

# Purchase Order Terms and Conditions

This document, which includes the following terms and conditions and those on the face of the Purchase Order, serves as the offer of Howell Laboratories, Inc. ("HLI") to the vendor identified on the face of the Purchase Order ("Vendor") to buy the goods or services (the "Products") described, which, when accepted in accordance with its terms, constitutes an agreement between HLI and Vendor (the "Agreement").

## 1. Acceptance of Order.

This Purchase Order may be accepted only in strict accord with the terms hereof. Any additional or different terms contained in any confirmation, acknowledgement or other documents sent by Vendor will not be accepted and will not be effective to modify the terms hereof. Acceptance of this Purchase Order on the terms hereof shall be conclusively evidenced by Vendor's delivery of the Products. Any acceptance which is qualified in any respect or which contains one or more different or additional terms shall constitute an acceptance of the terms hereof and such qualifications or different or additional terms shall be deemed an offer for supplemental terms which shall be deemed rejected by HLI unless expressly assented to in writing. Such rejection shall not affect the terms and validity of this Agreement.

## 2. Pricing.

Vendor warrants that the prices set forth on this Purchase Order are as low as any now charged by Vendor, and shall be as low as any which Vendor, at the time(s) for delivery hereunder, charges to other customers for like items and quantities. Vendor will not charge HLI for packing, crating, freight, express, cartage, insurance, customs or import duties or storage unless expressly provided by this Purchase Order. If the prices are subject to a discount for prompt payment, the discount period(s) for such of the Products delivered will be calculated from the later of: (a) the date of the invoice, or (b) the date on which HLI received the Products.

## 3. Termination.

- (a) Performance of work under this Purchase Order may be terminated by HLI, with or without cause, in all or in part, at any time by delivery of a written notice of termination to Vendor specifying the extent of such termination.
- (b) Upon receipt of notice of termination, Vendor shall immediately terminate work to the extent specified and take all actions necessary to limit HLI's financial obligations hereunder. At the request of HLI, Vendor shall deliver to HLI, or if authorized or directed by HLI, dispose of in accordance with such authorization or direction, all fabricated and unfabricated Products, parts of Products, work in process, completed Products and other supplies.
- (c) HLI's liability, if any, upon termination shall be limited to paying to Vendor, to the extent unpaid, the Purchase Order price for all Products which have been fabricated or performed or delivered to HLI in full accordance with this Purchase Order and any written amendments thereto.

## 4. Suspension; Changes.

HLI reserves the right to suspend work or to change specifications, drawings or quantities of the Products covered by this Purchase Order, subject to equitable adjustment for any necessary differences in price or time of delivery. If such suspension or changes cause an increase or decrease in the cost of performance of this order or in the time required for its performance, an equitable adjustment shall be negotiated promptly and the order shall be modified in writing accordingly. Any claim by Vendor for adjustment under this clause must be asserted in writing within thirty days from the day of receipt by Vendor of notification of the change or suspension and shall be followed as soon as practicable with specification of the amount claimed and supporting cost figures; however, nothing herein shall excuse Vendor from proceeding with this Purchase Order as changed.

## 5. Delivery Terms.

Vendor shall ship the Products F.O.B. HLI's designated place of delivery, with risk of loss to pass to HLI only upon HLI's receipt of the Products. Passage of title shall not constitute acceptance of any of the Products. Vendor shall be responsible for packaging the Products for shipment in accordance with industry standards and practices, and in compliance with all laws or regulations applicable to such Products. Vendor shall ship the Products pursuant to HLI's instructions, which may be changed by timely oral or written notice to Vendor. In the absence of specific instructions from HLI, Vendor shall be responsible for ensuring that the mode of transportation is appropriate for the Products and the required delivery time. TIME IS OF THE ESSENCE HEREOF and if any of the Products are not actually received by HLI within the time specified therefor (or within a reasonable time if none is specified) for any reason whatsoever (other than by reason of civil disturbance, act of God, strike, force majeure, fire or other catastrophe), HLI may, in addition to all other rights and remedies it may have hereunder or at law or in equity, refuse to accept the Products (or any of them), and may cancel this Purchase Order without any liability on its part to any person, firm or entity (including, without limitation, Vendor) and may recover from Vendor any loss or damage whatsoever incurred or suffered by HLI as a result thereof. HLI's acceptance of the Products shall not constitute a waiver of any claim for delay.

