

PURCHASE ORDER TERMS AND CONDITIONS

(UNLESS OTHERWISE NOTIFIED THIS DOCUMENT REMAINS IN EFFECT AS OF 05/09/03)

1. **TERMS AND ACCEPTANCE.** Acceptance of Owl Wire and Cable, Inc.'s ("Purchaser") offer to purchase by Seller whether by acknowledgment or by filing this order, in whole or in part, is expressly limited to the exact terms conditions, and instructions contained in this purchase order. It is a condition of this order that any deletion, addition, alteration, or amendment of the terms and conditions of this purchase order, whether contained in Seller's acknowledgment, invoice packing list, or delivery slip, shall have no force or effect and shall not constitute any part of this contract of purchase and sale without the Purchaser's express written approval. This order contains the entire agreement of the parties, and failure of either party to enforce any of its rights under this order shall not constitute a waiver of such rights or any other rights under this order.
2. **ACKNOWLEDGMENT.** All notices regarding acknowledgment of this order should be adhered to.
3. **BILLS OF LADING/INVOICES.** All bill of lading and express receipts should be to "Ship to" address on front of order. All invoices should be sent to Purchaser's INVOICE address shown on front of order. Invoice for each order and **DO NOT** invoice prior to making shipment. Invoices **MUST** contain the Purchaser's purchase order number to receive consideration for payment. Discounted invoices will be paid in accordance with the terms stated in this order. The discount period will commence with the receipt of goods or the receipt of the invoice whichever is later.
4. **PACKING.** The Purchaser's order number **MUST** appear on the outside of each package and all packing slips, invoices, and related paper. Each package shall contain an itemized packing slip indicating partial or complete shipment, part number(s), and number of cartons or containers. Omitted or incomplete packing slip may cause delay in payment of invoice. Each package shall be properly prepaid for shipment so as to secure the lowest transportation and insurance rates and to meet carrier's requirements unless otherwise specified.
5. **EXTRA CHARGES.** Unless specifically stated in this order, no charges of any kind, including by not limited to charges for packing breaking, shipping, freight, express, cartage, insurance, or transportation, will be allowed.
6. **DELIVERY TIME OF ESSENCE.** Purchaser's schedules are based upon the agreement that the goods and/or services will be delivered to the Purchaser by the date specified on face of order. Time is, therefore, of the essence and if goods and/or services are not delivered by the time specified, Purchaser may, at its option, and without limiting its other rights, reject such goods and cancel all or any unfulfilled part of this order. The acceptance of late or defective delivery shall not be deemed a waiver by Purchaser of its right to cancel this order, or to refuse to accept further deliveries. The Purchaser reserves the right to charge Seller for any loss or expense incurred as the result of Seller's failure to make timely delivery.
7. **INSPECTION AND REJECTION.** All goods and materials furnished under this order shall be subject to Purchaser's inspection, testing, and approval or rejection prior to or after delivery due to non-conformance. Payment by Purchaser shall not constitute an acceptance or approval of any non-conforming or defective goods or workmanship, nor shall it effect the right of Purchaser to later reject the goods or services.
8. **NONCONFORMING GOODS.** In addition to all remedies permitted by law, the Purchaser reserves the right to reject and return to Seller for full refund and at Seller's expense, all over shipments and all goods that do not conform to the Purchaser's exact specifications or requirements. Purchaser may charge to Seller all expenses for inspecting, unpacking, examining, repacking, storing and reshipping any goods rejected. The remedies afforded to Purchaser pursuant to this paragraph shall not be exclusive, but Purchaser may hold Seller liable for any and all damages arising from any breach or default pursuant to this paragraph.
9. **RISK OF LOSS; WAREHOUSING.** Risk of loss and transfer of title shall not pass to Purchaser until goods are delivered to and accepted by Purchaser. If Seller warehouses goods that have been ordered under this purchase order, regardless of warehousing location or whether title has passed to the Purchaser, Seller is responsible for any injury, loss, damage or destruction to the goods until delivered to Purchaser. Seller shall maintain adequate insurance coverage for warehoused goods in transit and submit a certificate of insurance to Purchaser which provides for Purchaser to receive 30 days' notice of cancellation.
