

# Procurement Terms and Conditions

Rev. 3/24/2023

**George L. Wilson & Co., Inc., its affiliates or subsidiaries,** (the “Buyer”) is an authorized distributor of Seller’s Products and all Products and services procured by Buyer shall be in accordance with the following terms and conditions:

**1. ACCEPTANCE/COMPLETE AGREEMENT.** This Order is Buyer’s offer to Seller and shall become a binding contract on the terms and conditions set forth herein upon the earlier of (i) Seller’s acknowledgement or (ii) by Seller’s full or partial performance hereunder. This Order does not constitute an acceptance by Buyer of any prior proposal, quote or offer to sell, and any reference to such is solely for the purpose of incorporating the description and/or specifications of the Products and services contained therein, but only to the extent that such description or specification does not conflict with the description and specifications on the face of the Order. This Order and the terms and conditions herein constitute the complete agreement between the parties and may not be altered or modified except in writing duly executed by each party. Any additional terms or conditions contained in Seller’s order acknowledgment, or in any other Seller document, shall be deemed rejected to by Buyer without the need for further notice of objection, and shall be of no effect, nor shall they be binding upon Buyer under any circumstances unless expressly accepted by Buyer in writing. Trade custom, trade usage, course of dealing, and past performance are superseded by this Order and shall not be used to interpret this Order.

**2. CHANGES.** Buyer at any time shall have the right to make changes to its order, including without limitation, in the quantities, specifications, drawings, instructions, or delivery schedule. Any such change that has a significant impact on Seller’s time or cost of performance shall entitle either Seller or Buyer to an equitable adjustment. However, no additional charge will be allowed unless asserted by the Seller within five (5) days after the change is ordered and authorized by Buyer in writing.

**3. CANCELLATION.** Buyer may cancel this Order in whole or in part upon notice to Seller, without liability to Buyer.

**4. DELIVERY. TIME IS OF THE ESSENCE** for delivery to Buyer hereunder. Seller will drop ship directly to Buyer’s customers as requested by Buyer, at no incremental expense to Buyer. Seller shall promptly provide written notification to Buyer of any possible or actual delay in performance hereunder and shall provide all relevant information concerning the cause for such delay. In no event, however, shall such notice relieve Seller of its obligations under this Order. If delivery is not made within the time specified, Buyer may purchase elsewhere and charge Seller any difference in price and/or Buyer may cancel the entire order or any undelivered portion thereof. Payments due to Seller may be offset against sums owed to Buyer by Seller. Deliveries shall be strictly in accordance with the schedule set out or referred to in the Order and in the exact quantities ordered. In no event shall Buyer be liable for any excess Product shipped by Seller. Buyer reserves the right at Seller’s expense to return Products shipped not in accordance with Buyer’s order set forth on the face hereof.

**5. WARRANTY.** Seller warrants and guarantees that its Products and services (collectively "Products"): (a) will comply with all relevant specifications and requirements; (b) will be of merchantable quality, free from any latent or patent defects; (c) will be safe and fit for their intended use; (d) shall reference true weights, measures, sizes, legends or descriptions indicated; and (e) shall comply with all applicable laws, rules, regulations, licenses, permits, ordinances, codes and or standards. This warranty and guaranty shall be in addition to any statutory or implied warranties, and warranties of broader scope and service warranties and guarantees given to Buyer by the Seller, and shall survive inspection, test, acceptance, and payment, and shall run to Buyer, its successors, assigns, and customers. Seller shall extend to Buyer and its customers no less than its standard warranty and product return policies, and in the event of breach of any applicable warranty, Seller will at a minimum, at Buyer or its customer’s discretion, (i) repair or replace the Product at Seller’s expense, or (ii) refund the purchase price, including any applicable shipping charges.

**6. NONCONFORMANCE.** Products or services that do not conform to the requirements of this Order may be rejected, at Buyer’s sole option. All costs with respect to the repair, replacement or refund of the nonconforming Products, including packing, packaging and freight charges, shall be at the Seller’s expense.

**7. PROPRIETARY RIGHTS.** Seller hereby acknowledges that Buyer is the owner of the trademarks and trade names connoting Buyer or Buyer products which it may elect to use in the distribution and sale of the Products, and that Seller has no right or interest in such trademarks and trade names. Seller agrees that it will not use Buyer's name, trade name or trademark in any way without the prior express written consent of Buyer. Seller hereby grants to Buyer the royalty-free license to use Seller's trademarks on the Products. Seller represents and warrants that it maintains all rights of ownership or use in any trademark, patent, copyright or any other Intellectual Property necessary to sell the Products to Buyer pursuant to this Agreement ("Intellectual Property"), and that the use by Buyer of any Intellectual Property pursuant to this Agreement will not conflict with or infringe upon the rights of any third party.

**8. RIGHT-OF-ACCESS.** Buyer reserves the right, during normal business hours, to verify purchased Products at Seller’s premises and to inspect Seller’s work hereunder to ensure that all relevant standards and specifications are met. Any such inspection by Buyer does not absolve Seller of the responsibility for the quality of Products, nor shall it preclude subsequent rejection by Buyer.

**9. PACKING & SHIPPING.** No charge shall be allowed for handling, packing, crating, drayage or storage without written permission of Buyer. Products shall be packaged in a method to preserve and protect from damage and/or degradation, and shall be suitably prepared for shipment by Seller in accordance with acceptable commercial practices and in compliance with all applicable laws. Seller shall cause the Products to be labeled and marked to conform to all requirements of all applicable federal, state and local laws,. Seller shall identify

Buyer's purchase order number on Seller's invoice, packing list, bill of lading or on any packages. Seller shall attach an invoice to all shipments, in addition to forwarding a copy of such invoice to Buyer.

**10. PRICING/PAYMENT.** This Order shall be billed and paid as set forth on the face of the Order. Seller shall separately itemize on the invoice any applicable sales taxes, all other taxes shall be responsibility of Seller.

**11. TITLE.** Seller warrants full, unrestricted title to all Products and services furnished hereunder, free and clear of all liens, security interests and encumbrances. Care, custody and control of, and title to all Products remain with Seller until such time as Buyer takes physical possession or otherwise agrees in writing.

**12. STOCKING/SHELF-LIFE.** Buyer may stock Product from time-to-time, and Seller agrees to accept returns or exchanges of saleable new Product inventory at full acquisition cost with no restocking or handling fees if Seller reasonably determines that sales are not sufficient to justify inventory levels. When shipping any Products with a limited shelf-life, Seller will take all necessary measures to ensure that such Products are received by Buyer (or its customers) with at least eight-five (85%) of the remaining shelf-life. Products that do not conform with this requirement will be considered to be defective. Buyer shall accept returns in accordance with this Section any Products that have at least sixty-five (65%) of their remaining self-life.

**13. HAZARDOUS MATERIALS.** Seller will notify Buyer in writing upon acceptance of this Order if Products furnished are subject to laws or regulations relating to hazardous or toxic substances, whether for shipment or use, or when disposed of, to regulations governing hazardous wastes, or any other applicable environmental, health, or safety laws or regulations. Instructions for shipping, handling, warnings, and safety data sheets ("SDS") shall be provided with each shipment. Seller agrees to and shall accept, at its facility, all of Buyer's unsold or expired Products containing hazardous chemicals, materials or substances for disposal, recycling or use. Buyer shall be responsible for packing and transportation costs to Seller. Seller shall be responsible for all other costs, including, without limitation, any costs associated with Seller's disposal, recycling or use.

**14. INDEMNITY & INSURANCE.** Seller agrees to defend, indemnify and hold Buyer (and its agents, representatives, employees, officers, directors, affiliates, successors and assigns, customers, and all subsequent users of the Products) harmless from all claims, demands, actions, damages, and liabilities (including reasonable attorney's fees) in any way connected with the Products or services provided to Buyer hereunder, the breach of any of the terms and conditions contained herein, or any act or omission of Seller, its agents, employees, or subcontractors. Should a recall be necessitated due to a defect or non-conformance of the Products, Seller shall bear all costs and expenses of such recall, including without limitation, costs of notifying customers, returning Products, customer refunds, and any expenses incurred to meet obligations to third parties. Seller agrees to procure and maintain on an occurrence form basis product liability insurance with respect to the Products and contractual liability coverage with insurer(s) having Best's rating(s) of A- or better, naming Buyer as an additional insured (Broad Form Vendors Endorsement), with minimum limits in each case of \$2,000,000. Seller shall promptly furnish to Buyer a certificate of insurance and renewal certificates of insurance evidencing the foregoing coverages and limits. The insurance shall not be canceled, reduced or otherwise changed without providing Buyer with at least thirty (30) days prior written notice.

**15. LIMITATION OF LIABILITY.** IN NO EVENT SHALL BUYER BE HELD LIABLE FOR PUNITIVE, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, INCLUDING FAULT OR NEGLIGENCE OF BUYER. Buyer's liability on any claim of any kind for any loss or damage arising out of or in connection with this Order or from the performance or breach thereof shall in no case exceed the price allocable to the Products ordered and delivered hereunder. Any action resulting from any alleged breach by Buyer must be commenced within one year after the cause of action has accrued, or Seller shall be deemed to have waived any such claims.

**16. COMPLIANCE WITH LAWS.** Seller shall comply with all applicable international, federal, state, county, and municipal statutes, laws, regulations, codes, standards, ordinances and orders in its performance hereunder and shall be responsible for all fees associated with such compliance, licenses, permits, certifications, bonds, taxes, duties, tariffs and other applicable fees. Without limiting the foregoing, Seller will comply with all customs laws and requirements of the U.S. (including specifically the U.S. Export Administration Act) and of each country in which the Products are made or likely to transit. In addition, Seller hereby acknowledges, represents and warrants (i) that Seller WILL NOT provide any Products that in whole or in part have been transferred, exported or imported, directly or indirectly, from a country or nation thereof, subject to restrictions under applicable laws and regulations, including but not limited to inclusion on the Export Administration Regulations' Denied Party List or any similar list published by a United States or foreign agency; (ii) Seller is not located in, under the control of, or a national resident of any such restricted country; and (iii) the Products have not been produced, in whole or in part, by prison labor, sweatshop labor, abusive forms of child labor, slave labor, or by other labor practices in violation of applicable law.

**17. ASSIGNMENT.** Seller shall not assign this Agreement or any rights or work performed hereunder without the prior written consent of Buyer. Any attempted assignment without such consent shall render this Agreement null and void.

**18. WAIVER.** No failure to exercise, and no delay in exercising, on the part of a party any right, power or privilege hereunder will operate as a waiver, nor will any single or partial exercise of any right, power or privilege preclude further exercise of the same right, power or privilege.

**19. VALIDITY OF PROVISIONS.** In the event that any provision or any part or portion of any provision of this Order shall be held to be invalid, void or otherwise unenforceable, such holding shall not affect the remaining parts or provisions hereof.

**20. GOVERNING LAW & VENUE.** This Agreement shall be governed in accordance with the laws of the Commonwealth of Pennsylvania, without reference to any conflict of law provisions. Unless the parties agree otherwise in writing, the state and federal courts located in Allegheny County, Pennsylvania shall have exclusive jurisdiction over all disputes hereunder, and the parties hereby consent to such jurisdiction, agree to accept service process by mail, and hereby waive any jurisdiction or venue defenses otherwise available. The parties agree the UN Convention on Contracts for the International Sale of Goods shall not apply to the sale of Products hereunder.

**21. CONFIDENTIALITY.** Seller expressly agrees to hold as confidential any information which is provided by Buyer ("Confidential Information"). Seller expressly acknowledges and agrees that Buyer's customer names, addresses, key contacts, customer purchase history, documents and information in any way related to the marketing, sale or distribution of any products are and shall be the Confidential Information of Buyer, regardless of whether such information is expressly marked as "confidential" by Buyer.

**22. GRATUITIES.** Neither the Seller, nor anyone in privity with the Seller, shall have accepted or accept, or give or agree to give, any gratuity from any person, including but not limited to the Buyer, in connection with the purchase of Products.

**23. GOVERNMENT PROCUREMENT PROVISIONS.** If the Products to be furnished by Seller are to be used in the performance of a U.S. government contract or subcontract, those clauses of the applicable U.S. Government procurement regulation which are required and mandated by Federal Statute to be included in U.S. Government subcontracts shall be incorporated herein by reference including, without limitation, the Fair Labor Standards Act of 1938, as amended, and the provisions of Executive Orders Nos. 11246, 11701 and 11758, the Rehabilitation Act of 1973, the Vietnam Era Veterans Readjustment Assistance Act of 1974, and all applicable amendments thereto and rules and regulations issued hereunder.

**24. PRIVATE LABEL PROVISIONS.** Any private label Products will contain Buyer's trademarks and labeling as determined by Buyer and communicated to Seller. Seller agrees to make no change to any of Buyer's artwork, labeling or packaging without first obtaining the written consent of Buyer. Seller will abide by any requested changes to the labeling and packaging of the Products as reasonably requested by Buyer. Buyer and Seller will mutually agree on baseline features, specifications, and industrial design (including the location of the factory where the product or product line will be manufactured) for each Product or line of Products prior to the manufacture of any Product. Seller will obtain Buyer's written consent prior to making any change in the specifications, industrial design or manufacturing location of any Product. Seller shall not sell any Products bearing Buyer's trademarks, trade names and/or logos to any other third party except with Buyer's prior written consent.

The following provisions will be in addition to the proprietary rights as outlined in Paragraph 9 of these Terms and Conditions. Buyer hereby grants to Seller a non-exclusive right and license to use its trademark, trade names and/or logos as further identified by Buyer (collectively the "Licensed Mark") in connection with the Products, subject to the following conditions and limitations: (a) Seller shall not use the Licensed Mark in any manner in any way related to the sale of any of the Products to any person or entity other than Buyer (or any of Buyer's affiliates or assigns, as set forth by Buyer); (b) Seller shall obtain Buyer's prior written approval before using all signs, labels, packaging material, advertising or any other matter bearing the Licensed Mark; (c) Seller shall not use any mark identical with or confusingly similar to the Licensed Mark for any purpose unrelated to the sale of the Products; (d) Seller acknowledges and agrees that nothing contained herein shall give to Seller any right, title or interest in the Licensed Mark, that the Licensed Mark is Buyer's sole property and that any uses by Seller of the Licensed Mark shall inure to the Buyer's benefit; (e) as soon as there is no reasonable need for Seller to continue using the Licensed Mark, Seller will immediately discontinue all use of the Licensed Mark, except for such use as may be required to fulfill its obligations herein, and, at its expense and as requested by Buyer, Seller will either deliver to Buyer all signs, labels, packaging materials, advertising and the like bearing the Licensed Mark that are then in the possession of Seller or will destroy the same and, upon Buyer's request, deliver to Buyer a certificate of destruction signed by an officer of Seller; (f) Seller agrees to notify Buyer of any unauthorized use of marks confusingly similar to the Licensed Mark which comes to Seller's attention; and (g) this license shall not be assignable in any manner whatsoever by Seller nor shall Seller have the right to grant any sublicense except as specifically agreed to in writing by Buyer.