

**NICHIDEN USA CORPORATION**  
**PURCHASE ORDER TERMS AND CONDITIONS**

1. **Acceptance.** This Purchase Order ("Order") constitutes an offer and expressly limits acceptance to the terms and conditions stated herein and any additional terms and conditions incorporated herein by reference or annexed hereto by NICHIDEN USA CORPORATION ("BUYER"). Additional or different terms and conditions proposed by Seller are objected to and hereby rejected unless expressly agreed upon in writing by BUYER. Acceptance of this Order by Seller shall occur either by Seller's written acceptance or by Seller's commencement of performance or first shipment. This Order, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the Order.

2. **Invoices; Price.** Invoices shall be submitted for each payment and shall contain the following information: BUYER's purchase order number, item number, description of item, quantities, unit prices, extended totals, and Seller's packing slip number. Seller shall furnish BUYER, upon BUYER's request, Bills of Lading, express receipts, or other proof of delivery. Payment of invoice shall not constitute acceptance of goods or services by BUYER, and shall be subject to adjustment for errors, shortages, defects, or other failures of Seller to meet the requirements of this Order. BUYER may at any time exercise rights of set off against any amount owed to Seller or any of Seller's affiliated companies. All payments made are to be credited by Seller against the invoice(s) referenced in BUYER's payment instrument or documentation. No increase in the price of the goods sold is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of BUYER.

3. **Over-shipments.** BUYER will pay only for quantities ordered. Over-shipments will be held at Seller's risk and expense for a reasonable time awaiting shipping instructions. Return shipping charges for over-shipped quantities will be at Seller's expense.

4. **Packing and Shipment.** Unless otherwise specified, at Seller's sole cost and expense, all goods shall be packed, packaged, marked, and otherwise prepared for shipment in a manner which is (i) in accordance with good commercial practice, (ii) acceptable to common carriers for shipment at the lowest applicable rate and in accordance with FMCSA or STB rules or regulations, or any other applicable laws, and (iii) adequate to insure safe arrival of the goods at the named destination. Seller shall mark all containers with necessary lifting, handling and shipping information, and with purchase order numbers, date of shipment, and the names of the consignee and consignor. An itemized packing sheet shall accompany each shipment. No partial or complete delivery shall be made hereunder prior to the date or dates shown unless BUYER has given prior written consent. If Seller fails to deliver the goods in full on the aforementioned delivery date, Seller shall indemnify BUYER against any losses, claims, damages, and reasonable costs and expenses which arise out of such failure.

5. **FCA Point.** Unless otherwise specifically provided on this Order, or otherwise agreed to in writing by BUYER and Seller, ordered goods shall be delivered FCA Seller's address as it appears on this Order and shipped to the delivery address designated by BUYER. Deliveries to the delivery address must be made in the quantities and at the times specified in this Order.

6. **Warranty.** Seller warrants that all goods and/or services sold, delivered or performed hereunder shall be free from defects in workmanship, materials, and manufacture, shall comply with the requirements of this Order, including any drawings or specifications referenced or incorporated in this Order, or samples furnished by BUYER or Seller and, where design is Seller's responsibility, shall be free from defects in design for the duration of manufacturer warranty. Seller warrants that all goods and/or services are in accordance with all applicable federal and state laws and standards, including, but without limitation, situations involving modification to BUYER's equipment or property. Seller further warrants that all goods and/or services purchased hereunder shall be of merchantable quality, and shall be fit and suitable for ordinary commercial purposes as well as for any special or unusual purpose intended by BUYER which are known to Seller. The foregoing warranties are cumulative and are in addition to all other warranties at law or in equity or under this Order. Seller hereby agrees to defend, indemnify and hold BUYER harmless of and from any and all costs, claims, liabilities, damages, attorneys' fees and causes of action whatsoever arising out of or in connection with any breach by Seller of any of the foregoing warranties. All warranties of Seller and the manufacturer of the Goods herein or by reason of law or equity shall extend to BUYER and to BUYER's direct and indirect customers, and to BUYER's successors and assigns. Seller shall execute such instruments as may be required to transfer the warranty to BUYER or its customers. BUYER's approval of Seller's materials or designs shall not relieve Seller of the warranties set forth in this clause, nor shall waiver by BUYER of any drawing or specification requirement for one or more of the items constitute a waiver of such requirements for the remaining items to be delivered hereunder unless so stated by BUYER in writing. The provisions of this clause shall not limit or affect the rights of BUYER under Section 7 of this Order.

