

1. Definitions

Agreement means a paper or electronic agreement between Seller and Purchaser duly executed by authorized representatives of both parties to sell or provide and to buy or use goods or services pursuant to which a Purchase Order is issued by the Purchaser. Seller means the party identified as the Seller in the Agreement or the Purchase Order. Purchaser means ND Paper Inc. acting through the division, if any, specified in the Agreement or the Purchase Order. Contract means the Agreement, if any, Purchase Order, all paper or electronic documents incorporated by reference under the Agreement and the Purchase Order, these Terms and Conditions themselves and any confidentiality or secrecy agreement executed by Purchaser and Seller, and all exhibits and amendments to all such documents. Items mean any goods or services to be provided or performed by Seller under the Contract. Price means the amount to be paid by Purchaser to Seller under the Contract for the Items.

2. Acceptance

Seller's acceptance of any Purchase Order shall be expressly limited to the terms of the Contract, and Purchaser objects to any contrary term contained in any quotation, order, acknowledgment, invoice or other document originating with Seller. By shipping goods or performing services after receipt of a Purchase Order, Seller shall conclusively be deemed to be bound by these Terms and Conditions and all other provisions of the Contract.

3. Blanket Order

If the Purchase Order is designated by Purchaser as a blanket order, Purchaser shall be obligated to purchase only those quantities of Items which it specifically requests under separate subsequent release orders issued by Purchaser to Seller.

4. Price

The Price shall be that stated in the Purchase Order unless such price exceeds the Price stated in the Agreement, if any, in which case the price stated in the Agreement shall control. If there is no price stated in the Purchase Order or Agreement, the Price shall be the lowest price at which Seller is selling Items or similar items to its other customers as of the date of delivery or the Price last charged or quoted Purchaser for such Items by Seller, whichever is less. If prior to delivery of the Items, Purchaser is able to purchase a portion or all of the Items, or similar items of like quality, at a price which is less than the Price, Purchaser shall notify Seller. Should Seller fail to meet such lower price, Purchaser may, at its option, purchase from the other source at the lower price, in which event Purchaser and Seller shall be released of their obligations under the Contract in respect of that portion of the Items or similar items purchased from the other source.

5. Drawings and Specifications

Any specifications, drawings, notes, instructions, engineering information, technical data or other information or materials furnished by either Purchaser or Seller to the other, or referred to in the Contract, and all materials created from or based on such information and materials (collectively, the "Materials") shall be incorporated herein by reference. Seller shall be fully and solely responsible for obtaining product data adequate to design, manufacture, fabricate, construct and deliver the Items in compliance with all requirements of the Contract and the Materials. Purchaser shall retain title to all such documents and Materials which it provides or causes to be given to Seller and all intellectual property rights contained or embodied therein, and Seller shall not use any of such documents or Materials or the information contained therein for any purpose other than in performance of the Contract. Seller shall not disclose such documents or information or the Materials provided by or behalf of Purchaser to any party other than Purchaser or a party duly authorized by Purchaser. Upon Purchaser's request, Seller shall promptly return to Purchaser all such documents and copies thereof.

6. Delivery

The Seller shall deliver the Items to Purchaser on the date(s) indicated in the Purchase Order. If Seller anticipates that it will not deliver the Items on the date(s) indicated, Seller shall immediately notify Purchaser by the fastest available means of the anticipated failure and the anticipated actual delivery date. If Seller fails to make delivery of any part of the Items on the date(s) indicated in the Purchase Order, the Purchaser may terminate the Contract and pursue other remedies. In the event Purchaser accepts late delivery, Seller shall reimburse Purchaser for any additional cost incurred as a result of the late delivery. All shipments shall be delivered DAP (Incoterms 2010) to the destination designated by Purchaser in the Purchase Order, and title and risk of loss shall remain with Seller until the Items in a completed state are received by Purchaser, its agent or consignee regardless of whether or not Purchaser has made full payment for the Items. Seller will mail Bills of Lading and Shipping Notices directly to the DAP (Incoterms 2010) destination on the day of shipment. Bills of Lading shall indicate the relevant purchase order number. Purchaser may require adherence to its routing instructions, and any savings resulting from adherence to such instructions shall be for the benefit of Purchaser. Seller, or the carrier it uses to deliver Items, whichever is applicable, shall (a) maintain a "satisfactory" safety rating from the U.S. Department of Transportation and shall provide Purchaser with written proof of such rating on request if the carrier is a motor carrier, and (b) shall maintain comprehensive general liability, bodily injury and property damage insurance in not less than the amount required by the Insurance Section, unless a larger amount is required by any federal, state, or local regulatory agency, in which event such larger amount shall be maintained.

