

**R.W. LYALL & COMPANY INC.**  
**TERMS AND CONDITIONS OF PURCHASE**

1. **ACCEPTANCE.** Any order constitutes a binding contract upon the terms and conditions herein when accepted by Seller, either by acknowledgment or by commencement of shipments. If any of Seller's prior proposals, quotations or writings are in conflict with the terms of any order, the terms hereof shall govern. Buyer recognizes that Seller may, for operating convenience, utilize its own form of acknowledgment or confirmation of sales in accepting any order, in such case, any provisions, terms or conditions in such form of acceptance which modify, conflict with, contradict or add to any provision, term or condition of said order, are objected to by Buyer and shall be deemed to be waived (unless expressly accepted in writing by Buyer), it being agreed that the provisions, terms and conditions of said order constitute the entire contract between the parties. No alterations, modifications or deletions of any terms or provisions of any order are objected to by Buyer and made by Seller will be binding upon Buyer unless expressly accepted in writing by Buyer.
2. **PACKING.** All material shall be suitably packed, marked and shipped in accordance with the requirements of common carriers and law, and no additional charge for packing or boxing shall be made to Buyer unless otherwise stated herein.
3. **SPECIFICATIONS.** All articles to Buyer's specifications must comply with such specifications, whether on blueprint or otherwise.
4. **QUANTITIES.** Seller shall not over or under-ship on quantities ordered.
5. **SHIPMENTS IN ADVANCE OF SCHEDULE.** At Buyer's option, will be (1) accepted, but entry of invoice will be deferred until such time as shipment was scheduled to be made, or (2) returned to Seller at Seller's expense.
6. **INCORRECT COUNT.** All material received will be counted by Buyer's Receiving Department, Seller will be advised of any discrepancies and if any, as a matter of expediency. Buyer will issue a Debit Memorandum for the difference in count.
7. **CASH DISCOUNT.** The cash discount shall be calculated from the date an acceptable invoice is received or the date all the invoiced supplies are received by Buyer, whichever is later.
8. **TRAFFIC ROUTING.** Seller agrees to pay all excess transportation costs (a) due to failure of Seller to comply with routing and shipping instructions, or (b) requiring Air Freight or Air Express shipment necessitated by Seller's failure to meet scheduled delivery dates.
9. **PRICES.** Prices, as set forth on the acknowledged purchase order, are firm and shall remain firm in force throughout the duration of said order.
10. **DELIVERY.** When a delivery date is specified, time shall be of the essence.
11. **INSPECTION.** (a) All materials or articles ordered are subject to final inspection and approval at destination by Buyer, notwithstanding prior payment, it being expressly agreed that payment shall not constitute final acceptance. Buyer may reject any article, which contains defective materials or workmanship, or which does not conform to specifications, blueprints, and samples or as ordered. Rejected articles may be returned at Seller's risk and expense, at the full invoice price, plus incoming transportation charges (if any), and replacement of rejected articles shall be made unless specified in writing to the contrary by Buyer in its Debit Memorandum issued for the rejected material, and when so specified, the quantity ordered shall be reduced at "no cost" to Buyer. (b) Items furnished in lots are subject to rejection on the basis of sample inspection. (c) Final inspection and acceptance by Buyer shall be conclusive except as regards (1) defective workmanship on material, rejected by Buyer within one year after shipment from Seller's plant and (2) latent defects, fraud, or such gross mistakes as amount to fraud. Buyer reserves right to visit sellers facilities during manufacture of product for purposes of monitoring quality of product and insuring compliance with specifications defined in body of purchase order.
12. **REIMBURSEMENT BY THE SELLER.** The Seller shall make reimbursement for expenses incurred by Buyer, which are resultant from delinquent deliveries, or defective materials furnished against any order. These expenses shall include, but are not necessarily confined to, additional costs brought about by the necessity to use alternate sources of materials, excessive inspection costs, and the costs of reworking or modifying, assembling and disassembling materials that do not meet specifications.
13. **WARRANTIES.** Seller expressly warrants that all articles ordered to specifications will conform thereto and to the blueprints or drawings, samples or other description furnished by Buyer and that all articles will be merchantable, of good material and workmanship free from defect and all liens and encumbrances. These warranties shall survive acceptance and payment and shall run to Buyer, its successors, assigns, customers and the user of the products ordered herein and shall not be deemed to be exclusive.
14. **PATENT INDEMNITY.** Seller agrees to indemnify and hold Buyer, its successors, assigns, customers and the users of the products ordered herein, harmless against loss, damage or liability including costs and expenses which may be incurred on account of any claim, demand, suit, or judgment involving infringement or alleged infringement of any patent rights in the manufacture, use or disposition of any article or material supplied hereunder, provided Buyer shall notify Seller of any such claim, demand or suit, and to the extent possible, the Seller shall be permitted to defend the same or make settlement in respect thereof.