7. **Inspection.** BUYER is not obligated to inspect or test any goods and/or services, but all goods and/or services purchased hereunder shall be subject to inspection and testing by BUYER. No inspection or test made prior to final inspection and acceptance shall relieve Seller from responsibility for defects or other failure to meet the requirements of this Order. If any item is defective in material or workmanship, or otherwise not in conformity with the requirements of this Order, BUYER shall have the right to reject it without correction, require its correction, accept it with an adjustment in price, or return it to Seller for full credit. Any item which has been rejected or required to be corrected shall be replaced or corrected by and at the sole cost and expense of Seller promptly after notice. If, after BUYER's request, Seller fails to promptly replace or correct any defective item within the delivery schedule, BUYER may, in addition to any other remedies to which BUYER may be entitled, (i) replace or correct such item and charge to Seller the cost occasioned thereby, (ii) without further notice, terminate this Order for default in accordance with the clause hereof entitled "Termination for Default" or/and (iii) require an appropriate reduction in price. Any inspection or other action by BUYER under this Section shall not reduce or otherwise affect Seller's obligations under the Order, and BUYER shall have the right to conduct further inspections after Seller has carried out its remedial actions.

8. **Changes.** BUYER may at any time, by a written order and without notice to sureties or assignees, suspend performance hereunder, increase or decrease the ordered quantities, or make changes within the general scope of this Order in any one or more of the following (i) applicable drawings, designs, or specifications (ii) method of shipment or packing, and/or (iii) place of delivery. If any such change causes an increase or decrease in the cost of or the time required for performance of this Order, an equitable adjustment shall be made in the order price or delivery schedule, or both, and this Order shall be modified in writing accordingly. No claim by Seller for any adjustment hereunder shall be valid unless asserted within twenty (20) days from date of receipt by Seller of the notification of change, provided that such period may be extended upon the written approval of BUYER. Nothing in this clause shall excuse Seller from proceeding with this Order as changed or amended. For clarity and avoidance of doubt, no change to this Order is binding upon BUYER unless it is in writing, specifically states that it amends this Order and is signed by an authorized representative of BUYER.

9. **Termination for Default.** (a) It is understood and agreed that time is of the essence under this Order. BUYER may, by written notice, terminate this Order in whole or part if Seller fails (i) to make delivery of the goods or perform the services within the time specified herein, or any extension thereof by written change order or amendment, or (ii) to replace or correct defective goods in accordance with this Order, or (iii) to perform any of the other provisions of this Order or so fails to make progress as to endanger performance in accordance with its terms. BUYER shall be the sole judge under such circumstances.

(b) In the event of termination pursuant to this clause, BUYER may procure, upon such terms and in such manner as BUYER may deem appropriate, goods and/or services similar or substantially similar to those terminated, and Seller shall be liable to BUYER for any excess costs occasioned

BUYER thereby, provided that Seller shall continue the performance of this Order to the extent not terminated.

(c) In the event of termination pursuant to this clause, BUYER in addition to any other rights provided herein or by law or equity, may require Seller to transfer title and deliver to BUYER, in the manner and to the extent directed by BUYER, any completed goods and services in the possession of Seller. Payment for such goods and/or services delivered to and accepted by BUYER shall be in an amount agreed upon by the Seller and BUYER (not to exceed the contract price).

10. **Termination Without Cause.** (a) BUYER shall also have the right to terminate this Order, in whole or in part, at any time, without cause, by written notice to Seller. Upon any such termination, Seller shall, to the extent and at the times specified by BUYER, stop all work on this Order, place no further orders hereunder, terminate work under orders outstanding hereunder, and protect all property in which BUYER has or may acquire an interest.

(b) Within twenty (20) days from such termination notice, Seller shall submit to BUYER Seller's written claim for termination charges in the form and with the certifications prescribed by BUYER, it being understood and agreed that only Seller's actual costs incurred and no profit shall be allowed for quantities terminated pursuant to this clause. Failure to submit a claim within such time shall constitute a waiver of all of Seller's claims and a release of all BUYER's liability to Seller arising out of such termination.

(c) BUYER reserves the right to verify claims hereunder, and Seller shall make available to BUYER, upon its request, all relevant books and records for inspection and audit. If Seller fails to afford BUYER its rights hereunder, Seller shall be deemed to have relinquished its claim.

(d) IN NO EVENT, UNDER THIS OR ANY OTHER SECTION OF THIS ORDER, OR IN CONNECTION WITH ANY TRANSACTION HEREUNDER BETWEEN, OR INVOLVING BUYER AND SELLER, OR THE GOODS OR SERVICES COVERED BY THIS PURCHASE ORDER, SHALL BUYER BE LIABLE TO SELLER (OR TO ANYONE ASSERTING A CLAIM ON SELLER'S BEHALF) FOR INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES OF ANY NATURE, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, REVENUES, AND/OR TERMINATION CHARGES PAID BY SELLER TO ITS SUPPLIERS.

