

TERMS AND CONDITIONS

Overriding Agreement. - Acceptance by Seller of this purchase order from Wabash Technologies Inc. ("Wabash") for the herein enumerated items and/or services ("Products"), which purchase order is acknowledged hereby to be an offer to contract, is expressly conditioned upon the agreement of Seller that the provisions herein control the purchase order and the further condition that any prior communications shall be considered as negotiations and merged into and superseded hereby. No condition, different or additional provisions stated by Seller in any acceptance or acknowledgement of this purchase order shall be binding upon Wabash unless expressly accepted by an authorized representative of Wabash in writing. Unless the context requires otherwise, the provisions hereof and the term "Order" when used herein, shall encompass this purchase order as well as a contract or agreement resulting from implementing this purchase order. Unless otherwise provided herein, the written acceptance by Seller of this purchase order or the commencement of any work or the performance of any services hereunder by Seller (including work or services with respect to samples) shall constitute acceptance by Seller of the provisions of this Order. No provisions other than those set forth in this Order (which Order includes any document attached to or incorporated by reference) shall be binding upon Wabash unless accomplished in accordance with these terms and conditions.

Delivery/Shipping. - Unless otherwise specifically expressed in this Order:

1. Seller shall not fabricate any Products or procure any of the material required for same, or ship any Products to Wabash, except to the extent authorized in written shipping and/or delivery schedules and/or instructions furnished by Wabash. Wabash shall have no responsibility for Products for which such schedules or instructions have not been provided, and same may be returned to Seller and Seller shall pay all packaging, handling, storage and transportation expenses and all other expenses in connection therewith. Wabash from time to time may direct complete or partial suspension of such instructions and/or schedules without liability of, or expense to, Wabash, except as expressed herein under Changes.

2. At Seller's expense, Seller shall properly pack and mark each package with Wabash's purchase order number, part number, factory, plant and/or dock number and all in accordance with any applicable requirements of Wabash and common carriers in a manner to secure lowest transportation costs.

3. Wabash's purchase order, part, and package numbers shall be shown on related packing slips, bills of lading and invoices.

4. No charge shall be made to Wabash for packing, marking, drayage, storage or otherwise.

5. Seller shall describe Products on the bill of lading and other shipping receipts and shall route shipment in accordance with instructions issued by Wabash. If no shipping instructions are given by Wabash, Seller shall ship via a licensed carrier by the method and route providing the lowest transportation cost consistent with the contemplated delivery schedule. Seller assumes responsibility for any losses incurred in shipping not promptly made good by the carrier.

Price. - If prices for Products are higher than specified initially by Wabash in this purchase order, Seller must secure Wabash's written approval for any such increase prior to any contract being created. If the price for a Product is higher than the price last quoted in writing to or paid by Wabash, or the market price at shipment whichever is lower, Seller believes that such prices do not exceed any existing applicable price limitations established by any duly constituted governmental authority. If otherwise, Seller shall refund to Wabash any such excess. Seller warrants that the prices are no higher than are currently available from Seller to any other purchaser of Products. No extra charges of any kind will be allowed unless specifically agreed to in writing by an authorized representative of Wabash in advance. All government imposed excise, manufacturing, sales, use and similar taxes shall be the obligation of Seller, except where expressly stated herein and separately and conspicuously indicated on the invoice to be the obligation of Wabash. Any cash discount period shall be computed from the date of receipt by Wabash of a complete and correct invoice, or Products, whichever is later. On invoices returned for completion or correction, the cash discount period shall run from the date of Wabash's receipt of the completed or corrected invoice. Unless freight, taxes, and other charges to Wabash, if any, are itemized, any discount will be taken on the full amount of the invoices. All payments are subject to adjustment prior or subsequent to being made, for a shortage, correction, or rejection. A bill of lading must be included with shipment or mailed to Wabash at Wabash's receiving point without delay.

