

DYMAX CORPORATION PURCHASING TERMS AND CONDITIONS

- 1. Acceptance.** Seller's written confirmation, mobilization such as ordering of supplies, initiating production, performance of services or shipping of goods shall constitute acceptance of a Dymax order and these terms and conditions. No acknowledgment or other document written or executed by Seller or forwarded by Seller to Dymax containing terms and conditions other than those specified herein shall be binding on Dymax or the Seller with respect to a Dymax order, unless any such instrument is signed by a Dymax Purchasing representative, and such instrument shall have been delivered to Seller. In the absence of the execution and delivery of any such instrument by Dymax, as aforesaid, all deliveries of goods and/or the rendering of services by Seller to Dymax shall be delivered, rendered and accepted solely upon the price, quantities, delivery dates, terms and conditions and specifications as set forth herein, on an ancillary Dymax supply contract and on the purchase order. Seller's acceptance of the purchase order is expressly limited to the terms contained herein. These terms and conditions along with any ancillary Dymax supply agreements comprise the entire agreement between the parties and supersede all prior or contemporaneous understandings, negotiations, agreements, representations and warranties, both written and oral, and prevail over any of the Seller's general terms and conditions of sale.
- 2. Quality, Quantity, Deliveries, and Packing.** In the event no standard of quality is specified in an order, the goods delivered and/or services rendered hereunder must be of the best quality. Seller shall ship and deliver all goods and render services in full hereunder on the dates and in the quantities specified in the order during Dymax' normal business hours, unless approval of any change in such date or quantity is given by Dymax. **If the Seller cannot meet ship date(s) specified on an order, Seller must advise Dymax immediately.** No charge will be paid by Dymax for packing, boxing, or cartage, unless specified in the order. Loss of or damage to any goods not packed in such a manner as to insure proper protection to same shall be borne by Seller. Each package of goods shipped must contain documentation showing shipper's name, contents of package, and the purchase order number on the face hereof. All shipping documents and carton labels shall show the Dymax PO number. All shipments to Dymax shall be FOB destination unless otherwise specified in the order.
- 3. Inspection.** Notwithstanding prior payment and/or inspection by Dymax, all shipments of goods and/or all services rendered hereunder shall be subject to inspection by and approval of Dymax of all or a sample of any goods and/or services after arrival of such goods at the delivery point specified in the order and/or after such services have been rendered taking into consideration, if there be delays in inspection, the seasonal nature of Dymax business. Dymax may, at its sole discretion, reject all or any portion of the goods or services if it determines the goods or services are non-conforming or defective.
- 4. Contamination Prevention.** Supplier must take steps to assure that all raw materials, components and empty containers are free from particulate, scale or cross contamination of any kind.
- 5. Rejected Shipments and Dymax Remedies.** If the goods shipped or to be shipped and/or services rendered or to be rendered hereunder are rejected in whole or in part by Dymax by reason of Seller's failure to comply with any of the terms, conditions, and/or specifications contained herein, Dymax, after so notifying Seller in writing, may either return the rejected portion of such goods and/or the rejected portion of such services to Seller at Seller's expense or hold the same for such disposal as Seller shall indicate without invalidating the remainder of this purchase order; or Dymax may reject the entire shipment of such goods and/or reject the entire services and cancel this purchase order for any undelivered balances of goods and/or un-rendered services. If goods shipped or to be shipped and/or services rendered or to be rendered hereunder are rejected as herein above provided, Dymax may, at its sole discretion,(i) require Seller to promptly replace the rejected goods and/or services and pay for all related expenses, including but not limited to transportation charges for return of the defective goods, or (ii) purchase like goods elsewhere and/or obtain like services elsewhere and charge Seller with any loss or damage (either direct or indirect) sustained by Dymax (including, but not by way of limitation, any difference between the price paid by Dymax for such like goods and/or services and the price specified on the face hereof) plus all costs of collecting the same (including, but not by way of limitation, attorneys' fees and court costs). Dymax shall not be obligated to pay for any goods shipped and/or services rendered which are rejected by it.
- 6. Tools, Dies, Films, Discs and Electronic Media** of any kind held by Seller or its permitted assignees for making Dymax parts must be repaired or replaced by Seller at Seller's expense. Those tools, dies, films, discs, media or all replacements thereof made specifically for the manufacture of Dymax parts are and shall at all times be considered Dymax property unless other written agreements are made between Dymax and the Seller or Seller's permitted assignee.
- 7. Patents.** Seller represents and warrants that the goods furnished hereunder do not infringe any United States or Canadian patent; that it will defend any suit that may arise in respect thereto; and that it will defend, indemnify and hold Dymax harmless from and against any and all loss which Dymax may incur (including but not by way of limitation, attorneys' fees and court costs) by reason of the assertion of any patent rights with respect to the goods furnished hereunder whether by reason of Dymax purchase, use, or otherwise.
- 8. Health and Safety.** All items to be supplied hereunder by Seller shall conform in all respects to the requirements of applicable insurance and governmental health and safety regulations, including regulations, including regulations administered by OSHA.
- 9. Responsibility and Indemnification.** All work to be performed by Seller hereunder shall be performed entirely at the risk of Seller and Seller shall defend, indemnify and hold harmless Dymax, its shareholders, directors officers, agents, servants, representatives, and employees from and against any and all losses (including without limitation), those relating to injury, death, loss of use, liability, damage, claims, demands, actions, judgments, interests, awards, penalties, fines, infringement, misappropriation and/or proceedings and all costs and expenses connected with any thereof (including, without limitation), attorneys' fees of whatever nature arising directly or indirectly with the performance of the Seller of such work, or Seller's negligence, willful misconduct, or breach of any of the terms and conditions contained herein. Seller agrees to indemnify and hold Dymax harmless from and against all claims and liens of any and all persons based upon

