

Purchase Order Terms and Conditions

Definitions. Where the context permits, the following words shall have the meanings indicated:

(A) "Purchaser" means R. C. Hemm Glass Shops, Inc.;

(B) "Product" means all goods, materials, chattels, and services to be provided pursuant to this Purchase Order;

(C) "Seller" means the person, corporation, company, partnership, or other entity producing, manufacturing, procuring and/or supplying the Product.

Acceptance - Agreement. Seller's commencement of work on the Product subject to this Purchase Order, delivery of the Product, or shipment of the Product, whichever occurs first, shall be deemed an effective mode of acceptance of this Purchase Order. Any acceptance of this Purchase Order is limited to acceptance of the express terms contained herein. Any proposal for additional or different terms or any attempt by Seller to vary in any degree any of the terms of this Purchase Order in Seller's acceptance is hereby objected to and rejected, but such proposals shall not operate as a rejection of this Purchase Order unless such variances are in the terms of the description, quantity, price, or delivery schedule of the Product, but shall be deemed a material alteration thereof, and this Purchase Order shall be deemed accepted by Seller without said additional or different terms. If this Purchase Order shall be deemed an acceptance of a prior offer by Seller, such acceptance is limited to the express terms contained herein. Additional or different terms or any attempt by Seller to vary in any degree any of the terms of this Purchase Order shall be deemed material and are objected to and rejected, but this Purchase Order shall not operate as a rejection of the Seller's offer unless it contains variances in the terms of the description, quantity, price, or delivery schedule of the Product.

Shipment. If delivery is not made by the date indicated in this Purchase Order, if any, Purchaser may, in addition to its other rights, cancel this Purchase Order, without any liability whatsoever.

Changes. Purchaser shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation. If any such changes cause an increase or decrease in the cost, or the time required for the

performance, an equitable adjustment shall be made and the Purchase Order shall be modified accordingly in writing. Seller agrees to accept any such changes subject to this paragraph.

Price. The price stated in this Purchase Order includes all charges for packaging, boxing, crating, special handling, and freight, F.O.B. destination. No modification or adjustment of the stated price may be made without the signed written agreement of Purchaser.

Setoff. All claims for money due or to become due from Purchaser shall be subject to deduction or setoff by the Purchaser by reason of any counterclaim arising out of this or any other transaction with Seller.

Delivery. Delivery shall be F.O.B. destination unless otherwise specified on the face of this Purchase Order. Notwithstanding any agreement by Purchaser to pay freight or other transportation charges, delivery is not complete until the Product has been actually received and accepted by Purchaser. The risk of loss or damage to Product prior to completion of delivery shall be borne by Seller. Purchaser reserves the right to refuse C.O.D. shipments.

Warranty. Seller expressly warrants that the Product furnished under this Purchase Order shall conform to all specifications and appropriate standards, will be new, and will be free from defects in material or workmanship. Seller warrants that the Product will conform to any statements made on the containers or labels or advertisements for such Product. Seller warrants that the Product will be merchantable, and will be safe and appropriate for the purpose for which goods or services of that kind are normally used. If Seller knows or has reason to know the particular purpose for which Purchaser intends to use the Product, Seller warrants that such goods or services will be fit for such particular purpose. Seller warrants that goods or services furnished will conform in all respects to samples. Inspection, test, acceptance or use of the Product furnished hereunder shall not affect the Seller's obligation under these warranties, and such warranties shall survive inspection, test, acceptance and use. Seller's warranties shall run to Purchaser, its successors, assigns and customers, and users of products sold by

Purchaser. Seller agrees to replace or correct defects of any Product not conforming to the foregoing warranties promptly, without expense to Purchaser.

Indemnification. Seller shall defend, indemnify and hold harmless Purchaser against all damages, claims or liabilities and expenses (including reasonable attorneys' fees, court costs and litigation expenses) arising out of or resulting in any way from any defect in the Product purchased hereunder, from any act or omission of Seller, its agents, employees or subcontractors, or from any breach of the terms of this Purchase Order. This indemnification shall be in addition to the warranty obligations of Seller.

Inspection/Testing. Payment for the Product delivered hereunder shall not constitute acceptance thereof. Purchaser shall have the right to inspect the Product and to reject any or all of said Product which is in Purchaser's judgment defective or nonconforming. Product rejected and/or Product supplied in excess of quantities called for in the Purchase Order may be returned to Seller at Seller's expense and, in addition to Purchaser's other rights, Purchaser may charge Seller all of Purchaser's expenses of unpacking, examining, repacking and reshipping such Product. In the event Purchaser receives Product whose defects or nonconformities are not apparent on examination, Purchaser reserves the right to require replacement, as well as payment of damages. Nothing contained in this Purchase Order shall relieve Seller in any way from the obligation of testing, inspecting and quality control.

Waiver. Purchaser's failure to insist on performance of any of the terms or conditions of the Purchase Order or to exercise any right or privilege or Purchaser's waiver of any breach hereunder shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type.

Entire Agreement. This Purchase Order, and any documents referred to on the face hereof, constitute the entire agreement between Purchaser and Seller for the Product.

Termination for Convenience of Purchaser. Purchaser reserves the right to terminate this Purchase Order or any part hereof for Purchaser's sole convenience. In the event of such termination, Seller shall

immediately stop all work hereunder, and shall immediately cause any of its suppliers or subcontractors to cease such work. Seller shall be paid a reasonable termination charge, consisting of a percentage of the Purchase Order price reflecting the percentage of the work performed prior to the notice of termination, plus actual direct costs resulting from termination. Seller shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided.

Termination for Cause. Purchaser may also terminate this Purchase Order or any part thereof for cause in the event of any default by Seller or if Seller fails to comply with any of the terms and conditions of this Purchase Order. Late deliveries, deliveries of products which are defective or which do not conform to the Purchase Order, and/or failure to provide Purchaser, upon request, of reasonable assurances of future performance shall all be causes allowing Purchaser to terminate this Purchase Order for cause. In the event of termination for cause, Purchaser shall not be liable to Seller for any amount, and Seller shall be liable to Purchaser for any and all damages sustained by reason of the default which gave rise to the termination.

Assignments and Subcontracting. No part of this Purchase Order may be assigned or subcontracted by Seller without the prior written approval of Purchaser.

Limitation on Purchaser's Liability - Statute of Limitations. In no event shall Purchaser be liable to Seller for anticipated profits or for incidental or consequential damages. Purchaser's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this Purchase Order or from the performance or breach thereof shall in no case exceed the price allocable to the goods or services, which gives rise to the claim. Purchaser shall not be liable for penalties of any description. Any action resulting from any breach on the part of Purchaser as to the Product delivered hereunder must be commenced within one (1) year after the cause of action has accrued.

Severability. If any provision hereof shall be found to be inoperable or in violation of any law or regulation, only that provision shall be stricken from this Purchase Order and the remainder of the Purchase Order shall not be affected.

Governing Law. The laws of the State of Ohio shall govern this Purchase Order and the rights and the obligations of the parties hereunder without regard to conflict of law principles, and the parties designate and consent to Miami County, Ohio as the sole and exclusive jurisdiction and venue for any and all proceedings hereunder. Purchaser and Seller also expressly and knowingly waive all right to a trial by jury.