

**BOKER'S, INC.**  
**Purchase Order Terms and Conditions**

*The following terms and conditions of sale are applicable to this Purchase Order and are the only conditions applying to the sale of Seller's goods or services, except conditions relating to prices, quantities, delivery schedules, terms of payment, invoicing, shipping instructions and the descriptions and specifications of the goods, together with all written conditions which may be mutually agreed upon by the parties and set forth in this form. Seller shall be deemed to have agreed to the following conditions if it fails to object to the conditions appearing in, incorporated by reference in, or attached to this Purchase Order. Seller's delivery of goods or services called for in this Purchase Order shall constitute its acceptance of the following terms and conditions of sale:*

**1. Acceptance of Purchase Order: Entire Agreement:** Acceptance of this Purchase Order shall be subject to the terms and conditions hereof. Boker's, Inc., hereinafter referred to as "Buyer," shall not be bound by any provisions additional to or at variance with the terms hereof that may appear in Seller's quotation, acknowledgement, confirmation, invoice or in any other communication from Seller to Buyer. Buyer's acceptance of material shipped shall constitute acceptance of such material subject to the provisions hereof only and shall not constitute acceptance of any counterproposal submitted by Seller not otherwise accepted in writing signed by an authorized agent of Buyer. Upon acceptance, this Purchase Order shall constitute the entire agreement between Buyer and Seller, supersede all prior negotiations, discussions and dealings and may not be modified or rescinded except by a writing signed by both parties. All specifications, drawings, and data submitted to Seller with this order or referred to by this Purchase Order are hereby incorporated herein and made a part of this Purchase Order.

**2. Changes:** The Buyer reserves the right at any time to make written changes in any one or more of the following: (a) Specifications, drawings and data incorporated in this Purchase Order where the goods to be furnished are to be specially manufactured for the Buyer; (b) Methods of shipment or packing; (c) Place of delivery; (d) Time of delivery; (e) Manner of delivery; and (f) Quantities.

If any such change causes an increase or decrease in the cost of or the time required for performance of this Purchase Order, an equitable adjustment shall be made in the contract price or delivery schedule, or both. Any claim by Seller for adjustment under this clause must be approved by the Buyer in writing.

**3. Delivery; Quantities:** Time is of the essence in this Purchase Order, and if delivery of goods is not made in the quantities and at the times specified, or rendering of services is not completed at the times specified, Buyer reserves the right without liability, and in addition to its other rights and remedies, to take either or both of the following actions: (a) direct expedited routings of goods (the difference in cost between the expedited routing and the order routing costs shall be paid by Seller); (b) terminate this Purchase Order by notice effective when received by Seller as to stated goods not yet shipped or services not yet rendered and to purchase substitute goods or services elsewhere and charge Seller with any loss incurred. Neither party shall be liable for excess costs of deliveries or defaults due to causes beyond its control and without its fault or negligence, provided, however, that when the Seller has reason to believe that deliveries will not be made as scheduled, written notice setting forth the cause of the anticipated delay will be given immediately to Buyer. The quantities of goods shipped pursuant to this Purchase Order must be equal to the amount ordered hereunder. Buyer will have no liability for payment for goods delivered to Buyer which are in excess of quantities specified in this Purchase Order and delivery schedules. Such goods shall be subject to rejection and return at Seller's expense, including transportation charges both ways. Buyer reserves the right to return, at Seller's expense, all goods received in advance of delivery schedules or to hold the goods and pay Seller's invoices on normal maturity after the scheduled delivery date.

