

## **VALTECH CORPORATION PURCHASE ORDER TERMS AND CONDITIONS**

These terms and conditions shall apply to all sales to Valtech Corporation ("Buyer") by you ("Seller") from the date of your receipt of these terms, whether received by mail, by facsimile or by other electronic means until such time as you receive a revised edition of these terms and conditions or other notice from Buyer of their revocation.

Additional or different terms, conditions or instructions applicable to a particular sale may be specified in the body of the purchase order or an exhibit thereto or in a separate contract to be negotiated between either Buyer or Seller and, in event of a conflict, will take precedence over these terms and conditions.

**1. ACCEPTANCE** - Acceptance of any order placed by Valtech Corporation is expressly limited to the terms and conditions set forth in this document, the applicable purchase order and the product specifications or receiving specifications applicable to the products ordered. Any terms and conditions contained in a proposal, quotation or invoice of Seller shall not constitute a part of the contract of sale resulting from Seller's acceptance of Buyer's order unless such terms and conditions are specifically agreed to in writing signed by Buyer's Purchasing Manager. Sellers shipment of goods in response to Buyer's order shall constitute acceptance on the terms and conditions set forth in this document and any additional or different terms contained in any acknowledgment, delivery receipt or invoice form submitted by Seller shall not constitute any part of the contract of sale resulting from Seller's acceptance. Any purchase order becomes a contract upon delivery of the goods or the performance of the services described in the purchase order. Partial performance under any purchase order is deemed acceptance of such purchase order in its entirety.

**2. QUALITY ASSURANCE PROCEDURES** - So long as there are purchase orders outstanding to which these terms and conditions apply, Seller agrees that it shall not materially alter its vendor certification process or quality assurance procedures from those in effect when Seller was first inspected by Valtech Corporation for purposes of becoming a Valtech Corporation supplier, except to make changes thereto to improve the quality of Seller's products.

**3. DELIVERY TERMS** - **Each product delivered shall be accompanied by a certificate of analysis** A Bill of lading must accompany every order that contains manufacturer lot identification numbers. Driver will be responsible for all palletizing and re-stacking. Buyer's purchase order number must be on the bill of lading. Product description must be clearly defined on the bill of lading. Any discrepancies in quantity or product specification will be noted; all originals must be left at the delivery warehouse, and copies will be signed and returned with the driver. A signature by Buyer's Receiving Manager or his designee will be the only proof of delivery.

**4. DELIVERY SCHEDULES** - Time is of the essence. In accepting any purchase order, Seller shall perform any purchase order and make deliveries as required hereby. Deliveries are to be made both in the quantities and at the time specified in schedules furnished by Buyer and shall not be excused by Seller's inability to obtain materials, supplies or labor. Buyer from time to time may change its delivery schedules by prior verbal notice to Seller. Seller is responsible to notify the Buyer of any possible disruption to service, including but not limited to strikes, equipment replacement or installations, facility improvements, production shut downs. Seller must provide Buyer with thirty (30) days notification of any labor contract expiration dates.

**5. PRODUCT SPECIFICATIONS, PRICE, QUANTITY AND PAYMENT TERMS, AUTHORIZATION**. Valtech Corporation Purchasing Personnel shall have the sole authority to negotiate price and product specifications. Buyer shall have the sole authority to negotiate quantity and terms of payment. Manufactured date must be clearly labeled on outer and inner packaging. Documentation must be supplied explaining interpretation of manufactured date code.

**6. EXCESS QUANTITY/UNAUTHORIZED PRODUCTS** - Buyer accepts no responsibility for: (i) goods or materials shipped in excess of quantities specified in a purchase order; (ii) products not authorized in a purchase order; and (iii) product shipped to an unauthorized location and any such excess and products may, at Buyer's option be returned to Seller at Seller's expense.

**7. PRODUCT REJECTION**. Valtech Corporation shall receive all goods subject to rejection. Seller will be notified of defective goods recalled by Valtech Corporation, or goods not conforming with any applicable purchase order or product specification. Such goods shall be held at Seller's risk and may, at Valtech Corporation sole discretion be returned to Seller at Seller's sole expense. Payment shall not constitute acceptance, nor will acceptance discharge any of Seller's other responsibilities hereunder. Seller shall grant Valtech Corporation a credit for all rejected goods. Seller will pay all of Valtech Corporation's costs associated with product rejection, including, without limitation, any administrative costs.

**8. INVOICING**. Original invoices must be sent to Valtech Corporation **BUYER PURCHASE ORDER NUMBER MUST BE ON ALL INVOICES**. Payment terms must be clearly defined to include purchase discounts. Payment discount terms will be acknowledged from the receipt date of the invoice. Buyer will not wait for credits for damaged or shorted products.