7. Warranty

Seller warrants that for a period of four years after the delivery of or performance of the Items to or for Purchaser, the Items will (a) be of merchantable quality; (b) be fit for the Purchaser's particular purposes; (c) be of high quality and be free from defects in material and workmanship; (d) comply with the most stringent of Purchaser's or Seller's specifications,

performance guarantees and requirements; and (e) comply with all nationally recognized codes and established industry standards. All Items shall be sold by Seller to Purchaser free and clear of any liens and encumbrances. Seller's warranties and guarantees shall survive inspection, delivery and acceptance of the Items and/or payment by Purchaser. If the Items do not conform to any of these warranties, then, at Purchaser's option, Seller shall repair or replace the defective Items, DAP (Incoterms 2010) Purchaser's designated site at Seller's expense, or in the case of services, re-perform the services at Seller's expense. In the event that, in the reasonable opinion of Purchaser, Seller cannot repair or replace the Items, or re-perform the services, within a reasonable time, then Purchaser may take all steps necessary to have the breach of warranty cured and/or may terminate the Purchase Order and/or the Contract. In any event, Seller shall be responsible for all expenses and damages which Purchaser incurs because of the breach of warranty. The foregoing warranties and obligations shall also apply to the Items supplied by Seller in such repair, replacement or re-performance. Disclaimers of express or implied warranties and limitations of liability in any Seller document will be of no effect unless specifically agreed to in writing by Purchaser.

8. Changes

Purchaser shall have the right to make changes (including additions and/or omissions) from time to time in the Items, any specifications and/or drawings which are a part of the Contract, method of shipment or packing and/or the time and/or place of delivery. Purchaser shall give Seller written notice of any such change which notice may include any increase or decrease in the cost of or the time required for performance of the Contract determined by Purchaser to be appropriate. If Seller does not agree with such adjustments, or if the notice does not contain any such adjustments, Seller shall still be obligated to proceed immediately with all of the changes directed by Purchaser without waiting to reach an agreement on any such adjustments. Any claims by Seller for adjustments after its receipt of Purchaser's change order must be asserted in writing to Purchaser not more than ten (10) days after such receipt by Seller or such claim shall be null and void.

9. Payments and Invoices

The specific terms of payment for all Items are stated in the Purchase Order or Contract. Unless otherwise specified there or in a separate written instrument signed by Purchaser, no invoice shall be issued by the Seller prior to the shipment or performance of the Items covered thereby, and no payment shall be made prior to receipt of such Items and of a proper invoice for such Items. Seller shall indicate the appropriate Purchaser purchase order number on the invoice and shall deliver it to the address specified by Purchaser from time to time. All claims for money due or to become due from Purchaser shall be subject to set-off by Purchaser by reason of any counterclaim arising out of this Contract or any other transaction with Seller.

10. Inspection

Purchaser may inspect any Items ordered hereunder during their manufacture, construction or preparation at reasonable times and shall have the right to inspect such Items at the time of their delivery and/or completion. Items furnished hereunder may at any time be rejected for defects revealed by inspection or analysis even though such Items may have previously been inspected and accepted. Such rejected Items may, at Purchaser's option, be returned to Seller for full refund to Purchaser, including removal, shipping and transportation charges.

