

## 1. Definitions

"Vendor" means the firm or company to whom the Purchase Order is addressed;

"ROCKFON" means Roxul USA, Inc. d/b/a ROCKFON.

"Goods" means the articles, materials, any works or services or any other article to be supplied by Vendor to ROCKFON pursuant to the Purchase Order.

"Purchase Conditions" means these Terms and Conditions of Purchase.

"Purchase Order" means the Purchase Order submitted by ROCKFON to Vendor in conjunction with these Purchase Conditions.

## 2. Application

No terms and conditions other than these Purchase Conditions, including any terms and conditions in any document attached to or incorporated herein by reference, shall be binding upon ROCKFON unless accepted by it in a writing signed by ROCKFON's purchasing agent. All terms and conditions contained in any prior proposal or acknowledgment of these Purchase Conditions which are different from or in addition to these Purchase Conditions are hereby rejected and shall not be binding on ROCKFON, and ROCKFON hereby objects to such additional terms and conditions. Vendor will be deemed to have assented to these Purchase Conditions if any part of the Goods covered by the Purchase Order is shipped or an invoice is presented in connection with such Goods.

## 3. Acceptance/Order Confirmation

Vendor may accept ROCKFON's Purchase Order submission by fax or e-mail of Vendor's Order Confirmation. ROCKFON reserves the right to revoke the Purchase Order at any time before Vendor has accepted it. The Purchase Order shall be deemed cancelled if Vendor's acceptance (order confirmation) has not been received by ROCKFON within fourteen (14) days after the date of ROCKFON's Purchase Order.

## 4. Drawings and Other Documentation

ROCKFON will, if requested, send relevant drawings and other documentation together with the Purchase Order. Vendor is responsible for obtaining from ROCKFON all necessary drawings and other documentation necessary for the fulfilment of the Purchase Order. Vendor shall return all Drawings and other documentation to ROCKFON after delivery has taken place or when otherwise requested by ROCKFON.

All drawings, technical documentation including component declarations in accordance with any applicable US regulatory agency or US industry standard, certificates, guarantees and similar documents which Vendor pursuant to the Purchase Order is obliged to deliver to ROCKFON will be considered an integral part of the supply and are to be supplied simultaneously with the Goods unless such documentation according to its nature cannot be completed until later. In any event, such documentation shall be supplied to ROCKFON promptly after it is available. ROCKFON may, at its election, consider late delivery of any of the aforementioned documentation as a delay of the entire delivery.

Costs in connection with the procurement of the mentioned documentation are considered as being part of the Purchase Price, and Vendor is not entitled to additional payment unless otherwise expressly agreed.

## 5. Packing and Preservation

All Goods shall be properly packed and secured by Vendor to ensure the Goods reach the destination stated in the Purchase Order in good condition. No additional charge will be allowed for packing of the materials, including cartons, crates, containers or similar costs, unless specified on the face of the Purchase Order. Any loss or damage, whenever occurring, which results from Vendor's improper or insufficient packing shall be borne by Vendor.

## 6. Labelling

All Goods shall be labelled in accordance with the specifications set out in the Purchase Order. If no specifications are included in the Purchase Order, each package/unit shall be labelled with Purchase Order Number and Project Number. The same labelling shall be applied for all the relevant documentation of the entire delivery, including the invoice and accompanying note. All deliveries that are forwarded by separate post or similar means of transportation shall also be labelled with the contact person in question.

## 7. Delivery time

Time is of the essence in Vendor's fulfilment of the Purchase Order and delivery of the Goods on the date specified therein. ROCKFON reserves the right to cancel the Purchase Order if the Goods are not shipped at the specified time. If the shipping and/or delivery date cannot be met, Vendor shall promptly notify ROCKFON of the delay and the earliest possible date for delivery.

In case of delayed delivery including the postponement of the date of delivery notified by Vendor, ROCKFON reserves the right to do any of the following:

- to cancel the order without liability to ROCKFON and to hold Vendor responsible for any loss including possible additional costs incurred when buying substitute Goods elsewhere, or
- to hold Vendor responsible for any loss or damage resulting from the delay, or
- to reduce the purchase price for the Goods by an amount equal to one percent (1%) of the entire order price for each day the Goods have been delayed as liquidated damages, however not exceeding twenty (20) per cent of the purchase price.

