

Conditions Of Purchase – November 2001

1. General

BUYER'S PURCHASE ORDER IS BUYER'S OFFER TO SELLER TO PURCHASE THE GOODS AND SERVICES DESCRIBED HEREIN AND IS NOT BINDING ON BUYER UNTIL ACCEPTED BY SELLER. ACCEPTANCE OF ALL TERMS AND CONDITIONS OF BUYER'S PURCHASE ORDER SHALL TAKE PLACE, AT THE ELECTION OF BUYER, EITHER BY EXECUTION AND RETURN OF THE SIGNED ACKNOWLEDGEMENT COPY OR BY PART PERFORMANCE OF BUYER'S PURCHASE ORDER. ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS SET FORTH IN ANY ACKNOWLEDGEMENT, ACCEPTANCE OR INVOICE OF SELLER OR IN ANY SIMILAR COMMUNICATION ARE HEREBY REJECTED AND SHALL NOT BE BINDING OR EFFECTIVE UNLESS EXPRESSLY ASSENTED TO IN WRITING BY AN AUTHORIZED REPRESENTATIVE OF BUYER.

2. Changes

(a) Buyer may at any time prior to shipment of products by Seller, by written change order, change the design (including materials, drawings, and specifications), processing, method of packing and shipping, and the place of delivery, of the products and services.

(b) If the change affects cost or timing, Buyer shall adjust the purchase price and delivery schedules equitably.

(c) Seller shall not make any change in the design, processing, method of packing or shipping, or place of delivery of the products and services without the written consent of Buyer.

(d) No modification of this agreement shall be binding upon Buyer unless made in writing and signed by Buyer's authorized representative.

3. Shipping Instructions and Releases

See face of Buyer's purchase order. If Seller fails to follow shipping instructions, Seller shall be responsible for all additional transportation charges incurred.

If delivery dates are not specified on the face of Buyer's purchase order, Seller shall ship goods only as authorized in shipment releases issued to Seller by Buyer. Buyer may return over-shipments to Seller at Seller's expense. Buyer from time to time and with reasonable notice may change or temporarily suspend shipping schedules specified in Buyer's purchase order or shipment releases.

4. Delivery

Delivery must be made within the time and at the specific quantity stated on the face of Buyer's purchase order or shipment release, but neither party shall be liable for any default due to acts of God or the public enemy, acts of the government or any agency thereof, fire, flood, epidemic or quarantine restrictions, third party strikes and freight embargoes, or to other causes beyond its control and without fault or negligence. In all other cases, if delivery is not made as requested, Buyer reserves the right, at its option, to purchase elsewhere and charge Seller with any loss incurred as a result thereof (including any incidental and consequential damages), and to cancel the order, and to have the goods shipped air freight at Seller's cost. Acceptance by Buyer of a late delivery of either the whole or a part of the order shall not constitute a waiver of Buyer's claim for any damage that the late delivery may have caused. Goods shipped to Buyer in advance of delivery schedule may be returned to Seller at Seller's expense.

5. Price

If price is not stated in Buyer's purchase order or in any other agreement between Buyer and Seller, it is agreed that Seller's price shall be the lowest prevailing market price. The selling price for the goods or services purchased hereunder shall at no time exceed the lowest price at which those goods or services are offered to any of Seller's other customers purchasing in like quantities. In the event that prior to the final shipment under Buyer's purchase order Seller sells or offers to sell to others goods substantially of the same kind as ordered herein at lower prices and or on terms more favorable to a third party than those stated in Buyer's purchase order, Seller shall notify Buyer of the same and the prices and/or terms herein shall be deemed automatically revised to equal the lowest price and or most favorable terms at which Seller shall have sold or shall have offered such goods and payments shall be made accordingly. In the event Buyer shall become entitled to such lower prices but shall have made payment at any price in excess thereof, Seller shall promptly refund the difference in price to Buyer. Price is to cover purchased goods or services in their entirety and, where purchase is by weight, net weight of material. No charges of any kind, including but not limited to charges for boxing, packaging, loading, bracing or cartage, will be allowed unless authorized by Buyer in writing.

