

General Terms and Conditions of Purchase

Revised and Effective as of January 1, 2019

These terms apply when referenced by Buyer's Purchase Order or other documentation.

1. **Controlling Documents, Offer and Acceptance.** Each order ("Purchase Order"), for the purchase of Goods (as defined under U.C.C. § 2-105), generated by R.J. Martin National Contracting, Inc., its subsidiaries or affiliated companies, if any ("Buyer"), including and governed by these General Terms and Conditions of Purchase and any specifications or attachments hereto, constitutes an offer by the Buyer to purchase the Goods of the Seller. The Purchase Order, these General Terms and Conditions of Purchase and any specifications or attachments thereto, constitute the entire agreement (the "Agreement") between the parties and supersede all prior agreements, orders, quotations, proposals and other communications regarding the Goods covered by the Purchase Order, except that the Seller's quotation is incorporated in and made a part of the Purchase Order only to the extent of specifying the nature and description of the Goods ordered, and only to the extent that such items are consistent with the other terms of the Purchase Order. **Unless Buyer specifically agrees in writing, conflicting terms and conditions in any document generated by Seller are rejected by Buyer and will be disregarded in favor of these General Terms and Conditions of Purchase.** The Purchase Order expressly limits Seller's acceptance to the terms of the Purchase Order. Seller accepts these General Terms and Conditions of Purchase and forms a contract by accepting the Purchase Order in writing. If a Purchase Order is not unconditionally accepted by Seller in writing within seven (7) days of its issuance, it will lapse unless otherwise agreed to by Buyer.
2. **Pricing.** Pricing will be as specified in the Purchase Order document. Pricing shall exclude all sales, use and excise taxes which either party is required to pay with respect to the sale of the Goods covered by the Purchase Order. Applicable tax, freight, and duties, if any, shall be shown separately on the invoice. The prices on the Purchase Order are firm, and there will not be any additional charges of any kind including, without limitation as a result of any increase based upon changes in raw materials, labor and/or overhead costs, duties and tariffs or similar import-export implementations. If no price is included in the Purchase Order, the price shall be the price set out in Seller's published price list in force as of the date of the Purchase Order.
3. **Most Favored Customer.** Seller represents and warrants that the price for the Goods is the lowest price charged by Seller to any of its external buyers for similar volumes of similar Goods. If Seller charges any other buyer a lower price, Seller must apply that price to all Goods under this Purchase Order. If Seller fails to meet the lower price, Buyer, at its option, may terminate this Purchase Order without liability pursuant to Section 15. Furthermore, if Buyer provides satisfactory evidence to Seller that it can purchase the Goods of like quality and in the same or greater quantity as provided for herein at a lower price and on terms and conditions substantially the same as those contained in this Agreement, Seller will reduce its prices for all future purchases of Buyer for such Goods on the same terms. If Seller elects not to meet such lower price(s), then Buyer may terminate this Agreement as it pertains to said Goods without liability by giving written notice to Seller.
4. **Payment and Audit Rights.** Seller shall send Buyer invoices via email to ap@rjmartin.net or mail for each shipment of Goods. Buyer's obligation to pay invoices is conditioned on receipt of conforming Goods. Unless provided in the Purchase Order, upon receipt of conforming Goods, Buyer will pay within sixty (60) days of receipt of a correct and accurate invoice. Seller will maintain records and accounting procedures sufficient to support invoices using generally accepted accounting procedures ("GAAP"). Seller's records pertaining to the performance of this Purchase Order may be subject, after reasonable notice and during normal business hours, to inspection and audit by Buyer. Seller will preserve and make available such records for two (2) years from the final payment on a Purchase Order.
5. **Changes.** Buyer may, by written change order, request changes in specifications, or increase or decrease the quantities of, Goods originally ordered. If any such changes require changes to design, fabrication methods, alters the amount due or delivery schedules, then Seller must notify Buyer in writing within five (5) business days, so that Buyer can decide whether to proceed with the requested change and also so that Buyer and Seller can mutually agree on revised costs and delivery schedules.
6. **Inspection.** Buyer will be given a reasonable opportunity to inspect Goods for physical damage, visible defect, packaging problems, and shortage. Buyer will have ninety (90) days from the time any latent or hidden defects in Goods are brought to Buyer's attention to notify Seller of such defect. If Goods do not conform to the specifications or are otherwise defective, Buyer will notify Seller and offer Seller a reasonable opportunity to remedy (not to exceed five (5) business days). Alternatively, Buyer may, at its sole election, return non-conforming Goods to Seller at Seller's expense, and receive either a credit or refund of the purchase price. If Buyer elected to return the Goods, it would not waive any other remedies that may be available at law or at equity. Payment for nonconforming Goods and services is not an acceptance, does not limit or impair Buyer's right to assert any legal or equitable remedy, and does not relieve Seller's responsibility for latent defects. If Seller fails to timely deliver replacement Goods, Buyer may replace them with Goods from a third party and charge Seller the cost thereof and terminate this Purchase Order for cause pursuant to Section 16.
7. **Right to Remedy.** If Seller does not timely modify, adjust, repair or replace defective or inadequate Goods within five (5) days written notice of such defect/inadequacy, then Buyer, after notice to Seller, may at its option and without prejudice to any other rights or remedies that may be available to it, make or cause to be made such modification, adjustment, repair or replacement, in which case Seller will reimburse Buyer for its actual costs or, at Buyer's option, Buyer can offset the costs from any amounts owing to Seller.
8. **Title and Risk of Loss, Shipping.** Unless specified in the Purchase Order, title to any Goods sold under the Purchase Order and risk of loss will pass to Buyer when shipments are accepted by Buyer at the specified delivery point (FOB Destination). Seller will suitably pack, mark and ship materials in accordance with Buyer's instructions and in accordance with governing laws, and, if so instructed by Buyer, will meet the transportation requirements of common carriers to secure the lowest transportation costs. The Goods shall be marked for shipment to Buyer at the address specified in the Purchase Order and delivered to Buyer or the forwarding agent selected by Buyer. Seller shall provide a twenty-four (24) hour delivery notice to Buyer and cannot ship without the written approval of the Buyer. Any exceptions must be requested by Seller and agreed upon by Buyer in writing in advance of shipment(s) being made.
9. **Warranties.** For a period of no less than twelve (12) months from the date upon which the Goods are put into use, Seller expressly warrants and guarantees to Buyer and to Buyer's successors, assigns and customers, that all Goods delivered to Buyer will: (a) conform to the specifications, standards, samples, and descriptions furnished to or by Buyer; (b) conform to all applicable laws, orders, regulations and standards where Goods are to be sold; (c) be merchantable and free of defects in design (to the extent designed by Seller), manufacture, materials and workmanship; and (d) be selected, designed (to the extent designed by Seller), manufactured and assembled by Seller based on Buyer's stated use and be fit and sufficient for the purposes intended by Buyer.
10. **Representations.** Seller represents and warrants that: (a) it has full power and authority to enter into the Purchase Order and perform the obligation thereunder; (b) the Purchase Order is the legal, valid, and binding obligation of the Seller, enforceable against the Seller in accordance with its terms; (c) the signing and delivery of the Purchase Order by the Seller and the performance by the Seller of all of the Seller's obligations under the Purchase Order will not (i) breach any contract to which the Seller is a party, or give any person the right to accelerate any obligation of the Seller, (ii) violate any law, judgment, or order to which the Seller is subject, or (iii) require the consent, authorization, or approval of any person including but not limited to any governmental body; (d) Seller has good and marketable title to Goods delivered to Buyer and that Goods will be free from all liens and encumbrances; (e) the Goods do not infringe any patent, copyright, trademark, trade dress or other intellectual property right of any third party; and (f) there is no past, threatened, pending or proposed future litigation, dispute, or claim that might prevent Seller from fulfilling its obligations under the Purchase Order. Seller acknowledges and agrees that these representations and warranties shall survive the inspection, testing, acceptance and/or use of the Goods by Buyer, are provided for the benefit of Buyer and its successors, assigns and end-users of the Goods purchased hereunder by Buyer, and are in addition to any warranties and remedies to which the Parties may otherwise agree upon, which are provided by law, or are contained in any of the manufacturer's standard product warranties that accompany the Goods. Seller shall be responsible for all liabilities, costs, and expenses arising out of any failure of Seller to meet the representations and warranties contained herein. In addition, Buyer shall have all remedies afforded under the Uniform Commercial Code.