## 8. Postponed Delivery

ROCKFON may by written notice given to Vendor not later than one (1) month before the scheduled delivery date of the Goods postpone delivery thereof for up to three (3) months, provided that conditions unforeseen by ROCKFON when placing the order and beyond ROCKFON's control render it necessary for ROCKFON to postpone the delivery of the Goods.

In such event, it shall be the duty of Vendor to store and to take all reasonable steps to safeguard the Goods until delivery can be effected.

Until the new delivery date, the Goods shall be stored at Vendor's risk and Vendor shall be responsible for all costs incurred.

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## 9. Quality

Goods supplied by Vendor shall conform to Vendor's specifications and to the quality of all furnished samples, drawings, descriptions and other particulars of the Goods stated in the Purchase Order. In case of any disagreement regarding the quality or performance of the Goods or other specifications, the requirements stated in the Purchase Order shall control. These provisions shall survive any delivery, inspection, acceptance or payment pursuant to the Purchase Order. These conditions shall apply to any replacement, repaired or substituted Goods provided by Vendor with the consent of ROCKFON.

## 10. Quantity

Notwithstanding any contrary trade usage or custom, Vendor must deliver the exact quantities specified in the Purchase Order. Vendor is not entitled to claim payment for any excess quantities. ROCKFON reserves the right to reject incomplete deliveries and to either return excess quantities at Vendor's expense and risk or retain excess quantities at no cost to ROCKFON. All Goods ordered on the Purchase Order must be delivered at the same time. ROCKFON may elect to refuse partial delivery before the due delivery date or to store the Goods at Vendor's expense and risk until the due delivery date. Partial delivery may be agreed separately with ROCKFON.

## 11. Payment

Unless otherwise stated in the Purchase Order, payment of invoices shall be made by the end of the calendar month following the month, in which the invoices are received by ROCKFON; however, no payment will be made prior to the stipulated terms of payment in the Purchase Order. Invoices shall not be delivered before delivery of the Goods to which they relate. ROCKFON reserves the right to set off and deduct from any monies due or becoming due to Vendor, any claim against Vendor in connection with Vendor's supply of Goods to ROCKFON.

No payments shall be made by ROCKFON until all materials, upon which payment is conditional, and any applicable documents (see above) have been delivered.

Any prepayment by ROCKFON shall be conditioned on Vendor's delivery of a letter of credit issued by a bank acceptable to ROCKFON or by similar unconditional security, that remains valid until released by ROCKFON or until not less than 20 days after the scheduled date of delivery.

## 12. Warranty

Vendor warrants the Goods to be merchantable and fit for ROCKFON's or its customer's intended use and be free from defects in design, material and workmanship for 24 months (it must be expected that the Goods are in operation 24 hours a day) from the time of delivery. The warranty includes guarantee for the faultless performance of the Goods in accordance with relevant specifications for the Goods.

If any default or defect not arising from normal wear and tear, shall appear during the warranty period Vendor shall, if so required by ROCKFON in accordance with the instruction of ROCKFON either repair or replace the defective parts on the site where the plant, on which the component is mounted, is erected or deliver replacement parts at Vendor's own expense (DAP end-user, INCOTERMS 2010) to ROCKFON or the end-user at the address of the plant so that ROCKFON or the end-user, as applicable, can correct the defect at Vendor's expense.

Vendor's warranty shall apply to any components manufactured according to ROCKFON's drawings, sketches and descriptions.

ROCKFON reserves the right to withhold payment or for Vendor's account to require a letter of credit for up to ten (10) per cent of the contract price, for the warranty period as the security for the performance of Vendor's obligations.

## 13. Indemnity

Vendor shall indemnify, save harmless, and defend ROCKFON and its affiliated companies, their customers, directors, officers, employees and agents from and against any loss, liability, cost, suits, actions, claims and all other obligations and proceedings whatsoever, including, without limitation, all judgments rendered against, and all fines and penalties imposed upon ROCKFON and any reasonable attorneys' fees and any other costs of litigation arising out of injuries to persons, including death or damage to property, caused by Vendor, its employees, agents, subcontractors, or in any way attributable to the Goods, including product liability claims, or the Purchase Order.

## 14. Patent, Copyright, Proprietary Right

Vendor warrants that the sale or use of the Goods will not infringe, violate, or contribute to the infringement of any patents, copyrights, proprietary rights, trademarks, or trade names or embody any unauthorised use of trade secrets in any country. Vendor covenants and agree to indemnify and hold harmless ROCKFON and any end-user against any and all claims, demands, liability, loss, costs, attorney's fees, expenses and liabilities arising from or attributable to any such infringement, violation, or unauthorised use of trade secrets.

