

WENDT CORPORATION
TERMS AND CONDITIONS

These Terms and Conditions of Purchase (“Terms and Conditions”) are incorporated by reference into and constitute a part of the Purchase Order issued by WENDT CORPORATION (“Wendt”) to the Supplier named therein Supplier. Wendt and Supplier are sometimes referred to herein as a “Party” and collectively as the “Parties”). As used herein, “Agreement” means, collectively, the Purchase Order issued to Supplier by Wendt and these Terms and Conditions, whether attached to the Purchase Order or provided separately by Wendt.

1. Acceptance. This Purchase Order constitutes an offer on the part of Wendt upon the terms and conditions and at the prices stated herein and shall become a binding contract between Wendt and Supplier upon receipt by Wendt of written acceptance from Supplier or upon shipment of product or performance of services referred to herein. None of the terms and conditions contained in the Purchase Order may be added to, modified, suspended or otherwise altered except by a written instrument signed by an authorized representative of Wendt and delivered by Wendt to Supplier, and each shipment received by Wendt from Supplier shall be deemed to be only upon the terms and conditions contained in this Purchase Order except as they may be added to, modified, suspended or otherwise altered by written instrument signed by an authorized representative of Wendt. Supplier agrees that the terms and conditions of the Purchase Order supersede any and all additional or different terms and conditions that may be contained in any acknowledgement, invoice or other form or document of Supplier notwithstanding Wendt’s act of accepting or paying for any shipment or similar act of Wendt unless the Supplier expressly makes its acceptance conditioned on assent by Wendt to the additional or different terms.

2. Price. Prices shown on the face of the Purchase Order shall be firm and fixed unless otherwise agreed to in writing by Wendt. If no price is set forth the order shall not be filled at a higher price than that previously quoted or charged, unless written permission is received from Wendt. Unless otherwise provided herein, such prices include (i) all applicable foreign, international, federal, state and local duties, charges, assessments, penalties, levies and taxes and (ii) all storage, handling, packaging and all other expenses and charges of Supplier. Shipments shall not vary from quantities specified in the Purchase Order unless agreed to by Wendt. Supplier agrees to extend at all times to Wendt and promptly make any price reductions necessary to give Wendt the benefit of the lowest and most favorable prices, terms and conditions possible. Unless otherwise provided herein, discount and payment due dates shall be computed from the date Wendt receives the goods and services, or the date Wendt receives the invoice therefore, whichever date is later.

3. Changes: Additions or Modifications. Wendt may, from time to time, by written instructions or drawings issued to Supplier, make changes, issue additional instructions, require additional goods, services, work or direct the omission of goods, services or work previously ordered or change the methods of shipment, warranties, packing or time or place of delivery; and the provisions of the Purchase Order shall apply to all such changes, additions and modifications. If such changes result in an increase or decrease in cost, or time required for the performance of this Agreement, Supplier will immediately notify Wendt and the parties will endeavor to negotiate an adjustment. If such changes result in an increase in cost or time which is unacceptable to Wendt, then Wendt at its sole option may cancel its request for such changes. No extra goods, services or work or additions or modifications thereto will be paid for by Wendt unless performed pursuant to and in accordance with the written order of Wendt.

4. Delivery.

(a) The term F.O.B. is a “price” term indicating responsibility for freight charges only. The Supplier agrees to deliver goods to the destination indicated on the face of the Purchase Order. Title to the goods passes at the time of delivery and delivery shall not be deemed to be complete until goods have been actually received and accepted by Wendt, notwithstanding any agreement to pay freight, express or other transportation charges, and the risk of loss or damage in transit shall be upon the Supplier.

(b) Wendt shall not be obligated to accept or pay for any goods in excess of the amount specified or for any goods which are defective in workmanship or material or are not in accordance with specifications. Wendt may, at its option, return or have returned to Supplier all such excess or defective goods and Supplier shall pay all expenses incurred by Wendt or its vendees in handling or transporting such goods. Defective goods returned to Supplier shall be replaced only upon written instructions from Wendt.

(c) in the event any goods are not delivered at the time, in the quantity or in the manner specified, Wendt may cancel the Purchase Order without incurring any liability for goods in transit or any expense in connection therewith.