10. **WARRANTIES.** Seller expressly warrants that all articles, materials, work, or goods supplies under this order will conform to the specifications, drawings, samples, or other descriptions given in all respects, and shall be fit and serviceable for the purpose intended, for good quality, material, and workmanship, merchantable and free from defect. All material, work, or goods shall be subject to rejection if use reveals defect not apparent upon receipt; and if rejected, will be held at Seller's risk and expense for storage and other charges until receipt of notification regarding disposal or return.
11. **WARRANTY AGAINST INFRINGEMENT.** Seller warrants that the sale or use of goods of Seller's design or Seller's patents covered by this order either alone or in combination with other materials will not infringe or contribute to the infringement of any patents, trademarks, or copyrights either in the U.S.A. or foreign countries, and Seller shall hold harmless, indemnify, and defend with competent counsel, Purchaser, its employees, officers, directors, shareholder, and/or agents form and against all liabilities, losses, damages, costs, expenses, causes of action, suits, judgments and claims by or on behalf of any person, corporation, entity, or governmental body resulting form the sale or use of Purchaser's products for any alleged infringements of any patents, trademarks or copyrights, by reason of the sale or use of goods provided by Seller pursuant to this order either alone, or in combination with other materials.
12. **PRICE.** Prices set forth in this order are not subject to increase. No additional amounts shall be chargeable to Purchaser because of taxes or excises, presently or hereafter levied on Seller. If Seller's quoted prices for the goods covered by this order are reduced (whether in the form of a price reduction, close-out, rebate, allowance, or additional discounts offered to anyone) at any time of any shipment, the price to Purchaser for such goods shall be reduced accordingly by Seller, and Purchaser will be billed at such reduced prices. If the price is not recorded on the face of this order, the price shall be that of last previous order given by Purchaser to Seller, subject to the provisions of this paragraph. If the price includes taxes or excises, and if all or any part of such taxes or excises are refunded to Seller, Seller shall immediately pay Purchaser the amount of such refund. Seller certifies that the prices on the face of this order are not higher than prices being charged to other organizations purchasing identical goods in smaller quantities at this particular time and do not discriminate against Purchaser.
13. **PRICE DISCRIMINATION.** Seller represents that the prices and terms of purchase, any allowances available, shall be in full compliance with the Robinson Patman Act.
14. **INDEPENDENT CONTRACTOR.** Seller is an independent contractor with no authority to bind Purchaser and having other relationship to Purchaser.
15. **INSURANCE.** Before Seller performs any work on Purchaser's premises, certificates of insurance for at least the coverage's listed below must be issued and sent to Purchaser at the address set forth in the upper left hand corner on face of order, including a provision that the insurance will not be canceled or charged without giving 30 days prior written notice to Purchaser:
 - a. NYS workers' compensation and employer's liability;
 - b. NYS statutory disability benefits;
 - c. General liability including contractual liability for bodily injury and property damage \$1,000,00 per occurrence, \$3,000,000 aggregate; and
 - d. Automobile liability, bodily injury and property damage, combine single limit \$1,000,000 each occurrence.
 Certificates for coverage listed in c and d above shall name Purchaser as an additional insured and shall contain a written provision that Seller's insurance is primary to any insurance Purchaser may maintain.
16. **IDEMNIFICATION.** Seller shall hold harmless, indemnify and defend with competent counsel Purchaser, its employees, officers, directors, and/or agents from and against all liabilities, losses, damages, costs, expenses, causes of action, suits, judgments and claims by or on behalf of any person, corporation, entity, or governmental body resulting form Seller's actual or alleged liability in tort (strict or otherwise), breach of contract or warranty, infringement, negligent or intentional acts or omissions, or from goods or services supplied by Seller under this purchase order or by reason of Seller's use of Purchaser's premises.
