

Blendtec, Inc. Purchase Order Terms and Conditions

1. **CONDITIONS OF OFFER OR ACCEPTANCE** -- If the Purchase Order is construed as an offer by Buyer, Seller's acceptance is strictly limited to the terms of this offer and Buyer hereby notifies Seller of its objection to any different or additional terms in Seller's acceptance. If the Purchase Order is construed as Buyer's acceptance of Seller's offer, this acceptance is expressly conditional on Seller's assent to any terms additional to or different from Seller's offer contained herein. The Purchase Order, including any exhibits or attachments, and these Terms and Conditions comprise the complete and final agreement between Buyer and Seller (the "Contract Documents") concerning its subject matter, and supersede all prior negotiations, proposals, representations, commitments, understandings, or agreements between the parties, either written or oral. No other agreement, quotation, or acknowledgment in any way modifying any of the Contract Documents will be binding upon Buyer unless made in writing and signed by Buyer's authorized representative.
2. **DELIVERY**--The time of delivery stated is the essence of this contract. The date specified for delivery is the required delivery date at Buyer's plant, unless otherwise specifically noted in the Purchase Order. Buyer reserves the right to refuse any goods or services and to cancel all or any part hereof if Seller fails to deliver all or any part of any goods or perform all or any part of any services in accordance with the terms specified herein. If Seller's deliveries will not meet agreed schedules, Buyer may require Seller to ship via a more rapid route or carrier in order to expedite such delivery and any difference in cost caused by such change shall be paid by Seller provided, nevertheless, that such right shall be in addition to any other rights and remedies of Buyer. Acceptance of any part of this order shall not bind Buyer to accept future shipments or performance of services, nor deprive it of the right to return goods already accepted and shall not be deemed to be a waiver of Buyer's right to cancel or return all or any part of the goods because of failure to conform to order or by reason of defects, latent or patent, or other breach of warranty, or to make any claim for damages, including manufacturing cost or loss of profits, injury to reputation or other special, consequential and incidental damages incurred by Buyer. Such rights shall be in addition to any other remedies provided hereunder or provided by law or otherwise. Delivery shall not be deemed to be complete until goods have been actually received and accepted by Buyer, notwithstanding delivery to any carrier or until any services have been performed, received and accepted.
3. **PACKING AND SHIPPING**--The goods purchased hereunder must be suitably packed and prepared for shipment to secure lower transportation rates or appropriately packed and comply with any specific transportation specifications of Buyer, and, in all cases, to comply with carriers' regulations. All charges for packing, crating and transportation are included in the price for the goods set forth in the Purchase Order and will be paid by Seller except as otherwise specifically stated. A Packing List shall accompany each box or package shipment, showing the order number specified hereon as well as the item number and a description of the goods. In the event that no such Packing List accompanies any shipment, the count or weight or other measure of Buyer shall be final and conclusive. Buyer shall not be obligated to accept any shipments in excess of the ordered quantity and any excess or advance shipments may be returned to Seller at Seller's expense.
4. **PAYMENT**--The original and one copy of a Bill of Lading or comparable shipping document must accompany Seller's invoices. Payment of such invoices shall be subject to a pro rata adjustment by Buyer for any shortage in the goods shipped or defective goods rejected by Buyer or for any failure to perform services or defective performance thereof. Any discount period shall be calculated from the date of receipt by Buyer of an appropriate invoice.
5. **WARRANTIES**--Seller represents, certifies and warrants (1) that the price charged for the goods and/or services purchased pursuant hereto shall be no higher than Seller's current price to any other customer for the same quality or quantity of such goods or services; (2) and that all goods delivered pursuant hereto will be new and free from defects in material