5. Risk of Loss. Supplier assumes all risk of loss or damages (a) to all goods, work in process, materials and other property of Wendt and to third persons and their property, as a result of Supplier entering into performance of the Purchase Order and until acceptance by Wendt of all of the goods or services to be provided by Wendt, (b) to any property received by Supplier from, or held by Supplier or its suppliers for the account of Wendt, and (3) to any goods or parts thereof rejected by Wendt or as to which Wendt has revoked its acceptance from the time of such rejection or revocation.

6. Shipment. All shipments are to be made as specified on the face of the Purchase Order and Supplier shall reimburse Wendt for any expenses incurred by Wendt due to Supplier’s failure to ship in accordance with Wendt’s instructions and routing or Supplier’s failure to properly package goods. Time is of the essence to Wendt and orders not delivered by the date specified may be cancelled by Wendt. All packages and containers must bear Supplier’s name and Wendt’s purchase order number, indicate the contents and show the quantity and gross and net weights of the shipment. Wendt’s quantity and/or weight will be conclusive on all shipments not accompanied by a packing list. No charge for packing, storage, insurance, customs duties or cartage will be allowed unless specifically authorized in writing by Wendt. Shipments for which Wendt assumes the cost shall be made by the cheapest available carrier and routing unless otherwise indicated on the face hereof. Goods must be prepared for shipment in accordance with the packing requirements of the applicable classification or tariffs in effect on the date of shipment.

7. Inspection.

(a) Wendt reserves the right to place an inspector or inspectors in Supplier's plant at Wendt's own expense, who shall be permitted to inspect before shipment or during the process of manufacture any of said parts against the Purchase Order, but approval of said inspector or inspectors shall not be deemed to be in any respect an acceptance by Wendt nor shall it be deemed a waiver by Wendt of any warranty or warranty implied or set forth in the Purchase Order.

(b) When Wendt calls for sample for inspection, it does so simply to assist Supplier, and even though Wendt approves the sample, the Supplier will still be held responsible if the parts are not exactly to specification.

8. Returns.

(a) Wendt, at its discretion at any time, may return to Supplier for full credit or replacement, at Wendt's option and at Supplier's risk and expense, including transportation charges both ways, all or part of any goods or shipments that are non-conforming, below sample or standard, defective or in breach of any warranties, expressed or implied, received late, containing excess quantities or which is in any other manner not in compliance with the Purchase Order. If agreed by Wendt and Supplier, or if Supplier does not respond to a Wendt return request within forty-five (45) days, Wendt may destroy such goods for credit, or dispose of such goods by any other means. The prior acceptance of any similar goods or shipments shall not be considered a waiver of Wendt's right to return all or any part of any subsequent goods or shipments so made. Wendt may impose a service charge of five percent (5%) for returns of goods pursuant to this Section. Cure of nonconforming tender may be made only with the written consent of Wendt.

(b) Notice of defects in the goods or of any other breach by Supplier under the terms of this Agreement will be considered made within a reasonable time, if promptly made after being discovered by Wendt or after notification is given to Wendt by its customers or the users of the goods. The return of such goods shall not relieve Supplier from liability for failure to ship conforming goods under the Agreement or for liability with respect to warranties or conditions, express or implied.

(c) Resale, repackaging, or repacking for the purpose of resale or for use shall not be considered as acceptance of the goods so as to bar Wendt's right to reject such goods or to revoke acceptance.

(d) In addition to any other remedies available to Wendt under this Agreement or applicable law, upon Supplier's breach of this Agreement, Wendt at its option and without liability to Supplier, may cancel any unshipped portion of any goods and return prior deliveries to Supplier for payment or credit, at Wendt's option.