**9. PAYMENT TERMS** - All cash discount periods will be computed from the date of receipt by Buyer of either a correct invoice or goods, whichever is later. All payments will be adjusted to correct errors in billing and/or unauthorized product costs. Buyer reserves the right to assess an administrative fee for unauthorized costs, retail, UPC, item codes, description, case count, size and weight to reimburse Buyer's costs, which fee shall not be deemed to be a penalty. Buyer will reflect adjustments at the time of payment. Buyer will not pay any finance or late charges.

Any reduction in applicable freight rates, customs duties, import taxes, excise taxes, and/or sales taxes from those in force on the date of any purchase order, regardless if stated on the face of any purchase order, shall be refunded to Buyer or credited against the price of the goods.

**10. PRICE REDUCTION DISCOUNTS** - Notwithstanding the prices set in any purchase order, Buyer shall receive the benefit of any general reduction in price or prices of goods ordered by purchase order which may be made by Seller at any time and from time to time prior to the last delivery of goods covered by any purchase order.

Buyer shall also receive the full benefit of all discounts, allowance, premiums and other favorable terms of payment customarily offered by Seller to its customers or customary in the trade, including, but not limited to, all trade, promotional and quantity discounts and any discount offered in exchange for early payment.

**11. CANCELLATION** - (a) In addition to all rights granted by law, Buyer reserves the right to cancel all or any part of any purchase order without payment or penalty if: (i) Seller does not make deliveries as specified, or if Seller breaches any of the terms hereof, including warranties of Seller; (ii) Buyer's business purpose is substantially frustrated; (iii) in the event Seller becomes insolvent or there is filed by or against Seller a petition in bankruptcy, reorganization or other insolvency proceeding; and/or (iv) the goods do not conform to samples; and/or (v) any goods do not conform to the warranty provided by Seller pursuant to Section 13 hereof.

Seller shall have no liability to Seller in the event all or any part of any purchase order is canceled or terminated hereunder.

**12. TRANSPORT AND PACKAGING** - All merchandise shall be suitably packed, marked and shipped in accordance with Buyer's instructions, or, in the absence of such instructions, in accordance with the requirements of common carriers in a manner to secure lowest transportation costs and avoid any damage in transit, and no additional charge shall be made to the Buyer therefore unless otherwise stated in any purchase order. Breakage or damage will be charged to Seller. If applicable, a packing slip must be enclosed in all shipments showing purchase order number, exact quantity and description of goods shipped, and lot markings for traceability.

**13. WARRANTY** - In addition to all warranties imposed by law, Seller expressly warrants that: all merchandise, goods and work covered by any purchase order will conform to the specifications, drawings, samples or other description furnished by Seller or specified by Buyer, and will be, new, free from defects, fit for the purpose intended, merchantable and of good material and workmanship; all merchandise, products, packaging, goods and services will comply with all applicable federal, state and local laws, statutes, codes, ordinances, rules and regulations; Seller has good title to the material, free from liens and encumbrances; none of the products, merchandise, goods and services infringe upon any patent, trademark, trade name or copyright of any third party; and the prices for the goods sold under any purchase order are not less favorable than those currently extended to any other customer for the same or like goods in equal or less quantities. In the event Seller reduces its prices for such goods during the term of any purchase order, Seller will reduce the prices to Buyer accordingly. This warranty shall survive any inspection, delivery, acceptance or payment by Buyer and shall extend to Buyer, their successors, assigns, customers and users of the products purchased hereunder.

**14. INDEMNIFICATION AND INSURANCE** - Seller will defend, indemnify and hold harmless Buyer, its successors and assigns, its successors and assigns and each of their customers and representatives from and against any and all liabilities, claims, demands, loss, damage or cost (including attorney's fees) for injuries or damage to any person or property arising out of the purchase, use or sale of the goods purchased by any purchase order and the performance of any purchase order, or a breach of any warranty or representation of Seller.

Seller shall maintain the following insurance with companies acceptable to Buyer, naming Valtech Corporation as an Additional Insured: workers' compensation in statutory amount; employer liability of not less than Two Million Dollars (\$2,000,000); general liability insurance, including products liability and automobile insurance, naming Buyer as additional insured, in a combined single limit amount of not less than Ten Million Dollars (\$10,000,000). Seller will provide Valtech Corporation evidence of such insurance prior to delivery of any products, or goods or the performance of any service. Such insurance shall not be cancelable without thirty (30) days prior notice to Valtech Corporation. The purchase of such insurance coverage or the furnishing of the aforesaid certificate shall not be satisfaction of Seller's liability hereunder or in any way modify Seller's indemnification of Buyer.

**15. CONFIDENTIALITY** - Any specifications, drawings, designs, manufacturing data and any other information transmitted to Seller by Valtech Corporation in connection with the performance of any purchase order are the property of Valtech Corporation and are disclosed in confidence upon the condition that they are not to be reproduced or copied or used for furnishing information or equipment to others. Seller will not, without the prior written consent of Valtech Corporation, in any manner advertise or publish the fact that Seller has contracted or furnished goods to Valtech Corporation.

