



## **PURCHASE ORDER TERMS**

April 1, 2011

**GENERAL:** The terms set forth in this document apply to and form a part of each purchase order issued by or on behalf of Leese & Co., Inc. that refers to and incorporates this document by reference. As used below (a) "Buyer" refers to Leese & Co., Inc.; (b) "Supplier" refers to the entity or person identified as such in Buyer's purchase order; and (c) "order documents" refers, collectively, to Buyer's purchase order, this document, and any other documents expressly incorporated by reference into Buyer's purchase order. If an order document incorporates additional terms and conditions, such additional terms and conditions shall not be part of the order document unless independently incorporated by reference into Buyer's purchase order.

**ACCEPTANCE:** Supplier's written acceptance of Buyer's purchase order or commencement of performance or shipment of goods subject to the order, whichever occurs first, constitutes Supplier's acceptance of the order, including all of the terms set forth in this document and any other order documents. Acceptance is limited to the terms set forth in the order documents. Any proposal by Supplier for additional or different terms shall be deemed a material alteration, and such additional or different terms are hereby objected to and rejected by Buyer. Any proposals by Supplier for additional or different terms will not operate as a rejection of Buyer's order, and Supplier's acceptance of the order will be effective without the proposed additional or different terms. If this order is deemed an acceptance by Buyer of an offer made by Supplier, such acceptance is limited to the terms set forth in the order documents.

**ENTIRE AGREEMENT:** Buyer's purchase order, this document and any other order documents constitute the complete and exclusive statement of the agreement between the parties relating to the order and supersede any prior agreements, understandings, proposals or other communications, whether oral or writing, relating to the order. No changes or additions to terms set forth in any order document will be binding upon Buyer unless agreed to in writing.

**APPLICABLE LAW:** The laws of the State of Pennsylvania shall govern the agreement of the parties with respect to this order as if it were an agreement solely between residents of such state to be performed entirely within the state.

**TERMINATION FOR CONVENIENCE:** Buyer may, at any time, terminate the Purchase Order in whole or in part by written or verbal notice to Seller. If the Purchase Order is terminated by Buyer for convenience, any claim of Seller shall be settled on the basis of reasonable costs (excluding anticipated profits) it has incurred in the performance of the Purchase Order. Buyer will make no payments for finished goods, works-in-process or raw materials fabricated or procured by Seller in amounts in excess of those authorized in a Purchase Order nor for any undelivered goods which are in Seller's standard stock or which are readily marketable.



Notwithstanding the foregoing, if termination is occasioned by Seller's violation of any term or condition of the Purchase Order, including violation of any warranty or delay in delivery, Seller shall not be entitled to any costs, and Buyer may claim against Seller all remedies provided by law and equity. Further, in the event Seller shall become insolvent or be subject to bankruptcy processing, Buyer may, without further obligation to Seller, terminate the Purchase Order in whole or in part upon giving written notice to Seller.

**TERMINATION FOR CAUSE:** In the event of any default by Supplier or if Supplier fails to comply with any terms set forth in the order documents, Buyer may terminate this order in whole or in part for cause, without any liability to Supplier. Late deliveries, deliveries of products or performance of services which are defective or which do not conform to the order documents, and failure, upon request, to provide reasonable assurances of future performance shall all be causes allowing Buyer to terminate this order for cause. In the event of termination for cause, Buyer reserves all remedies available to it by law or as otherwise provided under the order documents.