**4. Inspection and Acceptance:** All goods purchased hereunder are subject to inspection at Buyer's destination either before or after payment, at Buyer's option. Buyer reserves the right to reject and refuse acceptance of goods which are not in accordance with the instructions, specifications, drawings and data or Seller's warranties (express or implied). Goods not accepted will be returned to Seller for full credit or replacement at Buyer's option and at Seller's risk and expense, including, without limitation, handling and transportation costs. No replacement of rejected goods shall be made unless specified by Buyer in writing. Buyer shall not be liable for failure to accept any part of the goods, if such failure is the result of any cause beyond the control of Buyer, including, without limitation, fires, floods, Acts of God, strikes, differences with employees, casualties, delays in transportation, shortages of cars, inability to obtain necessary materials or machinery or total or partial shutdown of Buyer's plant for any cause. Acceptance of any part of the goods shall not bind Buyer to accept future shipments, nor deprive it of the right to return goods already accepted. Acceptance of all or any part of the goods shall not be deemed to be a waiver of Buyer's right either to cancel or to return all or any portion of the goods because of failure to conform to this Purchase Order, or by reason of defects, latent or patent, or other breach of warranty, or to make any claims for damages, including manufacturing costs, damage to materials, or articles caused by improper boxing, crating or packing, and loss of profits or other special damages occasioned the Buyer. Such rights shall be in addition to any other remedies provided by law.

**5. Prices and Packing:** This order shall be filled at the price stated herein unless otherwise agreed to in writing and signed by the Buyer. Unless otherwise specified, the price stated includes all charges and expenses of Seller, including, without limitation, packing, crating, freight, express, cartage, containers and all applicable taxes of federal, state or local government. Seller shall be liable for damage to goods described herein caused by improper boxing, crating or packing.

**6. Shipping:** Unless otherwise specified in this Purchase Order, shipment of goods shall be F.O.B. Buyer's facility. Title and risk of loss or damage shall pass from Seller to Buyer upon Seller's delivery of the goods to Buyer's facility. All packages, packing slips and invoices shall be plainly marked to show Buyer's order number. Seller shall be liable for excess transportation charges, delays or claims resulting from Seller's deviation from Buyer's routing instructions.

**7. Seller's Warranties:** Seller hereby warrants to Buyer, its successors and customers that all goods furnished will be free from defects in material and workmanship, will conform to applicable drawings, specifications and other descriptions furnished or specified by Buyer and, to the extent such goods are not of a detailed design furnished by Buyer, will be merchantable, suitable for the intended purposes and free from all other defects, including defects in design. In the event of a breach of this warranty Buyer may, at Seller's expense, (a) return the goods at Seller's risk and expense and recover from Seller the costs and expenses thereof, (b) accept or retain the goods and equitably reduce their price, or (c) require Seller, at Seller's expense, to promptly replace or correct the goods and, pending redelivery, to repay to Buyer any amount thereto fore paid for such goods. If Seller fails to promptly replace or correct such goods as directed by Buyer, Buyer may repair them or have them repaired at Seller's expense or purchase similar goods and recover from Seller the costs and expenses thereof. Notice of breach shall be deemed sufficient if given within ninety (90) days after discovery thereof by Buyer. These warranties shall be in addition to any other rights or remedies Buyer may have at law or equity under this Purchase Order.

**8. Property of Buyer:** Unless otherwise provided in this order or agreed to in writing, property of every description including but not limited to all tooling, tools, equipment and material furnished or made available to Seller, title to which is in Buyer, and any replacement thereof shall be and remain the property of Buyer. Property other than material shall not be modified without the written consent of the Buyer. Such property shall be plainly marked or otherwise adequately identified by Seller as "Property of Boker's, Inc." and shall be safely stored separately and apart from Seller's property. Seller shall not use such property except for performance of work hereunder or as authorized in writing by Buyer. Such property while in Seller's possession or control shall be kept insured by Seller, at its expense, in an amount equal to the replacement cost with loss payable to Buyer. To the extent such property is not material consumed in the performance of this order, it shall be subject to inspection and removal by Buyer and Buyer shall have the right of entry for such purposes without any additional liability whatsoever to Seller. As and when directed by Buyer, Seller shall disclose the location of such property and/or prepare it for shipment and ship it to Buyer in as good condition as originally received by Seller, reasonable wear and tear excepted.

