

**Purchase Order Terms and Conditions** (Terms and Conditions also found at [www.smallley.com/POterms](http://www.smallley.com/POterms))

1. **ACCEPTANCE AND CONFLICTING TERMS.** The entire Contract between the above-referenced vendor (“**Seller**”) and SMALLEY STEEL RING CO. (“**Buyer**”) is embodied in the terms and conditions of this Purchase Order and any specifications, drawings and blueprints with respect to the goods and services ordered (this “**Order**”) and this Order shall be deemed accepted and binding upon both of the parties hereto upon the occurrence of either of the following events: (a) when the acknowledgment copy of this Order or an Order Agreement has been signed and returned to Buyer; or (b) when Seller has commenced performance of this Order.

ANY ACCEPTANCE OF THIS ORDER IS LIMITED TO ACCEPTANCE OF THE EXPRESS TERMS OF THE OFFER CONTAINED ON THE FACE AND BACK HEREOF, AND TERMS AND CONDITIONS (ORAL OR WRITTEN) DIFFERING FROM, OR IN ADDITION TO, THE TERMS AND CONDITIONS SET FORTH HEREIN, WHETHER OR NOT SUCH DIFFERENT OR ADDITIONAL TERMS MATERIALLY ALTER THE TERMS AND CONDITIONS OF THIS ORDER, ARE HEREBY OBJECTED TO BY BUYER, WAIVED BY SELLER AND SHALL NOT OPERATE AS A REJECTION OF THIS OFFER WHICH SHALL BE DEEMED ACCEPTED WITHOUT SAID DIFFERING OR ADDITIONAL TERMS AND CONDITIONS.

Except as otherwise provided herein, this Order may not be altered or modified except in writing, duly executed by an appropriate representative of each party. If Seller objects in writing to any terms and conditions of this Order, Seller agrees that the terms and conditions of this Order will apply and bind each party until an overriding written agreement, with respect to such terms and conditions objected to by Seller, is negotiated in good faith and consummated between Buyer and Seller. Terms and conditions not objected to by Seller will be binding upon Seller.

2. **DELIVERY - Time is of the essence of this Order.** Unless expressly specified, delivery may not be in installments. Deliveries will be made in quantities and at the time(s) specified herein. If Seller’s deliveries fail to meet schedule, Buyer may, without limiting its other rights or remedies, direct expected production scheduling and routing and Seller will pay any additional costs incurred. Alternatively, Buyer may exercise its right to terminate pursuant to Section 13 hereof, all of any part of the Order in the event (a) Seller fails to make scheduled delivery of any or all of the goods and services ordered, including without limitation, raw material, components, intermediate assemblies and other like supplies (hereinafter, the “**Goods**”) or (b) Seller fails to perform the services described herein or (c) Seller’s performance, in Buyer’s opinion, substantially endangers completion of this Order. Buyer will not be liable for Seller’s commitments or production arrangements which are entered into in advance of issuance of this Order or which are in excess of the amount or in advance of the time necessary to meet Buyer’s schedule(s). If Seller delivers the Goods in advance of Buyer’s schedule(s), Buyer may withhold payment therefore until the date upon which the Goods were actually scheduled for delivery or store the Goods at Seller’s expense until such scheduled delivery date.

3. **INSPECTION AND ACCEPTANCE OF THE GOODS -** Payment for any of the Goods shall not constitute approval or acceptance of such Goods by Buyer, and Buyer’s right of inspection shall survive payment. All of the Goods will be subject to inspection and test by Buyer at times and places deemed necessary by Buyer including inspection during the period of manufacture at Seller’s facility. Seller will permit access to its facilities by Buyer, Buyer’s representatives and customers, and regulatory agencies to determine and verify the quality of work, records and material with respect to the Goods ordered, and will provide all tools, facilities and assistance reasonably necessary for such inspection at no cost to Buyer. Such Goods will be subject to inspection and acceptance by Buyer after delivery to Buyer. Seller acknowledges that such inspection may not occur until the Goods are removed from inventory for use and that such delay will not constitute a waiver by Buyer of any of Buyer’s rights hereunder. Inspections and payments made by Buyer prior to delivery will not constitute acceptance.

