



FLAKEBOARD AMERICA LIMITED (“FLAKEBOARD”)
TERMS AND CONDITIONS OF PURCHASE

Important Notice: THIS PURCHASE ORDER IS STRICTLY LIMITED TO ITS TERMS AND CONDITIONS AND ANY COUNTER-OFFERS OR CHANGES OF TERMS PROPOSED BY THE SUPPLIER ARE HEREBY REJECTED, UNLESS SPECIFICALLY AGREED TO IN WRITING BY FLAKEBOARD.

1. Acceptance of Conditions

- (a) By accepting the Order or any part of it, the Supplier agrees to and accepts all of the following terms and conditions, and any other terms and conditions incorporated by reference or appended to this Purchase Order. This Order is open for acceptance only upon these terms and conditions.
- (b) Flakeboard may insist upon strict compliance with these terms and conditions despite any previous custom, practice or course of dealing to the contrary.

2. Specifications

Flakeboard may make changes at any time and from time to time to any specifications or drawings and will endeavour to timely notify Suppliers of such changes.

3. Invoices and Delivery Slips

- (a) Delivery slips shall accompany all shipments of goods and in each case shall identify those goods shipped, previously shipped or back ordered, as the case may be, and shall show the Purchase Order number, the place from which the goods were shipped, the name of the carrier and bill of lading number.
- (b) All invoices shall be sent to the billing address stated on the Purchase Order and shall show the applicable Purchase Order number as well as the date of shipment.
- (c) All payments will be made in US dollars within the set standard terms of net 30 unless otherwise agreed upon by both Flakeboard and the Supplier.
- (d) Canadian and Foreign Suppliers shall forward 4 properly certified Customs invoices on the same day that shipment is made, together with all certificates required by law, and all such invoices shall show the Purchase Order number, case or container number and contents of each package separately.

4. Delivery Required

- (a) Where the Supplier fails to deliver the goods on or before the Delivery Required date, Flakeboard may cancel this Order or any part of it without prejudice to its other rights, and may return at the Supplier's expense part or all of any shipment of goods received after the Delivery Required date, unless such late shipment has been approved, and, irrespective of whether this Order is cancelled, Flakeboard may charge the Supplier with any loss or expense sustained as a result of the late delivery or failure to deliver.
- (b) Despite anything in this Purchase Order, where a Delivery Required date is stated on the Purchase Order, timely delivery is of the essence and the Seller and/or Supplier shall be responsible to ensure that such delivery is made, and shall advise Flakeboard immediately of any anticipated delays and the reasons for delay.

5. Delivery and Shipment

- (a) Goods shall not be deemed or construed to be delivered until actually received by Flakeboard at the place designated on the Purchase Order.
- (b) The Supplier shall notify Flakeboard forthwith where goods cannot be delivered in the quantities shown at the times specified in the delivery schedule.
- (c) All goods shall be properly classified, described, packaged, marked and labelled by the Supplier for shipment, and shall be in proper condition for transportation in accordance with any applicable State or Federal laws or regulations, and the Supplier shall indemnify and save Flakeboard harmless from any claims, penalties or damages incurred by Flakeboard as a result of the improper shipment of the goods.
- (d) Where by reason of a delay in shipment, it is necessary to make express or air express shipments of the goods in order to deliver the goods on the Delivery Required date, Flakeboard may direct that the goods be so shipped, and the difference between freight and express rates shall be for the account of the Supplier.
- (e) Except with the prior written consent of Flakeboard, all goods are to be shipped in the manner specified in the Purchase Order (or, if no method of shipment is specified, by the least expensive method of shipment), and where the goods are shipped by another method, Flakeboard may:
 - (i) refuse to accept delivery of the goods; or
 - (ii) accept delivery of the goods, and deduct any extra cost incurred by Flakeboard by reason of their shipment by an improper method from the price payable to the Supplier.

