



CEPHALON, INC. -TERMS AND CONDITIONS

- 1. ACCEPTANCE:** By accepting this Purchase Order, Seller agrees to its terms and conditions. This Purchase Order is Buyer's offer to Seller and becomes a binding contract, subject to the terms hereon, when accepted by acknowledgment or commencement of performance by Seller. Buyer shall not be bound by any terms and conditions not appearing hereon. Shipment by Seller of the material shall constitute a waiver by Seller of all terms and conditions contained in any acceptance form or any communication which are inconsistent with the terms and conditions set forth on this Purchase Order, unless specifically agreed to in writing by the Buyer. To the extent there are any inconsistencies between these terms and conditions, and those written on the face of the order by Buyer, the latter will control.
- 2. PRICE:** Buyer's order shall be filled at the price specified on the Purchase Order or at any lower price. If no price is specified, the order shall be filled at the lowest of (i) the price last quoted by the Seller, (ii) the price last paid by Buyer to Seller, or (iii) the prevailing market price. Unless otherwise specified, the prices stated on the front of this order include all charges for packing, hauling, storage, transportation to point of delivery, and all taxes not expressly imposed by law on Buyer. Seller warrants that the prices quoted in this order are no greater than those currently charged any other buyer for similar quantities of goods or services. Any price reduction extended to others by Seller prior to delivery shall also be extended to Buyer.
- 3. CHANGES:** No changes in quantities or specifications, or additions to this order shall be binding upon Buyer unless approved by Buyer in writing. Buyer may request changes in the scope or quantity of the goods and services covered by this order in which event an equitable adjustment will be made to any price, time of performance, and other provisions of this order if appropriate. Claim for such adjustment must be made within fifteen (15) days from the date of receipt by Seller of notice of the change.
- 4. DELIVERY :** Time is of the essence. If Seller fails to deliver the goods within the time specified in the Purchase Order, or fails to deliver all or part of the goods in accordance with its terms, Buyer may cancel all or part of this Purchase Order or may refuse to accept, or may return at Seller's expense, any goods ordered hereunder. Acceptance of part of the order shall not oblige Buyer to accept later shipments nor affect Buyer's right to return goods already accepted. All expenses of transportation and storage, if any, resulting therefrom shall be for Seller's account.
- 5. TITLE AND RISK OF LOSS:** Title and risk of loss to material to be delivered under this Purchase Order hereunder shall not pass until the materials reach the receiving point indicated and are accepted.
- 6. INSPECTION; TESTING:** Goods delivered under this Purchase Order shall be subject to inspection and testing by the Buyer. All or part of the order may be returned to the Seller at its expense for storage, transportation and insurance, if found within a reasonable time from the date of Buyer's inspection to be defective or not in accordance with the order, including specifications supplied therein or at a previous time. Buyer reserves the right to reject or refuse acceptance of goods which are not in accordance with the Seller's representations or warranties. Buyer will charge Seller for the cost of inspecting rejected goods. Acceptance of all or part of the goods, use thereof and payment therefore, or failure to notify the Seller promptly, shall not waive nor affect Buyer's right to cancel all or part of this Purchase Order, or to return all or part of the goods, recover damages upon Seller's warranties or agreements of indemnity, or any other remedy Buyer may have. Rejected goods may be returned to Seller or held by Buyer at Seller's risk and expense. Payment for any goods under this Purchase Order shall not be deemed acceptance of goods.
- 7. WARRANTIES:**
 - a) In accepting this Purchase Order, Seller expressly warrants that the articles to be shipped are free from defects in materials, workmanship, and fabrication and that all merchandise delivered shall be of the quality, quantity, size description, and dimension specified and strictly in accordance with the Buyer's specification and suitable for the purpose intended. Seller expressly warrants that the goods or services ordered (i) shall be merchantable, (ii) shall conform to this order, to specifications, drawings, and other descriptions referenced in this Purchase Order, and to any accepted samples, (iii) shall be free from defects in materials and workmanship, (iv) shall be free from defects in design unless the design was supplied by Buyer, and (v) shall be fit and safe for the Buyer's intended purposes.
 - b) Seller expressly warrants that it has clear title to the goods and that the goods and services shall be delivered free of liens and encumbrances.
 - c) Seller expressly warrants that the goods are not adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act (the "Act") and the regulations issued thereunder or within the meaning of any applicable federal, state or municipal law in which the definition of "adulteration" and "misbranding" are substantially identical with those contained in the Act; and are not goods which may not under any federal, state or municipal law, ordinance, regulation or order be introduced into commerce.
 - d) Each of these warranties and any other warranties as may be prescribed by law shall extend to Buyer, its successors, assigns, and customers and to users of the goods and services and shall run through any expiration date stated on the goods, or, if no expiration date is stated, then for a period of one (1) year after delivery.
- 8. COMPLIANCE WITH LAWS:** Seller represents and certifies to Buyer that in filling this order, Seller will comply with all applicable federal, state and local laws.
- 9. INDEMNITY:** Seller agrees to defend, indemnify and hold Buyer, its successors, assigns, employees, customers and users of the goods and services harmless with respect to all claims, liability, damage, loss and expenses, including attorney's fees incurred, relating to or caused by the following except where adjudged to be due to the sole negligence of the Buyer: a) any actual or alleged defect in the goods or services or in the design, manufacture or material of the goods; b) actual or alleged breach of any of the warranties set forth herein; c) failure of the Seller to deliver the goods or services on a timely basis; d) actual or alleged patent, copyright or trademark, infringement or violation of other proprietary right, arising out of the purchase, sale or use of the goods or services covered by this order; or e) failure of the goods or services to meet the requirements of any law.

