



### **Acceptance**

These Terms and Conditions are a part of a Quotation prepared and delivered to Purchaser by Boker's, Inc. ("Boker's"). The Quotation constitutes an offer on the part of Boker's to sell the goods described in the Quotation. No contract shall be formed by reason of preparation and delivery of the Quotation, unless and until Purchaser, in writing, accepts the Quotation. No order shall be binding upon Boker's until so accepted. Purchaser's acceptance of this offer is expressly condition upon Purchaser's assent to all of the terms and conditions set forth herein and the Quotation. In the event that Purchaser's acceptance conflicts with, varies or supplements the terms and conditions set forth in this offer, Boker's hereby objects to such provisions and the terms and conditions set forth in this form shall govern, and Purchaser's conflicting, varying or supplemental provisions shall be null and void. Boker's may withdraw its Quotation at any time before receipt of written acceptance by Purchaser.

### **Quantity**

Boker's will attempt to deliver the specific quantity ordered. However, delivery of quantities greater or less than the quantity ordered by not more than ten percent (10%) will be deemed to be performance in accordance with this offer and accepted by the Purchaser.

### **Delivery**

All shipments shall be "EXW-Ex-Works - Origin," and title and risk of loss or damage to the goods shall pass from Boker's to Purchaser upon Boker's delivery to the common carrier selected by Boker's. Boker's shall attempt to meet Purchaser's delivery dates. However, if conditions arise which prevent compliance with delivery schedules, Boker's shall not be liable for any damage or penalty for delay or for failure to give notice of delay. Without limiting the generality of the foregoing, Boker's shall not be liable for delay by reason of inability to obtain the necessary labor, materials, or manufacturing facilities, shortages, delays in transportation, or any other causes beyond the control of Boker's. Purchaser's sole remedy for delay shall be that Purchaser may terminate its order for delays in delivery or other delays thirty (30) days after written notice of such intention to Boker's. Purchaser shall be obligated to accept any portion of the goods shipped by Boker's during such period. Boker's reserves the right to make delivery in installments. All such installments shall be separately invoiced and paid for when due, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Purchaser of its obligation to accept remaining installments. Purchaser shall also accept any goods delivered within ten (10) days prior to the agreed upon delivery date.

### **Rejection**

Purchaser shall have the right to reject non-conforming goods within thirty (30) days of receipt of such goods. Rejected goods shall be returned to Boker's at Purchaser's expense, including but not limited to, transportation expense, and Purchaser shall bear the risk of loss on such returned goods.

### **Specification**

All goods covered by an order will conform to the specifications, designs, drawings or samples provided by Purchaser. Purchaser acknowledges and agrees that Boker's is manufacturing goods to Purchaser's specifications. In the event that this offer is for goods previously manufactured by Boker's for Purchaser and Purchaser has never provided specifications, Boker's will manufacture the goods to conform to the same goods previously delivered. Boker's is not providing any design and/or consulting services to Purchaser, including but not limited to, services relating to the use of the goods or the design of any system incorporating such goods. Boker's may at any time, by a written notice, propose changes in the specifications, designs, drawings, or samples to which the goods are to conform. Purchaser shall be deemed to have accepted any such proposed changes unless it objects within five (5) business days after its receipt of such notice. If any such change causes an increase or decrease in the price under this offer in the time required for performance, an equitable adjustment shall be made and this offer shall be modified in writing accordingly. Any claim for adjustment under this provision must be asserted within five (5) business days from the date the proposed change is accepted and the amount of such claim must be stated in writing within ten (10) days thereafter.

Any use of the TEFLON® trademark would require a separate license from DuPont. Boker's can supply such DuPont PTFE or FEP film without use of the TEFLON® trademark.

### **Warranty**

Boker's warrants that all goods will conform to the specifications provided by Purchaser and will be free from defects, allowing for reasonable manufacturing error, in workmanship and materials under normal use and maintenance conditions. Boker's obligations under this warranty are limited solely to, at Boker's option, either (a) the repair of such defective goods at Boker's facility or (b) delivering replacement goods to the Purchaser, as provided under Delivery above. No recovery of any kind against Boker's shall be greater in amount than the purchase price of the goods sold causing the alleged damage. **THIS WARRANTY IS IN LIEU OF ALL OTHER**

### **WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES REGARDING**

### **MERCHANTABILITY OF FITNESS FOR A PARTICULAR PURPOSE RELATING TO THE USE OF PERFORMANCE OF**

**THE PARTS.** No other express or implied warranty or guaranty shall bind Boker's. Boker's shall not be liable for its failure to conform with any requirements not adequately identified by purchaser in the specifications, or for personal injury or property damage, loss of revenue or profit, failure to realize savings or other benefits, expenditures for substitute goods or services, storage charges or other special, incidental or consequential damages caused by the use, misuse or inability to use the goods, regardless of the legal theory on which the claim is based and even if Boker's has been advised of the possibility of such damages. Without limiting the foregoing, the Purchaser assumes all risk and liability for loss, damage or injury to persons and property of the Purchaser or others arising out of use, misuse, or inability to use any goods sold by Boker's not caused directly by the acts or omissions of Boker's. This warranty shall not extend to anyone other than the original purchaser of the goods and states such purchaser's exclusive remedy. All claims under this warranty must be made within thirty (30) days after receipt of the goods by the Purchaser.

**Tooling**

Title to all tooling used in manufacturing the goods described in this offer shall remain, at all times, with Boker's unless any specific tooling was actually delivered to Boker's by Purchaser for use in such manufacturing, in which case title shall remain with Purchaser.

**Subcontracting**

Boker's may subcontract any portion of this offer without the prior written approval of Purchaser. In connection with any such subcontract, Boker's may disclose confidential specifications or other information to the subcontractor, as long as the subcontractor agrees to maintain such specifications as confidential in accordance with its usual business practices.