**16. CONTRACT** - Any purchase order becomes a contract upon delivery of the goods or the performance of the services described in the purchase order. Partial performance under any purchase order is deemed acceptance of such purchase order in its entirety.

**17. ASSIGNMENT** - Seller shall not delegate any obligations, nor assign any rights or claims hereunder, without the prior written consent of Buyer, and any attempted delegation or assignment by Seller without such written consent shall be void.

**18. REMEDIES**. The remedies herein reserved shall be cumulative and additional to any other or further remedies provided in law or equity including the right to cover.

**19. FORCE MAJEURE** - Buyer and Seller may delay delivery and/or acceptance due to war, riot, fire, flood, or any other act of God, provided that Buyer may cover during the period that Seller cannot make required deliveries. If Seller is delayed in fulfilling an order in excess of five (5) days, Buyer may cancel the affected order without any liability at any time thereafter. If Seller's ability to fulfill an order is only partially restricted or delayed, Seller shall use its best efforts to accommodate the requirements of Buyer, including giving any affected order preference and priority over those of other customers, which were placed after such order.

**20. DISRUPTION OF SERVICES** - Seller is responsible to immediately notify Valtech Corporation in writing of any reasonably possible disruption to service, including but not limited to Force Majeure Events, strikes, equipment replacement or installations, facility improvements, production shut downs. In the event that Seller experiences a disruption in service, Seller agrees to use its best efforts to comply with its obligations under these Terms and Conditions and all pending purchase orders, through the use of alternate labor sources and suppliers, provided, however, that Valtech Corporation, must consent in writing to any alternate labor source prior to such persons or suppliers assuming any duties pursuant to any pending purchase orders, which consent may not be unreasonably withheld. In the event Seller notifies Valtech Corporation of a disruption in service, Valtech Corporation reserves the right to terminate any purchase order which has not been delivered by Seller in full as of the date of such notice, and to contract alternative suppliers to fill all pending purchase orders previously placed with Seller. If Valtech Corporation contracts with an alternate supplier due to a strike, labor dispute or other work stoppage experienced by Seller, and due to the use of such alternative supplier, Valtech Corporation incurs costs beyond what it would have otherwise paid Seller for such orders, Seller agrees to indemnify Valtech Corporation against all such additional costs, which obligation shall be promptly satisfied by Seller upon request of Valtech Corporation. Seller must provide Valtech Corporation with ninety (90) days prior written notification of any labor contract expiration dates. Both Valtech Corporation and Seller specifically acknowledge and agree that any labor strike, work stoppage or other labor dispute on the part of Seller's employees or vendors shall not constitute a Force Majeure Event.

**21. IN-STOCK REQUIREMENT**. Seller shall provide Valtech Corporation with products sufficient to maintain a ninety-nine percent (99%) in-stock percentage, per scheduled delivery day (the "In-Stock Standard"). Seller must notify Valtech Corporation in writing of any expected shortage as soon as it is aware that a shortage of any product item will occur or may reasonably be expected to occur. In the event that Seller fails to maintain the In-Stock Standard, Valtech Corporation shall have the right to deduct from amounts then payable to Seller an amount representing Valtech Corporation's lost gross profit caused by Seller's failure to maintain the required In-Stock Standard.

**22. SEVERABILITY** - If any provision of these terms and conditions or any resulting purchase order are found by a court of competent jurisdiction to be prohibited or unenforceable, it shall be ineffective only to the extent of such prohibition or un-enforceability, and such prohibition or unenforceability shall not invalidate the balance of such provision to the extent it is not prohibited or unenforceable, nor invalidate the other provisions hereof, all of which shall be liberally construed in favor of Buyer in order to effect the provisions hereof.

**23. ATTORNEY'S FEES** - In the event of any litigation arising out of any purchase order, the prevailing party shall be entitled to actual reasonable attorney's fees plus costs of suit.

**24. PRODUCT SAFETY NOTIFICATION** - Whenever Seller becomes aware that any ingredient of a product sold to Valtech Corporation is or may be harmful or otherwise unusable, Seller shall immediately notify Buyer, by telephone notice to Valtech Corporation Purchasing Manager, followed by written confirmation within twenty-four (24) hours, including all relevant information with respect thereto Seller shall reimburse Buyer's administrative costs associated with a recall in addition to any other remedy available to Buyer.

**25. NOTICE** - All notices required to be given hereunder, or which may be given, shall be sent by United States certified or registered mail, return receipts requested, addressed to the parties at the addresses set forth on the purchase order and shall be deemed given three (3) business days after deposit in the mails.

**26. WAIVER** - No waiver of a breach of any provision of any purchase order shall constitute a waiver of any other breach, or of such provision. Seller shall be liable for all damages, direct and indirect, resulting from the breach of any of the terms and conditions herein contained.