DYMAX CORPORATION PURCHASING TERMS AND CONDITIONS

the furnishing of labor and/or materials in connection with the goods sold and/or services rendered by Seller hereunder. Seller shall not enter into any settlement of any claims related to the goods or services provided hereunder without Dymax prior written consent. Nothing in this agreement shall exclude or limit Seller's liability in any respect, including with respect to any consequential or indirect damages.

10. **Notification of Non-conforming product.** Seller shall withhold shipment and shall notify Dymax immediately in the event that non-conforming product is produced. Arrangements to re-manufacture product within specification and promised ship date shall be communicated to Dymax at that time.
11. **Equal Employment Opportunity.** Seller hereby agrees to comply with the provisions set forth in paragraphs (1) through (7) of section 2020 of Executive Order 11246 and all similar orders, rules, registrations, and laws prohibiting discrimination in employment, and further agrees that it will not discriminate on the basis of Race, Creed, Color, Sex, National Origin, or Age.
12. **Illegal Pickets.** Seller shall promptly exercise all legal rights and remedies afforded by applicable law to remove and suspend illegal pickets.
13. **Continuing Guaranty under Federal Food, Drug, and Cosmetic Act.** If the material furnished hereunder is a food, drug, cosmetic, or device (as such terms are defined in the Federal Food, Drug, and Cosmetic Act), such material comprising each shipment or other delivery made hereunder by Seller to, or on the order of Dymax, is hereby guaranteed as of the date of such shipment of delivery, to be, on such date, not adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act, and not an article which may not, under the provisions of Section 404 or 505 of such Act, be introduced into interstate commerce.
14. **Compliance with Law and Dymax Policies.** Seller shall comply with all applicable federal, state and local laws, regulations, and orders, and Seller will furnish Dymax with a warranty in a form satisfactory to Dymax, and containing such specific language as may be reasonably requested by Dymax. Prior to commencing any services, the Seller shall obtain and at all times maintain all necessary licenses and consents with respect to the provision of such services. The Sellers hereunder shall also be subject to the rules, regulations and policies imposed by Dymax, including security procedures, ethics policies and general health and safety practices and procedures.
15. **Warranty.** Seller warrants the goods and any material furnished hereunder (a) to be free from defects in title, labor, material or fabrication, (b) to conform to applicable specifications, drawings, samples or other descriptions given, (c) to be suitable for the purpose intended, (d) to be of merchantable quality, and further warrants that material of Seller's design will be free from defects in design. The prior sentence shall not be interpreted as a limitation on any implied warranties associated with the goods and any other material furnished hereunder.
16. **Insurance.** Seller shall carry insurance protection sufficient to meet all the liabilities that are mentioned herein with respect to all applicable time periods during and after the Seller's performance hereunder, and shall provide evidence of such insurance protection upon request from Dymax.
17. **Events Not Within Control of Purchaser.** If by reasons of fire, earthquake, flood, explosion, accident, civil disturbance, difference with or inability to secure workmen, shortages of energy or raw materials, equipment, labor or transportation, production shutdown, or curtailment, lack of facilities, act of God, or of any public enemy, voluntary or involuntary compliance with any valid or invalid, law, order, regulation, request, or recommendation of any government agency or authority, or other caused beyond the intermediate and direct control of Dymax, whether or not of the kind or nature herein before specified, Dymax shall be delayed in whole or in part in taking any delivery or deliveries of goods and/or accepting the rendering of services as herein specified, Dymax may, by giving written notice to Seller: Cancel this order in whole or in part as to any undelivered portion of such goods and/or unrendered portion of such services, or suspend in whole or in part, deliveries of goods and/or the rendering of services during the continuance of and to the extent of such cause.
18. **Calibration.** To the extent applicable, Seller shall provide calibration & data showing the results of calibration performed. Dymax QC will be informed of items, if any, which exceed allowable tolerances. Tamper resistant seals will be affixed to accessible controls. Labels shall be affixed to instruments calibrated and will state: Date calibrated, next due date, and initials of calibrator, certification shall include the statement "Calibration was performed per IAW MIL-STD-45662A and/or NIST" and shall be signed by an official of the organization. **All weighing instruments purchased or sent out for repair by Dymax must arrive with certification of calibration as specified above.**
19. **Time of Essence.** Time is of the essence with respect to the Seller's performance hereunder, and Dymax shall have the right to cancel all or part of this order without penalty if not delivered by the date specified in the order.
20. **Proprietary Disclosures.** Seller agrees that all non-public, confidential or proprietary information of Dymax, including but not limited to devices, drawings, data, design, reports, specifications, samples, patterns, plans, documents, business operations, customer lists or other business or technical information contained herein supplied by Dymax to Seller, whether disclosed orally, or disclosed or accessed in written, electronic, or other form of media and whether or not marked, designated or otherwise identified as "confidential" and relating to this order, is the proprietary property of Dymax and shall be held in confidence by the Seller. Such information shall only be used for the purposes of this order, and shall not be reproduced, used or disclosed to others without prior written consent from Dymax. Upon request from Dymax, Seller shall promptly return all documents and other material received from Dymax. Dymax shall be entitled to injunctive relief for any violation of this section.
21. **Assignment.** Seller shall not assign or subcontract this order or any part thereof, without the prior written consent of Dymax, and not unless the assignee or subcontractor agrees to be bound by all the terms and conditions of this order. Any purported assignment or delegation in violation of this section shall be null and void. Notwithstanding any provision hereof to the contrary, Brokers that have been pre-approved by Dymax shall not require prior written consent, but Broker's assignees and subcontractors remain bound to all terms and conditions herein, and all supporting Dymax documentation.