11. **Indemnification.** To the fullest extent permitted by law, Seller will defend, indemnify and hold harmless Buyer and its agents, subsidiaries, affiliates, officers, directors, shareholders, employees successors and assigns, against all damages, losses, claims, liabilities and expenses (including reasonable attorneys' fees, settlements and judgments) and costs (collectively "Claims") arising out of or resulting from or in connection with any defective Goods or from any negligent or wrongful act or omission of Seller or Seller's agents, representatives, employees or subcontractors, or any breach or failure by Seller to comply with any of Seller's representations or other terms and conditions of the Purchase Order. In the event of disagreement between Buyer and Seller regarding the existence of and responsibility for any actual or alleged defect in design, manufacture, or representation related to any item sold under the Purchase Order, Buyer shall have the right to make the final determination regarding the existence of and responsibility for such actual or alleged defect. Buyer will provide Seller with reasonable cooperation and assistance in the defense or settlement of any Claim, and grant Seller control over the defense and settlement of same, provided that Buyer shall be entitled to participate in defense of the Claim and to employ counsel at its own expense to assist in the handling of the Claim. Seller shall not agree to any settlement which results in an admission of liability by the Buyer without Buyer's prior written consent, which consent shall not be unreasonably withheld or delayed. If Seller fails to assume the defense of any Claim or does not diligently pursue such defense, Buyer may retain counsel and assume the defense of such Claim at the cost of the Seller, and in that case, Seller shall reimburse Buyer for all of its reasonable attorneys' fees, costs and damages incurred in settling or defending such claims within [thirty (30)] days of each of Buyer's written requests.

