

SCAPA BRASIL LTDA
Purchase Order Terms and Conditions

1. Definitions

- (a) Buyer – Scapa Brasil Ltda a company registered in Brazil under company number 15.004.043/0001-12 and with a principal place of business at Avenida Voluntários da Pátria, 560, Sala 11, Santana – São Paulo.
- (b) Seller – The person, firm or company on whom the Purchase Order is placed or directed.
- (c) Purchase Order – This document or any other relevant Purchase Order and any amendment thereto duly signed by an appointed agent on behalf of the Buyer.
- (d) Goods – The articles, materials work or other services as identified in the Purchase Order.
- (e) Specification – The technical requirements and/or description of the Goods and/or Seller Specifications as identified in the Purchase Order or otherwise applicable to it.
- (f) Contract – The Contract between the Buyer and Seller in relation to this Purchase Order.

2. General

- 2.1 The Buyer shall purchase and Seller shall sell the Goods subject to the terms and conditions that shall apply and form part of this Purchase Order.
- 2.2 These terms and conditions shall override and take the place of any others as contained in any document or other communication as used by the Seller in relation to this Purchase Order.
- 2.3 No variation, amendment or addition shall form part of the Contract unless specifically made by or accepted by the Buyer in writing.
- 2.4 Acceptance of this order by any means of acknowledgement or shipment of Goods or performance of services shall constitute acceptance by the Seller of the terms and conditions contained in this Purchase Order.
- 2.5 The terms and conditions together with written, approved amendments constitute the Contract between the Buyer and Seller.

3. Termination

The Buyer may, without prejudice to other rights or remedies, suspend, amend or cancel this Contract, in whole or in part without liability in the event:-

- (a) that Goods supplied fail to meet the Specifications, or
- (b) that Seller fails to deliver, at any time, Goods strictly conforming to the terms and conditions of this Purchase Order, or
- (c) of Seller's insolvency, liquidation, bankruptcy or the appointment of a Receiver to the Seller, or
- (d) that the Buyer has a bona fide belief that any of the events mentioned in paragraph (c) above are likely to occur or that the Seller has failed or is likely to fail to perform its obligation in respect of the Contract (in whole or in part).

4. Price

Unless otherwise agreed in writing:-

- (a) The price or prices stated in the Purchase Order shall be considered fixed and shall not be altered for any reason.
- (b) All prices are to be D.D.P. Buyer's plant (as identified in the Purchase Order) and shall include all charges for packaging, delivery (freight) and all applicable local, state and federal taxes, import fees and duties.
- (c) No charge shall be made for insurance but where any additional charge has been agreed it shall be separately annotated in the invoice submitted.
- (d) Buyer's payment terms are net 45 days from receipt of Goods. Any cash discount period in place will date from receipt of Goods or date of invoice, whichever is later. No C.O.D. shipments will be accepted.
- (e) Property in the Goods shall pass to the Buyer on acceptance of the Goods. Any payment howsoever made earlier shall be repaid to the Buyer if the Goods are rejected by the Buyer or in the event of the Seller becoming insolvent or there being any other event of default on the part of the Seller prior to completion of the Contract. Risks in the Goods remain in the Seller until the Goods are accepted by the Buyer.

5. Delivery

Delivery shall not be deemed complete until conforming Goods have been received and accepted by the Buyer:-

- (a) All Goods shall be properly and securely packed for delivery.
- (b) Unless otherwise agreed in writing, all packing materials, pallets, cases, etc., are to be supplied without charge and shall, upon delivery, become the property of the Buyer.
- (c) Order numbers and part numbers shall be clearly marked on all packaging, delivery notes, invoices and any other relevant documentation.
- (d) Goods delivered in excess of specified requirements (quantity and date) may be returned to the Seller at no risk or expense to the Buyer.
- (e) Should the Seller fail to deliver by the specified dates or within the specified period (as in the Purchase Order) the Buyer (without prejudice to any other remedies) shall be entitled to:-
 - (i) cancel that portion of the Purchase Order that is undelivered by the specified date or period end, and/or
 - (ii) charge to the Seller any additional costs, losses or expenses which the Buyer may incur (directly or indirectly) because of the Seller's failure to deliver.