9. Warranty.

(a) Unless specified otherwise by Wendt, Supplier represents and warrants to Wendt in writing, in addition to all warranties implied by law, that the goods including their design, construction, assembly, production, shipment, sale, packaging, labeling, packing, advertising, instructions and warnings or lack thereof, shall, as applicable, (i) be of good quality, material, and workmanship and be merchantable, fit for their intended purpose, and free from any and all defects, including, without limitation, such defects that could create a hazard to life or property; (ii) are not and have not been subject to product liability claims, except as disclosed to Wendt in writing; (iii) meet all applicable requirements of all applicable U. S. federal, state and local laws and regulations and of all applicable laws and regulations of jurisdictions outside the United States ("Laws"); (iv) do not infringe or encroach upon Wendt or any third party's personal, contractual or proprietary rights, including, without limitation, patents, trademarks, copyrights, rights of privacy or publicity, or trade secrets; (v) conform to all applicable specifications and to all articles shown Wendt as samples; (vi) will be well within any expiration date indicated on the packaging of the goods; (vii) have been stored under proper conditions to preserve the quality of the goods; and (viii) possess all performance qualities and characteristics claimed in advertisements or statements issued or authorized by Supplier. Approval by Wendt of Supplier's designs, materials or packaging shall not relieve Supplier from any obligations under any warranties, representations, conditions or guarantees.

(b) In performance of the Purchase order and in every activity connected therewith, Supplier shall comply fully with all applicable Laws.

(c) All warranties, both express and implied, shall survive any inspection, delivery or acceptance of the goods or services or payment therefor by Wendt.

10. Indemnity.

(a) Supplier agrees to indemnify, defend and hold harmless Wendt, its officers, directors, employees, agents, affiliates, successors and assigns (the "Indemnified Parties") from any and all liabilities, costs and expenses (including reasonable attorneys' fees) associated with any claim, complaint, charge, penalty, demand, injury, loss, or damage resulting from or in connection with (i) the breach of any representations or warranties by Supplier or the goods; (ii) the failure of Supplier to comply with applicable Laws or the terms of this Agreement; (iii) the design, construction, assembly, production, shipment, sale, packaging, labeling, packing, advertising, instructions and warnings or lack thereof, of the goods; and/or (iv) the alleged infringement of any patent, copyright, trademark, or trade name by Wendt by reason of the purchase, sale, normal use or other normal disposition of any article or materials furnished hereunder. This indemnification shall be in addition to the warranty obligations of Supplier set forth above in Section 9.

(b) In the event of any claim, suit or proceeding against any Indemnified Party in connection with any of the foregoing, Wendt agrees to timely notify Supplier of any such claim, suit or proceeding (but the lack of timeliness of such notice shall not affect Supplier's obligations hereunder except to the extent Supplier is actually prejudiced by such lack of timeliness). Supplier shall promptly, upon receiving

notice of such claim, suit or proceeding, assume the defense of the Indemnified Parties at its sole cost, and (whether Supplier assumes such defense or for any reason fails or refuses to assume such defense) Supplier shall pay any and all sums which any Indemnified Party becomes legally obligated to pay as a result of such claim, suit or proceeding. Supplier further agrees to pay the reasonable costs and attorneys' fees of any Indemnified Party to the extent incurred to defend against any such claim, complaint, charge, penalty, demand, injury, loss or damage or to enforce such Indemnified Party's rights under this Agreement. Wendt agrees to cooperate with Supplier in the defense or settlement of such claim, suit or proceeding, provided that Supplier shall obtain Wendt's prior written consent to any compromise, settlement or consent judgment which affects any Indemnified Party's rights or interests. Notwithstanding the above, an Indemnified Party shall have the right, but not the obligation, to participate as it deems necessary in the handling, adjustment, or defense of any claim. If Wendt reasonably determines that a defense or defenses are available to an Indemnified Party that are not available to Supplier and raising such defense or defenses would create a conflict of interest for the counsel defending the claim, the Indemnified Party will be entitled to retain separate counsel for the purpose of raising these defenses at Supplier's expense.

(c) Notwithstanding the above, Supplier shall not enter into any settlement or compromise of the claim that would result in the admission of any liability by any Indemnified Party, any financial liability on the part of any Indemnified Party, or would subject any Indemnified Party to injunctive relief without first obtaining Wendt's written consent.

(d) Should Supplier fail to assume its obligations hereunder within thirty (30) days (or sooner if required to maintain a defense), including its obligation to diligently pursue and pay for the defense of any Indemnified Party within a reasonable time, Supplier hereby agrees that the Indemnified Party shall have the right, but not the obligation, to proceed on the Indemnified Party's own behalf to so defend itself and to thereafter require from Supplier reimbursement and indemnification for any and all costs and expenses (including reasonable attorneys' fees).