15. **CHANGES.** Buyer may change any order at any time by submitting notice or new order to Seller. If such modification affects the cost or time of performance and if Seller makes a written claim for an equitable adjustment within thirty (30) days after receipt of notification or change. Buyer shall have the option of (a) making an equitable adjustment or (b) terminating this order as provided herein. Failure of Seller to so assert its claim shall operate as a waiver.
16. **ASSIGNMENT AND SUBCONTRACTING:** An order may not be assigned or subcontracted in whole or part, nor may any assignment of any money due or to become due hereunder be made by Seller without, in each case, Buyer's prior written consent.
17. **TOOLS:** (a) the word "tools" as used herein shall be interpreted to include any and all of the following: Tools, dies, jigs, fixtures, models, molds, patterns, and special appliances. (b) Buyer shall retain title to all tools furnished by Buyer in connection with this order and all such tools shall be subject to disposition by Buyer at any and all times and upon demand, such tools shall be returned to Buyer. (c) If the price to be paid is stated on the purchase order to include any tools used in the manufacture of items ordered, then such tools shall become and be the property of the Buyer and shall be so recorded and identified by Seller. (d) Buyer will not be liable for the cost of manufacture of any tools, which Seller deems necessary in his manufacturing process, unless Seller receives a written purchase order from Buyer authorizing the manufacture of such tools. (e) All tools furnished or paid for by Buyer in connection with any order shall be at Seller's risk and shall be replaced by Seller's expense and shall be kept insured by Seller with loss payable to Buyer. (f) Where Buyer furnishes Seller with tools to manufacture items ordered, Buyer does not warrant the accuracy of such tools. It shall be and remain Seller's responsibility to check said tools before and during the period the items ordered are being manufactured and it shall be and remain Seller's responsibility to deliver the items ordered which correspond to the dimensions and specifications of the blueprints or drawings for said items. (g) Nothing in this section shall be construed as imposing any obligation on Buyer to furnish any tools.

18. **MATERIAL:** The word "material" as used herein shall be interpreted to include any and all of the following: Raw material, castings, or integral parts for use in items to be manufactured in connection with any order. (b) Except as provided in subsection (d) below, Buyer retains title to all material furnished Seller in connection with any order, and the material shall be subject to disposition by Buyer at all times, and upon demand, shall be returned to Buyer. (c) All material furnished Seller in connection with any order shall be at Seller's risk and shall be replaced by Seller's expense and shall be insured by Seller with loss payable to Buyer. (d) Where Buyer debits Seller for material, title to the material shall remain in Buyer, and title shall pass to Seller only at such time when payment is made by Seller for the material (whether by actual payment, or by an accepted set-off, against Seller's account and then only to the extent of such payment or accepted set-off), and until payment is made or set-off is taken by Seller, subsections (b) and (c) shall remain in full force and effect. (e) Until delivery to Buyer of items ordered, all work performed by Seller upon material furnished shall be at Seller's risk, in the event of loss, damage or destruction. (f) Nothing in this section shall be construed as imposing any obligation on Buyer to furnish material. Price set forth on order includes material to be furnished by Seller.
19. **CONFIDENTIAL RELATIONSHIP:** Seller agrees to treat as strictly secret and confidential all specifications, drawings, blueprints, nomenclature, samples, and models and other information supplied by Buyer, unless written consent of Buyer is first obtained. Seller shall not in any manner advertise, publish or release for publication, any statement mentioning Buyer or the fact that Seller furnished or contracted to furnish Buyer's articles required by this order. Seller shall not disclose any information relating to any order to any person not entitled to receive it. Buyer's blueprints, instructions and facilities (tools, etc.) shall be used exclusively in the production of articles required by this order for Buyer and shall not be used for production, manufacture, or design of any article for any other person, firm, or corporation, without Buyer's written consent. All blueprints and drawings furnished by Buyer to Seller remain Buyer's property and are returnable to Buyer upon demand.
20. **TOXIC SUBSTANCES:** Seller warrants that any chemical substance furnished hereunder is on the Toxic Substances Control Act inventory, or that the vendor has satisfied the Toxic Substances Control Act and regulations, including pre-manufacture notice requirements and that the chemical is legally available for sale and use. Seller warrants that he has supplied all appropriate information concerning any potential hazards involved in the use, handling, transportation, labeling, storage, or disposal of these chemicals, including warning labels, cautionary instructions and notices. Seller also warrants that he has supplied any data on the possible toxic or harmful effects the chemical may have and what precautions purchasers should take to eliminate or minimize those risks. In addition, if chemicals are furnished in bulk, Seller will furnish Buyer with a supply of labels/cautionary instructions/notices to be used in its plant.
