

 **Aurubis Buffalo, Inc.**
TERMS AND CONDITIONS OF PURCHASE

These Terms and Conditions of Purchase apply when referenced by any purchase order or other documentation of Aurubis Buffalo, Inc. or any of its affiliates (“Buyer” or “AURUBIS BUFFALO, INC.”).

1. **OFFER; ACCEPTANCE; EXCLUSIVE TERMS.** Each purchase order issued by Buyer (“Order”) is an offer to the recipient of the Order (“Seller”) for the purchase of goods and/or services (“Products”) and includes and is governed by these Terms and Conditions of Purchase, together with any applicable Buyer Specifications, written instructions and Rules for Employee’s (collectively, “Terms”). The Order supersedes all prior agreements, order, quotations, proposals and other communications regarding the goods and/or services covered by the Order, except that a signed prior agreement (such as an award letter, Statement of Work or Non-Disclosure Agreement) will continue to apply to the extent not directly in conflict with the Order or these Terms. Any other modification or waiver of Buyer’s Terms must be expressly stated in the Order. The Order does not constitute an acceptance of any offer or proposal made by Seller. Any reference in the Order to any offer or proposal made by Seller is solely to incorporate the description or specifications of Products (including services) in the prior proposal, but only to the extent that the description or specifications do not conflict with the description and specifications in the Order. Seller accepts these Terms and forms a contract by doing any of the following: (a) commencing any work under the Order; (b) accepting the Order in writing; or (c) any other conduct that recognizes the existence of a contract with respect to the subject matter of the Order. The Order is limited to and conditional upon Seller’s acceptance of these Terms exclusively. Any additional or different terms proposed by Seller, whether in the Seller’s quotation acknowledgment, invoice or otherwise, are unacceptable to Buyer, are expressly rejected by Buyer, and will not become part of the Order.
2. **ASSIGNMENT PROHIBITED:** Buyer has given the Order to Seller in reliance on Seller’s reputation and personal performance hereof as well as reliance on Seller’s representatives and warranties regarding the Products. Seller may not assign its rights or delegate its obligations hereunder or subcontract any portion of the performance hereunder without prior written consent of AURUBIS BUFFALO, INC. Any such attempted assignment, delegation or subcontracting shall be void.
3. **SET-OFF:** AURUBIS BUFFALO, INC. shall be entitled at all times to set-off any amount owing at any time from Seller to AURUBIS BUFFALO, INC. or any of its affiliates against any amount payable at any time by AURUBIS BUFFALO, INC. to Seller.
4. **TERMINATION FOR CONVENIENCE:** AURUBIS BUFFALO, INC. may, at any time and upon written notice, terminate this Order in whole or in part regardless of whether Seller is in default hereunder. Such written notice shall state the extent and the effective date of termination. Upon receipt of such notice, Seller shall take all necessary steps to mitigate any losses Seller might incur on account of such termination. Upon such termination, AURUBIS BUFFALO, INC.’s obligation to Seller shall be limited solely to payment for (a) goods already shipped to AURUBIS BUFFALO, INC. or services performed; (b) completed goods produced pursuant to AURUBIS BUFFALO, INC.’s unique specifications and not yet shipped to AURUBIS BUFFALO, INC.; (c) the actual costs incurred by Seller that are properly allocable under recognized commercial accounting practices to the terminated portion of this Order, including Seller’s obligations to subcontractors that are also so allocable, but excluding any charge for anything of any nature that may be diverted to other orders; and (d) a reasonable profit on the work performed by Seller before receipt of the termination notice. The total payments AURUBIS BUFFALO, INC. is obligated to make hereunder shall not exceed the price of Products to which termination applies. Seller shall comply with AURUBIS BUFFALO, INC. instructions concerning Products Seller already has furnished or partly furnished for AURUBIS BUFFALO, INC.

AURUBIS BUFFALO, INC. shall not be responsible to pay for finished Products in production or goods fabricated or procured by Seller for producing such Products when such goods were fabricated or procured by Seller unnecessarily in advance or in excess of AURUBIS BUFFALO, INC.’s delivery schedule.

Termination by AURUBIS BUFFALO, INC. hereunder shall be without prejudice to any claims AURUBIS BUFFALO, INC. may have against Seller. The payment provided under this provision shall constitute AURUBIS BUFFALO, INC. sole liability in the event an Order is terminated as provided herein. The foregoing shall not apply to any termination by AURUBIS BUFFALO, INC. on account of Seller’s default or under any of the provisions in the “Termination For Default” clause.