## Howell Laboratories, Inc.

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## 6. Warranties.

Without limiting or excluding any other warranty, express or implied, Vendor represents, warrants and guarantees that the Products furnished hereunder:

- (a) Will be new, of first-class materials and design and merchantable quality, free from defects in material or workmanship and suitable for the purpose intended by HLI;
- (b) Does and will conform to:
  - any and all specifications,
  - any and all samples provided to HLI by Vendor or to Vendor by HLI and (iii) any and all literature and information regarding the Products provided to HLI by Vendor;
- (c) Has been manufactured in accordance with and will comply with all laws, rules, regulations and requirements of all governmental authorities having jurisdiction;
- (d) Will be properly branded, labeled, tagged, marked and/or registered (if required) in accordance with all applicable laws, rules, regulations and requirements, and Vendor's invoices shall bear separate guarantees provided for under such laws, rules, regulations, and requirements (or the appropriate notices that a continuing guarantee has been properly filed and renewed, if necessary, if permitted in lieu thereof); and
- (e) Does not and will not infringe upon or violate any patent, trademark, trade name, copyright or any other rights of third parties. HLI shall be under no duty to inspect any of the Products prior to use or resale, and neither the use nor resale of any Products covered by this Purchase Order shall constitute a waiver of any of HLI's rights, including rights to set-off, in whole or in part, against any sums payable to Vendor whether arising under this Purchase Order or otherwise.

## 7. Inspection.

The Products ordered and all parts, materials and workmanship entering into the performance of this order may be subject to source, site and final inspection and tests, or all of them by HLI and/or HLI's customers. If inspection and tests, whether preliminary or final, are made on Vendor's premises, Vendor shall furnish, without additional charge, all reasonable facilities and assistance for safe and convenient inspection and tests required by HLI and for HLI's customer, as the case may be. Inspection by HLI or failure to inspect by HLI shall not relieve Vendor of any responsibility or liability with respect to the products or work nor be interpreted in any way to imply acceptance by HLI.

## 8. Indemnification.

Vendor agrees to defend, protect and hold harmless HLI, its successors, assigns, customers and users of the Products, from and against any and all damages, claims, demands, losses, attorneys' fees, and expenses resulting from:

- (a) Any alleged infringement or violation of any patent, trademark, trade name, copyright or other rights of third parties;
- (b) Any actual, alleged or threatened breach of any representation, warranty or agreement set forth herein;
- (c) Any defect or alleged defect in the Products furnished hereunder;
- (d) The allegedly improper or faulty construction or design of such Products;
- (e) The failure of the Products to comply with specifications or with any express or implied warranties of Vendor; or
- (f) Any alleged violation of any applicable law, rule, regulation or order. Vendor covenants that Vendor will, upon request, defend or assist in the defense, at Vendor's expense, of any such suit or claim.