12. **Compliance with Laws.** Seller represents and warrants that it shall comply with all applicable international, national, state, regional and local laws and regulations in performing its duties hereunder and in any of its dealings with respect to the Goods.. The Purchase Order incorporates by reference all requirements of such laws. All materials used by Seller in the Goods or in their manufacture will satisfy current governmental and safety constraints on restricted, toxic and hazardous materials as well as environmental, electrical and electromagnetic considerations that apply.

13. **Insurance.** Seller shall at all times maintain insurance coverage at amounts that are commercially reasonable, including at least Comprehensive General Liability, including Contractual Liability coverage at \$1,000,000 per occurrence, Worker's Compensation Liability at statutory limits, Comprehensive Automotive Liability at \$1,000,000 per person and per accident and Product Recall coverage. Buyer shall be named as an additional insured on all such policies of insurance and Seller shall provide proof of insurance upon Buyer's request. The existence of insurance does not release Seller of its obligations or liabilities under the Purchase Order.

14. **Confidentiality.** The proprietary, confidential and privileged information of each party disclosed as part of this Agreement shall include, but is not limited to: written, oral, digital data and information, including, without limitation, price lists, product lists, volume and pricing of Goods sold under any Purchase Order, customer lists, vendor lists, services, business plans and strategies, sales and marketing methods and plans, and all other information obtained from the party to whom it is disclosed ("Recipient"), whether or not any of the foregoing is formally designated as confidential by the disclosing party ("Disclosing Party"), and whether any of the foregoing is received by the Recipient in electronic form, in written form, orally or in any other manner (collectively, the "Confidential Information"). During the course of dealing and for five (5) years thereafter, the Recipient will exercise the same degree of care as it exercises for its own Confidential Information of a similar nature, but no less than reasonable care, to (a) prevent disclosure or dissemination of Confidential Information received from the Disclosing Party, and (b) not use the Disclosing Party's Confidential Information for any purpose other than as needed to perform the Purchase Order. However, these non-disclosure and non-use provisions do not apply after and to the extent such Confidential Information (i) is or becomes generally available to the public through no act or failure to act by the receiving party, (ii) was already in the Recipient's possession at the time of its disclosure as shown by the Recipient's prior written records (iii) is subsequently disclosed to the Recipient on a non-confidential basis by a third party without violating any obligation of secrecy relating to the information disclosed, or (iv) is subsequently developed independently by an employee or agent of the Recipient who did not have access to the information. Neither party will use the name of the other in publicity releases, referrals, advertising, or similar activity without the prior written consent of the other.

15. **Termination for Insolvency.** The Agreement may be terminated immediately by Buyer without liability to Seller if any of the following or comparable events occur, and Seller will reimburse Buyer for all costs incurred by Buyer in connection with any of the following, including without limitation attorneys' fees, (a) Seller becomes insolvent, (b) Seller files a voluntary petition in bankruptcy, (c) an involuntary petition in bankruptcy is filed against Seller, (d) a receiver or trustee is appointed for Seller, (e) Seller need accommodations from Buyer, financial or otherwise, in order to meet its obligations under the Purchase Order, or (f) Seller executes an assignment for the benefit of creditors.

16. **Termination for Breach or Nonperformance.** Buyer may immediately terminate all or any part of the Purchase Order, without liability to Seller, if Seller (a) repudiates, breaches or threatens to breach any of the terms of the Agreement, (b) fails or threatens not to deliver Goods or perform services in connection with the Purchase Order, or (c) fails to make progress or to meet reasonable quality requirements so as to endanger timely and proper completion or delivery of Goods and does not correct the failure or breach within ten (10) days after receipt of written notice from Buyer specifying the failure or breach. Buyer is entitled to damages due to a breach or failure to perform by Seller.

