

# Tricon Industries, Inc. Terms and Conditions

- 1. Acceptance and Amendments.** The purchase order of Tricon Industries, Inc., hereinafter referred to as Buyer, becomes a contract, subject to Tricon Industries, Inc. terms and conditions, when acknowledgement is returned by Seller or upon commencement of performance by Seller; shall constitute the entire agreement between the parties. Such documents along with all specifications, drawings and instructions submitted to Seller with the order shall be deemed to be a complete and exclusive statement of the terms of the parties' agreement. Terms contained in Seller's acknowledgement which are different or in addition to Tricon Industries, Inc. terms and conditions are hereby objected to and are excluded unless Buyer assents, in writing, to their inclusion in the agreement. Buyer reserves the right at any time to make written changes within the general scope of the contract. Seller must notify Buyer of any adjustment to the contract and must receive written approval from Buyer to proceed. Buyer shall not be liable for price increases from the current purchase order terms without prior written consent. Seller agrees to comply with Buyer's quality requirements.
- 2. Cancellation and Termination of Offer.** Buyer shall have the right to cancel for default all or any part of the undelivered portion of the contract if Seller does not make deliveries as specified in the delivery schedule; if Seller breaches any of the terms; if Seller becomes insolvent or commits an act of bankruptcy; if Seller fails to maintain current certification; if Seller fails to notify Buyer of any mergers, acquisitions and/or affiliation changes. If certification is revoked, withdrawn, suspended or in case of merger, acquisition or affiliation changes, Seller must notify Buyer within 5 working days or prior to order acceptance. All laboratory contractors and subcontractors used by Seller must also maintain current applicable accreditation. Buyer may terminate performance of work under contract in whole or in part by written notice of termination, whereupon, the Seller will stop work on the date and to the extent specified in the notice and terminate all orders and subcontractor orders to the extent they relate to the terminated work.
- 3. Inspection.** Seller is required to provide material certifications for production materials at time of each delivery. Certifications are required to accompany the goods. Seller is required to retain copies of all material certifications for life of the program including life of service or until Tricon provides written authorization for disposal. All goods purchased under the contract are subject to inspection at Buyer's discretion before or after acceptance. Payment for any goods under the contract shall not constitute acceptance. Buyer reserves the right to reject/refuse acceptance of goods that are not in accordance with the Buyer's specifications, drawings or instructions and date of Seller's expressed or implied warranties. Goods not accepted will be returned to Seller for full credit or replacement, at the Buyer's discretion, and at the Seller's expense, including transportation charges both ways. Rejected goods shall not be replaced unless specified by the Buyer in writing. Seller shall be liable for damage to goods caused by improper packaging. Seller is responsible to respond to corrective action requests from Buyer per Tricon Root Cause Analysis and Corrective Action documentation requirements. Failure to comply will result in supplier status change to "No Bid".
- 4. Delivery.** Time is of the essence in the contract. If delivery of goods is not made according to Buyer's specified delivery schedule, or rendering of services is not completed at the specified times, Buyer reserves the right, without liability, and in addition to other rights and remedies, to direct expediting and/or routing of goods (extra costs shall be paid by the Seller) or terminate the contract by written notice. Buyer reserves the right to refuse or reject any/all shipments over and above the quantity specified on the contract. Buyer shall not be responsible for Seller's commitments or production arrangements in excess of the amount, or beyond a reasonable amount of time necessary to meet Buyer's delivery schedule. Buyer expects Seller to deliver 100% on time according to Buyer's delivery schedule. Seller is required to provide an original Certificate of Origin / NAFTA Certificate, HS Tariff Classification number and MSDS to Buyer, prior to or at time of delivery, if the purchase order indicates goods are to be exported.
- 5. General Warranty.** Seller warrants to Buyer, its successors, assigns and customers that the goods and services covered by the contract will be merchantable and will be free of defects of workmanship and/or material under proper and normal use. Seller further warrants that the goods and services furnished under the contract shall conform to all representations, affirmations, promises, descriptions, samples or models forming the basis of the contract. The foregoing General Warranty shall apply to all purchases except where the goods are manufactured pursuant to Buyer's design in which case the Special Warranty for Custom Parts shall apply.
- 6. Special Warranty for Custom Parts.** Where goods are manufactured pursuant to Buyer's design, Seller warrants to Buyer, its successors, assigns and customers, that the goods delivered will comply with Buyer's design specifications, drawings, instructions and applicable commercial specifications and/or industry and will be free of defects of workmanship and/or material under proper and normal use. This warranty shall not exclude any express warranty by Seller, but terms of this warranty shall govern in case of conflict.
- 7. Title Infringement.** Seller warrants to Buyer, its successors, assigns, and customers that the title conveyed to Buyer shall be good and merchantable; its transfer rightful; goods will be delivered free of any security interest, lien or encumbrance and will be free of claim of any person or infringement of any patent, copyright, trademark or the like. Seller agrees to assume full responsibility for the defense of any suit or proceeding which may be brought against Buyer, its successors, assigns and customers.
- 8. Indemnification.** Seller agrees to indemnify Buyer, its successors, assigns and customers and hold harmless from any losses, liabilities, damages, expenses (including court costs and attorney's fees), suits, decree and/or costs claimed by any person, firm or corporation arising from any cause or for any reason whatsoever. Seller agrees to assume full responsibility for the defense of any suit or proceeding which may be brought against Buyer, its successors, assigns and customers. Seller further agrees to annually furnish an Insurance Carrier's Certificate as proof the Seller has adequate insurance coverage.
- 9. Regulatory Compliance.** Seller warrants to Buyer, its successors, assigns and customers that the goods and services covered by the contract are in compliance with any and all applicable federal, state and local statutes, codes, ordinances and regulatory requirements.
- 10. Tricon Drawings, Specifications and Technical Information.** All drawings, specifications, engineering and manufacturing information furnished to Seller by Buyer shall remain Buyer's property and shall be returned to Buyer upon contract completion or upon demand; shall be considered and kept confidential by Seller; and shall not be disclosed except for Seller's employees involved in the manufacture of goods for the contract. Item/Description listed on the Tricon purchase order is for internal use only. Seller is required to notify Buyer of any changes to material, process, suppliers or sub-contractors. All changes must be pre-approved by Buyer prior to delivery of goods.
- 11. Liability.** Seller accepts financial liability for non-conforming materials, late deliveries and their effects including, but not limited to, warranty issues, cost recoveries for line down costs, sorting, scrap, charges due to recall, field returns, customer disruptions and premium transportation charges incurred by Buyer, its successors, assigns and customers. Seller accepts financial liability for material unavailable for use upon delivery due to document errors including, missing/incorrect material certifications and missing/incorrect packing lists. Document errors will be monitored for production materials by Buyer and reported monthly on the Tricon Industries, Inc. Supplier Performance Report. Seller will be charged \$100 per occurrence increasing to \$250 after the third occurrence.
- 12. Remedies.** Buyer shall have all remedies specified in this agreement in addition to those specified in the Uniform Commercial Code.