remedy for claims or damages under this paragraph.

4. **Termination for Cause.** Buyer may also terminate this order or any part hereof for cause in the event of any default by the Seller, or if the Seller fails to comply with any of the terms and conditions of this offer. Late deliveries, deliveries of products which are defective or which do not conform to this order, and failure to provide Buyer upon request, of reasonable assurance of future performance shall all be causes allowing Buyer to terminate this order for cause. In the event of termination for cause Buyer shall not be liable to Seller for any amount, and Seller shall be liable to Buyer for any and all damages sustained by reason of the default which gave rise to the termination.

5. **Time of Delivery.** Time is of the essence of this contract, and if delivery of items or rendering of services is not completed by the time promised, Buyer reserves the right without liability in addition to its other rights and remedies to terminate this contract by notice effective when received by Seller as to items not yet shipped and to purchase substitute items or services elsewhere and charge Seller with any loss incurred.

6. **Changes.** Buyer shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation. If any such changes

cause an increase or decrease in the cost, or the time required for the performance, an equitable adjustment shall be made accordingly. Seller agrees to accept any such changes subject to this paragraph, Seller shall make no substitutions without Buyer's consent.

7. **Inspection/Testing.** Payment for the goods delivered hereunder shall not constitute acceptance thereof. Buyer shall have the right to inspect such goods and to reject any or all of said goods which are in Buyer's judgment defective or nonconforming. Goods rejected and goods supplied in excess of quantities called for herein may be returned to Seller at its expense and, in addition to Buyer's other rights, Buyer may charge Seller all expenses of unpacking, examining, repacking and reshipping such goods. In the event Buyer receives goods whose defects or nonconformity is not apparent on examination, Buyer reserves the right to require replacement, as well as payment of damages. Nothing contained in this purchase order shall relieve in any way the Seller from the obligation of testing, inspection and quality control.

8. **Warranty.** Seller expressly warrants that all goods or services furnished under this agreement shall conform to all specifications and appropriate standards, will be new, and will be free from defects in material or workmanship. Seller warrants that all such goods or services will conform to any statements made on the containers or labels or advertisements for such goods, or services, and that any goods will be adequately contained, packaged, marked and labeled. Seller warrants that all goods or services furnished hereunder will be merchantable, and will be safe and appropriate for the purpose for which goods or services of that kind are normally used. If Seller knows or has reason to know the particular purpose for which Buyer intends to use the goods or services, Seller warrants that such goods or services will be fit for such particular purpose. Seller warrants that goods or services furnished will conform in all respects to samples. Inspection, test, acceptance or use of the goods or services furnished hereunder shall not affect the Seller's obligation under this warranty, and such warranties shall survive inspection, test, acceptance and use. Seller's warranty shall run to Buyer, its successors, assigns and customers, and users of products sold by Buyer. Seller agrees to promptly replace or correct defects of any goods or services not conforming to the foregoing warranty, without expense to Buyer, its successors, assigns, customers or users of products sold by Buyer, when notified of such nonconformity by Buyer, provided Buyer elects not to terminate for cause as set forth above. In the event of failure of Seller to correct defects in or replace nonconforming goods or services promptly, Buyer, after reasonable notice to Seller, may make such corrections or replace such goods and services and charge Seller for the cost incurred by Buyer in doing so.

9. **LIMITATION ON LIABILITY AND TIME FOR SUIT.** IN NO EVENT SHALL BUYER BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS AND/OR ATTORNEYS' FEES. BUYER'S LIABILITY ON ANY CLAIM OF ANY KIND FOR ANY LOSS OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH OR RESULTING FROM THIS AGREEMENT OR FROM THE PERFORMANCE OR BREACH THEREOF SHALL IN NO CASE EXCEED THE PRICE ALLOCABLE TO THE GOODS OR

SERVICES OR UNIT THEREOF WHICH GIVES RISE TO THE CLAIM. BUYER SHALL NOT BE LIABLE FOR PENALTIES OF ANY DESCRIPTION. ANY ACTION RESULTING FROM ANY BREACH ON THE PART OF BUYER AS TO THE GOODS OR SERVICES DELIVERED HEREUNDER MUST BE COMMENCED WITHIN ONE YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.

10. **Indemnification.** Seller shall defend, indemnify and hold harmless Buyer against all damages, claims or liabilities and expenses (including attorney's fees) arising out of or resulting in any way from any defect or alleged defect in the goods or services purchased hereunder, or from any act or omission of Seller, its agents, employees or subcontractors. This indemnification shall be in addition to the warranty obligations of Seller.

11. **Insurance.** Seller agrees to carry insurance covering product liability and general liability in amounts of not less than \$5,000,000.00 per occurrence. All such policies shall provide for at least thirty (30) days' prior written notice, to Buyer, of cancellation, non-renewal or material change in the terms and conditions of coverage and name Buyer as an additional named insured. At Buyer's request, Seller will provide Buyer with a certificate or certificates of insurance evidencing such coverage. In the event Seller ceases to carry adequate insurance that names Buyer as an additional insured, Buyer may immediately cancel this order by giving Seller written notice of Buyer's election to cancel.