11. Intellectual Property Indemnity

Seller shall indemnify and hold harmless Purchaser, and its agents, consignees, employees, customers, contractors and representatives, from and against all expenses, costs, charges, damages, claims, suits, judgments, losses, fines, penalties or liabilities (including attorneys fees) of every kind whatsoever arising from any and all claims for infringement or violation of any patent, copyright, trademark, trade secret or other intellectual property right by reason of the design, manufacture, purchase, use or sale of the Item. This indemnification shall be in addition to the warranty obligations of the Seller set forth in Section 7 and the indemnification obligations of Seller set forth in Section 15. Purchaser reserves the right to be represented in any such infringement proceeding. In the event an injunction is obtained against use of the Items, Seller shall do any of the following requested by Purchaser: (a) procure for Purchaser the right to continue using the Items; (b) replace the Items with equivalent or better non-infringing Items; (c) modify the Items, so that they become non-infringing, provided they perform in an equivalent or better manner.

12. Compliance with Laws and Regulations

Seller warrants that neither any of the Items provided to Purchaser nor their manufacture, fabrication, construction, transportation or use shall violate or cause Purchaser to be in violation of any federal, state or local law, code, ordinance, regulation, standard, rule, requirement or order. In the event of any conflict between the provisions of any laws, codes, ordinances, regulations, standards, rules, requirements or orders described in this Section, the more or most stringent provisions shall apply. Seller shall promptly take, at its expense, all action necessary to make all Items comply with the applicable federal, state or local laws, codes, ordinances, regulations, rules, standards, requirements or orders after Seller receives either from the applicable agency or from Purchaser a notice that some violation exists with respect to the Items. If Seller fails to promptly take such action, Purchaser may take all such action at Seller's expense. Seller shall also be liable for the payment of any penalties and/or fines imposed as a result of the failure of any Item provided by or for Seller hereunder to comply with all of the above requirements.

13. Equal Employment Opportunity and Other Nondiscrimination Clauses

This provision applies only in the event that the Items are to be used in whole or in part for the performance of United States government contracts and where the dollar amount exceeds, or may in any one year exceed, \$10,000, or when required by the Federal Acquisition Regulations. Seller hereby agrees that the provisions of the Equal Opportunity Clause, as promulgated by Executive Order 11246 dated September 24, 1965, as amended; the Vietnam Era Veterans Readjustment Assistance Act of 1974, Section 503 of the Rehabilitation Act of 1973; and the implementing regulations found at 41 C.F.R. 60-1 and 2, 41 C.F.R. 60-250, and 41 C.F.R. 60-741; as well as 48 C.F.R. 52.219-8, Utilization of Small, Small Disadvantaged and Women-Owned Business Concerns (June 1997); 48 C.F.R. 52.219.9, Small, Small Disadvantaged and Women-Owned Business Subcontracting Plan (August 1998); 48 C.F.R. 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (April 1984); 48 C.F.R. 52.222-37, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (January 1988); and 48 C.F.R. 52.222-36, Affirmative Action for Handicapped Workers (April 1984), are hereby incorporated by reference into the Contract, with the same force and effect as if they were given in full text. The full text is available upon request. Seller shall execute and deliver to Purchaser a completed Certificate of Compliance using Purchaser's form of Certificate before starting to perform under the Contract.

14. Liens

If at any time there shall be evidence of the existence of any lien or claim for work done or materials, services or equipment furnished by Seller or any other party in connection with the Contract, the Purchaser may use money then due or to become due under the Contract to discharge such lien or satisfy such claim and may credit such amounts against the amounts due or to become due to the Seller.

