



Talon Innovations Corporation - Terms and Conditions of Purchase

DEFINITIONS

The term "Buyer" shall refer to Talon Innovations Corporation, a Minnesota corporation. The term "Seller(s)" shall refer to the person, institute, company, organization or corporation from whom Buyer purchases Product(s). The term "Products" shall refer to the materials, supplies, items, and services purchased by Buyer. Other defined terms have the meanings given to them herein.

1. ACCEPTANCE

Unless stated otherwise by Buyer, this Agreement is the sole and complete agreement between Buyer and Seller and supersedes all prior discussions, agreements or understandings whether stated orally or in writing. Unless stated otherwise by Buyer, any terms or conditions stated by the Seller in any prior proposal or in acknowledging or otherwise accepting the Buyer's order shall not be binding on the Buyer unless specifically accepted in writing. Unless stated otherwise by Buyer, to the extent that any term or condition of a validly issued and accepted purchase order or other written agreement conflicts with a term or condition contained in this Agreement, the term or condition contained in this Agreement shall control. Buyer may, in its sole discretion and at any time for any reason, change this Agreement or any policies or guidelines. Seller is responsible for reviewing this Agreement and applicable changes.

Any of the following acts by Seller shall constitute acceptance of a purchase order and the terms and conditions set forth in this Agreement: (1) sending an acknowledgement and/or confirmation in response to Buyer's purchase order; (2) delivery of any of the Products ordered; or (3) informing the Buyer in any manner of commencement of performance.

2. PRICING AND DELIVERY

Seller shall furnish the Products called for in Buyer's purchase order in accordance with the prices and delivery stated in the purchase order. If prices and/or delivery date are not stated in the Buyer's purchase order, Seller shall offer its lowest prices and best delivery dates, both of which shall be subject to written acceptance by Buyer. All prices include all applicable taxes, except sales tax which is separately shown where applicable. Seller must provide advanced written notice to Buyer of any changes to the prices and delivery stated in the purchase order. After such notice, Buyer may, at its sole discretion, inform Seller within a reasonable time period that it is cancelling all or part of the purchase order to the extent that prices or delivery are different than what is stated in the purchase order.

3. PACKING AND SHIPPING

No charge shall be made by Seller for packaging or storage of Products. All Products shall be packaged, marked, and labeled to prevent damage during normal transit unless noted on the purchase order with specific instructions. Seller shall provide a packing slip with each delivery, which identifies the following: (1) quantity delivered; (2) buyers part number(s); (3) invoice number(s); and (4) purchase order number(s). In addition, if applicable, Seller shall provide Material Safety Data Sheet(s) ("MSDS") to Buyer at the time of delivery and upon request.

4. RISK OF LOSS AND TRANSFER OF TITLE

Title to Products and risk of loss of all Products shall pass from Seller to Buyer upon receipt and acceptance at the Buyer's facility regardless of whether Buyer or Seller pays for or arranges for the freight. Seller will bear all expenses and risks of loss prior to receipt and acceptance at the Buyer's facility.

5. INVOICING

After each shipment made under this Agreement, Seller shall send a separate invoice, including Buyer's part numbers. Payment of an invoice will be pursuant to the terms stated in the purchase order and shall not constitute acceptance of Products ordered and shall be subject to appropriate adjustment for failure of Seller to meet the requirements of the purchase order. Buyer may set off any amount owed by Seller or any of its affiliated companies to Buyer against any amount owed by Buyer under the purchase order or the terms of this Agreement.

6. RECORD RETENTION

Records must be maintained on file for a minimum of seven (7) years beyond the termination of the contract. In the event, where customer contracts specify otherwise, the required record retention shall be stated on the purchase order or other requirements flow down document. All requirements for record retention must be flowed down to any sub-tier vendor/supplier participating in the completion of this purchase order. Records must be legible, identifiable, retrievable and available to the Buyer.