12. **Proprietary/Information/Confidentiality/Advertising.** Seller shall consider this order and all information furnished by Buyer to be confidential and shall not disclose or use such information for any purpose other than performing this contract, unless Seller obtains written permission from Buyer to do so. Unless otherwise agreed in writing, no commercial, financial or technical information disclosed in any manner or at any time by Seller to Buyer shall be deemed secret or confidential and Seller shall have no rights against Buyer with respect thereto except such rights as may exist under patent laws.

13. **Intellectual Property.** Seller warrants that the goods and the sale and use of them will not infringe any United States or foreign patents, trademarks, tradenames, copyrights, trade secrets or any other form of intellectual property. Seller agrees upon receipt of notification to promptly assume full responsibility for defense of any suit or proceeding which may be brought against Buyer or its agents, customers, or other vendors for alleged patent infringement, as well as for any alleged unfair competition resulting from similarity in design, trademark or appearance of goods or services furnished hereunder, and Seller further agrees to indemnify Buyer, its agents and customers against any and all expenses, losses, royalties, profits and damages including court costs and attorney's fees resulting from any such suit or proceeding, including any settlement. Seller acknowledges that Buyer's patents, trademarks, tradenames, copyrights, trade secrets or any other form of intellectual property that Buyer provides to Seller are Buyer's exclusive property and Seller disclaims all rights in same. Where payment is made for experimental, developmental, or research work, as such, to be performed in accordance with special requirements of Buyer, Seller agrees to disclose and on request to assign to Buyer each invention, property right, confidential process or know-how, and trade secret resulting therefrom or other form of intellectual property and Seller shall disclaim all rights in same. All drawings, art work, special products, materials, information or data furnished by Buyer and all intellectual property resulting from this order (as referenced in the foregoing sentence) are Buyer's exclusive property, shall be used by Seller only for Buyer's work, shall be deemed Buyer's proprietary information shall be kept confidential and shall be returned promptly at Buyer's request.

14. **Assignments and Subcontracting.** No part of this order may be assigned or subcontracted without the prior written approval of Buyer.

15. **Setoff.** All claims for money due or to become due from Buyer shall be subject to deduction or setoff by the Buyer of any counterclaim arising out of this or any other transaction with Seller.

16. **Shipment.** If in order to comply with Buyer's required delivery date it becomes necessary for Seller to ship by a more expensive way than specified in this purchase order, any increased transportation costs resulting therefrom shall be paid for by Seller unless the necessity for such rerouting or expedited handling has been caused by Buyer. If freight allowance is not full, then shipment must be made collect, via Buyer's specified and approved freight carrier. The bill of lading, shipping papers and all cartons must bear Buyer's purchase order number. Seller must notify Buyer immediately if the foregoing shipping and carrier instructions cannot be met. Buyer will charge back Seller with an extra transportation costs, including demurrage and detention, on back order shipments or if the shipping instructions are not followed. Palleting, boxing, crating and strapping charges are not permitted unless expressly authorized by Buyer prior to shipment.

17. **Force Majeure.** In the event of war, flood, strike, labor trouble, accident, riot, act of any governmental authority, acts of God or contingencies beyond the reasonable control of the Buyer, Buyer shall not be liable to Seller for its cancellation of this agreement or delay of the acceptance of materials or services tendered for delivery under this agreement.

18. **Compliance With Laws.** Seller guarantees and warrants it has complied with all federal, state and local laws applicable to this sale, and Seller agrees to defend, indemnify, and hold Buyer harmless against any liability resulting from any non-compliance.

19. **General Provisions.** These terms and conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of these terms and conditions. No change, modification, rescission, discharge, abandonment, or waiver of these terms and conditions shall be binding upon the Seller unless made in writing and signed on its behalf by a duly authorized representative of Seller. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement these terms and conditions shall be binding unless hereafter made in writing and signed by the party to be bound. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. The invalidity in whole or in part of any condition of this contract shall not affect the validity of any other condition. The remedies provided in this contract are in addition to any other remedies in law or equity. All typographical or clerical errors made by Buyer in any purchase order or publication are subject to correction. The interpretation of this agreement and of the rights and obligations of the parties under this agreement, and all questions concerning the validity of this agreement, shall be governed by the laws of the State of Washington. Any suit, action or proceeding brought by either party to enforce any term or provision of this agreement, or to determine the validity of this agreement, or concerning this agreement or the subject hereof in any manner, shall be commenced and maintained solely in state or federal courts having jurisdiction at the Buyer's address set forth on the face hereof. The Convention for the International Sales of Goods shall not apply to this agreement.