15. General Indemnity

Seller shall indemnify and hold Purchaser and its agents, consignees, employees, customers, contractors and representatives harmless from and against all expenses, costs, charges, damages, claims, suits, losses, fines, penalties or liabilities (including attorneys fees) of every kind whatsoever by reason of, arising out of, or in any way connected with its performance under the Contract. This indemnification shall be in addition to the warranty obligations of the Seller set forth in Section 7 and the indemnification obligations of Seller set forth in Section 11. Seller, in any indemnification claim hereunder, hereby expressly and without reservation waives any defense or immunity it may have under any applicable Workers' Compensation laws or any other statute or judicial decision, disallowing or limiting such indemnification where an employee of Seller makes a claim against any indemnitee herein, and Seller consents to a cause of action for indemnity.

16. Insurance

Seller shall maintain with a carrier or carriers having an A.M. Best rating of not less than A- the following minimum insurance at its expense for the duration of the Contract (including all warranty periods thereunder) covering all of Seller's obligations under the Contract:

- (a) Workers' Compensation and Employers' Liability:
Required Limits: Workers' Compensation - Statutory; Employer's Liability – not less than \$1,000,000 for bodily injury by accident and \$1,000,000 for bodily injury from disease
Seller shall obtain from its insurers a waiver of subrogation in favor of Purchaser.
- (b) Commercial General Liability including coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and contractual liability and no exclusions for explosion, collapse, underground property damage or work performed by subcontractors
Required Limits: \$1,000,000 each occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate; \$1,000,000 Personal and Advertising Injury
Seller shall name Purchaser as an additional insured.
Seller shall obtain from its insurers a waiver of subrogation in favor of Purchaser.
- (c) Business Automobile Liability
Required Limits: Not less than \$1,000,000 combined single injury limit and each accident
- (d) Excess/Umbrella Liability
Required Limits: Not less than \$5,000,000 for combined bodily injury and property damage
- (e) Professional Liability/Errors and Omissions Liability (if providing professional services)
Required Limits: Not less than \$1,000,000 per claim/aggregate covering Seller's obligations under the Contract with a per claim deductible satisfactory to Purchaser.

The completed operations coverage or the products liability coverage described above under the commercial general liability insurance shall be kept in effect for the longer of two years from the date of Purchaser's initial commercial use of the Items or the period stated in the first sentence of this Section. Seller is responsible for any deductibles and/or self-insured retentions (SIRs) carried on the above insurance. None of the above insurance coverage shall be cancelable except upon thirty (30) days prior written notice to the Purchaser and to all other insured parties, and Seller shall provide Purchaser with a copy of any such cancellation notice immediately after Seller's receipt of it. On Purchaser's request, Seller shall provide certificates of insurance, copies of the additional insured and waiver of subrogation endorsements, and renewal binders evidencing such insurance coverage.

17. Termination, Suspension, or Delay

Purchaser shall have the right at any time to terminate, suspend, or delay the Contract in whole or in part by prior written notice to Seller. In the case of termination of the Contract, Seller shall then transfer to Purchaser, in accordance with Purchaser's directions, all materials and all information accumulated, specifically prepared or acquired by Seller for use in the performance of this Contract. Seller shall, if directed by the Purchaser and to the extent stated in the notice of termination, suspension or delay, make all efforts necessary to preserve the work in progress and to protect the Items whether still at Seller's manufacturing facilities or in transit to Purchaser's facilities. If Seller is not then in default in the performance of any of its obligations hereunder, and if Seller has taken reasonable steps to mitigate its damages resulting from such termination, Purchaser shall pay to Seller, as Seller's sole and exclusive remedy for termination under this Section, to the extent not already paid to Seller, an amount equal to: (a) the reasonable and documented costs incurred by Seller in accordance with the Contract prior to Seller's receipt of notice of termination, plus, (b) the reasonable and documented costs and charges incurred by Seller in winding up its activities under the Contract prior to the effective termination date, provided, however, that the amounts listed in (a) and (b) of this Section plus prior payments to Seller shall in no event exceed the Price. Before Purchaser resumes performance under the Contract following such suspension or delay, Seller and Purchaser shall negotiate in good faith on the adjustments, if any, which may be required in payments to Seller or in the Price to avoid inequities either to Seller or Purchaser.