Changes. - No representative of Wabash, excepting only its President or Vice President by expressed writing, has the authority to change any provision contained herein in any manner. Wabash may at any time by written notice make changes in drawings, specifications, descriptions, and/or shipping and delivery instructions. If any such changes materially affect Seller's necessary cost related thereto, an equitable adjustment shall be made in the price. Requests for adjustments by one party under this provision must be made within thirty (30) days of the date of change was ordered or within such further period as the non-requesting party may allow in writing.

Delivery. - Unless Wabash has expressly provided otherwise herein, delivery shall not be complete until Products have been received and accepted from the carrier at Wabash's receiving dock by Wabash, notwithstanding any agreement to pay transportation and/or any other related charges.

Non-Payment by Wabash. - Wabash shall not be liable for failure to perform hereunder arising from causes beyond the reasonable control of Wabash, including but not limited to labor disputes, and Wabash may, in addition to its other rights set out in this Order, and whether or not such default is sufficient justification for Wabash to have the option to terminate further performance hereunder, defer payment and/or other performance by Wabash during any period in which Seller is in default hereunder. The unjustified failure by Wabash to pay any amount to Seller in accordance with this Order shall be actionable by Seller and the Seller, as its sole, complete, and exclusive remedy may recover any such amount to which Seller is entitled, and in addition thereto, interest at the rate of six percent (6%) per annum during the period of such unexcused failure until paid.

Termination at Option of Wabash. - Unless otherwise specifically expressed in this Order:

1. Ongoing performance of work hereunder may be terminated in whole or in part by Wabash at its option and for any reason sufficient in the sole business judgment of Wabash at any time by written notice to Seller. After receipt of such notice, Seller shall, unless otherwise directed by Wabash, immediately terminate all work hereunder, and

(a) Terminate all orders and contracts relating thereto.

(b) Reasonably settle all claims arising out of such terminations.

(c) Transfer title and deliver to Wabash (i) all completed work which conforms to the requirements hereof and does not exceed in quantity, the amount authorized by Wabash for production, and (ii) all reasonable quantities (but not to excess of amounts authorized by Wabash) of work in process and materials produced or acquired in commencing performance of the work terminated which are of the type and quality suitable for producing Products which conform to the requirements of this Order and which cannot reasonably be used by Seller.

(d) Take all action necessary to protect property in Seller's possession in which Wabash has or may acquire an interest.

(e) Submit to Wabash promptly, and in all events not later than three months from termination (one month in the case of partial termination), Seller's termination claim: provided, however, that in the event of failure of Seller to so submit, Wabash may determine in good faith, notwithstanding the provisions of paragraph 2 hereof, on the basis of information available to it, the amount, if any, due Seller with respect to the termination, and such determination shall be final.

2. Upon termination by Wabash under this captioned section, Wabash shall pay to Seller the following amounts without duplication:

(a) The price herein for all Products completed and delivered in accordance with this Order and not previously paid.

(b) The actual and necessary incurred net (non-recoverable through mitigation by Seller) costs incurred by Seller properly allocable under generally accepted accounting principles and practices to the balance of the Products not provided for in (a) above, including work in process and raw materials; such costs to be in no event include anticipated profits or exceed the price allocable to such balance of Products in this Order.

3. The provisions of paragraph 2 above shall not apply if, and for so long as Seller is in default hereunder.

Assignment. - Seller shall not delegate its performance under this Order. Seller shall not assign any interest in this Order or any payment due or to become due hereunder without first obtaining written consent from an authorized representative of Wabash. Whether Wabash does or does not give its written consent to an assignment of any payment hereunder, Wabash shall be entitled to assert against Seller, alone, in the absence of an assignment or against Seller and Seller's assignees if any, all rights, claims and defense of every type arising from any cause whatsoever within or outside the scope of this Order (including without limitation, rights of setoff, recoupment, and counterclaim) which Wabash could assert against Seller or such assignee, whether acquired prior to or subsequent to such assignment.

Compliance with Laws. - In Seller's performance hereunder, Seller shall comply with all applicable laws, ordinances, executive orders and regulations thereunder, and this Order shall be deemed to incorporate by reference all the clauses required thereby.