6. Right of Inspection

- (a) All goods received shall be subject to Flakeboard's inspection and rejection (and to the inspection and rejection of any Federal, State or Municipal Government or agency, the permission of which is required to use the goods), and the Supplier shall

- (i) permit any accredited representative of Flakeboard or applicable Government or agency to attend at the plant, warehouse or other place of shipment;
 - (ii) supply such samples of goods as Flakeboard or any representative of a Government or agency may reasonably request;
 - (iii) provide all reasonable assistance to any representative of Flakeboard or any Government or agency, for the purpose of testing or otherwise inspecting the goods.
- (b) The Supplier shall bear the cost of delivery and inspection of defective, non-conforming, unordered or otherwise rejected goods.
- (c) No rejected goods shall be replaced without a new Purchase Order unless prior approval from Flakeboard is obtained.
- (d) Where additional work is required to meet specification requirements, such work shall be arranged forthwith by the Supplier, and shall be carried out at no extra cost to Flakeboard.
- (e) Unauthorized late deliveries, unordered goods, defective goods, and goods not in accordance with Flakeboard's specifications shall be held for 3 days for the Supplier's instructions and at the Supplier's risk, and where the Supplier so directs, shall be returned at the Supplier's expense.
- (f) Payment for goods prior to inspection shall not constitute acceptance of those goods.
- (g) Where goods are rejected, any allowance for the price of those goods shall be deducted from payments made in respect of total shipments.

7. Exact Order

- (a) This Purchase Order is for the exact quantity stated, and no overrun or overshipment will be chargeable to Flakeboard unless approved by Flakeboard in writing prior to shipment.
- (b) No costs additional to those stated on the Purchase Order shall be chargeable to Flakeboard unless approved by Flakeboard in writing prior to shipment.
- (c) There shall be no back-order without prior approval by Flakeboard.

8. Force Majeure

Neither Flakeboard nor the Supplier shall be responsible for delays in respect of this Purchase Order that result from acts of God, acts of public enemies, civil commotion, explosion, fire, law, order, ordinance or requirement of any government or its representative or legal body having jurisdiction, outbreak of disease, power failure, regulation, revolution, terrorism, war, or labor unrest such as strikes, slowdowns, picketing or boycotts, or any other event or occurrence beyond the reasonable control of the either party ("Force Majeure"). If either Flakeboard or the Supplier is unable or fails to perform any or all of its duties and obligations under this Purchase Order by reason of Force Majeure, then the party so affected (the "Failing Party") will not be liable to the other party during the period of Force Majeure and to the extent of its inability or failure, but:

- (a) the Failing Party claiming Force Majeure will have notified the other party in writing within 72 hours after the Force Majeure event, setting out in reasonable detail the nature of the event, giving a good faith estimate of the expected duration of the event and outlining the steps the Failing Party intends to take to deal with the event; and
- (b) the Failing Party shall make all commercially reasonable efforts in the circumstances to surmount the event of Force Majeure, and to resume full performance as soon as it is reasonably practicable.

9. Warranties By Supplier

- (a) The Supplier warrants that all goods shall
- (i) conform to any sample, specifications, drawings or other description furnished to or adopted by Flakeboard; and
 - (ii) be of merchantable quality, free from any defect in material or workmanship and fit for any purpose expressly disclosed by Flakeboard to the Supplier.
- (b) The Seller warrants that it has good and marketable title to the goods and that neither the supply of any goods to Flakeboard nor the use of those goods by Flakeboard shall constitute an infringement of any patent, invention, trade mark, copyright or similar proprietary interest belonging to any third party, and the Seller shall indemnify Flakeboard and shall save Flakeboard harmless from and against any and all claims, liabilities or costs (including legal costs on a substantial indemnity basis) to which Flakeboard is exposed by reason of any such infringement.

10. Amendment

No modifications of, or additions to, the provisions or conditions of this Purchase Order will become part of it unless accepted in writing by Flakeboard.

11. Assignment

This Purchase Order may not be assigned, sub-contracted or otherwise transferred in whole or in part to any other supplier, except with the prior written consent of Flakeboard.

12. Jurisdiction

This Purchase Order is to be construed and governed by all applicable State and Federal laws.