## 9. Samples; Work Product.

- (a) If HLI supplies any plans, specifications, models and writings of and/or relating to the Products (collectively, the "Samples") to permit Vendor, as the bailee of the Samples, to manufacture and/or procure the Products, Vendor shall have the responsibility for carefully checking the Samples for accuracy, design, quality, conformance to specifications, and suitability for use. The Samples and any Work Product (defined below) shall be used exclusively for HLI's Products, and may not be disclosed to anyone else or used by Vendor for anyone other than HLI. Vendor further acknowledges that Vendor is not and shall not become the consignee or owner of any or all of the Samples or Work Product, shall not obtain a security interest in or to any or all of the Samples or Work Product and may not sell, hypothecate or otherwise assign any rights in or to the Samples or the Work Product. Upon HLI's written request, Vendor will, at its sole cost and expense, return the Samples and all Work Product to HLI. "Work Product" means any and all inventions, discoveries, deliverables, materials, software, flowcharts, ideas, concepts, data, protocols, specifications, names, designs, reports, studies, analyses, tools, dies, molds, drawings, blueprints and other works made or conceived by or on behalf of Vendor pursuant to this Agreement, whether or not patentable.
- (b) Vendor acknowledges and agrees that HLI is the sole and exclusive owner of all right, title and interest in and to the Samples and any Work Product, including without limitation all Intellectual Property Rights (defined below) embodied therein or related thereto. Vendor hereby assigns, transfers and conveys to HLI, without the necessity of any consideration in addition to that recited herein, all right, title and interest in and to Work Product, including without limitation all Intellectual Property Rights (defined below) embodied therein or related thereto. Vendor acknowledges and agrees that to the extent that any Work Product is protectable under U.S. copyright laws, such Work Product shall be considered a "work made for hire" as that term is used and defined in such laws (17 U.S.C. Section 101). Vendor agrees to execute such documents to evidence such transfer as HLI may reasonably request. "Intellectual Property Rights" means all patents, patent applications, copyrights, moral rights, database rights, design rights, trade secrets, rights in inventions, rights in know-how, rights in ideas, shop rights and rights in confidential information, embodied or reflected in the Work Product (whether or not any of the foregoing rights are patentable or registrable under copyright or similar statutes or subject to analogous protection) and all other equivalent or similar rights, which may subsist anywhere in the world.

## **10. Rejection.**

The Products shall be accepted by HLI subject to its inspection. HLI shall have the right at any time to reject or revoke its acceptance of any of the Products which are defective in any way, not in accordance with sample or standard or which are different in quality or quantity from that ordered. HLI, at its option, may correct the same at Vendor's expense. Rejected Products may be returned to Vendor at its sole risk and expense. Any amounts chargeable to Vendor under these provisions may, at HLI's election, be set-off in whole or in part against any sums payable to Vendor, whether arising under this Purchase Order or otherwise, any such set-off to be without prejudice to any claims of HLI based on such loss or expense not reflected in such set-off.

## **11. Confidential Information.**

All Samples and information furnished by HLI, and any Work Product, either in written or verbal form, relating to the production, manufacture, use and service of the Products, the Samples or the Work Product ("Confidential Information") are proprietary to HLI. All such Confidential Information shall be kept secret. Vendor shall take all necessary precautions and use its best efforts to hold such Confidential Information in confidence and to ensure that its employees shall likewise keep secret and not make direct or indirect use of Confidential Information except in performance of their duties.

## **12. Mercury Exclusion.**

The Products shall not contain or have come in direct contact with mercury, mercury compounds or with any mercury-containing device employing a single boundary of containment. Mercury contamination will be cause for rejection.

## **13. Polychlorinated Biphenyls Prohibition.**

Vendor shall not employ equipment or use material that is known or suspected of containing polychlorinated biphenyls.

## **14. Toxic Substances/Hazardous Materials.**

Paints or primers on Products which contain the following components shall not be shipped without prior written approval by HLI: arsenic, mercury, lead, chromates, or organo-metallic material. Materials containing asbestos shall not be provided without HLI's prior written permission. If invoked specifications and standards permit other materials, they shall be used in lieu of asbestos.

## **15. Prohibition Of Yellow Wrappings or Protection Devices.**

Vendor shall not use yellow wrapping material or attached yellow protection devices such as caps or plugs.

## **16. Brass or Copper Black Oxide Coated Threaded Fasteners.**

Vendor shall not use brass or copper black oxide coated threaded fasteners.

## **17. Government Contracts.**

If the Products are for use in a U.S. Government contract or subcontract, the following FAR and DFAR provisions in their current form shall apply and are incorporated herein by reference:

- 52.204-2 (Security Requirements)
- 52.211-5 (Material Requirements)
- 52.215-2 (Audit and Records-Negotiation)
- 52.219-8 (Utilization of Small Business Concerns)
- 52.222-1 (Notice to the Government of Labor Disputes)
- 52.222-4 (Contract Work Hours and Safety Standards Act - Overtime Compensation)
- 52.222-20 (Walsh-Healey Public Contracts Act)
- 52.222-21 (Prohibition of Segregated Facilities)
- 52.222-26 (Equal Opportunity)
- 52.222-35 (Equal Opportunity for Veterans)
- 52.222-36 (Affirmative Action for Workers with Disabilities)
- 52.222-37 (Employment Reports on Veterans)
- 52.223-3 (Hazardous Material Identification and Material Safety Data)
- 52.223-11 (Ozone-Depleting Substances)
- 52.223-12 (Refrigerated Equipment and Air Conditioners)
- 52.225-3 (Buy American Act - Free Trade Agreements - Israeli Trade Act)
- 52.225-11 (Buy American Act - Construction Materials under Trade Agreements)
- 52.225-13 (Restrictions On Certain Foreign Purchases)
- 52.227-1 (Authorization and Consent)
- 52.227-2 (Notice and Assistance regarding Patent and Copyright Infringement)
- 52.227-9 (Refund of Royalties)
- 52.227-10 (Filing of Patent Applications-Classified Subject Matter)
- 52.244-6 (Subcontracts for Commercial Items)
- 52.247-63 (Preference for U.S. Flag Carriers)

- 52.247-64 (Preference for Privately Owned U.S. Flags Commercial Vessels)
- 252.204-7000 (Disclosure of Information)
- 252.223-7001 (Hazard Warning Labels)
- 252.225-7009 (Restriction on Acquisition of Certain Articles Containing Specialty Metals)
- 252.225-7013 (Duty-Free Entry)
- 252.225-7025 (Restriction On Acquisition Of Forgings)
- 252.227-7013 (Rights in Technical Data - Noncommercial Items)
- 252.227-7014 (Rights in Noncommercial Computer Software And Noncommercial Computer Software Documentation)
- 252.227-7016 (Rights In Bid Or Proposal Information)
- 252.227-7017 (Identification And Assertion Of Use, Release, Or Disclosure Restrictions)
- 252.227-7019 (Validation Of Asserted Restrictions - Computer Software)
- 252.227-7030 (Technical Data-Withholding of Payment)
- 252.227-7037 (Validation of Restrictive Markings on Technical Data)
- 252.244-7000 (Subcontracts For Commercial Items And Commercial Components - DoD Contracts)
- 252.247-7023 (Transportation Of Supplies By Sea)
- 252.247-7024 (Notification Of Transportation Of Supplies By Sea)

## **18. Miscellaneous.**

- (a) This Purchase Order contains the entire and only Agreement between Vendor and HLI with respect to the subject matter covered. Any representation, term or condition not incorporated herein shall not be binding upon either Vendor or HLI. No amendment or modification to this Purchase Order shall be binding upon HLI unless HLI shall issue a Purchase Order amendment unless a writing setting forth such amendments or modifications shall be signed by both HLI and Vendor.
- (b) The parties hereto are and shall be deemed to be independent contractors, and, under no circumstances, shall Vendor or any of its agents, officers, partners, directors, contractors or employees be construed to be an agent of HLI in any respect. Without limiting the scope of the foregoing, the parties hereto expressly stipulate that the relationship between HLI and Vendor does not and shall not constitute a partnership, joint venture or other similar arrangement.
- (c) Any required written notices shall be deemed given when sent by U.S. Mail, registered or certified return receipt requested, by nationally recognized overnight delivery service, or by facsimile transmission, to the address of each party set forth in the Purchase Order, or to such other address as either party may substitute by written notice to the other.
- (d) Any assignment or attempted assignment of this Purchase Order by Vendor, either of rights or the performance of duties hereunder, shall be void and of no force or effect without, in each instance, HLI's express written consent, except that Vendor may assign claims for monies due or to become due, subject, however, to all of HLI's rights hereunder.
- (e) HLI's failure to exercise any of its rights hereunder shall not constitute or be deemed a waiver or forfeiture of such rights.
- (f) This document and the Agreement arising herefrom shall be governed by the laws of the State of Maine, not including the United Nations Convention on Contracts for the International Sale of Goods, and regardless of laws that might be applicable under principles of conflicts of law. All disputes arising under this Agreement shall be submitted to and settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in force. The arbitration shall take place in Portland, Maine.