If any of the Goods do not meet the specifications or otherwise do not conform with the requirements of this Order, Buyer will have the right to reject such Goods. Any Goods rejected after delivery may, at Buyer’s option, (a) be returned to Seller for reimbursement, credit, replacement or correction, at Seller’s expense, or (b) Buyer may correct or replace such Goods, at the Seller’s expense. Any of the Goods rejected and returned to Seller will not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed to Buyer. Packaging, handling and transportation costs relating to return and re-delivery of rejected Goods will be paid for by Seller.

Quality records shall be made available to Buyer upon request, and shall be retained in a safe, accessible location for a period of ten (10) years minimum, unless otherwise specified.

4. **CHANGES -** Buyer may, at any time, by a written order, make changes in any of the following: (a) tooling drawings, designs or specifications, where the Goods

to be furnished are to be specially manufactured for Buyer in accordance therewith; (b) method of shipment of packing; and (c) place of delivery and delivery schedule, and Seller will promptly comply with such change(s).

If any such change(s) cause an increase or decrease in the cost of, or the time required for the performance of any work under this Order, an equitable adjustment will be made in the price or delivery schedule, or both, by Buyer and this Order shall be modified in writing accordingly. Any claim by Seller for adjustment under this Section must be asserted by Seller within fifteen (15) days from the date of receipt of notice of change by Seller unless Buyer expressly waives such requirement in writing. Where the cost of property made obsolete or excess as a result of any change requested by Buyer is included in Seller’s claim for adjustment, Buyer shall have the right to prescribe the manner of disposition of such property. Failure to agree on any claim for an equitable adjustment under this Section will be a dispute and either party may thereupon pursue any remedy which it may have in any court of competent jurisdiction or under Defense Acquisition Regulations, if applicable. Pending the resolution of any such dispute, Seller will diligently pursue the performance of this Order as changed.

During performance of this order, Seller shall not make any changes in design, drawings, specifications, material, process, products, services, procedures, facility, location, or practices affecting items to be furnished by Seller without advanced notification to and written approval of Buyer.

Seller must flow down to all sub-tier suppliers the applicable requirements in the buyer’s documents, including key and critical characteristics where required.

5. **SPECIFICATIONS -** All specifications applicable to this Order shall be the latest issue in effect on the date of issuance of this Order unless otherwise noted. If drawings and specifications are furnished by Buyer, this Order shall be based upon such drawings and specifications, and approval of samples by Buyer shall not relieve Seller from strict and full compliance with such drawings and specifications.

6. **BUYER’S CONFIDENTIAL INFORMATION -** Seller will keep confidential all information, drawings, specifications or data furnished by Buyer and shall not divulge or use such information, drawings, specifications or data for the benefit of any third person or entity or for any purpose other than the performance of this Order. Except as required for the performance of this Order, Seller will not make copies or permit copies thereof to be made without the prior written consent of Buyer; Seller will, upon completion of this Order, return such information, drawings, specifications and data to Buyer and make no further use, either directly or indirectly, of any such data or of any information derived therefrom without obtaining Buyer’s prior written consent.

7. **USE OF SELLER’S INFORMATION -** Seller agrees that all information heretofore or hereafter furnished or disclosed to Buyer by Seller, in connection with the placing or filling of this Order, is furnished or disclosed as a part of the consideration for this Order. Such information is not, unless otherwise agreed to by Buyer in writing, to be treated as confidential or proprietary. Seller will assert no claims (other than for patent infringement) by reason of the use or disclosure of information so furnished or disclosed, unless such agreement is made in writing and signed by an appropriate representative of Buyer.

8. **DISCLOSURE OF CONTRACT -** Seller shall not in any manner advertise or publish that it has furnished, or contracted to furnish, to Buyer the Goods herein described or purchased without the prior written consent of Buyer.

9. **TOOLING -** Unless otherwise specified in this Order, all tooling, jigs, dies, and other like articles required for performance will be furnished by Seller and shall be maintained in good condition and replaced when necessary at Seller’s expense. Seller will pay all applicable taxes, including personal property taxes, assessed upon such tooling, jigs or other like articles. If Buyer agrees to pay Seller for special tooling, jigs and other articles, either separately or as a stated part of the unit prices of the Goods, Buyer may, at its option, upon making payment therefor, take title and possession of such special tooling, jigs and articles, including any dies, tools, gauges, fixtures and patterns.

10. **BUYER-OWNED PROPERTY -** Unless Buyer and Seller otherwise agree in writing, the following provisions shall apply to any tools, tooling, patterns, equipment, materials or other properties used in the manufacture of the Goods for Buyer or in the performance of this Order, that are either supplied to Seller by Buyer or have been acquired by Seller and specifically paid for by Buyer. All such properties (including scrap) shall hereafter be referred to as “**Buyer-Owned Property**”.