**9. Special Tooling:** The term "special tooling" as used in this clause shall be deemed to include all jigs, dies, fixtures, molds, patterns, special cutting tools, special gauges, special test equipment, other special equipment and manufacturing aids, and drawings and any replacements of the foregoing, acquired or manufactured or used in the performance of this order, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the production of the goods or parts thereof or performance of the services of the type required by this order. The term does not include (a) items of tooling or equipment heretofore acquired by Seller, or replacement thereof, whether or not altered or adopted for use in the performance of this order, (b) consumable small tools, (c) general or special machine tools or similar capital items, or (d) tooling, title to which is in Buyer. Seller agrees that special tooling shall be retained and not used or reworked except for performance of work hereunder or as authorized in writing by Buyer while in Seller's possession or control. Seller warrants that it will keep the special tooling in good condition fully covered by insurance, and will replace it when lost, destroyed, or necessary for performance of work hereunder. Upon cessation or termination of the work under this order for which the special tooling is required, Seller shall furnish Buyer a list of

the goods, parts, or services for the manufacture or performance of which such special tooling was used or designed and a list indicating where each item of the special tooling is located, and shall transfer title to and possession of the special tooling to Buyer for an amount equal to the unamortized cost thereof, or dispose thereof as Buyer may direct in writing. In addition, Buyer shall have the right to take possession of, including the right of entry for such purpose, any special tooling, title to which Buyer acquires hereunder, without any additional liability whatsoever to Seller.

**10. Proprietary Rights:** All technical information in the nature of designs, blueprints, specifications, engineering data for production or product know-how, which is supplied to the Seller by the Buyer to facilitate or assist in the performance of this Purchase Order, shall, unless otherwise agreed, be considered and kept confidential by the Seller, and the Seller shall use and cause its employees and agents not to disclose any such information either directly or by incorporation of such information in or its use in manufacturing goods for others. Additionally, Seller agrees to assign to the Buyer and not otherwise to make use of any invention, improvement or discovery (whether or not patentable), conceived or reduced to practice in the performance of this Purchase Order by any employee of the Seller or any other person working under Seller's discretion, and such assignment shall be considered as additional consideration for the making of this Purchase Order. Upon completion of performance of this Purchase Order, the Seller shall deliver to the Buyer any and all information relating to any such invention, improvement or discovery, and shall cause employees or others subject to Seller's instructions to sign as appropriate all documents necessary or convenient to enable the Buyer to file applications for patents throughout the world and to obtain title thereto.

**11. Patent Indemnity Clause:** The Seller agrees, upon receipt of notification, to promptly assume full responsibility for the defense of any suit or proceeding which may be brought against Boker's, Inc., or any of its subsidiaries, successors, assigns, agents or vendees hereinafter for purposes of this Section collectively referred to as the Buyer, for alleged patent infringement, as well as for the alleged unfair competition resulting from similarity in design, trademark, or appearance of goods, by reason of the use or sale of any goods furnished under this Purchase Order, except for goods manufactured entirely to Buyer's specification; and the Seller further agrees to indemnify Buyer against any and all expense, loss, royalties, profits and damages, including court costs and attorney's fees, resulting from the bringing of such suit or proceedings, including any settlement or decree or judgment entered therein. Buyer may be represented by and actively participate through its own counsel in any such suit or proceedings, if it so desires. In the event that the goods or any part thereof is held to constitute an infringement and the use of the goods or any part thereof is enjoined, Seller shall at its own expense, either procure for Buyer the right to continue using the goods or any part thereof or replace the goods or any part thereof with non-infringing goods or part thereof, or modify the goods so that it becomes non-infringing, or in the event of the impossibility of the foregoing options grant Buyer a credit for the purchase price of such goods. The Seller's obligations hereunder shall survive acceptance of the goods and payment therefor by the Buyer.

**12. Indemnification:** Seller further agrees to indemnify and save Buyer, its agents, customers, successors and assigns, harmless from any and all losses, liabilities, damages, claims, demands, suits, actions, proceedings, subrogations and expenses, including court costs and reasonable attorneys' fees, related in any way to this Purchase Order, or the services performed or goods delivered under this Purchase Order, or the services performed or goods delivered under this Purchase order, except for goods manufactured entirely to Buyer's specifications, which are claimed or made by any person, firm, association or corporation, including employees, workmen, servants or agents of the Seller and his subcontractors arising from any cause or for any reason whatsoever. Seller further agrees, upon receipt of notification, to promptly assume full responsibility for the defense of any and all such suits, actions, or proceedings which may be brought against Seller or against Buyer, its agents, customers, successors and assigns. Indemnification under this clause is not exclusive, and is cumulative to all other rights of indemnification of Buyer against Seller.