To the extent this Order covers items normally carried in inventory by Seller, as distinguished from goods specially made to AURUBIS BUFFALO, INC.’s specifications, AURUBIS BUFFALO, INC. shall have no liability for any termination hereof prior to actual shipment.
5. **TERMINATION FOR DEFAULT:** Each of the following events shall constitute a default by Seller for purposes of this section (a) the insolvency of Seller; (b) any assignment for the benefit of creditors of Seller, (c) the voluntary or involuntary filing of a petition order or other decree in bankruptcy by or against Seller; (d) the commencement of any proceeding, under court supervision or otherwise, for liquidation of, reorganization of, or the composition, extension, arrangement or readjustment of the obligations of Seller; (e) failure by Seller to comply with AURUBIS BUFFALO, INC.’s reasonable instructions and Change Notices; (f) failure by Seller to comply with any of the provisions of the Order; (g) failure of the goods or services covered by the Order to conform to Seller’s warranties, contained herein or other warranties made by Seller; (h) failure of Seller to make deliveries as scheduled; and (i) proof that any representations by Seller were false when made. AURUBIS BUFFALO, INC. shall have the right to terminate in whole or in part this Order forthwith in the event of any default by Seller. In the event of any such termination AURUBIS BUFFALO, INC., in addition to other rights it may have under applicable law or other terms of this Order, shall have the right (i) to refuse to accept further delivery of goods, (ii) to return to Seller at Seller’s expense any goods already delivered, to recover all payments made therefor and all expenses incident thereto, (iii) to recover any advance payments to Seller for undelivered, unperformed or returned goods, and (iv) to purchase the goods and/or services covered by the Order elsewhere and charge Seller with any additional costs resulting therefrom. AURUBIS BUFFALO, INC.’s right to return goods not affected by any assignment by Seller of moneys due or to become due hereunder.
6. **CHANGES:** AURUBIS BUFFALO, INC. may, at any time upon a written notice signed by an authorized AURUBIS BUFFALO, INC. representative (“Change Notice”), make changes of any nature in this Order. If any such Change Notice affects the delivery time or Seller’s cost of performance, an equitable adjustment shall be made in the delivery schedule or the price or both.

Any claim by Seller for adjustment under this clause shall be deemed waived unless made in writing to AURUBIS BUFFALO, INC. within ten (10) days from receipt by Seller of the Change Notice.
7. **NON-DISCRIMINATION IN EMPLOYMENT:** Section 202 of Executive Order 11246 as amended by Executive Order 11375, relating to equal employment opportunities, the implementing rules and regulations of the Secretary of Labor, and all contract clauses and requirements which are applicable and set forth therein are incorporated herein by specific reference. In particular the Seller hereby certifies that it does not maintain segregated facilities. In making this certification the Seller incorporates each and all of the provisions of the approved form of certification contained in 41 C.F.R. Section 60-1.8(b) the same as such provision were fully set forth herein and signed by the Seller. Sections 503 and 504 of the Rehabilitation Act of 1973 and Title IV of the Viet Nam Veterans Readjustment Assistance of 1974, relating to employment and advancement in employment of qualified handicapped individuals, disabled veterans of the Viet Nam era, the implementing rules and regulations of the Secretary of Labor, and all contract clauses and requirements which are applicable and set forth herein as incorporated herein by specific reference pursuant to 41 C.F.R. Section 60-741.22. Sections 1 and 3 of Executive Order 11625 relating to the promotion of minority business enterprises, the implementing rules and regulations of the General Service Administration and all contract clauses and requirements which are applicable and set forth herein are incorporated herein by specific reference.
8. **LISTING JOB VACANCIES:** Seller shall comply with applicable laws, executive orders and regulations concerning listing job vacancies including 41 C.F.R. Part 50 250, which is hereby incorporated herein by reference.
9. **COMPLIANCE WITH LAW:** Seller certifies that in the performance hereof it will comply with all applicable law, statutes, rules, regulations or orders of the United States government or of any state or political subdivision thereof, and same shall be deemed incorporated herein by reference as is stated in their full text.
10. **INDEMNITY:** Seller shall indemnify AURUBIS BUFFALO, INC. and its directors, officers, agents and employees and hold each of them harmless from and against any and all liability, loss, damages, costs, claims and expenses that may be made against AURUBIS BUFFALO, INC. or that AURUBIS BUFFALO, INC. may incur, either directly or indirectly, by reason of or arising from the goods or services furnished under the Order or any negligence or breach of contract by Seller.
11. **WAIVER:** No delay or omission in exercising any right or remedy hereunder shall operate as a waiver thereof or of any other right or remedy, and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy. The rights, powers, elections and remedies of the parties hereunder are cumulative and in addition to those which the parties have at law or in equity. AURUBIS BUFFALO, INC.’s failure to object to any provision contained in any communication from Seller shall not be deemed an acceptance of such provision or a waiver of any provision of the Order or these Terms.
12. **PATENTS, TRADEMARKS, ETC.:** Seller warrants that neither the goods furnished under the Order nor the sale or use thereof will infringe on any existing patent, trademark or copyright. Seller agrees to indemnify, hold harmless and defend AURUBIS BUFFALO, INC., its directors, officers, agents and employees from and against any suit, claim or demand alleging patent, trademark or copyright infringement or misappropriation of any trade secret arising out of or in connection with the Order. If AURUBIS BUFFALO, INC. so requests, Seller shall defend or settle at Seller’s expense any suit or proceeding against AURUBIS BUFFALO, INC. alleging such infringement or misappropriation. AURUBIS BUFFALO, INC. may assume its own defense or join in the defense of any action in which it is made a party, in which event the foregoing indemnity and agreement to hold AURUBIS BUFFALO, INC. harmless shall extend to all of AURUBIS BUFFALO, INC. costs therein including attorneys’ fees and litigation costs. All royalties for patents or charges for the use of patents which may be involved in the performance of the Order shall be included in the cost of performance.
13. **CONFIDENTIALITY:** Seller shall not use or disclose, nor permit its employees, agents or subcontractors to use or disclose, any data, drawings, blueprints, specifications, or any other information furnished in connection with this Order, except to the extent necessary to perform hereunder. Upon completion, cancellation or termination of this Order, or upon the request of AURUBIS BUFFALO, INC., Seller shall return to Buyer all such data, drawings, blueprints, specifications or other information, including any copies thereof made by Seller.

Seller agrees to keep confidential and not to disclose to others or use in any way confidential business information that AURUBIS BUFFALO, INC. may disclose with this Order or that Seller may be exposed to as a result of entering AURUBIS BUFFALO, INC. property to deliver the goods hereunder.
14. **DELIVERY:** Except as otherwise indicated on the face hereof, all goods are to be shipped F.O.B. destination. In addition to any other requirements imposed on the Seller by law, the Seller shall suitably pack, crate and mark all goods to prevent damage and conform to requirements of carriers without additional charge to AURUBIS BUFFALO, INC. If Seller fails to pack the goods in an appropriate manner or to ship in the manner or route that is directed by AURUBIS BUFFALO, INC., Seller shall reimburse AURUBIS BUFFALO, INC. for any loss resulting therefrom.

Delivery shall be made in quantities and at times specified by AURUBIS BUFFALO, INC. AURUBIS BUFFALO, INC. may return to Seller at Seller’s expense any goods shipped to AURUBIS BUFFALO, INC. in advance of the requested schedule. If any goods delivered do not conform to all terms of this Order, AURUBIS BUFFALO, INC. may reject such goods or the entire lot received. If this Order requires or authorizes deliveries of goods in separate lots, AURUBIS BUFFALO, INC., if it rejects a cancels one or more separate lots as aforesaid, may also, at its sole election, cancel any undelivered lots and purchase elsewhere and charge Seller with any loss incurred as a result thereof. Further, and notwithstanding anything else to the contrary, AURUBIS BUFFALO, INC. shall have the right to return all freight-damaged goods to Seller at Seller’s expense and receive full credit therefor.