Warranties and Cumulative Rights and Remedies. - Seller warrants that Products and the materials and components incorporated therein shall be free from defects in material and workmanship; shall be merchantable and fit for such purposes and uses if any as specified by Wabash and that the design shall satisfy all requirements of any samples, drawings, and/or specifications as may be identified or incorporated herein or supplied to or by Seller in connection therewith. Seller further warrants that all performance hereunder by Seller will be by careful, efficient, qualified persons in the best and most workmanlike manner and will conform to the specifications and the highest standards applicable in the field. These warranties shall continue notwithstanding any inspection, receipt, acceptance, or payment by Wabash. These warranties extend to Wabash, its successors, assigns, customers, and users of its products. Products not in conformity herewith, at Wabash's option and at no expense to Wabash, (1) may be retained by Wabash at an equitable adjustment in price, (2) may be returned to Seller for repair, replacement, correction, credit, or refund as specified by Wabash, or (3) may be corrected in place by Seller or by Wabash, at Wabash's option, at Seller's expense. Seller assumes all risk of loss or damage to Products rejected by Wabash while they are in Wabash's possession (excepting only Wabash's willful actions) and while they are in transit. Defective or non-conforming Products, shall not be replaced by Seller absent specific authorization from Wabash. Seller shall bear the transportation, handling, storage and related expenses of rejected Products. Seller shall, at its sole expense, indemnify, defend and hold Wabash harmless from and against any and all claims made against Wabash based upon, relating to, or directly or indirectly, arising out of any claimed defects in Products or some other aspect of Seller's performance hereunder. It is understood and agreed that tender of non-conforming Products may substantially impair this entire Order and may cause Wabash special damage. Warranties, rights, and remedies provided Wabash herein are not exclusive and are in addition to and cumulative with any other warranties, rights, or remedies provided by law or in equity.

Seller's Default. - Should seller fail or refuse to perform any provision of this Order, or should Wabash reasonably conclude that the prospects of future performance by Seller hereunder is impaired, and in either event, same shall be a default to Seller hereunder and Wabash may delay or terminate further performance, in whole or in part, by Wabash without such termination or delay being a default by Wabash hereunder upon notice being given to Seller of such election. Without limitation of the generality of the foregoing, any non-conformity in any lot or installment delivered hereunder shall constitute grounds for rejection by Wabash of such lot or installment. In addition, Wabash may cancel the entire balance of the entire Order for any such non-conformity, without such cancellation being a default of Wabash hereunder.

Indemnification by Seller. - Seller shall indemnify and hold Wabash harmless from any loss, penalty, and/or damages, including but not limited to attorney fees, resulting from or arising in connection with any default hereunder by Seller.

Non-Waiver. - Any waiver or failure of Wabash to require strict compliance with any provision of this Order shall not be deemed to be a waiver of Wabash's rights to insist upon strict compliance in other respects or thereafter in the same respect.

Friendly Assistance. - No accommodation or attempted accommodation or other friendly assistance by Wabash in respect to any business situation in which Wabash may undertake or agree to undertake additional obligations beyond those legally required by Wabash hereunder, shall be binding or enforceable upon Wabash beyond the extent performed by Wabash nor shall any such action be deemed to constitute a waiver of, change or otherwise extend the terms hereof and the legal responsibilities of Wabash or Seller in any manner whatsoever.

Inspection and Testing. - All Products are subject to inspection and testing at all times and places, either before, during, or after shipment, in accordance with procedures established from time to time by Wabash. Where rejection of non-conforming Products exceeds Wabash's established acceptance quality levels, Wabash may conduct a 100% inspection and charge Seller the cost thereof. Seller's facilities for producing and furnishing Products shall at all times be subject to inspection by Wabash. Seller shall maintain complete and detailed records of all inspections and tests which shall indicate the nature and number of observations made, the number and type of deficiencies found, the quantities approved and rejected, and the nature of any corrective action taken. Such records shall be available to Wabash at all times, and unless otherwise agreed to in writing by an authorized representative of Wabash, shall be retained by Seller for a period of at least five (5) years from the date of the last delivery hereunder. The Seller shall have on file, subject to audit by Wabash, adequate data showing the physical and chemical properties of all Products as well as components and raw material incorporated therein, and shall impose the same requirements on any subcontractors.