17. **HAZARDOUS CHEMICALS.** If the goods or materials shipped to Purchaser under this purchase order contain a hazardous chemical, Seller must provide a material safety data sheet, and any other information required by the Federal Hazard Communications Standard, New York State Labor Law 876(4), or other state or federal environmental laws, prior to, or at the time of shipment.
18. **EQUAL EMPLOYMENT OPPORTUNITIES/AFFIRMATIVE ACTION COMPLIANCE.** Purchaser is an equal employment opportunity affirmative action employer and complies with all applicable laws and regulations. The seller agrees, unless exempted, to incorporate by reference and abide by (i) Executive Order 11246 relating to the employment and advancement of women and minorities and the Equal Opportunity Clause; (ii) the Vietnam Era Veterans Readjustment Assistance Act, relating to the employment and advancement of disabled veterans and veterans of the Vietnam Era; and (iii) the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1991, relating to the employment and advancement of qualified disabled individuals.
19. **TRADEMARK.** If the goods specified in this order are peculiar to Purchaser's design or if the goods bear Purchaser's trademark or identifying mark, they shall not bear the trademark or other designation of the manufacturer or Seller, and similar goods shall not be sold or otherwise disposed of to anyone other than Purchaser without the written consent of Purchaser. The title to any and all drawings and blue prints, jigs, dyes, patterns, tools, etc. used in connection with this order shall at all times vest in Purchaser and shall upon completion of deliveries under this order or upon termination of the agreement pursuant to which this order is issued, be delivered to Purchaser upon request and Seller assumes all liability for loss thereof or for Seller's failure to return such property to Purchaser.
20. **TAXES.** Seller accepts liability for payment of all payroll and social security taxes and all other federal, state, or local taxes now or hereinafter imposed by any governmental authority.
21. **CANCELLATION.** Purchaser reserves the right at any time and from time to time without cause, to cancel all or any part of the undelivered portion of this order by notice to Seller. In the event of such cancellation, Purchaser shall not be liable to Seller for loss of anticipatory profits. The provisions of this paragraph shall not limit or affect Purchaser's right to terminate this purchase order for default of Seller.
22. **WAIVER OF LIENS.** Seller hereby waives and relinquishes all liens and claims statutory or otherwise which Seller now has or may hereafter have as a result of labor done and materials furnished by Seller or Purchaser and performance of this order.
23. **DEFAULT.** Upon the occurrence of any one or more of the following events, Purchaser shall have the option to cancel and terminate this contract without cost or liability to the Purchaser: (1) Seller's insolvency or inability to meet obligations as they become due, (2) filing of voluntary and involuntary petition of bankruptcy by or against Seller, (3) institution of legal proceedings against Seller by creditors or stockholder, (4) appointment of a receiver for Seller by any court of competent jurisdiction. The acceptance of goods or performance after the occurrence of any of the events set forth above shall not effect the right of the Purchaser to cancel its additional obligations.
24. **TRADENAME.** Unless authorized by Purchaser in writing, Purchaser's name, tradename, or the tradename of any of Purchaser's subsidiaries or affiliates, shall not be used in Seller's advertising.
25. **COMPLIANCE WITH LAWS.** All work performed and goods provided shall comply, in all aspects, with all applicable State, Federal, and local laws, rules and regulations.
26. **NO ASSIGNMENT.** Seller may not assign this order or any interest relating to this order without Purchaser's written consent.
27. **WAIVER.** The failure of Purchaser to enforce any of the provisions of this order shall not be construed to be a waiver of such provision or limit the right of Purchaser thereafter to enforce each and every provision. No claim or right arising out of a breach of this contract can be discharged by waiver unless the waiver is in writing assigned by the aggrieved party.
28. **GOVERNING LAW.** All matters concerning the validity and interpretation of the Purchaser's offer and Seller's acceptance shall be governed by the laws of the State of New York. Jurisdiction of any litigation shall be in New York State with venue in a court of competent jurisdiction in Madison County.