(a) Seller shall have the right to use Buyer-Owned Property without payment

for usage as required in the performance of this Order or other work for Buyer, but shall not use Buyer-Owned Property in the performance of any other work without prior written approval of the Buyer. Title to all Buyer-Owned Property shall at all times remain with Buyer. Title to all Buyer-Owned Property which is procured or manufactured by Seller for Buyer shall be fully invested in Buyer upon payments for same by Buyer.

(b) Seller shall take necessary measures to preserve Buyer's title to Buyer-Owned Property, free of all liens and encumbrances. Buyer retains the right, in addition to other rights provided by law, to enter Seller's premises and remove Buyer-Owned Property with or without a court order and without a bond.

(c) Seller shall, on written request of Buyer, properly pack and ship Buyer-Owned Property to such destination as designated by Buyer.

(d) Seller shall, at its expense, perform all maintenance work, repairs and replacement necessary with respect to applicable Buyer-Owned Property so that such Buyer-Owned Property remains suitable for the use intended.

(e) The risk of loss or damage to all Buyer-Owned Property shall be with Seller from the time that such Buyer-Owned Property is delivered to Seller until that Buyer-Owned Property is removed from Seller's place of business or control as directed by Buyer in writing. Proof of adequate insurance coverage on Buyer-Owned Property shall be provided to Buyer by Seller upon written request of Buyer.

(f) Buyer shall not be liable for loss, damage, detention, or delay resulting from causes beyond its control with respect to any Buyer-Owned Property to be delivered to Seller by Buyer.

(g) Seller shall assume and shall indemnify Buyer against any and all liability for damaged property or injury to, or death of any persons arising from, or incidental to the presence of or use of, Buyer-Owned Property, whether such damage, injury or death is caused by defects in Buyer-Owned Property, negligence in the use thereof, or otherwise.

(h) Seller shall, upon receipt of written request, provide Buyer with a current listing of Buyer-Owned Property in its or its subcontractor's possession, indicating complete descriptions, quantities and property conditions.

11. **PRICES** - The prices of the Goods are those stated on the face of this Order and will remain firm for the quantities ordered hereunder notwithstanding any delays in delivery or acceptance, provided that, in the event Buyer requests and Seller agrees that deliveries be delayed for more than twelve (12) months after the last scheduled date of delivery set forth on the face of this Order, an equitable adjustment in price based upon actual cost increases experienced by Seller as the consequence of such delay will be made. In the event the parties are unable to agree upon such price adjustment, the undelivered balance of this Order may be canceled.

12. **TERMINATION FOR DEFAULT** - Buyer may, by written notice of default, terminate this Order or any part thereof, without liability to Buyer, in the event of the occurrence of any of the following: (a) insolvency of Seller, the filing of a voluntary or involuntary petition in bankruptcy by or regarding Seller, appointing of a Receiver or Trustee for Seller, or an assignment by Seller for the benefit of creditors, (b) failure to meet Buyer's delivery schedule, or (c) a material breach of any of the terms or conditions hereof. After a default (and at Buyer's option) Buyer may (x) terminate this Order in whole or in part, and/or (y) obtain the Goods ordered herein from another source and charge Seller for any excess cost resulting from such re-procurement, and/or (z) pursue such other remedies at law or in equity available to Buyer. Buyer may at its option, in its sole discretion, require delivery of any of the Goods which are ready for delivery. Seller will assure that such Goods are capable of delivery free and clear of all liens and other encumbrances. If after notice of termination of this Order has been given, it is determined by Buyer that the Seller's failure to perform this Order is due to any cause beyond Seller's control, such notice of default shall be deemed to have been issued pursuant to Section 13 and the rights and obligation of the parties shall in such event be governed by such Section, provided Seller notifies Buyer of such cause.