and workmanship and that all goods will conform to applicable samples, specifications, drawings, and standards of quality and performance, and that all goods will be free from defects in design and suitable for their intended purpose; (3) that the goods covered by this order are fit and safe for consumer use; (4) that all services performed pursuant hereto will be free from defects in material and workmanship and will be performed in accordance with the specifications and instructions of Buyer provided nevertheless that Seller shall retain the discretion and control with respect to the manner and means of performing such services and shall at all times remain an independent contractor. All the representations, certifications and warranties of Seller together with its service warranties and guaranties, if any, shall run to Buyer and Buyer's affiliates and customers. Seller agrees to indemnify, defend and hold Buyer and any affiliate harmless from all claims, liability, loss, damage and expense including but not limited to recall expenses, reasonable attorneys' fees and other special, consequential and incidental damages incurred or sustained by Buyer or any affiliate by reason of any breach of any warranty, certification or representation with respect to the goods and/or services which are covered by this order. All goods supplied and services performed pursuant hereto shall be subject to inspection and test by Buyer and its agents at all times and places, whether during or after manufacture as to goods, or performance as to services, and notwithstanding the terms of delivery or payment or, as to goods, that title has not passed to the Buyer. In the event that goods supplied pursuant hereto or services performed hereunder contain defects in material or workmanship or as to services, are not performed in accordance with the specifications and instructions of Buyer, Buyer may require prompt correction thereof or, as to services, require that the services be rendered again at Seller's expense or, as to goods, require that the goods be replaced at Seller's expense. If such defects exist or if Seller is unable or refuses to replace the goods or render the service again promptly, Buyer may by contract or otherwise replace such goods or obtain such services and charge Seller or deduct from amounts owed by Buyer to Seller the cost, expenses and losses including incidental and consequential damages incurred thereby which are in excess of Seller's price for such goods or services. After notification to Seller that goods are defective, all risk of loss with respect to such goods shall be in Seller and Seller shall pay all packing and shipping charges in connection with defective goods returned by Buyer. **Buyer's approval of designs or prototypes furnished by Seller shall not relieve Seller of its obligations herein.** The goods covered by this order are intended for the manufacture and sale of the established products of Buyer and any affiliate and in which Buyer and any affiliate have built a substantial and valuable reputation for quality and efficiency and any defect in the goods or services hereunder may occasion special damage to Buyer and its affiliate. All rights and remedies of the Buyer and its affiliate hereunder shall be in addition to any other rights and remedies provided by law.

6. CHANGES--Buyer may at any time by written or electronic notice cancel this order or make changes within the general scope of this order in any one or more of the following:
 - i. Drawings, designs or specifications,
 - ii. Methods of shipments or packing,
 - iii. Quantities,
 - iv. Delivery schedules,
 - v. Place of Delivery, and
 - vi. Instructions with respect to the rendition of services.

If any such change increases or decreases the cost of, or the time required for the performance of this order, an equitable adjustment in the price and/or delivery schedule will be made and set forth in a written modification to this order, but under no circumstances shall Buyer be responsible for any raw material purchased by Seller in excess of the quantities released or for the fabrication of parts beyond normal lead times.

Any claim for adjustment by Seller under this clause must be made within thirty (30) days from the date of receipt of the written notification of the change.

7. TAXES--Federal, State or Local taxes which are properly billable to Buyer shall be stated separately in Seller's Invoices. All tax exemption certificates will be accepted by Seller.
8. TOOLING--In the case of any tools, dies, jigs, fixtures, patterns, equipment or other facilities of Buyer which may be in possession of Seller in connection with this order, Seller agrees that his responsibility shall be that of a bailee and that he shall indemnify and hold harmless Buyer from any loss or damage thereto which is caused by or as a result of any negligence, act or omission the part of Seller or its agents, employees or others until such time as such facilities are delivered into the possession of Buyer.

With respect to such facilities, Seller will:

- i. Make and affix such markings thereon as Buyer may direct,
- ii. Make no change, modification or alteration thereto without Buyer's written consent,
- iii. Make no use thereof except in the production of material ordered by Buyer,
- iv. Store the same without charge to Buyer in separate racks or in sections of Seller's plant, in either case, clearly marked "Property of Blendtec, Inc.." and
- v. Maintain the same in good condition excepting ordinary wear and tear.

If Seller acquires tools or manufactures them in connection with this order and charges Buyer for the use thereof or a tool service charge in connection therewith, unless otherwise agreed in writing, Buyer may at its option, upon completion or termination of this Purchase Order, elect to take title to such tools and upon receiving notice of such election Seller will deliver such tools to Buyer upon payment by Buyer to Seller of that portion of the unreimbursed out-of-pocket cost of such tools which was incurred by Seller at its expense.

9. RESPONSIBILITY FOR PROPERTY--Any property of Buyer or of the United States which in connection with this Purchase Order is in the possession or control of Seller or Seller's subcontractors, vendors or agents shall be returned to Buyer in the condition in which it was received by Seller, except for ordinary wear and tear and except to the extent that such property has been incorporated into goods delivered hereunder or has been consumed in the production of such goods. Risk of loss with respect to all such property shall be in Seller.
10. INSURANCE--Seller agrees, if and when requested by Buyer to procure a policy or policies on insurance in form and amounts satisfactory to Buyer including endorsement specifically naming Buyer and/or its affiliate as an insured to cover products liability and completed operations and/or to insure all property of Buyer which is connected with the order and of which Seller has care, custody, control or the right of control against loss or damage resulting from fire (including extended coverage), malicious mischief and vandalism. Satisfactory evidence of such insurance shall be submitted to Buyer within a reasonable period of time after request.

