



## **MARLO INCORPORATED TERMS AND CONDITIONS OF PURCHASE**

1. Governing Provisions. These Terms and Conditions of Purchase ("terms and conditions") constitutes an offer or counteroffer by Marlo Incorporated of Racine, Wisconsin ("Marlo") to purchase the products and other items ("products") described in a purchase order or on the face hereof or on any document, whether in written or electronic form, to which these terms and conditions have been attached or to which these terms and conditions have been incorporated by Marlo by reference. THIS WRITING IS NOT AN ACCEPTANCE OF ANY OFFER MADE BY SELLER. NO ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS SHALL BE BINDING UPON MARLO NOR CAN THE SELLER'S ACCEPTANCE LIMIT OR ALTER MARLO'S TERMS AND CONDITIONS UNLESS SPECIFICALLY AGREED TO IN WRITING SIGNED BY DULY AUTHORIZED PERSONNEL OF MARLO. MARLO HEREBY REJECTS ANY SUCH ADDITIONAL OR DIFFERENT PROVISIONS CONTAINED IN ANY QUOTATION, ACKNOWLEDGEMENT, INVOICE, OR OTHER COMMUNICATIONS FROM SELLER. Seller shall be deemed to have accepted this purchase order on the terms and conditions set forth herein upon receipt of written confirmation by Marlo or upon delivery of any products ordered hereunder, whichever occurs first. Acceptance of the products described in this purchase order shall not constitute acceptance of Seller's terms and conditions.

2. Liens. Seller shall deliver good and merchantable title to the products free and clear of all claims, liens and encumbrances of every kind and nature.

3. Shipment and Delivery. Unless otherwise expressly provided herein, all products delivered to Marlo shall be F.O.B. at Marlo's address set forth on the face of the purchase order. All customs, duties, costs, taxes, insurance premiums and other expenses relating to such transportation and delivery shall be at Seller's sole cost and expense. Seller shall preserve, pack, package and handle the products so as to protect the products from loss or damage and in accordance with good commercial practice. Time is of the essence as to this order. Seller shall immediately notify Marlo in the event Seller's timely performance is delayed or likely to be delayed, in whole or in part, and Seller shall provide Marlo with all available information with respect to the reasons for the delay. Such notice shall not constitute a waiver by Marlo of any of Seller's obligations hereunder. If only a portion of the products specified are available for shipment to meet the delivery date specified on the face hereof, Seller shall, unless Marlo directs otherwise, (i) ship the available products in time to ensure timely delivery, and (ii) ship, at Seller's own cost, the remaining portion of the products as soon as such products become available to Seller. If Seller fails to deliver products ordered hereunder by the delivery date set forth on the face hereof, Marlo may cancel such order upon notice to Seller prior to receipt of the products.

4. Inspection / Acceptance. Marlo may reject any portion or all of any shipment of products that does not conform to the applicable specifications or descriptions of the products, or which are otherwise defective, within sixty (60) days of receipt of such products and may return such rejected products to Seller for, at Marlo's sole option, replacement, refund or credit. Marlo's payment to Seller for such products prior to Marlo's timely rejection of such products as non-conforming shall not be deemed as acceptance by Marlo. Marlo's return shipment to Seller of any of the following products shall be at Seller's own risk and expense, including, without limitation, transportation and insurance charges: (i) products that do not meet the warranties specified herein; (ii) products which are not accepted by Marlo pursuant to this paragraph; (iii) products which constitute over-shipments by Seller; (iv) Seller's shipment to Marlo of all replacement and reworked products to replace nonconforming products.

5. Change Orders. Marlo may, at any time prior to shipment, by a written order, suspend its purchase of products hereunder or make changes in: (i) the quantities of products ordered or the delivery date; (ii) applicable drawings, designs, and/or specifications; (iii) the method of shipment or packing; and/or (iv) the place of delivery. If a change by Marlo causes an increase in the cost of or the timing required for Seller's performance, and Seller so notifies Marlo promptly in writing, then the price and/or delivery schedule of the products corresponding to such changed portion(s) of this purchase order shall be equitably adjusted as mutually agreed upon by both parties, and the parties shall modify this purchase order accordingly in writing. Seller shall request such adjustment no later than twenty (20) days from the date of Seller's receipt of Marlo's notification of change.

6. Warranty. Seller warrants to Marlo and its customers for the longer of Seller's normal warranty period or eighteen (18) months following Marlo's acceptance of the products that: (i) the products shall be free from defects in design, material, workmanship, and manufacture; (ii) the products will conform to the documentation therefore and to the applicable specifications, drawings, samples, or to other descriptions set forth in this purchase order; (iii) the products will be suitable for the purposes for which the products are intended if such purposes were made known to Seller; (iv) Seller has good, unencumbered title to the products and has conveyed such good, unencumbered title to Marlo, and (v) all products are new and unused, unless otherwise specified on the face of this purchase order.

