



TERMS AND CONDITIONS OF PURCHASE

1. **Formation of Contract**

This order constitutes the offer of McNally Industries, LLC ("McNally") to purchase the goods and services described on the purchase order from the addressee (the "Seller") on the terms and conditions set forth below. Any references to the Seller's quotation are made only for the purpose of specifying price, the nature and description of the item or items, the terms of payment and the time of delivery, and then only to the extent that such terms are consistent with this order. In no event shall this order constitute an acceptance of any quotation or other offer made by the Seller, except to the extent that all of the terms of such quotation or offer are identical to the terms set forth herein. The Seller's acknowledgement of this order, of the Seller's performance in response thereto, shall constitute the Seller's acceptance of McNally's offer to purchase and shall create a binding contract between the Seller and McNally subject to and in accordance with these Terms and Conditions. The Seller's acceptance of McNally's offer to purchase is limited to the terms of this order. Any terms and conditions contained in the Seller's acknowledgement which are in addition to or are inconsistent with these terms shall be construed as proposals for addition to the contract. Such terms will not become part of the contract unless agreed to in writing by McNally.

2. **Assignment and Delegation**

The Seller may not assign this order or delegate any part of the performance hereof without the prior written consent of McNally.

3. **Purchase Order Number**

The Seller shall use McNally's purchase order number on all invoices, packaging and correspondence relating to this purchase order. Failure to use that number may result in a delay in paying invoices or responding to correspondence.

4. **Price**

The Seller represents that the price to be paid by McNally for goods and services hereunder is no more than the price charged to any other customer of the Seller for goods and services comparable to the goods and services to be purchased hereunder, other than variations attributable solely to differences in quantity.

5. **Delivery**

The Seller shall perform its obligations hereunder strictly in accordance with the delivery schedule referred to in this order. Invoices covering material shipped in advance of that schedule will not be paid until the appropriate period following their scheduled delivery date.

6. **Warranties**

No attempt by the Seller to limit the warranties or remedies of McNally and its customer shall be effective with respect to any goods or services purchased hereunder. The Seller expressly warrants that all goods furnished and services performed under this order will (i) be free from defects in material and workmanship, (ii) conform to applicable specifications, drawings, samples, descriptions or other instructions given, and (iii) be fit for their intended purpose. Goods ordered to government specifications shall comply with all applicable specifications in effect at the date of this order unless otherwise specified by McNally. These warranties shall extend to McNally and its successors, assigns and customers, and all users of the goods covered by this purchase order.



7. Non-Infringement

The Seller warrants that the goods sold hereunder do not and will not infringe any valid United States or foreign patent, trademark, copyright or other proprietary right. The Seller shall defend, at its own expense, any claim, action or suit that may be brought against McNally or its customers alleging any such infringement, and the Seller shall indemnify McNally and its customers and hold McNally and its customers harmless against all claims, judgments, decrees, damages, costs and expenses incurred by McNally or its customers on account of any such actual or alleged infringement.

8. Cancellation

a) McNally may cancel this order in whole or in part if the Seller does not make any delivery when and as required hereunder or if the Seller breaches any of the terms hereof. If McNally cancels all or any part of this order pursuant to this paragraph (a), McNally may purchase similar good elsewhere on such terms and in such manner as McNally may deem appropriate and the Seller shall promptly remit to McNally the difference between the price paid by McNally for such replacement goods and the price to have been paid under this order.

b) McNally may cancel this order in whole or in part, without cause, at any time by notice to the Seller in writing. The Seller will thereupon immediately stop work on this order or the cancelled portion thereof and immediately notify its subcontractors in writing to do likewise. McNally's sole obligation to the Seller following such cancellation shall be the payment of the Seller's uncompensated actual costs incurred prior to the Seller's receipt of McNally's cancellation notice and any costs directly arising from such cancellation. In no event shall McNally's obligations exceed the price specified in this purchase order. Any claim for amounts due on account of such cancellation shall include such detail as McNally may reasonably request and shall be subject to audit by McNally.

9. Compliance with Applicable Laws

The Seller agrees that it will comply, and that all goods and services hereunder will comply, with all applicable laws, statutes, rules, regulations, or orders of the United States government or any state or political subdivision thereof. (**government "flow-down" provisions)

10. McNally Property

As used herein, "McNally Property" means all dies, molds, jigs, tools, drawings, designs, specifications and other materials furnished by McNally to the Seller in connection with this purchase order, or the cost of which is amortized or included in the price of this order. Title to all McNally Property furnished by McNally to the Seller shall remain in McNally at all times. Title to all other McNally Property shall pass to McNally upon completion or termination of this order. The Seller shall compensate McNally for any loss of or damage to McNally Property while in the possession or control of the Seller or its subcontractors, and shall, at the Seller's own expense, maintain full and complete insurance thereon in an amount satisfactory to McNally. All McNally Property shall be used by the Seller only for the purposes of manufacturing the goods or performing the services specified in this order and shall be returned to McNally upon completion or cancellation of this order. The Seller shall hold all McNally Property in strict confidence and not disclose such information to any other party without the prior written consent of McNally.

11. Advertising

Without the prior written consent of McNally, the Seller shall not advertise or publish the fact that the Seller has furnished or contracted to furnish any goods or services to McNally.



12. Taxes and Duties

All taxes and duties applicable to this order shall be paid by the Seller unless otherwise stated herein.

13. Notice of Delay

The Seller will promptly notify McNally of any event that threatens timely completion of this order. However, the giving of such notice shall not excuse any such delay.

14. Governing Law

This order shall be governed by the laws of the State of Delaware and constitutes the entire agreement between McNally and the Seller.