**Reorders**

Any reorders shall be in writing or by telephone, promptly confirmed in writing, and shall specify the requested delivery date and the quantity of such reorder.

**Confidential Information**

Any knowledge or information which Purchaser shall have disclosed or may hereafter disclose to Boker's and which in any way relates to the specifications, goods or services covered by this offer, shall not, unless specifically designated in writing by Purchaser, in the case of specifications, or otherwise specifically agreed to in writing by Boker's, in the case of other information, be deemed confidential, and shall be acquired by Boker's free from any restrictions as part of the consideration for this offer. Boker's may disclose any information deemed to be confidential if such disclosure is necessary for the performance of this offer. Boker's will hold confidential all confidential information in accordance with customary business practices. Confidential information, and the restrictions related thereto, shall not apply to information already known to Boker's at the time of disclosure; information in the public domain prior to the date of disclosure; information which subsequently falls into the public domain through no fault of Boker's; information which is disclosed or made available to Boker's without restriction hereafter by a third party having a legal right to do so; and information which has been previously developed by Boker's independently of the party disclosing such information. Any knowledge or information which Boker's shall have disclosed or may hereafter disclose to Purchaser concerning Boker's manufacturing process shall be deemed confidential, and Purchaser may not disclose such information to anyone except as required by law or court order.

**Termination**

(a) Either party shall have the right to terminate this agreement:

- 1) For breach of any provision to this agreement by the other party provided that written notice has been given to the other part of the alleged breach and the other party has not cured the breach within thirty (30) days, or such longer period as may be required by applicable law, after delivery of such notice.
- 2) If there is a change in the management or control of the other party which is unacceptable, the cancellation to be effective thirty (30) days after delivery of notice to such effect to the other party or such longer period as may be required by applicable law: provided, that, neither party shall not unreasonably withhold its consent to a change of control or management of the other party.
- 3) Automatically if the other party ceases to function as a going concern, becomes insolvent, makes an assignment for the benefit of creditors, files a petition in bankruptcy, permits a petition in bankruptcy to be filed against it, or admits in writing its inability to pay its debts as they become due or if a receiver is appointed from a substantial part of its assets.

(b) Either party may terminate this agreement, without cause, upon thirty (30) days written notice to the other party. In the event of termination by Purchaser pursuant to this clause, Purchaser shall be liable to Boker's for all actual and direct costs incurred by Boker's per Boker's records, relating to this offer, and a reasonable overhead and profit on the portion of the offer completed.

Any notice of termination hereunder shall automatically operate as a cancellation of any deliveries of any of the goods to Purchaser which are scheduled to be made subsequent to the effective date of termination, whether or not any orders for the goods have been theretofore confirmed by Boker's. During the term between the furnishing of notice of termination and the effective date thereof, all sales and deliveries of goods to Purchaser shall be on cash basis only. Purchaser shall be liable to Boker's for all costs incurred with respect to such termination.

Patent Indemnity. Purchaser hereby agrees to indemnify Boker's, its successors, assigns and agents against loss, damage or liability, including costs and expenses, including attorney's fees, which may be incurred on account of any suit, claim, judgement or demand involving infringement or alleged infringement of any patent rights in the manufacture, use or disposition of any goods supplied hereunder, provided, that, Boker's shall notify Purchaser of any suit instituted against it and, to the full extent of its ability to do so, shall permit Purchaser to defend the same or make settlement in respect thereof, unless Boker's determines that Purchaser's financial condition is such that there is a reasonable likelihood that Purchaser will not be able to perform its indemnity hereunder.

**Credit and Finance Charges**

Boker's may if the Purchaser's account is not kept current, or its credit standing deteriorates, discontinue shipments or place Purchaser on a cash basis (that is, a certified check with order). In addition, Boker's may assess a finance charge of 11/2% per month, but not in excess of the limit permitted by law on any overdue amount, and Purchaser shall also be liable for actual and reasonable costs and expenses of collection, including reasonable attorney's fees.

**Force Majeure**

Except for Purchaser's obligation to make payments, neither Boker's nor Purchaser's shall be in default of any obligation hereunder if such default results from governmental acts or directives (official or unofficial); strikes (legal or illegal); acts of God; war (declared or undeclared); insurrection, riot or civil commotion; fires; flooding or water damages; explosions; embargoes; or delays in manufacturer's or supplier's furnishing products; whether of the kind herein enumerated or otherwise, but which are not within the reasonable control of the party affected.

**Waiver**

No claim or right arising out of a breach of this agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. The failure of Boker's to enforce at any time for any period of time any of the provisions hereof shall not be construed to be a waiver of such provision nor the right of Boker's thereafter to enforce each and every such provision.

**Governing Law and Waiver of Jury Trial**

This agreement shall be governed by the laws of the State of Minnesota. Boker's and Purchaser each hereby consents to the jurisdiction and venue of any local, state or federal court located within the State of Minnesota upon service of process made in accordance with the statutes of Minnesota and the United States, and further agree that any and all causes of action whether or not arising under this agreement by and between the parties hereto shall only be brought in a local, state or federal court situated within the State of Minnesota. Boker's and Purchaser hereby expressly waive any right to a trial by jury in any action or proceeding to enforce or defend any rights under this agreement, and agree that any such action or proceeding shall be tried before a court and not a jury.

**Entire Agreement**

This agreement constitutes the entire agreement between the parties superseding all previous proposals, oral or written. No representation or statement not contained on the original copy of this agreement shall be binding on Boker's as a warranty or otherwise, nor shall this agreement be modified or amended unless in writing and signed by an officer of Boker's.