7. INSPECTION OF PRODUCTS

All Products covered by Buyer's purchase order may be inspected and tested by Buyer, its customers, and higher tier contractors, at all reasonable times and places that Seller shall provide without additional charge. Seller shall use an appropriate inspection system to ensure conforming parts are delivered to Buyer. Buyer reserves the right to request a specific inspection system. All inspection records relating to items covered by a purchase order shall be available to Buyer during the performance of the order and for such longer periods as specified by Buyer in its acceptance of the inspection system.

If any Products covered by the purchase order are defective or otherwise not in conformity with the requirements of this order, Buyer may by written notice within a reasonable time period to Seller: (1) rescind the order as to such items; (2) accept such items at an equitable reduction in price, or (3) reject such items and require the delivery of replacements. Deliveries of replacements shall be accompanied by a written notice specifying that such items are replacements. If Seller fails to deliver required replacements promptly, Buyer may (1) replace or correct such items and charge Seller the cost occasioned Buyer thereby or (2) terminate the purchase order for default as provided in Section 20. No inspection (including source inspection), tests, approval (including design approval), or acceptance of items ordered shall relieve Seller from responsibility for defects or other failures to meet the requirements of a purchase order. Rights granted to Buyer in this Section are in addition to any other rights or remedies provided elsewhere in this Agreement or in law.

Final inspection and acceptance shall be at Buyer's facility unless otherwise specified in the purchase order.

8. RIGHT TO INSPECT

Seller shall allow Buyer or its designee the right upon reasonable prior communication to enter the manufacturing, storage, and/or operation facilities of Seller during regular business hours to inspect and spot check the Products, tools, equipment, molds, and Product manufacturing facilities, in order to confirm Seller's compliance with the terms of this Agreement or a purchase order. Seller shall make available an authorized representative of its organization to facilitate Buyer's exercise of the foregoing inspection rights. When requested by Buyer, Seller will provide to Buyer such data, drawings, specifications, test results, quality documentation, schedules and other documents and information as is reasonable required by Buyer to confirm Seller's compliance with the terms of this Agreement or a purchase order.

9. WARRANTIES

In addition to any other express or implied warranties, Seller warrants that Products furnished pursuant to Buyer's purchase order and this Agreement shall be (1) free from defects in workmanship and material, (2) free from defects in design except to the extent that such items comply with detailed designs provided by Buyer, (3) suitable for the purpose, if any, which are stated on the face of the order, (4) in conformity with all other requirements of the order; (5) free from any intellectual property rights, security interests, liens or encumbrances claimed by or arising from through Seller or to Seller to be claimed by a third party.

In addition to any other rights Buyer may have, if within one year after delivery and acceptance, Products are found not to be as warranted, Buyer may return such items to Seller, at Seller's expense for correction, replacement, or credit, as Buyer may direct.

10. MATERIALS AND TOOLS

If Buyer furnishes Seller material or equipment (such as special dies, molds, jigs, tools, test equipment, etc.) or pays for such material or equipment, title thereto shall remain or vest in Buyer, and Seller shall identify, maintain and preserve such material and equipment and shall dispose of it (including scrap) in accordance with Buyer's direction and after reasonable written notice has been given. Buyer does not require that Seller carry insurance on such property and Seller shall not include any insurance cost therefore in the prices charged under any purchase order.

11. PROPRIETARY INFORMATION/INTELLECTUAL PROPERTY

All Proprietary Information obtained by Seller from Buyer in connection with any purchase order ("Proprietary Information"), which is received in confidence, shall remain property of Buyer.

Proprietary Information, as used herein, shall mean technical and/or business information of the other party that is disclosed during the term of this Agreement, whether or not labeled as Confidential, and includes without limitation: blueprints, design drawings, subcontracts, inventions, innovations, improvements, discoveries, formulae, trade secrets, processes, machines, specifications, drawings, plans, articles of manufacture, samples, molds, computer programs, research, information relating to products or manufacturing capabilities, costs, profit, sales, lists of customers, business methods and plans for future developments.