18. Default

If the Seller: (a) becomes insolvent; (b) has a petition under any chapter of the bankruptcy laws filed by or against it; (c) makes a general assignment for the benefit of its creditors; (d) has a receiver requested for or appointed to it; (e) fails to comply with any of its obligations under the Contract then Purchaser may, in addition to its rights under the Warranty Section above, at its option either cure the default at Seller's expense or terminate the Contract after first giving Seller ten (10) days written notice to cure such default, if Seller has failed to cure such default within such ten (10) day period. Immediately after such termination, Purchaser may: (i) take possession of the Items wherever they may be located and in whatever state of completion they may be together with all drawings and other information necessary to enable Purchaser to have the Items completed, installed, operated, maintained and/or repaired; (ii) pay to Seller any amount then due under the Contract after taking full credit for any offsets to which Purchaser may be entitled; (iii) contract with or employ any other party or parties to finish the Items; and (iv) collect from the Seller any additional expense, losses or damage which Purchaser may suffer.

19. Purchaser's Rights and Remedies

Any rights or remedies granted to Purchaser in any part of the Contract shall not be exclusive of, but shall be in addition to, any other rights or remedies granted in any other part of the Contract and to any other rights or remedies that Purchaser may have at law or in equity.

20. Packing and Marking

All goods shall be packed, crated and braced to prevent damage or deterioration and in accordance with Uniform Freight Classification Rules and Regulations, and Carrier Tariffs with no charges being paid by Purchaser for packing, crating or bracing. The contents of each shipping container shall be clearly identified on the outside of the container, and the applicable Purchase Order number for the contents shall be clearly stated on the outside of each such container.

21. Confidential Treatment

Seller shall not disclose in any advertisement or promotional material or in any other manner, without the prior written consent of Purchaser in each instance, that Purchaser has purchased or contracted to purchase the goods or services ordered.

22. Assignment

Seller may not assign the Contract or any right thereunder without the prior written consent of Purchaser.

23. Waiver

The failure of either party hereto to require strict compliance with or complete performance of any obligation of the other party hereto by such other party shall not be construed as a waiver of any subsequent breach by such other party.

24. Entire Agreement

The Contract sets forth the entire agreement between Seller and Purchaser on the subjects covered herein, and, except as otherwise provided above in the Changes Section, no terms, conditions, understanding or agreement purporting to modify or vary the terms of the Contract shall be binding unless made in writing and signed by Seller and Purchaser. In the event of any conflict between any provision of these Terms and Conditions and any other provisions of the Contract, these Terms and Conditions shall prevail or control unless (a) the conflicting provision in such other document expressly states that it supersedes these Terms and Conditions or (b) the conflicting provision is in a paper or electronic Purchase Order issued by Purchaser or an Agreement, in which event such conflicting provision shall prevail or control over these Terms and Conditions and over any conflicting provision in any other part of the Contract. No course of prior dealings between the parties nor any trade usage shall be relevant to supplement or explain any term used herein.



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25. Severability

In the event that any words, phrase, clause, sentence or other provision of the Contract shall violate any applicable statute, ordinance or rule of law in any jurisdiction in which it is used, such provision shall be ineffective to the extent of such violation without invalidating any other provision of the Contract.

26. Governing Law

The Contract and all performance thereunder shall be governed by and construed in accordance with the internal laws of the State of New York applicable to agreements made and wholly performed therein (without giving effect to principles of conflict of law). The parties exclude the application of the United Nations Convention on Contracts for the International Sale of Goods. All disputes arising out of the Contract and all performance thereunder shall be adjudicated in a court of competent jurisdiction in New York, and Seller hereby consents to personal jurisdiction in New York. Upon mutual agreement, such disputes may be resolved by arbitration or mediation.