## 15. Price

All prices shall be as stated in the Purchase Order. All prices are fixed and inclusive of delivery charges (DAP delivery address, INCOTERMS 2010). No adjustments of prices can take place due to intermediate increases of Vendor's costs or fluctuations of rates of exchanges unless otherwise expressly specified in the Purchase Order.

## 16. Service/Spare Parts

Vendor shall supply ROCKFON, for not less than ten (10) years from the date of delivery of the Goods, with spare parts for the Goods purchased. If Vendor shall cease to stock any spare parts prior to the expiration of the ten (10) year period, Vendor shall notify ROCKFON and provide ROCKFON with the opportunity to purchase adequate stocks of such spare parts at the list prices that were valid when Vendor was generally stocking the spare parts in question.

All applications to Vendor from ROCKFON's customers/end-users concerning supplies shall without unnecessary delay be referred to ROCKFON.

## 17. Drawings, Tools, Models, etc.

All drawings and other documentation, tools and models paid for by ROCKFON shall remain ROCKFON's property.

Vendor is responsible for storage and safety of drawings and other documentation delivered by ROCKFON according to the directions of the accompanying letter.

Vendor is responsible for storage and maintenance of the aforementioned tools and models, etc. and shall keep the same separated from Vendor's or a third party's tools and models, etc. by clearly marking it with ROCKFON's name and relevant identification.

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ROCKFON's drawings, tools and models, etc. shall only be used for manufacture of Goods to ROCKFON and such property may not be copied or handed over to any third party.

Vendor shall be strictly liable for any theft of, damage to, or loss of the tools, models etc. belonging to ROCKFON as mentioned above. All such property shall be held at Vendor's risk and shall upon ROCKFON's request be insured by Vendor at its expense for an amount equal its replacement cost. Upon ROCKFON's request such property is to be delivered promptly to ROCKFON despite any outstanding disputes between Vendor and ROCKFON. In case Vendor is unable to return tools, models, etc. subject to no other deterioration that is common for ordinary tear and wear, Vendor is strictly liable to pay to ROCKFON an amount equal to the replacement value of said Goods.

### **18. Trade Terms**

The trade terms stated in the Purchase Order are quoted with relation to INCOTERMS 2010 that apply save in so far no other terms have been explicitly agreed upon and stated in the Purchase Order or are inconsistent with the provisions of these Trade Terms.

### **19. No Waiver**

Failure on the part of ROCKFON to insist upon strict compliance or failure to exercise or enforce rights conferred upon it shall not be deemed to be a waiver of any right granted to ROCKFON herein so as to bar the exercise or enforcement thereof at any time or times thereafter.

### **20. Assignment/Use of Sub-Suppliers**

Vendor shall not assign, transfer or sub-contract all or any part of the Purchase Order or delegate any duties hereunder to a third party without the prior written consent of ROCKFON, which consent may be withheld in its sole discretion.

If Vendor desires to employ subcontractors to fulfil all or any part of the Purchase Order, Vendor shall provide the subcontractor's name, address and field of operation to ROCKFON together with a request for permission to employ such subcontractor. ROCKFON may grant or withhold approval of the subcontractor in its sole and absolute discretion, without stating any cause.

### **21. References**

Vendor must under no circumstances use ROCKFON's name or any of its trade names in any kind of references, including reference lists, brochures, advertising material, press statements and the like. This also applies to any kind of pictures of equipment and components that have been manufactured for ROCKFON.

### **22. Governing Law; Disputes**

The Purchase Order and these Purchase Conditions shall be governed in all respects by the laws of the State of Illinois, without giving effect to choice of law principles.

Any dispute in connection with any Purchase Order or these Purchase Conditions is first and foremost to be dealt with by amicable discussions intended to lead to settlement.

In case this proves impossible any dispute shall be settled pursuant to the laws of the State of Illinois, and Vendor consents to the jurisdiction of the courts in the State of Illinois.

ROCKFON reserves the right to determine whether a possible dispute between the parties is to be referred to arbitration or to be settled by law court. If ROCKFON determines that the dispute shall be referred to Arbitration, the

parties undertake to have the dispute settled according to the Commercial Arbitration Rules of the American Arbitration Association (AAA). Such arbitration to take place in the state of Illinois.

Any complaint or summons shall be considered validly served if such letter is forwarded by registered mail to the opposing party.

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