Proprietary Information shall be used and disclosed by Seller only to the extent necessary for the performance of this order except upon prior written notice to Buyer. For avoidance of doubt, Seller may not market, advertise and/or sell Products obtained from Buyer without Buyer's written consent. Seller assigns and agrees to assign to Buyer all of Seller's right, title and interest in any and all Proprietary Information, whether now existing or later developed, discovered or created.

Without limiting the generality of the foregoing, Seller acknowledges and agrees that any and all of Buyer's intellectual property and trade secrets are the Proprietary Information of the Buyer. Seller will not at any time use for Seller's benefit or disclose to any person for any purpose any Proprietary Information, or permit any person to use, examine and/or make copies of any documents, files, data or other information sources that contain or are derived from Proprietary Information, without the prior written permission of Buyer.

Upon termination of any specific business relationship between Buyer and Seller (including, but not limited to, the completion of a purchase order), all documents, data, devices, and all other items which disclose or embody Proprietary Information under this Agreement will be returned to the disclosing party upon request within fifteen (15) days after such termination.

In no case shall this Agreement provide Seller with authorization to infringe on the intellectual property rights of the Buyer.

This Agreement shall not be construed as a license from Buyer to Seller of any of Buyer's intellectual property rights.

All obligations under this Section shall survive the termination of this Agreement and completion of any individual purchase order unless specified otherwise in writing by Buyer.

12. INDEMNITY

Seller, at its own expense, shall defend, indemnify and hold Buyer, and its successors, assigns, parent, subsidiaries and affiliates, and the officers, directors, employees, agents and customers of each of them, from and against any and all loss, damage or expense of any nature (including attorneys' fees) arising out of or relating directly or indirectly to Seller's performance or non-performance of the terms of this Agreement or a purchase order ("Indemnified Claim"), including but not limited to any claim, action, suit or proceeding, arising at any time, alleging: (1) infringement or violation of any patent, trademark, trade secret, copyright or other intellectual property right of the other or any third party (except to the extent the infringement or violation is caused by specifications provided by Buyer); (2) violation of any statute, regulation or rule of law in the manufacture, assembly, packaging or delivery, sale or resale of the Products (including any services performed); (3) breach of any of the terms or conditions of, or representation in, this Agreement; or (4) personal injury, property damage, or other damage, arising out of a claimed defect or failure of a Product or due to act, omission or negligence relating to services performed by Seller, whether performed on the premises of Seller or Buyer or elsewhere, and including, but not limited to, the failure of a Product to comply with warranties or satisfy specifications set forth in a purchase order.

Both parties will notify each other with reasonable promptness following notice of any suit or claim. Buyer shall have the right, but not the obligation, to assume entire control of the defense, compromise or settlement thereof (with Seller indemnifying as noted above), and in connection with any Indemnified Claim. Seller shall cooperate fully to make available to Buyer all pertinent information under Seller's control.

All obligations under this Section shall survive the termination of this Agreement and/or completion of any individual purchase order unless specified otherwise in writing by Buyer.

Unless otherwise indicated in the purchase order, Seller shall carry and maintain insurance coverage satisfactory to Buyer to cover the above, and upon Buyer's request, shall furnish to Buyer appropriate evidence of such insurance.

13. SUBCONTRACTS

Seller shall not subcontract for complete or substantially complete parts of work called for by the purchase order without Buyer's prior written approval.

14. COMPLIANCE WITH LAWS

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In performance of this order, Seller shall comply with all federal, state and local laws, rules and regulations for violation of which Buyer may be liable, including particularly all applicable requirements of the Fair Labor Standards Act. Furthermore, Seller will cooperate fully upon the request of Buyer with respect to any laws, rules or regulations that Buyer must or may comply with that arise out of or relate to a purchase order or this Agreement.

15. LIEN WAVERS

Seller shall furnish, upon Buyer's request, waivers by Seller and all other persons entitled to assert any lien rights in connection with the performance of Buyer's orders.

16. ASSIGNMENT

Seller shall not assign any purchase order or any rights under this Agreement without prior written consent of Buyer, as no purported assignment by Seller shall be binding on Buyer without such consent.