6. Discount and Settlement of Invoices

Unless otherwise agreed by Buyer and Seller, the payment terms hereunder shall be net 90 days, and Buyer shall be entitled to a 2% discount for payments that it makes within 60 days of its receipt of an invoice from Seller, or receipt of merchandise, whichever is later. Any adjustments in Seller's invoice due to shortage, late delivery, rejection or other failure to comply with Buyer's purchase order, shall be made before payment. All invoices shall be deemed paid on the date that either a check is mailed to Seller by Buyer or an electronic wire of the payment is initiated by Buyer. If the payment due date, calculated in accordance with this Section 6, falls on a day other than a business day in the country of Buyer, Buyer shall make any payment due hereunder on the next business day in the country of Buyer, and such payment shall not be deemed to be late.

7. Warranty and Indemnity

(a) Seller expressly warrants that all goods, material and workmanship will conform with applicable drawings, specifications, samples, or other descriptions given, will be merchantable and fit for the purpose intended, and will be free from defects. All goods delivered and services performed will be subject to test and inspection by Buyer at the place of manufacture or at destination or at both. Any of the goods found at any time to be damaged (including goods damaged due to unsatisfactory packaging by Seller) or defective or not in conformity with Buyer's purchase order may be corrected by Buyer at Seller's expense or rejected and returned at Seller's expense. If Buyer elects to return such goods to Seller at any time and the goods are off-the-shelf products or component parts, Buyer shall be entitled to a credit equal to the purchase price of the goods or services, plus 15% of the purchase price of the goods or services. If Buyer elects to return such goods to Seller at any time and the goods are conversion materials or raw materials, Buyer shall be entitled to a credit equal to the purchase price of the goods or services, plus Buyer's actual costs related to containment and sorting of such goods. However, Buyer's inspection or failure to inspect shall in no way relieve Seller of responsibility hereunder.

(b) To the fullest extent permitted by law, Seller agrees to indemnify and hold harmless Buyer from and against any and all liabilities, losses, damages, judgments, awards, costs, fees, and expenses, including all incidental and consequential damages (including, but not limited to, attorneys' fees and costs of investigation) incurred by Buyer resulting from or relating to any claim, notice, allegation, complaint, demand, action, lawsuit, investigation, proceeding, or other process or procedure of any kind (including, but not limited to, those based in whole or part on patent, trademark or copyright infringement, negligence, product liability, willful misconduct, breach of express or implied warranties, strict liability, deceptive or unfair trade practices, advertising liability, governmental statute or regulation, and the like) between Buyer and any third party, parties or any other entity and arising out of or in any way resulting from the goods, materials, products, or services provided, shipped, furnished or delivered or services performed by Seller to, for, or on behalf of Buyer. The obligations of Seller under this Section 7(b) shall survive cancellation or termination of each purchase order agreement. The obligations of Seller under this Section 7(b) are independent and do not in any way limit or satisfy the obligations of Seller to Buyer under any other provision of this agreement.

(c) In the event that Buyer becomes subject to any investigation or report to a governmental agency or voluntary standards organization (whether a government, legislative, executive, judicial body, agency or voluntary standards organization, including without limitation the Brazilian Consumer Protection agencies, the Ministry of Health, the Ministry of Transportation, the federal, state or local environmental agencies or any other Brazilian federal, state, county, municipal or other governmental or voluntary standards organizations which now have or in the future may acquire authority concerning like matters) relating to compliance with safety regulations or product safety, or becomes subject to any corrective action plan, consent agreement or order requiring corrective action (including without limitation notice, recall, retrofit, repair, replacement or the refund of purchase price of said products or services, whether at the wholesale, retail or consumer distribution level), whether such corrective action plan, consent agreement or order is voluntary or is a mandate of any governmental agency or

voluntary standards organization, or becomes subject to Buyer's own investigation relating to compliance with safety regulations or product safety, as the result of, arising from or in any way related to the goods, materials, products or services provided, shipped, furnished or delivered or services performed by Seller to, for, or on behalf of Buyer, Seller agrees to defend, protect, indemnify and hold harmless Buyer from any and all expenses and liabilities (including without limitation attorneys' fees and expenses, administrative costs and expenses, costs of investigation, notice, corrective action, recall, repair, replacement or the refund of the purchase price) which may be incurred in connection with any such investigation, corrective action plan, consent agreement or order requiring corrective action, or in assuring compliance or aiding or assisting compliance with such mandates. The obligations of Seller under this Section 7(c) shall survive cancellation or termination of each purchase order and/or agreement.