(e) If the Purchase Order includes the performance of labor for Wendt, Supplier agrees to indemnify and protect Wendt against all liability claims or demands for injuries or damages to any person or property growing out of the performance of the Purchase Order. Supplier further agrees to furnish an insurance certificate showing that Supplier has adequate insurance coverage to the satisfaction of Wendt and where appropriate, and if requested by Wendt, naming Wendt as additional insured.

11. Remedies.

- (a) Rights and remedies of Wendt hereunder are cumulative and in addition to those which Wendt has under any Law or in equity;
- (b) Any waiver by Wendt of any particular breach or default hereunder by Supplier must be in writing and shall not constitute a continuing waiver or a waiver of any other breach or default.
- (c) Approval by Wendt of Supplier's proposed design, product specifications, test plans and/or procedures, manufacturing process, methods, tooling or facilities shall not relieve Supplier from meeting all requirements of the Purchase Order.

12. Invoicing. Supplier shall invoice ("Supplier Invoice(s)") Wendt for all goods delivered by Supplier under this Agreement. Each Supplier Invoice shall conform with the terms of the Purchase Order and set forth: (a) the "Ship To" location; (b) line item costs; (c) the carrier; (d) the number of cartons, pallets or pieces, applicable; and (e) weight of the shipment. If Supplier fails to comply with any requirement of this Section, Supplier shall be liable for and reimburse Wendt for any increased direct and indirect expense thereby incurred by Wendt.

13. Limitation on Claims. In no event shall Wendt be liable for anticipated profits or for incidental or consequential damages. Wendt's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this Agreement or from the performance or breach thereof shall in no event exceed the price allocable to the goods which gave rise to the claim. Notwithstanding any provision to the contrary, Supplier agrees that it may not bring any claim or dispute (including payment disputes) after the one (1) year anniversary of the occurrence of the event giving rise to such dispute.

14. Wendt's Property. All tools, tooling, equipment, dies, gauges, models and other tangible personal property furnished by Wendt to Supplier, fabricated or acquired by Supplier for the purpose of supplying goods to Wendt, or paid for by Wendt, shall be and remain the sole and exclusive property of Wendt. All Wendt's property will be plainly marked and otherwise adequately identified by Supplier as "property of Wendt," will, at Supplier's expense, be safely stored (separate and apart from Supplier's property wherever practicable), and will be kept free of all liens, claims, encumbrances and interests of third parties. Supplier will not substitute any property for any of Wendt's property, will not deliver or make available to any third party any of Wendt's property or goods developed, manufactured or created with the aid of any of Wendt's property, and will not use any of Wendt's property except in filling the orders of Wendt. All Wendt's property, while in Supplier's custody or control, shall be held at Supplier's risk and will be kept insured by Supplier at Supplier's expense in an amount equal to the replacement costs, with loss payable to Wendt. Supplier will, at its expense, maintain all Wendt property in good condition and repair. Upon the request of Wendt at any time, Supplier will prepare all Wendt's property for shipment and deliver such property to Wendt in the same condition as it was originally received by Supplier, reasonable wear and tear excepted. Wendt shall have the right, at all reasonable times, upon prior notice, to enter Supplier's premises to inspect any and all of Wendt's property and any property or goods manufactured, developed or created with the aid of any of Wendt's property.

15. Technical Data. All technical information in the nature of designs, blueprints, drawings, specifications, engineering data or product know-how which is supplied to Supplier by Wendt to facilitate or assist in the performance of this Agreement shall remain the sole and exclusive property of Wendt. Supplier agrees to maintain such information in confidence and not to use, directly or indirectly, any such information for its own benefit or the benefit of any other person. All such information shall be returned to Wendt promptly upon its request, and Supplier will not retain any copies thereof.

16. Confidentiality. Supplier shall not, without first obtaining Wendt's written consent, disclose that fact that Wendt has ordered the Goods covered by this Agreement and shall not, except as required for Supplier's performance under this Agreement, disclose any of the details

associated with this Agreement to any third party. Unless otherwise agreed in writing, no commercial or technical information disclosed or supplied by Supplier to Wendt shall be deemed secret or confidential, and Supplier shall have no rights against Wendt with respect thereto.

17. Subcontract/Assignment. Neither the Purchase Order nor any rights and obligations under it shall be assigned (whether by operation of law or otherwise) or contracted to any third party by Supplier without the prior written consent of Wendt. Any attempted assignment of the Purchase Order without the express written consent of Wendt shall be void.