17. **Right to Terminate.** If the project or program for which Goods are ordered is cancelled, substantially modified, or delayed, Buyer may terminate the applicable Purchase Order by written notice as to all or any part of the Goods not delivered prior to receipt by Seller of the notice. As to Goods that are standard manufactured items, Buyer's only obligation shall be to pay for Goods delivered to Buyer prior to receipt of the notice of termination. As to Goods specially manufactured for Buyer, Seller will stop all work on receipt of notice of termination, unless otherwise directed by Buyer. Upon such termination, Buyer will pay reasonable costs incurred by Seller directly connected with the Purchase Order, including costs and cancellation charges actually incurred by Seller under subcontracts. Such payment shall not exceed the total price of the Purchase Order and shall be reduced by any deposits or refunds available to Seller. Upon such payment, title to Goods shall pass to Buyer.

18. **Force Majeure.** Seller acknowledges that time is of the essence in its performance. However, neither party will be liable to the other for damages for failure to carry out their obligation under the Agreement, in whole or in part when the failure is due to strikes, lockouts, fires, floods, earthquakes, or other natural disasters, freight embargoes, governmental or administrative prohibitions, riots, and acts of public enemies or terrorists. If either party is affected by any such event, shipments already in route will be accepted and paid for. A Party affected by such an event will immediately notify the other, describing the event and estimating the duration. The parties will cooperate in good faith to mitigate the effects of the event. Regardless, if Seller is unable to honor the Purchase Order in a timely fashion, Buyer will be entitled to seek Goods from another supplier without penalty, and those Goods will count towards any volume requirements that Buyer has committed to purchase. Alternatively, at its sole election, Buyer may terminate the Purchase Order. Unless excused by this Section 18, if Buyer must acquire Goods from another supplier on an emergency basis because Seller is unable to timely perform on the agreed schedule, Seller will reimburse Buyer for all commercially reasonable additional costs and expenses incurred to obtain the Goods. The change in cost or availability of materials or components based on market conditions or supplier actions will not constitute force majeure.

19. **Notices.** Seller and Buyer agree that all notices, requests, demands and other communications required by the Purchase Order or these General Terms and Conditions of Purchase must be in writing and be delivered to the parties at the addresses as set forth on the first page of the Purchase Order or any other address that a party may designate by notice to the other parties. Notices are considered delivered upon actual receipt if delivered personally or by fax, mail (postage pre-paid, certified and return receipt requested) or courier.

20. **Relationship of Parties.** Seller and Buyer are independent contracting parties, and nothing in the Purchase Order will make either party the employee, agent or legal representative of the other for any purpose. The Purchase Order does not grant either party any authority to assume or to create any obligation on behalf of or in the name of the other. Seller will be solely responsible for all employment and income taxes, insurance premiums, charges and other expenses it incurs in connection with its performance of the Purchase Order, except as expressly provided in a written agreement signed by Buyer. All employees and agents of Seller or its respective contractors are employees or agents solely of Seller or such contractors, and not of Buyer, and are not entitled to employee benefits or other rights afforded to Buyer's employees. Buyer is not responsible for any obligation with respect to employees or agents of Seller or its contractors.

21. **Non-Assignment.** Seller may not assign or delegate its obligations under the Purchase Order without Buyer's prior written consent which may be withheld for any or no reason. Any purported assignment in violation of this Section shall be null and void. In the event of any approved assignment or delegation authorized by Buyer, Seller retains all responsibility for Goods, including all related warranties and claims, unless otherwise expressly agreed in writing by Buyer.
22. **Governing Law, Jurisdiction, and Venue.** These General Terms and Conditions of Purchase and the Purchase Order shall be governed by the laws of the State of Ohio without giving effect to any choice or conflict of law provision of any other jurisdiction that would cause the application of the laws of any jurisdiction other than those of the State of Ohio. Seller irrevocably submits to the exclusive jurisdiction of and venue in the federal and state courts located in Cleveland, Ohio.
23. **Survival.** The obligations of the Seller to Buyer survive the termination of the Purchase Order, except as otherwise provided in these General Terms and Conditions of Purchase.
24. **Cumulative Remedies.** The rights and remedies under the Purchase Order and these General Terms and Conditions of Purchase are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.
25. **Headings.** The headings in these General Terms and Conditions of Purchase are for convenience only and shall not affect their interpretation.
26. **Contract Interpretation.** The parties to the Purchase Order represent that they have negotiated and understood its provisions and agree that no presumptions should be made against the drafter. The Purchase Order will be binding on the parties and their respective heirs, personal representatives, successors, and permitted assigns, and will inure to their benefit. If a provision of these General Terms and Conditions of Purchase is determined to be unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions of these General Terms and Conditions of Purchase will not be impaired. The Purchase Order, these General Terms and Conditions of Purchase and any specifications or attachments thereto contain the entire understanding of the parties regarding the subject matter of the Purchase Order and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of the Purchase Order. No waiver will be binding on Buyer unless it is in writing and signed by the party making the waiver. Buyer's waiver of a breach of a provision of these General Terms and Conditions of Purchase will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision.