

TERMS AND CONDITIONS OF PURCHASE

1. **TERMS AND CONDITIONS:** These terms and conditions control the purchase of the goods and services set forth in this Purchase Order (the "Order"). The issuance of this Order to Seller constitutes an offer expressly limited to the terms contained herein. These terms and conditions may not be waived or modified except as specifically set forth in writing by Buyer. SELLER'S ACCEPTANCE OF THIS ORDER IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS CONTAINED HEREIN. ANY ADDITION, CHANGE OR DELETION BY SELLER IN ANY PRIOR PROPOSAL, ACKNOWLEDGMENT FORM OR OTHERWISE SHALL BE DEEMED A MATERIAL ALTERATION AND IS EXPRESSLY REJECTED BY BUYER.
2. **PLANS, SPECIFICATIONS AND TOOLING:** All plans, specifications, drawings, notes, instructions or other information referred to on the face of this Order or contained in attachments or exhibits hereto or are otherwise provided to Seller are deemed to be incorporated herein by reference. All property, including without limitation, all tools, equipment, material, drawings, manufacturing aids and replacements (i) furnished by Buyer, either directly or indirectly, or (ii) as acquired or manufactured by Seller for use in the performance of this Order for which Seller has been reimbursed by Buyer, is the property of Buyer and shall be plainly marked as the property of Buyer, safely stored separate from Seller's property, and protected to prevent unauthorized access or disclosure.
3. **PRICE AND DELIVERY:** Seller shall furnish the goods or services in strict accordance with the price and delivery schedule stated herein. TIME IS OF THE ESSENCE with respect to all of Seller's performance hereunder. If delivery or performance is not effected within the time stated in this Order, Buyer may charge Seller for any resulting expense, loss or damage and/or cancel this Order
4. **PAYMENT:** Seller shall issue invoices in accordance with the instructions on the Purchase Order and only after delivery of the goods and/or completion of the services ordered by Buyer hereunder. Buyer shall issue payment within 30 days from the date the invoices are received. Buyer's payment is contingent upon Seller's delivery of conforming goods and/or satisfactory completion of services. Payment made for rejected goods or services shall be refunded by Seller within ten (10) days after Buyer's request therefor or, at Buyer's option, shall be deducted from any other or subsequent payments due or to become due to Seller
5. **INSPECTION; ACCEPTANCE:** Payment before or after inspection shall not constitute acceptance of non-conforming goods or services, and neither inspection, testing nor acceptance of the goods or services shall relieve Seller from its responsibility for latent or patent defects in the goods or other failures to meet the requirements of this Order, fraud or Seller's warranty obligations. All replacements shall be delivered or undertaken immediately, and if not, Buyer may either replace or correct such goods and effect substitute performance for services and charge Seller for the costs incurred thereby, or terminate this Order for cause
6. **PACKAGING AND SHIPPING:** Seller shall package, mark and ship the goods: (a) in accordance with the terms of this Order and good commercial practices; (b) in a manner acceptable to common carriers that will protect against the hazards of shipment and storage; (c) at the lowest practicable rate; and (d) in accordance with all applicable laws. Each package shall legibly be marked with proper handling instructions, shipping information, Order number, part or item number, if any, and the names of Buyer and Seller. An itemized packing list shall accompany each shipment.
7. **WARRANTY: SELLER WARRANTS THAT: (A) ALL GOODS DELIVERED HEREUNDER ARE FREE FROM DEFECTS IN DESIGN, MATERIAL AND WORKMANSHIP AND ARE OF A QUALITY OF WORKMANSHIP THAT IS REQUIRED BY THE BEST PROFESSIONAL PRACTICES AND PROCEDURES IN SIMILAR MANUFACTURING INDUSTRIES; (B) ALL SERVICES ARE PERFORMED IN A GOOD AND WORKMANLIKE MANNER; (C) THE GOODS OR SERVICES PURCHASED HEREUNDER STRICTLY CONFORM TO APPLICABLE SPECIFICATIONS, DRAWINGS, SAMPLES AND OTHER DESCRIPTIONS REFERENCED HEREIN AND OTHERWISE PROVIDED TO SELLER; AND (D) THE GOODS DELIVERED HEREUNDER PROVIDED BY SELLER DO NOT INFRINGE ON THE COPYRIGHT, PATENT, OR OTHER PROPERTY RIGHTS OF OTHERS.** All warranties set shall run to Buyer, its successors, assigns, customers and users of its products. Any goods repaired or replaced and services reperformed shall be further warranted as set forth above
8. **CANCELLATION:** Buyer may cancel, suspend, delay or interrupt this Order or any part thereof upon thirty (30) days prior written notice or at any time for good cause by written notice to Seller specifying the effective date and the extent of such cancellation, suspension, delay or interruption. Upon receipt of such notice, Seller shall immediately terminate any affected work under the Order and take all actions to reduce its costs in connection with any affected goods or services. The occurrence of any of the following shall constitute "good cause": (a) the goods or services or any part thereof fail any inspection or test hereunder or are defective or non-conforming; (b) the goods or services are not or cannot be delivered to Buyer as scheduled; (c) Seller makes a general assignment for the benefit of creditors or any action under any bankruptcy or similar laws is filed by or against Seller; (d) Seller fails to comply with any of the terms or conditions of this Order; or (e) any reason outside of the reasonable control of Buyer, including force majeure events. Seller shall reimburse Buyer for Buyer's reasonable expenses that are properly and directly allocable to and result from such cancellation for good cause under clause (a), (b) or (d) above, as determined by Buyer according to generally accepted accounting principles. If Buyer cancels this Order pursuant to (a), (b), or (c) above, Seller shall pay Buyer all losses, damages, and expenses Buyer incurs as a result of such cancellation
9. **LEGAL MATTERS:** To the fullest extent provided by law, Seller shall indemnify, defend and hold harmless Buyer from and against all demands, claims, losses, liens and liabilities of whatever kind or nature, including attorneys' fees and costs (collectively a "claim"), incurred by or asserted against Buyer arising from or related in any way to the acts, omissions or breaches of Seller or those for whom Seller is responsible. The prevailing party to any legal action arising out of this Order shall be entitled to recover attorneys' fees and other costs it incurred in bringing such action.
10. **DEPOSIT.** In the event this Order is cancelled for good cause, Seller shall return any deposit made by Buyer to Seller within three (3) business days of the same. In the event this Order is cancelled for any reason without good cause but prior to Seller's manufacture of custom goods, Seller shall be entitled to retain half of the Deposit. In all other cases of cancellation, Seller shall be entitled to retain the Deposit. Buyer hereby retains a security interest in any Deposit made with respect to the goods or services to be delivered hereunder, together with the proceeds from the sale or other disposition thereof, until Seller has satisfied its obligation hereunder. Seller shall, upon request of Buyer, execute all documents and financing statement necessary to perfect such security interest.
11. **APPROVAL OF CHANGES.** For any custom Smooth-Bor component, Seller shall obtain Smooth-Bor's written approval prior to making any change to the production method/materials (including those of a sub-contractor); a sub-contractor; test methods/equipment; and/or relocating production sites supplier must notify the buyer of any changes to the supplied products or services.