The forgoing warranty period shall be extended for: (i) fiberglass reinforced polyester (FRP) resin/media tanks which will have a warranty period of five (5) years from shipment date and (ii) where the product defect is, by its nature not readily apparent in which case the warranty period will be extended up to the earlier of sixty (60) days from the date of actual discovery or three (3) years from Marlo's acceptance of the product. The foregoing warranties are in addition to all other warranties, whether express or implied, and will survive the delivery, inspection, acceptance or payment. If any of the products do not meet the warranties specified herein or otherwise applicable, Marlo, may, at its option: (i) require Seller to correct any defective or non-conforming products by repair or replacement at no charge to Marlo; (ii) return such defective or nonconforming products to Seller, at Seller's expense, and recover from Seller a refund for all amounts paid therefore; (iii) correct the defective or non-conforming products itself and charge Seller for the cost of such correction; or (iv) utilize the defective products and require an appropriate reduction in price. The foregoing remedies are in addition to all other remedies at law or equity or under this purchase order, for damages or otherwise, and shall not be deemed to be exclusive. All warranties shall run to Marlo and its customers.

7. Cancellation. Marlo may cancel or revoke acceptance with respect to its order, in whole or in part, in the event the product or products fail to conform to Seller's representations or warranties, or in the event Seller fails to make deliveries as specified in this purchase order, or in the event Seller breaches any other terms or conditions of this purchase order. Also, Marlo may cancel this order if Seller ceases to conduct its operations in the normal course of business, or if Seller is subject to any bankruptcy, insolvency, or receivership proceeding. If any installment delivered pursuant to this purchase order is rightfully rejected by Marlo, all remaining installments may be rejected by Marlo, without any obligation whatsoever to Seller.

8. Price. Unless otherwise provided on the face hereof, the price for the products set forth on the face of this purchase order includes all delivery charges and all applicable federal, state and local taxes, charges or duties. Seller represents and warrants to Marlo that the prices for the products provided hereunder are the lowest prices for which Seller has sold or is selling such products, taking into account any differences in quantities, scheduling and other material terms. Marlo shall be entitled to receive from Seller any price reduction which Seller makes to others for comparable products as of the later of: (i) the delivery date for the products; (ii) the date of actual deliver; or (iii)

the date an acceptable invoice for the products is received by Marlo. All payments due hereunder to Seller shall be paid to Seller no later than forty-five (45) days following delivery and receipt of a properly prepared invoice and regular discounts will be deducted. Marlo may at any time set off any amount owned by Marlo to Seller against any amount owed by Seller to Marlo.

9. Indemnification. Seller agrees to defend, indemnify, and hold Marlo, its employees, officers, directors, customers, successors and assigns, harmless against any claim, demand, liability, loss or expense whatsoever, including reasonable attorneys' fees, arising from any actual or alleged: (a) defect in the products; (b) failure to comply with the specifications of Marlo or with the express or implied warranties given by Seller; (c) breach of the terms and conditions of this purchase order; (d) violation by the products, or in their manufacture or sale, of any statute, ordinance, administrative order, rule or regulation; or (e) infringement by any product of any patent, trademark, or other trade designation, trade secret, copyright or other intellectual property right. If any claim, demand, action or proceeding is commenced against Marlo by reason of any of the above matters, Marlo agrees to give Seller reasonable written notice thereof.

10. Conflict Minerals (Dodd-Frank). Marlo supports the policy set forth in the federal law known as Dodd-Frank concerning the non-use of conflict minerals. As such, Marlo requires and Seller warrants and represents to Marlo that Seller has verified its metal supply chain and that no conflict minerals are incorporated into items sold to Marlo. If it is determined that items sold to Marlo contain prohibited conflict minerals, Marlo will immediately terminate all existing orders and Seller will be disqualified as a Marlo supplier in the future.

11. Taxes. Seller agrees that all excise, sales, use, and other taxes applicable to the sale or purchase of materials or articles, or to Seller's work or Seller's receipts for the performance of the work covered by the order shall be paid by Seller, and Seller shall indemnify and save Marlo harmless from and against all liability for such taxes.

12. Gratuities. Seller represents and warrants to Marlo that Seller has not offered or given and will not offer or give any employee, agent, or representative of Marlo any gratuity with the intent of securing any business from Marlo or favorable treatment under any agreement with Marlo. Any breach of this warranty shall be a material breach of the terms and conditions of each and every purchase order between Marlo and Seller.

13. Assignment. Seller may not assign this order or any interest herein without the prior written consent of Marlo.

14. Legal Compliance. In performance of the work hereunder Seller shall at all times comply with and give all stipulations, certificates and representation required by all applicable federal, state, municipal and local laws and rules, orders, requirements and regulations thereunder.

15. Venue of Legal Disputes. The venue for all legal disputes shall be Racine County, Wisconsin and the Seller consents to the jurisdiction and venue of the Circuit Court for Racine County, Wisconsin.

16. Severability. Each provision of the agreement shall be considered severable and if for any reason any provision hereof is determined to be invalid and contrary to law, to the extent permitted by law, such invalidity shall not impair the operation of or affect those portions of this agreement which are valid.

17. Final Agreement. This writing is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms and conditions of their

agreement. Any subsequent modification or amendment to it may be made only in writing signed by both parties hereto. This writing and these terms and conditions shall be governed by and construed according to the internal laws of the State of Wisconsin.