13. **TERMINATION AT BUYER'S OPTION: LIABILITY UPON TERMINATION** - Buyer may terminate this Order at any time, even if Seller is not in default hereunder, in whole or in part by written notice of termination whereupon Seller will stop work on the date and to the extent specified in the notice and terminate all vendor orders and related subcontracts. Seller will promptly advise Buyer in writing of the quantities of work and material on hand or purchased prior to termination and the most favorable disposition that Seller can make thereof. Seller will comply with Buyer's instructions regarding transfer and disposition of title and possession of such work and material within five (5) business days, or such other time period as may be specified in writing by Buyer, after receipt of such notice of termination, or in the event Buyer gives no instruction, Seller will take prudent steps

to mitigate its damages. Buyer will have the right to audit such claims at any reasonable time(s) by inspecting and auditing the records, facilities, work or materials of Seller and/or its vendors and subcontractors relating to this Order. Buyer will pay Seller, without duplication, the Order price for furnished work accepted by Buyer and the cost to Seller of work in process and raw material allocable to the terminated work, based on any audit Buyer may conduct and generally accepted accounting principles, less (a) the reasonable value or cost, whichever is higher, of any items used or sold by Seller in violation of this Order; (b) the agreed value of any items used or sold by Seller; and (c) the cost of any defective, damaged or destroyed work or material. Buyer will make no payments for finished work, work in process or raw material, fabrication or materials procured by Seller in excess or advance of any amounts released by Buyer. Notwithstanding the above, payments made under this clause shall not exceed the aggregate minimum price specified in this Order for the Goods less payments otherwise made, and adjustments will be made reducing the payments hereunder for costs of work in process and raw materials to reflect on a *pro rata* basis any indicated loss on the entire Order had it been completed. **PAYMENT MADE UNDER THIS SECTION 13 WILL CONSTITUTE BUYER'S ONLY LIABILITY AND SELLER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT THIS ORDER IS TERMINATED FOR BUYER'S CONVENIENCE.**

14. **EXCUSABLE DELAYS** - Neither party shall be liable for damages for delay in delivery or failure to otherwise perform its obligations hereunder arising out of causes beyond its control and without its fault or negligence, including, but not limited to, acts of God or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather. If the delay is caused by the delay of Seller's subcontractor(s) (any tier) or vendor(s) and if such delay arises out of causes beyond the control of both Seller or said subcontractor(s) or vendor(s) and without the fault or negligence of any of them, Seller shall not be liable to Buyer in damages unless the materials or services to be furnished by said subcontractor(s) or vendor(s) were obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedule. Seller will notify Buyer in writing within forty-eight (48) hours after the beginning of any such cause. Nothing herein shall relieve Seller from making deliveries at the earliest possible time. Notwithstanding anything to the contrary contained in this Section, in the event such delay materially interferes with the performance of Buyer's requirement, Buyer may cancel any undelivered portion of this Order at any time, without liability to Seller of any kind or nature whatsoever, upon written notice to Seller.

15. **SAFETY** - To the extent that Seller's agents, employees of subcontractor(s) or vendor(s) enter upon premises occupied by or under the control of Buyer, or any of its customers or suppliers in performing this Order, Seller shall take steps to prevent the occurrence of any injury (including death) to any persons, or of any damage to any property, arising out of acts or omissions of such agents, employees of subcontractor(s) or vendor(s).

16. **INDEMNIFICATION** - Except to the extent that any such injury or damage is due solely and directly to Buyer's negligence, Seller shall indemnify, defend and hold Buyer and its affiliates, and their respective officers, directors, shareholders, employees, agents, representatives, successors and assigns, harmless from any and all costs, losses, expenses, damages, claims, suits or any liability whatsoever, including, without limitation, reasonable attorneys' fees and costs, arising from, relating to or in connection with (a) any act or omission of Seller, its agents, employees or subcontractor(s), (b) a breach of the representations, warranties or covenants of Seller hereunder, (c) the Goods, this Order or any Order Agreement, and/or (d) any fault, negligence or defect, latent or otherwise, in the material or articles purchased or their design or during or as a result of the work or services performed pursuant to this Order or any Order Agreement.

17. **INSURANCE** - Seller shall maintain and require its subcontractor(s) and vendor(s) to maintain, (a) public liability and property damage insurance, including contractual liability (both general and vehicle), in amounts sufficient to cover the obligations of Seller set forth in these terms and conditions, and (b) workmen's compensation and employer's liability insurance covering all employees engaged in performing this Order against claims arising under applicable Workmen's Compensation and Occupation Disease Acts. In addition, Seller, at its expense shall carry sufficient insurance to indemnify Buyer against any loss or damage to Buyer's materials, tools or equipment while at Seller's plant. Seller shall furnish, upon Buyer's request, certificates evidencing the insurance required hereunder. Seller warrants that no expiration, termination or modification of such insurance will take place without thirty (30) days' prior written notice to buyer.

