

# PURCHASE ORDER TERMS AND CONDITIONS

## Acceptance – Agreement

Sellers commencement of work on the goods subject to this purchase order or shipment of such goods, whichever occurs first, shall be deemed an effective mode of acceptance of this purchase order. Any acceptance of this purchase order is limited to acceptance of the express terms contained within the purchase order, this document, or referenced attachments hereof. Any proposal for additional or different terms or any attempt by the Seller to vary in any degree any terms of this offer in Seller's acceptance is hereby objected to and rejected, but such proposals shall not operate as a rejection of this offer unless such variances are in the terms of the description, quantity, price or delivery schedule of the goods, but shall be deemed a material alteration thereof, and this offer shall be deemed accepted by Seller without said additional or different terms. If this purchase order shall be deemed an acceptance of a prior offer by Seller, such acceptance is limited to express terms contained within the purchase order, this document, or referenced attachments hereof. Additional or different terms or any attempt by Seller to vary in any degree any of the terms of this purchase order shall be deemed material and are objected to and rejected but this purchase order shall not operate as a rejection of the Seller's offer unless it contains variances in the terms of the description, quantity, price or delivery schedule of the goods.

## Termination for Convenience of Natural Beauty (NB)

Natural Beauty (NB), hereafter referred to as NB, reserves the right to terminate this order or any part hereof for its sole convenience. In the event of such termination, Seller shall immediately stop all work hereunder, and shall immediately cause any of its suppliers or subcontractors to cease such work. Seller shall be paid a reasonable termination charge consisting of a percentage of the order price reflecting the percentage of the work performed prior to the notice of termination, plus actual direct costs resulting from termination. Seller shall not be paid for any work done after receipt of the notice of termination nor for any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided.

## Termination for Cause

NB may also terminate this order or any part hereof for cause in the event of any default by the vendor, or if the vendor fails to comply with any of the terms and conditions of this purchase order. Late deliveries, deliveries of products which are defective or which do not conform to this Order, and failure to provide NB upon request of reasonable assurances of future performance shall all be causes allowing purchaser to terminate this order for cause. In the event of termination for cause, NB shall not be liable to Seller for any amount, and Seller shall be liable to purchaser for any and all damages sustained by reason of default which gave rise to the termination.

## Proprietary Information-Confidentiality-Advertising

Seller shall consider all information furnished by NB to be confidential and shall not disclose any such information to any other person, or use such information itself for any purpose other than performing this contract, unless Seller obtains written permission from NB to do so. This paragraph shall apply to samples, drawings, specifications, or other documents prepared by Seller for NB in connection with this order. Seller shall not advertise or publish the fact that NB has contracted to purchase goods from Seller, nor shall any information relating to the order be disclosed without NB's written permission. Unless otherwise agreed in writing, no commercial, financial or technical information disclosed in any manner or at any time by Seller to NB shall be deemed secret or confidential and Seller shall have no rights against purchaser with respect thereto except such rights as may exist under patent laws.

## Warranty

Seller expressly warrants that all goods or services furnished under this Agreement shall conform to all specifications and appropriate standards, will be new, and will be free from defects in material or workmanship. Seller warrants that all such goods or services will conform to any statement made on the containers, or labels or advertisement for such goods, or services, and that any goods will be adequately contained, packaged, marked and labeled. Seller warrants that all goods or services furnished hereunder will be merchantable, and will be safe and appropriate for the purpose for which goods or services of that kind are normally used. If Seller knows or has reason to know the particular purpose for which NB intends to use the goods and services, Seller warrants that such goods or services will be fit for such particular purpose. Seller warrants that goods or services furnished will conform in all respects to samples. Inspection, test, acceptance or use of the goods or services furnished hereunder shall not affect the Seller's obligation under this warranty, and such warranties shall survive inspection, test, acceptance and use. Seller's warranty shall run to NB, its successors, assigns and customers, and users of products sold by NB. Seller agrees to replace or correct defects of any goods or services not conforming to the foregoing warranty promptly, without expense to NB, when notified of such non-conformity by NB, provided NB elects to provide Seller with the opportunity to do so. In the event of failure of Seller to correct defects in or replace nonconforming goods or services promptly, NB after reasonable notice to Seller, may make such corrections or replace such goods and services and charge Seller for the cost incurred by NB in doing so.

## Price Warranty

Seller warrants that the prices for the articles sold NB hereunder are not less favorable than those currently extended to any other customer for the same or similar articles in similar quantities. In the event Seller reduces its price for such article during the term of this order, Seller agrees to reduce the prices hereof correspondingly. Seller warrants that prices shown on this purchase order shall be complete, and no additional charges of any type shall be added without NB's express written consent. Such additional charges include, but are not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing, crating.