Confidential Information of Seller. - If any information which Seller discloses to Wabash in connection with this Order is considered confidential and/or proprietary by Seller, prior to disclosure Seller shall conspicuously notify Wabash of that fact, and Wabash shall thereafter take precautions to protect Seller's interest therein, which precautions shall be conclusively presumed adequate and acceptable to Seller unless Seller shall request a written particularization of Wabash's intended precautions and shall object to their adequacy prior to making disclosure of the information sought to be protected. Such particularized precautions, if taken as furnished in writing to Seller, shall be conclusively presumed adequate, Seller's sole option being to decline to disclose such confidential or proprietary information until such written particularization, if accomplished, is acceptable to Seller.

Patents. - Seller agrees to indemnify and hold harmless Wabash, its successors, assigns, customers, and users of its products against any and all liability, loss and expense (including but not limited to attorney fees and court costs) by reason of any claim, action or litigation arising out of any alleged or actual, direct or contributory infringement of patents arising from the purchase, use or sale of the Products. In case the purchase, use or sale of the Products, or any part thereof, is held to constitute infringement and/or is enjoined. Seller shall, at its own expense, procure for Wabash, its successors, assigns, customers and users of its products, the right to continue the purchase, use and sale of the Products; or, with the approval of Wabash, modify the Products so they become non-infringing, or remove the Products and refund the price and installation, transportation, and storage costs thereof. If this order involves experimentation, research or development work, Seller agrees to grant to Wabash an irrevocable, non-exclusive, and royalty-free license to make, have made, use, and sell any inventions resulting from work under this Order.

Material Furnished by Wabash. - Unless otherwise expressly stated in writing, any material furnished by Wabash in connection with this order shall remain Wabash's property. All such materials not used in the manufacture of Products shall, as directed, be returned to Wabash at Seller's expense, and if not accounted for or so returned shall be paid by Seller. The furnishing of any material or other items by Wabash shall in no way release Seller from Seller's obligations hereunder.

Special Tooling. - All special dies, tools, patterns, designs, drawings, materials, information, and/or equipment directly or indirectly used in the furnishing of Products; either furnished or paid for by Wabash or purchased from funds furnished by Wabash as allocated on Seller's books, belong to and shall be the property of Wabash, and shall not be used by Seller for the benefit of any other entity, and may be removed by Wabash at any time. All such items while in the possession of Seller shall be maintained and cared at Seller's expense and Seller shall bear the risk of loss and damage to same.

Notice. - Any notice required or permitted to be given to Wabash hereunder shall be sufficient if received by Wabash's Purchasing Agent at the address first above written. Any notice required or permitted to be given to Seller shall be sufficient if sent to Seller at the address first above written. Either party hereto may change its address for notice purposes by written notice to the other party.

Seller Advertising. - Seller, and Seller's successors, may not use or refer to Wabash in its direct or indirect merchandising campaign without the prior express written approval of Wabash.

Captions. - Captions on sections of these terms and conditions are inserted only for convenience and reference, and shall not be construed to limit the scope or intention of any provision thereof.

Limitation of Actions. - Any action for Wabash's alleged breach of the agreement created hereby must be commenced within twelve (12) months after the occurrence of the facts alleged to constitute a breach.

Errors. - Errors in the non-printed section thereof, either typographical or clerical, are subject to correction by Wabash.

Severability. - If any clause hereof is determined to be contrary to law, unconscionable, or otherwise unenforceable by any third party with authority to make a binding determination, the clause in question shall be modified in its effect only to the extent necessary to bring it within the minimum standard required, and if so modified the clause shall remain binding upon the parties. The remaining provisions of this instrument shall not be affected by such modification.

Controlling Law. - This transaction shall be construed according to the laws of the state in which Wabash's receiving point is located as indicated by the address on the face of this Order.