**PROPRIETARY INFORMATION; CONFIDENTIALITY; ADVERTISING:** Unless otherwise expressly agreed in writing by Buyer, Supplier: (i) will consider all information furnished by Buyer in connection with this order, as well as drawings, specifications or other documents prepared by Supplier for Buyer in connection with this order, to be confidential information of Buyer and shall not disclose any such information to any other person or use such information for any purpose other than performing its obligations under the order; (ii) will not advertise, publish or otherwise disclose the fact that Buyer is purchasing or has contracted to purchase goods or services from Supplier; and (iii) will not disclose any information relating to this order to any third party. Unless otherwise expressly agreed in writing by Buyer, no commercial, financial or technical information disclosed in any manner or at any time by Supplier to Buyer or its agents or representatives shall be deemed secret or confidential, and Supplier shall have no rights against Buyer with respect to such information except such rights as may exist under patent or copyright laws. This provision shall be in addition to, and not in lieu of, any other existing confidentiality obligations between Buyer and Supplier.

**WARRANTY:** Supplier warrants that all goods or services furnished under this order shall conform to all applicable specifications of Supplier, to the specifications and other requirements stated in the order documents and to all applicable requirements of law; that all goods furnished under this order will be free from defects in material or workmanship; and that all services furnished under this order will be performed in a reasonable and workmanlike manner and in accordance with industry standards. Supplier warrants that all such goods or services will conform to any statements made on the containers or labels or advertisements for such goods or services and that any goods will be adequately contained, packaged, marked, and labeled. Supplier shall ensure that all goods that constitute electrical or industrial equipment or machinery are listed or labeled by a third party testing agency in compliance with all applicable international and national standards and the national, state, and/or local laws and regulations applicable to Buyer's designated delivery location, and Supplier promptly will provide Buyer with documentation verifying such compliance as soon as it is available, but in any event prior to



shipping the equipment or machinery to Buyer. Unless otherwise agreed in writing by Buyer, Supplier warrants that all goods or services furnished under this order will: (i) be merchantable and appropriate for the purpose for which goods or services of that kind are normally used, (ii) be fit for the particular purpose for which Buyer intends to use the goods or services if Supplier knows or has reason to know such purpose; and (iii) conform in all respects to any samples shown to and approved by Buyer. Buyer's inspection, test, acceptance or use of the goods or services furnished hereunder shall not affect the Supplier's obligation under this warranty. Supplier's warranty shall run to Buyer, its successors, assigns and customers, and users of product sold by Buyer. When notified of a defect or nonconformity by Buyer, Supplier agrees to promptly replace or correct defects in any goods or services not conforming to the foregoing warranty, without expense to Buyer, or to refund the purchase price paid by Buyer for the defective or non-conforming goods or services. In the event of failure of Supplier to perform the foregoing obligations, after reasonable notice to Supplier, Buyer may make such corrections or replace such goods and services and charge Supplier for the cost incurred by Buyer in doing so.

**PRICE WARRANTY:** Supplier warrants that the prices for goods and services sold to Buyer hereunder are no less favorable than those currently extended by Supplier to any other customer for the same or similar goods in similar quantities or the same or similar services under similar terms and conditions. If Supplier reduces its price for such items before Supplier completes performance of this order, Supplier agrees to reduce the prices under this order correspondingly. Supplier agrees that the prices stated in this order are complete, and no additional charges of any type shall be due and payable by Buyer unless and except to the extent Buyer expressly assumes responsibility for such additional charges in the order documents. Such additional charges include, but are not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing and crating.

**FORCE MAJEURE:** Upon notice to Supplier, Buyer may delay delivery or acceptance of goods ordered hereunder due to causes beyond its reasonable control. Supplier shall hold such goods at the direction of the Buyer and shall deliver them when the cause affecting the delay has been removed. Buyer shall be responsible only for Supplier's direct additional costs in holding the goods or delaying performance of this order at Buyer's request. Causes beyond Buyer's reasonable control shall include government action or failure of the government to act where such action is required, strike or other labor trouble, war, acts of terrorism, fire or unusually severe weather.