## Force Majeure

NB may delay delivery or acceptance occasioned by causes beyond its control. Seller shall hold such goods at the direction of NB and shall deliver them when the cause affecting the delay has been removed. NB shall be responsible only for Seller's direct additional costs in holding the goods or delaying performance of this agreement at NB request. Causes beyond NB's control shall include but are not limited to government action or failure of the government to act where such action is required, strike or other labor trouble, fire or severe weather.

## Patents

Seller agrees upon receipt of notification to promptly assume full responsibility for defense of any suit or proceeding which may be brought against NB its agents, customers, or other vendors for alleged patent infringement, as well as for any alleged unfair competition resulting from similarity in design, trademark or appearance of goods or services furnished hereunder, and Seller further agrees to indemnify NB, its agents and customers against any and all expenses, losses, royalties, profits and damages including court costs and attorney fees resulting from any such suit or proceeding, including any settlement. NB may be represented by and actively participate through its own counsel in any such suit or proceeding if it so desires, and the costs of such representation shall be paid for by the Seller.

## Insurance

In the event that Seller's objectives hereunder, require or contemplate performance of services by Seller's employees, or person's under contract to Seller, to be done on NB's property, or property of NB's customers, the Seller agrees that all such work shall be done as an independent contractor and that the persons doing such work shall not be considered employees of NB. Seller shall maintain all necessary insurance coverage including public liability and Workman's Compensation Insurance. Seller shall indemnify and save harmless and defend NB from any and all claims or liabilities arising out of the work covered by this paragraph.

### **Indemnification**

Seller shall defend, indemnify and hold harmless NB against any and all damages, claims or liabilities and expenses (including attorney's fees) arising out of or resulting in any way from any defect in the goods or services purchased hereunder, or from any act or omission of Seller, its agents, employees or subcontractors. This indemnification shall be in addition to the warranty obligations of Seller.

### **Changes**

NB shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation. If any such changes cause an increase or decrease in costs or the time required for performance, an equitable adjustment shall be made and this agreement shall be modified in writing, accordingly. Seller agrees to accept any such changes subject to this paragraph.

### **Inspection/Testing**

Payment for the goods delivered hereunder shall not constitute acceptance thereof NB shall have the right to inspect such goods and to reject any or all said goods which are in NB's judgment defective or nonconforming. Goods rejected and goods supplied in excess of quantities called for herein may be returned to Seller at its expense and, in addition to NB's other rights NB may charge Seller all expenses of unpacking, examining, repacking and reshipping such goods. In the event NB receives goods whose defects or nonconformity is not apparent on examination, NB reserves the right to require replacement, as well as payment of damages. Nothing contained in this purchase order shall relieve in any way the Seller from the obligation of testing, inspection and quality control.

### **Entire Agreement**

This purchase order, and any documents referred to within hereof, constitute the entire agreement between the parties.

### **Assignments and Subcontracting**

No part of this order may be assigned or subcontracted without the prior written approval of NB.

### **Setoff**

All claims for money due or to become due from purchaser shall be subject to deductions or setoff by NB by reason of any counterclaim arising out of this or any other transaction with Seller.

### **Shipment**

If in order to comply with NB's required delivery date it becomes necessary for Seller to ship a more expensive way than specified in

this purchase order, any increased transportation costs resulting therefrom shall be paid by Seller unless the necessity for such rerouting or expedited handling has been caused by NB.

### **Waiver**

NB's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or NB's waiver of any breach hereunder shall not thereafter waive any other terms, conditions, or privileges, whether of same or similar type.

### **Delivery**

Time is of the essence of this contract, and if delivery of items or rendering of services is not completed by the time promised, NB reserves the right without liability in addition to its other rights and remedies to terminate this contract by notice effective when received by Seller as to items not yet shipped or services not yet rendered and to purchase substitute items or services elsewhere and charge Seller with any loss incurred.

### **Limitation of Natural Beauty (NB) Liability-Statute of Limitations**

In no event shall NB be liable for anticipated profits or for incidental or consequential damages. NB's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this agreement or from the performance or breach thereof shall in no case exceed the price allocable to the goods or services or unit thereof which gives rise to the claim. NB shall not be liable for penalties of any description. Any action resulting from any breach on part of purchaser as to the goods or services delivered hereunder must be commenced within one year after the cause of action has occurred.

### **Remedies**

The individual rights and remedies herein shall be cumulative and additional to any other or further remedies or damages provided in law or equity including all damages and remedies provided by the Uniform Commercial Code, or in this purchase order, all of which apply hereunder. No waiver of any breach of any provision of this purchase order shall constitute a waiver of any other breach or of such provision.

### **Applicable Law**

This purchase order shall be construed to be executed and performed in Wisconsin and Wisconsin laws shall govern its interpretation and enforcement. All litigation arising hereunder shall be commenced and prosecuted in Brown County Circuit Court located in Green Bay, Wisconsin. Seller expressly waives all right to remove any litigation to federal court and hereby expressly consents to the exclusive jurisdiction and venue of Brown County Circuit Court.