In the event of a claim under this section, Buyer may at its option terminate the order or defer acceptance of the balance of the goods or services ordered until the claim is resolved.

10 FORCE MAJEURE: Neither party shall be liable to the other for any failure to perform hereunder or for delay in performance when such failure or delay shall be caused by any of (but not limited to) the following: acts of God, fire, flood, accident, machinery breakdown, labor disturbance, shortage, war, terrorist acts, any act of government authority or any other events beyond the reasonable control of the party whose performance is affected. The party whose performance is so affected shall provide prompt notice to the other, shall indicate the estimate duration of such event of force majeure, and shall use all reasonable efforts to mitigate the effects of the event of force majeure. During any period when Seller is unable to supply the quantity of goods or the services set forth in this Purchase Order, Seller shall allocate any available goods or services among its customers on a fair and reasonable basis. If Seller is subsequently excused from performance, then to the extent good or services are not delivered, Buyer may purchase similar goods or services from other sources without liability or obligation to Seller.

11 TOOLS AND FURNISHED MATERIALS: Title to all designs, drawings, dies, molds, tools, appliances, materials or other property or information furnished to Seller by Buyer in connection with this Purchase Order, shall belong to Buyer. Such property shall be recorded and identified as the property of the Buyer and stored in a secure manner. They shall be held by Seller at Seller's risk and shall be replaced by Seller if lost, damaged or destroyed. They shall remain in good condition at Seller's expense and kept insured by Seller with loss payable to Buyer.

12 INSURANCE: Seller shall furnish Buyer with certificates of insurance upon Buyer's request. During the performance of the Purchase Order and until goods or services defined by the Purchase Order are accepted by Buyer, Seller shall maintain at Seller's expense appropriate insurance policies to adequately cover all property damage, product liability and bodily harm situations that could arise out of the performance of this Purchase Order.

13 TAXES: Seller agrees to be responsible for any federal, state, or local excise, sales or gross receipt taxes, personal property taxes, custom duties or levies and any foreign taxes which may be imposed on goods or services purchased under this order. All quoted prices are assumed to include such taxes, custom duties and levies unless specifically excluded in writing by Seller. In the event Seller fails to include such taxes, custom duties and levies in Seller's quoted price, and accepts the Purchase Order at the quoted price, Seller waives all rights to seek additional compensation for such taxes, custom duties and levies at a later date.

14 CANCELLATION: Buyer shall have the right upon written notice to Seller to cancel this Purchase Order or any unfilled portion thereto without any liability other than to make payment for that portion of the Purchase Order which has been delivered and accepted. Buyer will also consider any reasonable expenses incurred by Seller in canceling the Purchase Order and for work in progress. Buyer may also cancel this Purchase Order, in whole or in part, without liability, (i) if Buyer anticipates Seller's breach of this Purchase Order and Seller does not provide adequate assurance of its performance within ten (10) days of Buyer's request, (ii) if deliveries are not made at the time or in the quantities specified, or (iii) in the event of a breach or failure by the Seller to meet other terms of this Purchase Order. Buyer's rights pursuant to this paragraph shall be in addition to any other remedies provided Buyer by law.

15 ASSIGNMENT; PUBLICITY: Seller shall not, without first obtaining written approval of Buyer, (i) assign or subcontract all or any part of this Purchase Order or (ii) publish or advertise confirmation of the fact that Seller has contracted with Buyer to fill this Purchase Order.

16 GOVERNING LAW: This Purchase Order and the performance under it shall be controlled and governed by the law of the Commonwealth of Pennsylvania, and Seller hereby submits to the jurisdiction of the courts of Pennsylvania for purposes of resolving any dispute.

17 WAIVER: No waiver of any of the provisions contained in this Purchase Order shall be valid unless made in writing and executed by both parties. No substantial changes to the Purchase Order will be allowed without the Buyer's written consent. Failure of the Buyer to insist upon strict performance shall not constitute a waiver of any of the provisions of this Purchase Order.

18 ENTIRE AGREEMENT: These terms and conditions may be superseded only in the event of a written contract, between Buyer and Seller, separate from this document, or noted changes to the terms and conditions that are specified on the Purchase Order.