**PATENTS:** Supplier agrees upon receipt of notification to promptly assume full responsibility for defense of any suit or proceeding which may be brought against Buyer or its employees, agents and customers for alleged patent or copyright infringement, as well as for any alleged trademark infringement or unfair competition resulting from similarity in design, trademark or appearance of goods or services furnished hereunder, and Supplier further agrees to indemnify Buyer, its employees, agents and customers against any and all expenses, liabilities, losses and damages, including reasonable attorneys' fees, resulting from any such suit or proceeding, including any settlement agreed to by Supplier. Buyer may be represented by and actively participate through its own counsel in any such suit or proceeding if it so desires, and the



costs of such representation shall be paid by Supplier until such time as Supplier assumes full responsibility for the defense of the matter with counsel acceptable to Buyer.

**INDEPENDENT CONTRACTOR:** Supplier agrees that all services performed under this order shall be performed by Supplier as an independent contractor, that the persons performing such work shall not be considered employees of Buyer and that Supplier shall be solely responsible for payment of any wages, benefits, taxes and other employer obligations related to such personnel. Supplier shall maintain all necessary insurance coverage, including public liability and workers' compensation insurance, with limits that are appropriate for the nature of its business. Supplier shall indemnify, save harmless and defend Buyer from any and all claims or liabilities arising out of work covered by this paragraph.

**INDEMNIFICATION:** Supplier shall defend, indemnify and hold Buyer harmless against all expenses, liabilities, losses and damages, including reasonable attorneys' fees, arising out of or resulting in any way from any defect in the goods or services purchased under this order, or from any negligent or otherwise wrongful act or omission of Supplier, its employees, agents or subcontractors in the performance of this order. This indemnification shall be in addition to the warranty obligations of Supplier.

**CHANGES BY BUYER:** Buyer shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery, and/or method of transportation. If any such changes cause an increase or decrease in the cost, or the time required for the performance, the parties shall make an equitable adjustment and modify this agreement in writing accordingly. Supplier shall be required to accept any commercially reasonable change provided for in this paragraph.

**CHANGES BY VENDOR:** Supplier shall not make any distinguishable change to the design, specifications, materials, manufacturing process and/or manufacturing location of the goods delivered to Buyer without Buyer's prior written approval. Changes requiring Buyer's prior approval in accordance with this paragraph shall include, but not be limited to: (a) a change in safety standards; (b) a change in design, specifications or materials that affects the form, fit, function, safety and/or reliability of the goods; (c) a material change in inspection methods; and/or (d) any change that may affect the quality of the goods.

**QUALITY ASSURANCE:** Goods and services purchased under this order shall meet the quality and safety criteria as specified in the order documents. Buyer shall have the right to review Supplier's quality assurance system and, with prior notice and at reasonable times, to conduct an on-site inspection of the factory(ies) where the goods that are the subject of this order are manufactured. Supplier shall provide any technical and/or testing reports as may be requested by Buyer regarding product quality, safety and reliability.

**SUBCONTRACTOR QUALITY MANAGEMENT SYSTEM:** If Supplier contracts the services of third parties (including affiliates) in its performance under this order, Supplier shall be fully responsible for the subcontractors' compliance with Supplier's duties and obligations hereunder. Buyer may require that Supplier furnish supporting documentation that Supplier has verified the effectiveness of the quality



management system of any subcontractor and/or has taken other appropriate steps to assure the quality of any parts or services that Supplier obtains from such subcontractors.

**INSPECTION/TESTING:** Payment for goods delivered under this order shall not constitute acceptance of the goods. Buyer shall have the right to inspect such goods and to reject any or all of said goods that are defective or non-conforming in Buyer's judgment. Goods rejected and goods supplied in excess of quantities called for by this order may be returned to Supplier at its expense and, in addition to Buyer's other rights, Buyer may charge Supplier all expenses of unpacking, examining, repairing and reshipping such goods. If a defect or nonconformity in goods received by Buyer is not readily apparent upon inspection, Buyer's acceptance of such goods will not preclude Buyer from later making a warranty claim for such defect or nonconformity. Nothing contained in the order documents shall relieve the Supplier from the obligation of testing, inspection and quality control.