**13. Insurance:** If this Purchase Order covers the performance of labor for Buyer, Seller agrees to indemnify and protect Buyer against all liability, claims or demands for injuries or damages to any person or property growing out of the performance of this Purchase Order. Seller further agrees to carry comprehensive general liability insurance, including, without limitation, contractual and product liability coverage, with minimum limits acceptable to the Buyer, and Seller shall, at the request of the Buyer, furnish the insurance carrier's certificate evidencing such coverage.

**14. Cancellation:** Buyer shall have the right to cancel for default all or any part of the undelivered portion of this Purchase Order if Seller does not make deliveries as specified in the delivery schedule, if Seller breaches any of the terms hereof including warranties of Seller, if Seller makes an arrangement extension or assignment for the benefit of creditors, if Seller dissolves or otherwise ceases to exist or liquidates all or substantially all of its assets, if Seller becomes insolvent or if Seller generally does not pay its debts as they become due. Such right of cancellation is in addition to and not in lieu of any other remedies which Buyer may have in law or equity.

**15. Termination:** The Buyer may terminate performance of work under this Purchase Order in whole or from time to time in part by written notice of termination, whereupon the Seller will stop work on the date and to the extent specified in the notice and terminate all orders and subcontracts to the extent they relate to the terminated work. Seller will promptly advise the Buyer of the quantities of applicable work and material on hand or purchased prior to termination and the most favorable disposition that the Seller can make thereof. Seller will comply with the Buyer's instructions regarding transfer and disposition of title to the possession of such work and material. Within 60 days after receipt of such notice of termination, the Seller will submit all its claims resulting from such termination. Buyer will have the right to check such claims at any reasonable time or times by inspecting and auditing records, facilities, work or materials of the Seller relating to this order. Buyer will pay the Seller without duplication the order price for finished goods accepted by the Buyer and the costs to the Seller of work in process and raw materials allocable to the terminated work, based on any audit the Buyer may conduct and generally accepted accounting principles less; however, (a) the reasonable value or cost (whichever is higher) of any goods used or sold by the Seller without the Buyer's consent, (b) the agreed value of any goods used or sold by the Seller with the Buyer's consent, and (c) the cost of any defective, damaged or destroyed goods or material. Buyer will make no payments for finished goods, work in process or raw material fabricated or procured by the Seller in excess of any order or release. Notwithstanding the above, payments made under this clause shall not exceed the aggregate price specified in this order less payments otherwise made or to be made, and adjustments shall be made reducing the payments hereunder for costs of work in process and raw material to reflect on a pro rata basis any indicated loss on the entire Purchase Order had it been completed. Payment made under this clause constitute the Buyer's only liability in the event this Purchase Order is terminated hereunder. Except as otherwise provided in this Purchase Order, the provisions of this clause will not apply to any cancellation by the Buyer for default by the Seller or for any other cause allowed by law or under this Purchase Order.

**16. In Compliance with Applicable Laws:** Seller agrees that, in the performance of this Purchase Order, it will comply with all applicable laws, statutes, rules, regulations or orders of the United States government or of any state or political subdivision thereof.

**17. Waiver:** The failure of Buyer to insist, in any one or more instances upon the performance of any of the terms, covenants or conditions of this Purchase Order or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such terms, covenants or conditions or the future exercise of such right, but the obligation of Seller with respect to such future performance shall continue in full force and effect.

**18. Assignment:** None of the sums due or to become due nor any of the work to be performed under this Purchase Order shall be assigned without Buyer's prior written consent.

**19. Subcontracting:** None of the work which Buyer contemplates being performed by Seller shall be subcontracted without Buyer's prior written consent, and if and when subcontracting is allowed, Seller shall continue to comply with, and be bound by, all provisions of this Purchase Order.

**20. Venue:** Buyer and Seller each hereby consents to the jurisdiction and venue of any 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 agrees 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 state or federal court situated within the State of Minnesota.

**21. Arbitration:** Without limiting in any way the right of either party to obtain a judicial resolution of disputes hereunder in the manner specified in 20 above, the parties recognize that it may be desirable by mutual agreement to submit certain controversies to binding arbitration in accordance with the rules then prevailing of the American Arbitration Association.