18. **COMPLIANCE WITH LAWS** - Seller shall, in the performance of work or services under this Order, fully comply with all applicable Federal, State, National, Provincial and local laws, rules, regulations, and ordinances, of the United States and/or foreign countries or jurisdictions, where applicable, and shall hold Buyer harmless from any liability resulting from its failure to comply.

19. **TAXES** - Seller's price shall be exclusive of any Federal, State or local

sales, use or excise taxes levied upon, or measured by, the sale, the sales price or use of the Goods and any like taxes of foreign countries or jurisdictions (including customs duties, forwarding fees, port entry fees and other like impositions), where applicable in the performance of this Order. Seller shall list separately on its invoice any such tax applicable to any of the Goods payable by Buyer, with respect to which Buyer does not furnish to Seller evidence of exemption. Seller's prices shall not include any taxes on property owned by the U.S. Government, unless authorized in writing by Buyer. Seller agrees to comply with any reasonable request by Buyer regarding payments under protest and regarding any refunds, claims, litigation or proceedings with respect to any such taxes and to make appropriate adjustments to afford Buyer the benefit of any refund or reduction in such taxes.

20. **DISPUTES – REMEDIES** - With respect to any dispute arising hereunder or with respect to the Goods which is not disposed of by agreement or for which Seller's sole and exclusive remedy is not expressly set forth herein, either party may pursue any remedy which it may have in any court of competent jurisdiction or under Defense Acquisition Regulations if applicable. Pending the resolution of any such dispute, Seller shall diligently pursue the performance of this Order. Anything herein to the contrary notwithstanding, if any government official having cognizance of Buyer's or its customer's contract issues a final decision relating directly or indirectly to this Order or to the items to be delivered hereunder, such decision, if binding upon Buyer, will in turn be binding upon Seller, and Seller will not be entitled to additional compensation or reimbursement for compliance therewith. The remedies provided Buyer herein will be cumulative and in addition to any other remedies provided by law or equity. Buyer is authorized to apply toward any payment of any monies due Seller by Buyer any sums now or hereafter owed by Buyer to Seller or any entity affiliated with Seller. Any failure by Buyer to enforce its rights hereunder, or a waiver of a breach of any provision hereof, will not be deemed a waiver of such rights or a waiver of any other breach. **IN NO EVENT SHALL BUYER BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, TORT OR CONSEQUENTIAL DAMAGES OR LOSSES OF ANY NATURE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, LOST REVENUES, PROFITS OR SAVINGS, TO SELLER OR ANY THIRD PARTY, AND ALL SUCH DAMAGES ARE HEREBY DISCLAIMED.**

21. **NOTICE OF LABOR DISPUTES** - Whenever Seller has knowledge of any actual or potential labor dispute which delays or threatens to delay the timely performance of this Order, Seller shall immediately give written notice thereof, including all relevant information with respect thereto, to Buyer. Seller agrees to insert the substance of this clause, including this sentence, in any subcontract hereunder or vendor order issued.

22. **WARRANTY** - Seller warrants that all of the Goods furnished hereunder will be merchantable, free of defects in material and workmanship, will conform to applicable written drawings, specifications and other data and, if not of Buyer's specified design, will be free of design defects and fit and sufficient for the purpose intended. All warranties shall survive acceptance and payment, and shall run to Buyer and its customers.

23. **PATENT INDEMNIFICATION** - Seller warrants that the Goods purchased hereunder and sale or use of them will not infringe any United States Letters patent. Seller shall indemnify and save harmless Buyer, its successors, assigns, customers and users of the Goods, from and against all loss, liability and damage, including reasonable attorneys' fees, costs and expenses, resulting from any claim that the manufacture, use, lease, sale or resale or any of the Goods supplied under this Order infringe any patent or patent rights, confidential information, trade secrets, trademarks, trade names or copyrights. Seller will, when notified, at Buyer's request, defend any action or claim of such infringement at its own expense. Indemnification shall not apply to the Goods manufactured in accordance with Buyer's specified design or any infringement based solely upon the use of the Goods supplied hereunder in combination with other goods not furnished by Seller, unless such combination is in accordance with recommendations or specifications furnished by Seller. In the event the manufacture, sale, lease or use of such Goods is enjoined, Seller shall, at its own expense at Buyer's option, either procure for Buyer the right to continue using such Goods, or replace same with equivalent non-infringing goods or modify such Goods so they become non-infringing or accept return of the Goods and refund the purchase price, including transportation, installation, removal and other charges incidental thereto.