21. **COMPLIANCE WITH LAWS:** Seller agrees to fully observe and comply with all applicable Federal, State, and local laws, rules, regulations, and orders pertaining to the production and sale of the goods ordered, and, upon request Seller shall furnish Buyer with certificates of compliance with such laws, rules, regulations and orders: and in particular, Seller certifies that it has met all the requirements of the Occupational Safety & Health Act and regulations. All invoices must bear a statement certifying that the goods or services were produced in accordance with the Fair Labor Standards Act and regulations.
22. **GOVERNMENT CONTRACTS:** If any order is placed, directly or indirectly, under a contract of the United States Government or any State, or other governmental authority, then all terms and conditions required by law, regulation or by the Government Contract with respect to said order are incorporated herein by reference. To the extent that the terms and conditions of any order are inconsistent with any such required terms and conditions, then the required terms and conditions shall prevail and be binding on both Buyer and Seller. Seller agrees, upon request, to furnish Buyer with a certificate or certificates in such form as Buyer may require certifying that Seller is in compliance with all such terms and conditions as well as any applicable law or regulation. Upon request, Buyer will make available to Seller copies of all pertinent terms and conditions required by any such Government contract.
23. **INDEMNIFICATION:** Seller agrees to defend, indemnify and hold harmless Buyer, its successors and assigns, customers and users of its products against all suits at law or in equity and from any and all damages, claims and demands, including reasonable attorney's fees, arising out of in any way related to the death or injury, to any person or damage to any property alleged to have resulted from the goods hereby ordered, and upon the tendering of any suit or claim to Seller to defend the same at Seller's expense as to all costs, fees and damages. The foregoing indemnification shall apply whether Seller or Buyer defends such suit or claims and whether the death, injury or property damage is caused by the sole or concurrent negligence of Seller or otherwise.
24. **RISK OF LOSS:** Seller will bear all risk of loss of all merchandise covered by any order until such merchandise has been delivered to the Buyer designated location.
25. **LABOR DISPUTES:** Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay, the timely performance of any order, Seller shall immediately give written notice thereof, including all relevant information with respect thereto to Buyer. Seller agrees to insert the substance of this clause, including this sentence, in any subcontract hereunder.
26. **TERMINATION:** (a) Buyer may terminate work on any order for its own convenience in whole or in part by written or telegraphic notice at any time. In that event, Seller's sole remedy shall be to recover from Buyer Seller's reasonable costs of work-in-progress and materials already purchased with due allowance for salvage value. Upon Buyer's payment to Seller in accordance with this paragraph, title to all equipment, materials, work-in-progress, finished products, plans, drawings, specifications, information, special tooling and other things for which Seller has paid shall vest in Buyer.  
(b) Buyer may, by written notice of default, cancel any order, without liability to Buyer, in the event of the happening of any of the following: insolvency of Seller, the filing of a voluntary petition in bankruptcy by Seller, the filing of an involuntary petition to have Seller declared bankrupt, the appointment of a Receiver or Trustee for Seller, or the execution by Seller of an assignment for the benefit of creditors.  
(c) If Seller fails to perform as specified herein, or if Seller breaches any of the terms hereof, Buyer may without liability, upon giving Seller written notice (i) Cancel any order in whole or in part by written notice to Seller and Seller shall be liable to Buyer for all damages, losses and liability incurred by Buyer directly or indirectly resulting from Seller's breach or (ii) obtain the goods ordered herein from another source with any excess cost resulting therefrom chargeable to Seller.  
(d) The remedies herein provided shall be cumulative and in addition to any other remedies provided at law or in equity.
27. **EQUAL OPPORTUNITY:** (a) The Equal Opportunity Clause in Section 202 Executive Order No. 11246, amended, relative to Equal Employment Opportunity, and the implementing rules and regulations of the Office of Federal Contract Compliance, and Section 503 of the Rehabilitation Act, are incorporated herein by specific references.
28. **MISCELLANEOUS PROVISIONS:** (a) The contract resulting from the acceptance of any order shall be interpreted under and shall be governed by the laws of New Hampshire. (b) The invalidity in whole or in part of any condition of any order shall not affect the validity of other conditions. The remedies herein reserved shall be cumulative, and additional to any other remedies in law or equity. Failure of Buyer to insist upon strict performance shall not constitute a waiver of the provisions hereof or waiver of any other default. (c) Seller agrees and represents that the prices specified in any order do not exceed current selling prices to similarly situated customers for the same or similar articles and for comparable quantities, and that such prices are not in excess of the maximum prices permitted by any applicable governmental regulations existing at the date of said order. (d) Seller agrees at his own expense to comply with any Federal and State Unemployment Insurance Law or Old Age Benefit Law or other Social Security Law or Workmen's Compensation Act, and Seller assumes all liabilities or obligations imposed by any one or more of such laws with respect to any order. (e) Unless otherwise stated on the face hereof, the order price includes all Federal, State, and local taxes applicable on any order.