**ASSIGNMENT AND SUBCONTRACTING:** No part of this order may be assigned, transferred or subcontracted by Supplier without the prior written approval of Buyer, provided that this provision is not intended to require Buyer's consent for Supplier to use independent contractors in activities related to the development, production, sale or shipment of goods ordered hereunder so long as Supplier remains solely responsible to Buyer for Supplier's compliance with the terms and conditions of the order documents.

**SAFETY:** Vendors who perform work at Buyer's location are solely responsible for the safety of their employees and ensuring that all employees of vendor strictly adhere to Buyer's safety policies and procedures.

**SETOFF:** All claims for money due or to become due from Buyer shall be subject to deduction or setoff by the Buyer by reason of any counterclaim arising out of this or any other transaction with Supplier.

**SHIPMENT:** Unless otherwise stated on the face of this order or agreed in writing by Buyer, goods purchased under this order shall be shipped F.O.B. Buyer's location, and Supplier shall be solely responsible for all transportation charges, including the cost of any insurance against loss or damage in transit. If it becomes necessary for Supplier to ship by a more expensive means than specified in this order in order to comply with Buyer's required delivery date, any increased transportation costs resulting from such shipment shall be borne by Supplier unless the necessity for the expedited handling was caused by Buyer. Supplier shall ship to the designated destination stated in the order. Seller agrees to (a) properly pack, identify, label, and ship goods in accordance with the requirements of Buyer; (b) make only those charges for handling, packaging, storage or transportation of goods as expressly permitted by the relevant Purchase Order; and (c) promptly forward the full set of original copies of bills of lading and/or other shipping documents for each shipment to Buyer in accordance with Buyer's instructions. Such bills of lading or shipping documents shall include correct classification and identification of the goods shipped in accordance with the applicable carrier's and/or governmental requirements, as well as Buyer's packaging and shipping instructions.



**TITLE AND RISK OF LOSS:** Unless otherwise stated on the face of this order or agreed in writing by Buyer, Supplier shall retain title to and risk of loss or damage to goods subject to this order until the goods are delivered to Buyer's location and an authorized representative of Buyer has acknowledged receipt of the goods in writing. Buyer's acknowledgment of receipt shall not constitute acceptance of the goods.

**WAIVER:** Buyer's failure to insist on performance of any of the terms set forth in the order documents or its waiver of any breach by Supplier of such terms shall not constitute a waiver of any other term or with respect to any other breach, whether of the same or similar type.

**DELIVERY:** Time, quantity, and accuracy of deliveries are of the essence. If delivery of items or rendering of services is not completed by the time specified in the order documents, Buyer reserves the right, in addition to its other rights and remedies, to terminate this order with respect to goods not yet shipped or services not yet rendered without liability by providing notice to Supplier, effective upon receipt by Supplier, and to receive a refund of any amounts previously paid with respect to such cancelled goods or services.

**NOTICE OF DELAYS:** Whenever Supplier has knowledge of an actual or potential delay to the timely performance of an order, Supplier shall immediately notify Buyer in writing of all relevant information with respect to such delay. Such notice is for informational purposes only and shall not relieve Supplier of Supplier's obligations to comply with Supplier's requirements under such order.

**LIMITATION ON BUYER'S LIABILITY:** In no event shall Buyer be liable for anticipated profits, incidental or consequential damages, penalties or liquidated damages of any description. Buyer's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this order or from the performance or breach thereof shall in no case exceed the price allocable to the goods or services or unit thereof which gives rise to the claim. Any action resulting from any breach or alleged breach on the part of Buyer under this order must be commenced within one year after the cause of action has accrued.

**EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE:** During the performance of this order, the Supplier agrees to comply with all federal, state and local laws respecting discrimination in employment and non-segregation of facilities, including but not limited to, the requirements set forth under 41 CFR §§ 60-1.4, 60-250.5 and 60-741.5, which equal opportunity clauses are incorporated herein by this reference.