Seller shall furnish certificates of insurance prior to start of work on Buyer's or its customer's premises and indemnify Buyer against all loss, damage or liability arising hereunder, and work will be performed only in accordance with safety rules and procedures while on the premises.

11. ASSIGNMENTS--This Purchase Order may not be assigned by Seller in whole or in part without the prior written consent of Buyer.

12. USE OF DESIGNS, DATA, ETC.--Seller agrees that it will keep confidential the features of any equipment, tools, gauges, patterns, designs, drawings, engineering data or other technical or proprietary information furnished by Buyer and use such items only in the production of goods or furnishing of services under this order or other orders from Buyer and not otherwise unless Buyer's written consent is first obtained. Upon completion or termination of this order, Seller shall return all such items including copies to Buyer or make such other disposition thereof as may be directed or approved by Buyer.
13. PATENTS AND DATA--Seller shall indemnify and hold harmless Buyer; Buyer's customers and users of Buyer's products against liability or suit of any nature, including costs and expenses for infringement of any patent or patent right arising from the manufacture, use or sale of any goods or any part thereof, called for in this order, including but not limited to articles recommended by Seller which are of the manufacture of others, except to the extent that any such liability or suit shall have arisen solely because of Seller's manufacture of articles or original design of Buyer.

If any experimental, developmental or research work is called for or required hereunder, Seller agrees to and hereby does grant to Buyer an irrevocable, non-exclusive, fully transferable royalty-free license to make, have made, use and sell any invention, improvement or discovery (whether or not patentable) that Seller conceives or first actually reduces to practice in the performance of this order.

Seller agrees to and hereby does grant to Buyer (I) an irrevocable, non-exclusive, fully transferable royalty-free license to reproduce, translate, publish, use and dispose of, and to authorize others so to do, any copyrighted or copyrightable material ordered as articles or incorporated in, or supplied as a supplement with, any articles: and (ii) the right to reproduce, use and disclose for any purpose all or any part of the reports, drawings, blueprints, data and technical information delivered or specified to be delivered by Seller to Buyer under this order.

14. TRADEMARKS--Seller acknowledges that Blendtec, Inc. is the owner of and the exclusive right to use the Blendtec, Inc. trademarks including but not limited to "Blendtec" regardless of form, design or type style. Accordingly, Seller agrees that it will not directly or indirectly manufacture for or sell or offer to sell to any party other than Buyer and its corporate affiliates any goods of whatever nature wherein any of the Blendtec, Inc. Trademarks are used in association therewith.
15. NOTICE OF LABOR DISPUTE--Whenever any actual or potential labor dispute is delaying or threatens to delay the timely performance of this order, Seller shall immediately give notice thereof, including all relevant information with respect thereto to Buyer.
16. COMPLIANCE WITH LAWS: NONDISCRIMINATION -- Seller warrants that the goods have been produced in accordance with the requirements of the Fair Labor Standards Act (29 USCA 201-219) and all other applicable federal, state and municipal laws and regulations. Seller's invoice shall bear the separate guaranty provided for under such acts, or shall contain appropriate notice that a continuing guaranty has been filed with the Federal Trade Commission in accordance therewith. Seller shall comply with all provisions of Section 202 of Executive Order 11246 as amended by Executive Order 11375 or subsequent Executive Orders and rules and regulations set forth by the Secretary of Labor in effect as of the date of this order.
17. TERMINATION--Buyer may, by written notice to Seller, terminate the whole or any part of this order if
 - i. Seller fails to perform any provisions of this order or so fails to make progress as to endanger performance of this order in accordance with its terms, or

- ii. Seller becomes insolvent or the subject of proceedings under any law relating to bankruptcy or the relief of debtors or admits in writing its inability to pay its debts as they become due.

If this order is so terminated, Buyer may procure or otherwise obtain, upon such terms and in such manner as Buyer may deem appropriate, goods, or services similar to those terminated. Seller, subject to the exceptions set forth below, shall be liable to Buyer for any excess costs of such similar goods or services.

Seller shall transfer title and deliver to Buyer, in the manner and to the extent requested in writing by Buyer at or after termination such complete articles, partially completed articles and materials, parts, tools, dies, patterns, jigs, fixtures, plans, drawings, information and contract rights as Seller has produced or acquired for the performance of the terminated part of this order, and Buyer will pay Seller the contract price for completed articles delivered to and accepted by Buyer as the fair value of the property of Seller so requested and delivered.