DYMAX CORPORATION PURCHASING TERMS AND CONDITIONS

22. **Price.** The price of the goods and/or services is the price specified on the purchase order, and unless specified in the purchase order, price includes all packaging, transportation costs, insurance, customs duties, fees and applicable taxes. Prices may decrease but may not increase during the life of Dymax purchase orders.
23. **Miscellaneous.** This purchase order shall be governed by the laws of the state of Connecticut without regard to the conflicts of law provisions thereof. Any legal action brought with respect to this order shall be brought and adjudicated in the state or federal courts of the state of Connecticut. By accepting this order, the Seller consents to personal jurisdiction of the state of Connecticut. This order may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all of which together constitute one and the same instrument. No waiver by Dymax of any of these terms and conditions is effective unless explicitly set forth in writing and signed by Dymax. The relationship between Dymax and Seller is that of independent contractors, and nothing contained herein shall be construed as creating an agency, partnership, joint venture or any other form of enterprise, employment or fiduciary relationship between Dymax and Seller. If any term or provision of these terms and conditions is to be held invalid, illegal, or unenforceable, such invalidity, illegality or unenforceability shall not affect any other term or provision herein. Provisions of these terms and conditions, which by their nature should apply beyond the termination or expiration of these terms and conditions, will remain in force after any such termination or expiration.
24. **Change Notification by Seller. Supplier shall provide the Dymax Purchasing Department with 6 months written notice prior to ceasing production of, or making any modifications to items listed on this order.** Modifications requiring this notification include, but are not limited to, raw materials, components, manufacturing equipment, processes and locations, subcontractors, test methods, specifications, tolerances and performance criteria. Dymax may, at its sole discretion, accept or reject any such change notification. Any rejection by Dymax may include a termination of all or any part of a purchase order, without any cost, penalty or other expense to Dymax.
25. **Change Notification by Dymax.** Dymax may, at any time by written instructions and/or drawings issued to Seller, order changes to any order for goods or services placed hereunder. Seller shall within 10 days of receipt of any change order, submit a firm cost proposal for the change order. If Dymax accepts such cost proposal, Seller shall proceed with the changed order subject to the cost proposal and the terms and conditions set forth herein.
26. **Termination.** In addition to any remedies that may be provided under these terms and conditions, Dymax may terminate any purchase order with immediate effect upon written notice to the Seller, either before or after acceptance of the goods or the Seller's delivery of services, if Seller has not conformed or complied with the purchase order or any of these terms and conditions, in whole or in part. If Dymax terminates any purchase order for any reason, Seller's sole and exclusive remedy is payment for the goods received and accepted and services accepted by Dymax prior to the termination.