24. **EMPLOYMENT PRACTICES** - Seller will comply with all applicable requirements of the Fair Labor Standards Act, as amended, and with all applicable regulations and orders issued thereunder, and so certify on its invoice. Seller incorporates herein the affirmative action clauses contained in OFCCP Regulations (41 CFR Chapter 60) with respect to Executive Order 11246.

**To the extent applicable, the equal employment opportunity and affirmative action requirements set forth in 41 CFR §§ 60-1.4(a) are hereby incorporated by reference into this contract. This contractor and subcontractor shall also abide by the requirements of 41 CFR §§ 60-300.5(a) and 60-741.5(a). These**

**regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.**

25. **OSHA AND CPSA COMPLIANCE** - Seller warrants that the Goods sold or the services rendered to Buyer shall conform to the standards and regulations promulgated under the Occupational Safety and Health Act of 1979 (29 U.S.C. 651) and the Consumer Product Safety Act of 1973 (Title 5 U.S.C. 5314, 5315; 15 U.S.C. 2051-2081). In the event the Goods sold do not conform to such standards and regulations, Buyer may return such Goods for correction or replacement or at Buyer's option, exercise its rights under Section 13 hereof. Seller shall indemnify Buyer from and against any and all claims, losses or expenses resulting from Seller's failure to comply with the warranties set forth in this Section. Failure of Buyer to contest a citation resulting from non-compliance of the Goods will not relieve Seller of liability under these warranties.

26. **GOVERNMENT PROPERTY** - In the event any tooling, test equipment, articles or material of any type designated or acquired hereunder as Government property or as Government owned is furnished to Seller in connection herewith, Seller assumes complete liability therefor, except for reasonable wear, tear, and consumption in the performance of this Order, unless otherwise provided on the face hereof. Seller shall comply with Appendix B of the Defense Acquisition Regulations.

27. **GOVERNMENT CONTRACTS** - If a U.S. Government contract number appears on the face of this Order, Seller will comply with the provisions of the Anti-Kickback Statute. (Public Law 86-698, 74 Stat. 740, 41 U.S.C. 51-54) and shall hold Buyer harmless from any liability resulting from failure of such compliance. Contract clauses required by the provisions of Defense Acquisition Regulations listed below (unless Buyer, in writing, designates other governmental regulations as applicable) are incorporated herein by reference, except that the terms "Government" and "Contracting Officer" and equivalent phrases (unless the contexts clearly indicate otherwise) shall mean "Buyer" and the terms "Contractor" or "Subcontractor" shall mean "Seller".

28. **ASSIGNMENT** - This Order or any portion of this Order or any duty or right herein or any claim arising hereunder shall not be assigned by Seller without the prior written consent of Buyer. Nor may this Order be assigned by operation of law or a merger or judicial sale or otherwise without the prior written consent of Buyer. Any unauthorized assignment or attempted assignment by Seller shall constitute a material breach of this Order. This Order may be assigned by Buyer. Any payment to any assignee of any claim under this Order, in consequence of such consent, shall be subject to set-off, recoupment or other reduction for any claim which Buyer may have against Seller.

29. **WAIVER** - Failure of Buyer or Seller to insist on performance of any of the terms and conditions or requirements of this Order shall not be construed as a waiver of such terms, conditions or requirements and shall not affect the right of either party thereafter to enforce each and every term, condition or requirement hereof.

30. **CHEMICAL SUBSTANCES** - Seller warrants that each chemical substance sold hereunder shall, at the time of sale, transfer or delivery, be on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Agency pursuant to 15 U.S.C.A. Section 2607.

31. **SEVERABILITY** - If any term, covenant or condition of these terms and conditions, or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of these terms and conditions, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of these terms and conditions shall be valid and shall be enforced to the fullest extent permitted by law.

32. **FURTHER ASSURANCES** - The parties hereto shall perform such acts, deliver such other documents and do all such other things consistent with the terms and conditions of this Order as may be reasonably necessary or desirable for the performance of this Order and to otherwise carry out the intents and purposes hereof.

33. **NOTIFICATION OF NON-CONFORMING PRODUCT**- Supplier shall notify Buyer immediately after discovering non-conforming product. Buyer will then determine the disposition of the product. Buyer will provide Supplier with specific instructions and disposition for the non-conforming material as applicable.