Seller shall continue performance of this order to the extent not terminated. Buyer shall have no obligations to Seller in respect of the terminated part of this order except as herein provided. Buyer's rights as set forth herein shall be in addition to Buyer's other rights in case of Seller's default, whether set forth in this order or not.

- 18. **DEFAULT BEYOND CONTROL**--Seller shall not be liable for damage or for default due to cause beyond Seller's control and without Seller's fault or negligence, provided Seller exercises due diligence in promptly notifying Buyer of conditions which will result in delay, and provided further if Seller's delay is caused by the default of a subcontractor or supplier, such default arises out of causes beyond the control of both Seller and subcontractor or supplier, and without the fault or negligence of either of them, and the supplies of services to be furnished by the subcontractor or supplier were not obtainable from other sources.
- 19. **RELEASE OF INFORMATION**--Seller agrees that prior to the issuance of any publicity or publication of any advertising which in either case makes reference to this order, or to Buyer, Seller will obtain the written permission of Buyer with respect thereto.
- 20. **NON-WAIVER OF RIGHTS**--The failure of Buyer to insist upon strict performance of any of the terms and conditions in the Purchase Order or to exercise any rights or remedies, shall not be construed as a waiver of its rights to assert any of same or to rely on such terms or conditions at any time thereafter.
- 21. **ENTIRE AGREEMENT**—The Contract Documents are intended by the parties as a final expression of their agreement and also is a complete and exclusive statement of the terms thereof, any prior oral or written agreements as to the subject matter notwithstanding. The Contract Documents may not be modified or terminated orally or by trade usage or any course of conduct and no modification nor any claimed waiver of any of the provisions hereof shall be binding unless in writing and signed by the party against who such modification or waiver is sought to be enforced.
- 22. **INDEMNITY** -- TO THE MAXIMUM EXTENT ALLOWED BY LAW, SELLER SHALL INDEMNIFY, DEFEND (AT BUYER'S OPTION), AND HOLD HARMLESS THE BUYER AND ITS AFFILIATES AGAINST ALL LOSS, DAMAGE, LIABILITY, COST, AND EXPENSE (INCLUDING REASONABLE ATTORNEYS' FEES, ANY INJURY OR DEATH TO ANY PERSON OR DAMAGE TO ANY PROPERTY) RESULTING FROM OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OR NONPERFORMANCE OF THE CONTRACT DOCUMENTS BY SELLER OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY SELLER OR ANYONE FOR WHOSE ACTS SELLER MAY BE LIABLE (INCLUDING NEGLIGENCE AND CONCURRENT NEGLIGENCE), EXCEPT TO THE EXTENT SUCH LOSS, DAMAGE, LIABILITY, COST, OR EXPENSE IS CAUSED BY

ANY OF THE BUYER. BUYER SHALL HAVE THE RIGHT, BUT NOT THE OBLIGATION, TO CONTROL THE DEFENSE OR SETTLEMENT OF ANY CLAIM OR LAWSUIT COVERED BY SELLER'S INDEMNITY HEREUNDER AND, AT BUYER'S OPTION, SELLER SHALL, AT SELLER'S EXPENSE (A) DEFEND ALL ACTIONS BASED THEREON, OR (B) PAY BUYER ALL ATTORNEYS' AND CONSULTANTS' FEES AND ALL COSTS AND OTHER EXPENSES ARISING FROM THE DEFENSE AND SETTLEMENT THEREOF BY THE BUYER-INDEMNIFIED PARTIES.

23. GOVERNING LAW -- The validity and interpretation of the Contract Documents and of the rights and obligations of Buyer and Seller shall be governed and construed according to the laws of the state of Utah, without giving effect to its conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Contract Documents.
24. DISPUTE RESOLUTION: If a dispute or claim arises out of or relates to the Contract Documents, Seller shall continue to perform under the Contract Documents, and the parties will attempt to settle their differences through direct negotiations. If such negotiations are unsuccessful, litigation may be brought exclusively in a federal or state court within Salt Lake County, Utah. Seller and Buyer hereby consent to personal jurisdiction in any legal action, suit, or proceeding brought in any federal or state court within Salt Lake County, Utah, having subject matter jurisdiction, and irrevocably waive, to the fullest extent permitted by applicable law, any claim or any objection it may now or hereafter have that venue or personal jurisdiction is not proper with respect to any such legal action, suit, or proceeding brought in such a court in Salt Lake County, Utah, including any claim that such legal action, suit, or proceeding brought in such court has been brought in an inconvenient forum.
25. HEADINGS--The heading at the beginning of each numbered section hereof have been inserted for ease of reference only and are not part of this contract.