6. Inspection, Quality and Rejection

The Buyer reserves the right (at any time) and the Seller shall afford all necessary facilities to the Buyer to inspect the Goods at any time during the manufacture or any time thereafter (whether at the Seller's premises, the Seller's sub-Contractors or:-

- (a) Seller shall retain documentary evidence of product quality in the form of records and/or other data essential in determining compliance to Specification and make such data available for review by the Buyer.
- (b) It is a condition that all Goods delivered against this Purchase Order:-
 - (i) shall be in total compliance with drawings and/or Specifications supplied or referenced and conform strictly with the quantity and quality requirements stated or relevant to the Purchase Order and Specifications;
 - (ii) shall be in every respect fit for the purpose which the Buyer has expressly (or by implication) made known;
 - (iii) shall be of satisfactory quality and free from defect and without prejudice to the foregoing, be of standard not less than that of previous supplies or samples (if any) approved by the Buyer.
- (c) The Seller may not introduce design changes (to Specifications/drawings) without prior notification to and approval by the Buyer.
- (d) The Seller's obligations in relation to the Purchase Order shall in no way be affected or diminished by the Goods being specified under a patent or trade name or by any prior examination of the Goods or sample by the Buyer.
- (e) The Buyer shall not be bound to return any Goods it rejects or refuses to accept but in the event the Buyer should decide to so return it shall be at the Seller's risk and expense.
- (f) Goods received by the Buyer (and at any time thereafter) found to be non-conforming to the terms of the Contract shall entitle the Buyer at its discretion (and without prejudice to any other remedy) to require the Seller:-
 - (i) to repair, modify or replace such Goods without cost to the Buyer and/or to reimburse the Buyer (in full) for the costs of such repair or modification carried out by the Buyer or a third party at the Buyer's discretion, or
 - (ii) refund the full purchase price, or
 - (iii) to fully pay and indemnify the Buyer from and against all loss of profit, cost claims and expenses suffered by the Buyer in respect thereof.
- (g) All Goods supplied must further comply fully with all Health and Safety at Work legislation and all other relevant statutory provisions, orders and regulations applicable to the countries of manufacture and sale. All information required by such laws/provisions concerning the use of the Goods to be provided by the Seller to the Buyer.

7. Other

7.1 Design

Any tools, designs, fixtures and Specifications relating to the Purchase Order and supplied by the Buyer to the Seller shall not be used by the Seller for any other purpose without the prior written agreement of the Buyer. The Seller shall insure and indemnify the Buyer against any or all loss or damage to any of the Buyer's property while in its (Seller's) custody and shall return all such property on completion of the order.

7.2 Force Majeure

The Buyer shall be entitled to cancel/withdraw any order for Goods (in whole or in part) which remain undelivered or to require the Seller to suspend delivery for any period if the Buyer's activities (for which the Goods were ordered) are stopped, interfered with or limited in any way by cause beyond its (Buyer's) control, including but not restricted to, acts of God, fire, flood, strikes or lock-outs.

7.3 Patent and Monopoly Rights

The Seller shall protect, indemnify and hold harmless, the Buyer, its agents and all other parties affected thereby, against any and all costs, claims, demands, liabilities, losses or expenses by reason of any claim or litigation in respect of any alleged or actual infringement of patent, copyright or trade mark (foreign or domestic) resulting from the use or resale of the Goods or any part thereof. Goods manufactured to the Buyer's design to be excepted.

7.4 Warranty

All or any warranties, guarantees or other such rights given by the Seller (express or implied) shall be for the benefit of and be enforceable by the Buyer and also its customers – the users of the Goods.

7.5 Injury, Damage and Loss

The Seller shall be liable for and shall indemnify the Buyer from and against all actions, claim, costs, expenses, losses and other liabilities whatsoever arising directly or indirectly from any order and caused by or resulting from the acts or omissions of the Seller, his sub-Contractors, agents or suppliers in the performance of the order.

7.6 Waiver

Any failure, delay, relaxation or concession by the Buyer in the exercise of its rights in any respect shall not be construed as a waiver or relinquishment of the right to exercise (in the future) any such rights and the obligations of the Seller shall continue in full force and effect.

7.7 Confidentiality

The Seller agrees to hold secure all data and information relating to this Purchase Order/Contract and to protect the total confidentiality of its dealings with the Buyer from any third party interest.

7.8 Governing Law

All disputes or claims shall be determined in accordance with the laws of the Buyer's country of domicile and each party irrevocably agrees that the courts of the Buyer's country of domicile shall have the exclusive jurisdiction to settle such disputes or claims.