17. NOTICE OF LABOR DISPUTES

Whenever an actual or potential labor dispute is delaying or threatens to delay the timely performance of a purchase order, Seller shall immediately notify Buyer in writing of all relevant information with respect to such dispute.

18. CESSATION OF PRODUCTION

If production of Products covered by a purchase order is to be permanently discontinued at any time within one year after final delivery under a purchase order, Seller shall give Buyer at least 12 months prior written notice of such discontinuance during which time Seller shall accept orders from Buyer for a reasonable quantity of such items.

19. PUBLICITY

Seller shall not make or authorize any news release, advertisement, or other disclosure which shall deny or confirm the existence of a purchase order without the prior written consent of Buyer, except as may be required to perform the purchase order.

20. CHANGES BY BUYER

Buyer may at any time by written change order, suspend performance in whole or in part, make changes in drawings, designs, specifications, method of shipment of packing, or time or place of delivery or require additional or diminished work. If any such causes an increase or decrease in cost of, or the time required for performance of a purchase order, an equitable adjustment shall be made in contract price or delivery dates or both, and Buyer's order shall be modified in writing accordingly. Any claim for adjustment under this Section shall conclusively be deemed to be waived unless asserted in writing (including the amount of the claim) and delivered to Buyer within thirty (30) days from the date of receipt by Seller of

the change order. If the cost of property made obsolete or excess as a result of a written change order is paid by Buyer, Buyer may prescribe the manner of disposition of such property. Buyer's engineering and technical personnel may from time to time render assistance to Seller concerning the items or services to be furnished pursuant to a purchase order, but such personnel are not authorized to change the items ordered or the provisions of Buyer's order. No change order will be binding on Buyer unless issued by an authorized representative of Buyer's purchasing office. Nothing in this Section shall excuse Seller from proceeding with the purchase order as changed.

21. **TERMINATION**

(a) **WITHOUT CAUSE.** Buyer may terminate for its convenience, all or any parts of a purchase order at any time by written notice to Seller.

(b) **WITH CAUSE.** If (i) Seller materially breaches any of the terms of this Agreement or materially defaults in the performance of any of its duties or obligations hereunder, and such breach or default is not remedied within ten (10) days after delivery by Buyer of written notice of such breach or default; or (ii) Seller fails to make any delivery or perform any services in accordance with a purchase order and does not remedy such failure within ten (10) days after receipt of written notice thereof; or (iii) Seller fails to make progress to such an extent that performance of an order is endangered; or (iv) any proceeding is filed by or against Seller in bankruptcy or insolvency, or for appointment for the benefit of creditors; Buyer may (in addition to any other right or remedy provided by this Agreement, the purchase order, or by law) terminate all or any part of a purchase order that has not been delivered by written notice to Seller without any liability and may purchase substitute items elsewhere and Seller shall be liable to Buyer for any excess cost occasioned Buyer thereby.

22. **WAIVER**

The failure of Buyer to insist upon the performance of any provision of this Agreement or a purchase order, to exercise any right or privilege granted to Buyer under this Agreement or a purchase order shall not be construed as waiving any such provision, and the same shall continue in force.

23. **APPLICABLE LAW/FORUM SELECTION**

The validity, performance and construction of this Agreement or any purchase order shall be governed by the laws of the state of Minnesota. The parties agree to submit to the personal and exclusive jurisdiction of the courts located in Minnesota for the resolution of all legal disputes arising under the terms of this Agreement or any purchase under.

24. **NOTICES**

All notices to Buyer shall be in writing and, unless otherwise specified, shall be sent to:

Talon Innovations Corporation
1003 Industrial Drive South
Sauk Rapids, MN 56379
Attn: Materials Manager/Head of Purchasing

25. **FORCE MAJEURE**

Seller will promptly notify Buyer in writing of any actual or potential circumstance that would delay the timely performance of any purchase order, and will include all relevant information to Buyer. Buyer shall not be liable to take delivery of Products or render any other performance in the event fire, accidents, labor difficulties, government actions, third party failures or any other conditions beyond Buyer's reasonable control render it commercially impractical for Buyer to do so.