11. **Responsibility for Goods.** Notwithstanding any prior inspections, and irrespective of the FCA point named herein, Seller shall bear all risk of loss, damage or destruction to the Goods called for hereunder until final acceptance by BUYER and Seller shall also bear the same risks with respect to any Goods rejected by BUYER.

12. **Waiver.** BUYER's failure to enforce at any time any of the provisions of this Order, to exercise any election or option provided herein shall in no way be construed to be a waiver of such provisions or the right of BUYER hereafter to enforce each and every such provision.

13. **Insolvency, Loss of Profits, Damages.** The insolvency or adjudication of bankruptcy, the filing of a voluntary petition in bankruptcy, or the making of an assignment for the benefit of creditors, by either party, shall be a material breach hereof. In no event shall Seller be entitled to anticipatory profits or to special or consequential damages.

14. **Subcontracting.** No subcontracting shall be made by Seller with any other party for furnishing any of the completed or substantially completed articles, spare parts, services or work herein contracted for without BUYER's prior written approval.

15. **Patents, Royalties, and Encumbrances.** All goods and/or services which are the subject of this Order shall be free from liability of BUYER for royalties, infringement of U.S. or foreign patent rights or copyrights, other third party claims of intellectual property rights, mechanic's liens or other liens or encumbrances. Seller agrees to defend, indemnify and hold BUYER harmless against all claims, costs, damages, and causes of action (including the payment of settlements, judgments and attorney's fees) arising out of or in connection with any actual or alleged infringements of patent, copyright and other intellectual property rights in the use, sale, resale or lease of said goods or services, and any other breach of the foregoing warranties.

17. **Compliance with Laws.** Seller warrants that no law, rule, or ordinance of the United States, any state, or any other governmental agency will be violated in the manufacture, sale or use of goods and/or in the performance of the services covered in this Order. Seller will comply with all applicable laws and will indemnify, defend and hold BUYER harmless from loss, cost, or damage as a result of any such actual or alleged violation or non-compliance. Seller shall provide BUYER with Material Safety Data Sheets for any hazardous materials shipped pursuant to this Order, and shall comply with all applicable laws, including but not limited to, the export control laws and regulations of the United States, affecting any such shipment.

18. **Confidential Information.** Goods purchased hereunder with BUYER's specifications or drawings shall not be quoted for sale to others without BUYER's express prior written authorization, which BUYER may grant or withhold in BUYER's sole and absolute discretion. Any specifications, drawings, samples, or other data furnished by BUYER shall be treated as confidential information by Seller, shall remain BUYER's property and shall be returned to BUYER on demand. Any documents or data prepared by Seller and which incorporate or disclose any confidential information of BUYER, shall be returned to BUYER upon demand, or shall be destroyed by Seller upon demand by BUYER, with Seller promptly providing BUYER a certificate attesting to such destruction. Seller shall keep all confidential information under this Order in the strictest confidence and shall not disclose any such confidential information to any third party unless authorized to do so by BUYER in writing.

19. **Assignments.** No right or obligation under this Order (including the right to receive money due hereunder) shall be assigned by Seller without the prior written consent of BUYER, and any purported assignment without such consent shall be void. BUYER may assign this Order at any time.

20. **Tooling and Documents.** All specifications, drawings or other documents and data furnished by BUYER, and all tools, dies, molds, jigs, fixtures, patterns, hobs, electrodes, punches, artwork, screens, tapes, templates, machinery, special test equipment and gauges, which have been furnished, paid for or charged against BUYER, or which have had their cost amortized shall remain at all times the property of BUYER, treated as confidential information and delivered in good condition, normal wear and tear excepted, by Seller to BUYER FCA Seller's plant, immediately upon demand. Seller warrants that said items and information will not be used for any work or the production of any materials or parts other than for BUYER without BUYER's prior written permission.

21. **Applicable Law and Venue.** This Order, and the obligations and performance of the parties hereto, shall be governed by the internal laws of the State of Illinois, without regard to conflict of laws principles. The parties agree that any action brought by either party regarding this Order or relating to any goods or services under this Order shall be brought and pursued only in state or federal courts located in Cook County, Illinois. Seller hereby consents to the personal jurisdiction of such Illinois courts and hereby waives any objection to such venue and personal jurisdiction.

22. **Severability; Attorneys' Fees.** If any provision of this Order is determined to be unenforceable, the other provisions of this Order shall remain in full force and effect. If either BUYER or Seller institutes any action or proceeding to enforce or interpret any provision of this Order, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs of suit.

23. **Rights of BUYER.** Notwithstanding any provision of this Order to the contrary, BUYER always retains the right to re-negotiate costs and adjust shipping schedules to maintain inventories.

24. **Survival.** Provisions of this Order which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Order.