If at any time Seller has reason to believe that deliveries will not be made as scheduled, written notice setting forth the cause of the anticipated delay shall be given immediately to AURUBIS BUFFALO, INC. In the event of any late delivery, AURUBIS BUFFALO, INC. may, at its option, cancel the Order in whole or part, and upon AURUBIS BUFFALO, INC.’s request Seller shall reimburse AURUBIS BUFFALO, INC. promptly for any losses or costs AURUBIS BUFFALO, INC. sustains or incurs on account of the failure of Seller to deliver the goods as scheduled.
15. **EXTRA CHARGES:** AURUBIS BUFFALO, INC. shall not be responsible for any charges of any kind, including, but not limited to, taxes of any nature, crating, boxing, storing, packing, returnable containers, loading, unloading, insurance, or transportation unless separately itemized hereon and on any invoices sent.
16. **TIME IS OF THE ESSENCE:** Time is of the essence with respect to any delivery or performance dates provided for in this Order. Neither party, however, shall be liable for delay caused by any occurrence beyond its reasonable control, including but not limited to, fires, strikes, accidents, acts of God, and delays of common carriers. Any extension of time granted to Seller pursuant hereto shall be Seller’s exclusive remedy for any claim resulting from a delay caused by these occurrences.
17. **WARRANTY:** Seller warrants for a period of _____ year(s) from the delivery of the goods that the goods delivered under the Order will conform to the description of Products stated in the Order and/or these Terms; that such goods will be of merchantable quality free from all latent and patent defects; that such goods will be fit for the use intended by AURUBIS BUFFALO, INC. and that such goods shall be free of any claim of any third party. Seller agrees, at AURUBIS BUFFALO, INC. option and without prejudice to any other rights AURUBIS BUFFALO, INC. may have, to remedy any defective goods or reimburse AURUBIS BUFFALO, INC. for its costs of remedying any defective goods or its costs of replacing defective goods or its cost incurred because of any delays caused by either remedying or replacing defective goods. Such warranties shall survive inspection, testing and acceptance.

Payment for goods specified herein shall not constitute an acceptance thereof, but all goods shall be received subject to AURUBIS BUFFALO, INC. inspection and rejection. Defective goods or goods not in accordance with AURUBIS BUFFALO, INC.’s Terms shall be held for Seller’s instructions at Seller’s risk.

AURUBIS BUFFALO, INC.’s inspection, acceptance or retention of all or any part of the goods shall not be deemed to be a waiver of AURUBIS BUFFALO, INC.’s right to cancel or to return all or any portion of the goods because of failure to conform to the Order or the Terms, or by reason of defects, latent or patent, to claim a breach of warranty; or to make any claim for damages, including manufacturing costs and loss of profits or other special damages occasioned by AURUBIS BUFFALO, INC.
18. **PRICE:** If no price is specified herein, charges shall not exceed the lowest of Seller’s standard price or the price previously quoted or charged to AURUBIS BUFFALO, INC. for goods of like kind and quality. Further, Seller warrants that the prices for the goods sold to AURUBIS BUFFALO, INC. under this Order are not less favorable than those currently extended to any other customer for the same or like goods in similar quantities. If at any time on or before the delivery of the goods to AURUBIS BUFFALO, INC. the Seller quotes or charges any other customer lower prices for goods of like kind and quality, said lower price shall be substituted for the price otherwise applicable to this Order. Seller further warrants that the prices charged hereunder are in compliance with all applicable Government laws, rules and regulations. Any discount period shall be calculated from the date on which AURUBIS BUFFALO, INC. receives an invoice for goods or the date it receives such goods, whichever is later. In cases where a price subject to escalation has been agreed upon, all claims for such price escalation must be received by AURUBIS BUFFALO, INC. within sixty (60) days of final shipment.
19. **SPECIAL DIES** If the price to be paid is stated on the face of this Order to include special dies, jigs, tools or patterns used in the manufacture of the articles ordered hereunder, then such special dies, jigs, tools or patterns shall be and become the property of AURUBIS BUFFALO, INC. No dies, jigs, tools, patterns, drawings or specifications supplied by Seller by, or otherwise belonging to, AURUBIS BUFFALO, INC. shall be used in production, manufacture or design of any articles other than those called for by this Order, except with the written consent of AURUBIS BUFFALO, INC., nor shall articles manufactured to AURUBIS BUFFALO, INC. dies, jigs, tools, patterns, drawings, or specifications be furnished or quoted to any other person or concern. Upon termination of this Order such dies, jigs, tools, patterns belonging to, AURUBIS BUFFALO, INC. shall be disposed of as directed by AURUBIS BUFFALO, INC. All such dies, jigs, tools, patterns drawings or specifications shall be fully insured by Seller against loss by fire and other perils covered in a standard extended coverage endorsement while in Seller’s possession.
20. **GOVERNING LAW:** This Order shall be governed and construed in accordance with the laws of the State of New York unless otherwise specified on the face hereof. The U.N. Convention on the International Sale of Goods shall not apply to this Order.