8. Confidential Information and Design Rights

All drawings, specifications, technical information, pricing information, data, designs, and other information furnished to Seller by Buyer in connection with the purchase of goods or services covered by Buyer's purchase order shall remain the property of Buyer and shall be maintained in confidence by Seller. Seller may disclose such information only to its employees on a need-to-know basis, but except as required by law (and then only with prior written notice to Buyer) shall not disclose the same to any third party, or publish, release, duplicate or use it at any time in any manner, without the express prior written consent of Buyer.

The obligations set forth in the immediately preceding subparagraph shall not apply to such information which Seller can establish by tangible evidence (a) was rightfully known or possessed by Seller at the time of its disclosure by Buyer to Seller, (b) is or becomes known to the public through disclosure in a printed publication without breach of Seller's obligations hereunder, or (c) is subsequently received by Seller from a third party having a lawful right to disclose it without restriction.

Seller expressly agrees to, and hereby does, assign and transfer to Buyer all right, title and interest that Seller may have or to which it may be entitled, (a) in and to all copyrights in any work authored, directly or indirectly, with regard to goods specially manufactured for Buyer, including all designs, drawings, graphics, pictures, sculptures, text, specifications, technical information, and data, and (b) in and to all inventions, whether or not patentable (and to any patents or other protective rights including trade dress rights thereon), conceived or first reduced to practice, directly or indirectly, with regard to goods specially manufactured for Buyer. Seller agrees to execute such further confirmatory assignments, not inconsistent with this Section 8, as are deemed necessary or desirable by Buyer when presented by Buyer for execution by Seller, without charge.

Seller expressly agrees and hereby does, grant to Buyer and its domestic and foreign subsidiaries and other affiliated companies, a nonexclusive, royalty-free, irrevocable worldwide license (a) under each and every copyright of Seller in any work authored prior to Buyer's purchase order that is in any manner applicable to any work produced in response to Buyer's purchase order and to any later modification thereof, and (b) to use and sell goods purchased hereunder anywhere in the world under each and every patent of Seller.

9. Buyer's Property

Any raw material furnished by Buyer in connection with Buyer's purchase order shall be deemed to be held by Seller as bailee, and Seller agrees to pay for all such material spoiled or not otherwise satisfactorily accounted for. Buyer will specify acceptable scrap allowance, if any, and any amount in excess of this will be paid for by Seller at Buyer's cost.

All tools, gauges, patterns, dies, and other material and equipment furnished to Seller by Buyer shall remain the property of Buyer. It shall be plainly identified by Seller as "Property of **[insert name of Buyer]**" and shall be safely stored and not used except in filling Buyer's orders. The property, while in Seller's custody, shall be maintained in good condition at Seller's expense and shall be kept insured by Seller at Seller's expense in an amount equal to the replacement cost, with loss payable to Buyer. Seller shall furnish to Buyer a certificate of insurance evidencing Seller's compliance with the provisions of this Section 9. Buyer's property may be removed by Buyer at any time.

Notwithstanding anything to the contrary in Buyer's purchase order, Seller shall not use any trademark, trade name or trade dress right of Buyer in any manner other than for the benefit of Buyer and only upon Buyer's prior written request and in strict accordance with Buyer's written instructions.

10. Patent Guarantee

Seller warrants that the sale or use of the goods or materials covered by Buyer's purchase order shall not infringe or contribute to the infringement of any patents, utility model registrations, design registrations, trademarks, or copyrights, or embody an unauthorized use of trade secrets, either in Brazil or in foreign countries. Seller agrees to indemnify and hold Buyer harmless from and against all claims, liabilities, costs, damages, or expenses (including attorneys' fees) of any kind, involving any such actual or alleged infringement or unauthorized use, excluding, however, any infringement or use solely relating to concepts, designs, or ideas furnished in writing by Buyer and which, as between Buyer and Seller, originated with Buyer. Seller agrees that it will, upon reasonable notice and request from Buyer, assume the defense of the Buyer, its successors, assigns, and customers of its goods, against any such aforementioned suit, claim or demand. In addition, if the sale or use of the goods or materials purchased is enjoined, Seller at its own expense and at Buyer's option shall (a) procure for the Buyer and its customers the right to continue using and selling the goods or materials, (b) modify the goods or materials so as to be non-infringing, (c) replace the goods or materials with non-infringing goods or materials, or (d) refund the purchase price to Buyer.

11. Cancellation Provisions

Either party shall have the right to cancel Buyer's purchase order in the event that the other party files or has filed against it any petition under the bankruptcy laws (if not vacated within 30 days of filing), becomes insolvent or makes an assignment for the benefit of creditors.

In addition to all of the other rights which Buyer may have to cancel Buyer's purchase order, Buyer shall have the further right, without assigning any reason therefor, to terminate any work hereunder, in whole or in part, at any time. Upon receipt of a notice of termination, Seller shall, unless the notice otherwise directs, immediately discontinue all work on the order. Buyer will not be liable to Seller for any costs for completed articles, articles in process, or materials acquired or contracted for, if the costs were incurred more than ten (10) days prior to the delivery date stated on the face of the order. If Buyer cancels prior to the delivery date stated on the face of Buyer's purchase order and if the parties cannot agree within a reasonable time upon the amount of fair compensation to the Seller for the termination, (a) Buyer shall pay the contract price for all articles completed in accordance with Buyer's purchase order and not previously paid for, (b) Buyer shall pay a fair and proper portion of the contract price for articles in process, and (c) Buyer shall pay Seller's costs for all materials acquired or contracted for by Seller for the purpose of fulfilling Buyer's purchase order that Seller is unable to cancel or return. If Buyer so desires, cancellation charges shall be subject to Buyer's audit.

With Buyer's consent, Seller may sell or retain at an agreed price any completed articles, materials, work in process, or other things, payments for which, in whole or in part, by Buyer is provided for in the preceding paragraph, and Seller shall credit or pay Buyer the amounts so agreed or received. Any goods, materials, work in process, or other things not so retained or sold shall be transferred and delivered by Seller in accordance with Buyer's directions. Appropriate adjustment shall be made for delivery costs or cost savings. The provisions of this paragraph shall not limit or affect the right of Buyer to terminate Buyer's purchase order upon default of Seller.

In no event shall Buyer be liable for any incidental or consequential damages, including without limitation, loss of profits or business, or damages arising out of Buyer's cancellation of orders or the termination of business relations with Buyer, even if Buyer has been advised by Seller of the possibility of such damages.

12. Non-Exclusivity; Waivers and Assignment

Each of the remedies reserved to Buyer herein shall be cumulative and in addition to all other or further remedies provided herein or by law. Any waiver of strict compliance with the terms of Buyer's purchase order shall not be a waiver of Buyer's right to insist upon strict compliance with the terms of Buyer's purchase order thereafter. Seller may not assign any of its rights or delegate any of its duties hereunder without Buyer's prior written consent.

13. Insurance

Seller shall procure and maintain comprehensive commercial general liability insurance (including without limitation coverage for products liability, advertising liability and the contractual assumption of liability under this agreement) covering, on an occurrence basis, with limits of at least \$3,000,000.00 per occurrence, claims for bodily injury, sickness and disease including death, property damage, and damages relating to loss of use of physical property, arising out of or relating to all goods, materials, products or substances provided, shipped, furnished, or delivered or services performed which are the subject of this agreement. Each

policy required by this section shall name Buyer as an additional insured for all such coverages, shall require the insurer to provide notice in writing to Buyer at least 30 days prior to any cancellation or non-renewal, and shall provide that such insurance shall be primary insurance without any right of contribution from any other insurance carried or maintained by Buyer. Seller shall annually, and more frequently upon request of Buyer, furnish to Buyer certificates of insurance evidencing Seller's compliance with the provisions of this Section 13. The obligations of Seller under this Section 13 are independent and do not in any way limit or satisfy the obligations of Seller to Buyer under any other provision of this agreement.

14. Compliance with Law

In rendering the goods and services pursuant to Buyer's purchase order, Seller shall comply with all applicable federal, state, and local laws, rules, and regulations. Seller represents and warrants that (i) Seller and all suppliers, subcontractors and agents involved in the production or delivery of goods and services purchased pursuant to Buyer's purchase order strictly adhere to all applicable federal, state and local laws, regulations and prohibitions of Brazil and of all countries in which the goods and services are produced or delivered with respect to the operation of their production facilities and their other business and labor practices, including laws, regulations and prohibitions governing the working conditions, wages, hours and minimum age of the workforce, (ii) the goods and services have not been and shall not be produced or manufactured, in whole or in part, by child labor or by convict or forced labor, and (iii) the goods and services shall not have been transhipped for purposes of avoiding compliance with labor laws. Seller further agrees to furnish such documentation as may be required by Buyer to evidence compliance with the foregoing. Buyer or a third party designated by Buyer shall have the right, at any time while Seller is supplying goods or services to Buyer, upon reasonable notice, to inspect Seller's and its subcontractors' and agents' production facilities to verify the representations and warranties in this paragraph.

Seller acknowledges that Buyer may serve from time to time as contractor for the United States Government. Seller agrees to comply with all United States federal laws, rules, and regulations applicable to subcontractors of United States government contractors. All contract clauses required by the United States Government in such circumstances are incorporated herein by reference.

15. Export/Import

For each international shipment, Seller shall include a priced invoice with the master packing slip and upon request shall furnish all other required documents. The invoice shall include (i) the Seller's name, contact person, address, telephone, and facsimile number, (ii) the "sold to" address or billing address, (iii) the "ship to" address or destination address, including a contact person at the receiving location, (iv) the number of cartons and total number of pieces for each item, (v) the total net weight for each part number, (vi) the Buyer's part number, (vii) the specific description for the part in English (if multi-tool kits are being shipped, an attached breakdown with cost must be included. Value of consigned inventory must also be included on the invoice or in an attachment), (viii) the HTS Code, (ix) the country of manufacture/origin (country of origin is not determined by country of export, but by the country of manufacture), (x)

the unit price for each component, (xi) the extended total (unit price multiplied by number of units/pieces), (xii) any freight or insurance incurred that is not included in the unit price, (xiii) the total value of the invoice, identifying the type of currency, (xiv) the total weight, including the weight of the outer packaging, and (xv) the terms of sale. Export credits shall belong to Buyer. Seller, upon request, shall furnish all documents required to obtain NAFTA qualification, export credits and customs drawbacks and shall identify the country of origin of the materials used in the goods and the value added thereto in each country. Seller shall ensure that the proper country of origin is marked on the goods and/or their container. Seller agrees to comply with all Brazilian laws and regulations applicable to export and import transactions as well as to provide any and all related documents and information.

16. Environmental and Consumer Protection

Seller warrants compliance with all federal, state and local environmental and consumer protection laws and regulations for each material constituting or contained in goods sold or otherwise transferred to the Buyer under Buyer's purchase order.

17. Applicable Law

Buyer's purchase order shall be governed by the laws of the country in which Buyer is located, or if Buyer is located in the United States, the state where the Buyer is located, without regard to that country's or state's rules regarding private international law or conflict of laws. Litigation arising out of or in connection with the buyer's purchase order shall be brought only in a court located in the country in which the Buyer is located, or if the Buyer is located in the United States, a Federal District Court located in the state where Buyer is located, or in a court of such state. Seller hereby submits to the jurisdiction of any such court.

18. Force Majeure.

The obligations of the parties hereto, except the obligation to pay monies when due hereunder, shall be subject to all acts of God; riots and insurrections; interference by civil, military or naval authorities; governmental actions; accidents; storms, fire or other casualty; shortages and inability to obtain labor, energy, components, raw materials or supplies; and other similar events of force majeure which are beyond the reasonable control of the party obligated to perform hereunder (provided that such affected party uses good faith and diligent efforts to perform its obligations despite the occurrence of such event), and such performance obligation shall be suspended during the period of such force majeure; provided that if any party intends to rely on an event of force majeure to suspend its obligation to perform hereunder, such party shall provide written notice to the other party of its intent to rely on such a force majeure event and identify specifically such event.

19. Set-Off; Credits

Buyer may set off against amounts payable under Buyer's purchase order all present and future indebtedness of the Seller to Buyer arising from this or any other transaction whether or not related thereto. Seller agrees that any credit balance will be paid in cash to Buyer upon

written request. If Buyer terminates its relationship with Seller, all balances due to Buyer shall be paid in cash to Buyer within 10 days of notification to Seller of such termination.

20. Validity

No finding that a part of Buyer's purchase order is invalid or unenforceable shall affect the validity of any other part hereof.

21. Entire Agreement

Buyer's purchase order and these Conditions of Purchase constitute the entire agreement and understanding between the parties in respect of the matters set forth therein and herein, and all prior negotiations, writings and understandings relating to the subject matter of the Agreement. Other than as set forth in Buyer's purchase order and these Conditions of Purchase, no representations, warranties, covenants, agreements or conditions, express or implied, whether by statute or otherwise, have been made by Buyer.

22. Amendment, Waiver and Non-Exclusivity

These Conditions of Purchase may be amended, modified, supplemented or changed in whole or in part only by an agreement in writing making specific reference to these Conditions of Purchase and executed by each of the parties. Any of the terms and conditions of these Conditions of Purchase may be waived in whole or in part, but only by an agreement in writing making specific reference to these Conditions of Purchase and executed by the party that is entitled to the benefit thereof. Each of the remedies reserved to B&D shall be cumulative and in addition to all other or further remedies provided herein or by law.

23. Binding Agreement and Successors

These Conditions of Purchase shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns; provided, however, that these Conditions of Purchase and the rights of the parties thereunder may not be assigned, and the obligations of the parties thereunder may not be delegated, in whole or in part, without the prior written consent of the other party hereto.

24. No Third Party Beneficiaries

Nothing in these Conditions of Purchase is intended to confer upon any person other than the parties any rights or remedies.

25. Notices

Any notice, request, instruction or other document or communication required or permitted to be given under these Conditions of Purchase shall be in writing and shall be deemed to be given upon delivery in person or upon being deposited in the mail, postage prepaid, for mailing by certified or registered mail or upon being deposited with an overnight courier,

charges prepaid, to the addresses set forth beneath the signatures of the parties on the Agreement, or to such other address or addresses as may be specified in writing at any time or from time to time by either party to the other party.

26. Further Assurances

The parties each agree to execute, make, acknowledge, and deliver such instruments, agreements and other documents as may be reasonably required to effectuate the purposes of these Conditions of Purchase and to consummate the transactions contemplated hereby and thereby.

27. Section Headings

The Section headings contained in these Conditions of Purchase are for convenience of reference only and shall not limit or otherwise affect the meaning or interpretation of these Conditions of Purchase.

28. Construction

As used in these Conditions of Purchase, any reference to the masculine, feminine or neuter gender shall include all genders, the plural shall include the singular, and the singular shall include the plural. With regard to each and every term and condition of these Conditions of Purchase and any and all agreements and instruments subject to the terms thereof, the parties understand and agree that the same have or has been mutually negotiated, prepared and drafted, and that if at any time the parties desire or are required to interpret or construe any such term or condition, no consideration shall be given to the issue of which party actually prepared, drafted or requested such term or condition.

29. Relationship of Parties

Neither party shall have any authority to obligate, or to otherwise act as representative of, or agent for, the other party for any purpose, and neither party shall make any representations or hold itself out as having such authority.

30. Holidays

If any documents or notices to be delivered on specific days of the week hereunder fall on a legal holiday or other day on which Buyer is closed for business, then such notice or document shall be delivered on the next business day thereafter.