18. Force Majeure. Neither party shall be liable for any failure to make or accept any one or more deliveries arising out of conditions which negate or diminish, in the case of the Supplier, its ability to manufacture, and in the case of Wendt, its need for any products or services, including but not limited to compliance with any law or other governmental action, acts of God, fire, flood, explosion, strikes or other labor trouble/shortage or failure of supply of materials or equipment, interruption of or delay in transportation, or any other circumstance of like or different nature beyond the reasonable control of the party so failing. If any of such contingencies affecting Supplier's ability to perform occur, Supplier shall use its best efforts to supply to Wendt the products and/or services in quantities and type as close as reasonably possible to the quantity and type contracted for herein.

19. Cancellation; Termination. Wendt may cancel the Purchase Order, in whole or in part at any time for any reason, upon written notice to Supplier. In the event of such cancellation, Wendt, in addition to any other rights it may have under applicable law or other terms of this Agreement, shall have the right: (i) to refuse to accept further delivery of goods; (ii) to return to Supplier at Supplier's expense any Goods already delivered and to recover all payments made therefore and expenses incident thereto; and (iii) to recover any advance payments to Supplier for undelivered or returned Goods. Upon receipt of notice, Supplier shall thereupon take immediate steps to terminate the production and delivery of goods and the performance of services and works as quickly and effectively as possible and shall cancel commitments, unless otherwise instructed by Wendt, at best possible terms. Supplier may, at Wendt's option, be paid for the goods and services and work done at the Purchase Order prices, cost of materials furnished and commitments cancelled less previous payments to Supplier on the Purchase Order price. Wendt shall be entitled to possession of materials for which payment is made. In the event Supplier ceases operations or becomes involved in any proceeding, voluntary or involuntary, in bankruptcy or insolvency, or in the event of the appointment with or without the Supplier's consent, of an assignee for the benefit of creditors or of a receiver then Wendt, may in addition to all other remedies, cancel the Purchase Order and Supplier shall reimburse Wendt for any additional costs or damages.

20. Survival. Notwithstanding any legal presumption to the contrary, the covenants, conditions, representations, indemnities, and warranties contained in this Agreement, shall survive inspection, delivery, acceptance, payment and termination and shall be binding upon the Parties and their successors and permitted assigns.

21. Miscellaneous.

(a) All work performed by Supplier and all materials used in connection with this Agreement shall be at the risk and expense of Supplier until delivered and accepted by Wendt.

(b) Any and all taxes, fees, imposts or stamps, required by state, federal, local governments, or any such governmental authority in the selling, transferring, or transmitting of goods to Wendt shall be paid and assumed by Supplier.

(c) This Agreement and any applicable schedules and exhibits represent the entire and integrated agreement between the Parties with respect to the sale and purchase of Goods and supersede all prior negotiations, representations or agreements, written or oral. No changes or modifications to this Agreement are permitted, and no waiver of any rights under this Agreement are enforceable, unless made in writing as an addendum hereto and signed by both Parties.

(d) If any provision(s) of this Agreement shall be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of any remaining provision(s) thereof. Wendt's waiver of any term or condition of this Agreement shall not be deemed a continuing waiver, and Wendt failure to demand cure of or cancel or rescind an order as a result of a prior breach by Supplier shall not be deemed a waiver by Wendt of the right to demand cure of or cancel or rescind an order as a result of any subsequent breach. The rights set forth in this Agreement are cumulative and in addition to those otherwise provided by law and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

22. Choice of Law and Jurisdiction. This Agreement shall be interpreted and enforced under and in accordance with the internal laws of the State of New York without reference to its conflicts of law principles and the Parties shall exercise any right or remedy thereunder exclusively in, and hereby consent to the exclusive jurisdiction of, the courts of the State of New York and the United States District Court in Buffalo, New York. The Parties expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods, if and to the extent applicable.

23. Attorneys Fees. In the event Wendt retains the services of an attorney for the purposes of enforcing any of its rights under this Agreement or seeking redress for a breach of any of Supplier's obligations hereunder, then, in addition to all other rights and remedies available to Wendt under this Agreement or otherwise, Supplier shall reimburse Wendt for all such fees.