

ADDITIONAL TERMS AND CONDITIONS

1. **DEFINITIONS:** The words and phrases set off by quotations marks in this Section of the Purchase Order shall have the meanings therein indicated. Whenever such words or phrases are intended to have their defined meanings, the first letter of such word or the first letters of all substantive words in such phrase shall be capitalized.

- (a) "Buyer" means Kress Corporation.
- (b) "Code" means the Illinois Uniform Commercial Code, Ill. Rev. Stat., ch. 26, Sec. 1-101 et seq.
- (c) "Goods" means the items identified on the front of this Order, including all component parts thereof, if any.
- (d) "Order" or "Purchase Order" means the instrument of which this definition is a part, including the front and reverse sides hereof, and includes any attachments hereto.
- (e) "Seller" means the person or organization to whom this Order is directed, or the person or organization who, with or without Buyer's consent, accepts this Order or ships the Goods pursuant to this Order in the stead of the person or organization to whom it is directed.

Whenever a word or phrase which is used in this Purchase Order is defined or used in the Code, such word or phrase shall have the same meaning as defined or used in the Code except to the extent that the Code definition or use is inconsistent with the definitions herein or the context hereof.

2. **WARRANTIES:** In addition to all warranties which may be prescribed by Seller and by law, Seller warrants that the Goods purchased hereunder, will be delivered free of any claim of any third person by way of infringement or otherwise; will be merchantable; will be fit for the particular purpose or purposes intended by Buyer, and will conform to applicable designs, specifications, drawings, descriptions or samples furnished or to be furnished by Buyer to Seller. Buyer's approval of any designs, specifications, drawings, descriptions or samples furnished by Seller shall not relieve Seller of its warranties hereunder. The aforesaid warranties shall extend and inure to the benefit of Buyer, its successors, assigns, customers and to the users of the Goods.

3. **ACCEPTANCE, ALTERATION:** This Purchase Order may be accepted by Buyer's receipt of the attached acknowledgment copy duly executed by Seller. In the absence of such acknowledgment, commencement of delivery of the Goods ordered hereunder and acceptance of any such delivery by Buyer shall constitute a firm contract on the terms and conditions herein. None of the terms and conditions in this Purchase Order may be added to, modified, superseded or otherwise altered except by written instrument, signed by an authorized representative of Buyer and transmitted by Buyer to Seller, notwithstanding any terms and conditions that may be contained in any acknowledgment, invoice or other correspondence from Seller or Buyer's acceptance of any shipment or payment thereon. This Order expressly limits acceptance to the terms hereof. Any conduct by Buyer and Seller subsequent to the date of this Order which recognizes the existence of a contract shall be sufficient to establish a contract for sale although this Order and any written confirmation or other instrument received by Buyer from Seller do not otherwise establish a contract. In such case the terms of such contract shall consist solely of the terms of this order, together with any supplementary terms incorporated under any provisions of the Code not inconsistent with the terms hereof.

Buyer's acceptance of the Goods ordered hereunder shall not relieve Seller of any obligations and warranties hereunder. Acceptance of the Goods shall occur after Buyer has a reasonable opportunity to inspect and test the Goods and signifies to Seller that the Goods are conforming or that it will take or retain them in spite of their non-conformity, with an allowance for deterioration and damage or deficiency in quantity.

4. **COMPLIANCE WITH LAWS:** Seller warrants that it and the Goods furnished hereunder shall comply with all applicable state, federal and local laws, rules and regulations, and that it is liable for all unemployment compensation taxes on wages of such of its employees as have produced the Goods and agrees to forever indemnify and save Buyer harmless against liability on account of any non-compliance. Seller also agrees to furnish on each invoice its statement (in form approved by the U.S. Department of Labor) certifying that the Goods were produced, manufactured and delivered in accordance with the Fair Labor Standards Act of 1938, as amended, and all regulations and orders issued thereunder. Further, Seller warrants that it has complied and will comply with all pertinent provisions of Executive Order No. 11246 and all other rules, regulations and orders relative to Equal Employment Opportunity in the manufacture, distribution, sale and delivery of the Goods.

5. **INFRINGEMENT AND INDEMNITY:** Seller, its successors, assigns or heirs and legal representatives shall forever indemnify and save harmless Buyer, its subsidiaries, affiliated companies, successors, assigns, employees, agents, distributors, customers and users of the Goods purchased hereunder (collectively referred to as "Affiliates") of and from any claim, demand, cause of action, suit judgment, loss, attorney's fees incurred in the investigation, defense or settlement of any court or other proceeding or suit or any threatened court or other proceeding or suit for actual or alleged patent, trade-mark, copyright, infringement, domestic or foreign, or infringement or violation of any similar rights. If in the performance of this order, Seller or his agents or employees enter Buyer's premises, Seller shall indemnify and hold harmless Buyer and its Affiliates, from and against all claims, dues, demands, liabilities and expenses (including attorneys' fees) arising out of injury to, or death of, any person or damage to property caused in whole or in part by the acts or omissions of Seller or his agents or employees. In addition, Seller shall indemnify and hold harmless Buyer and its Affiliates from and against all claims, dues, demands, liabilities and expenses (including attorneys' fees) arising out of injury to, or death of, any person or damage to property attributable to the use, application, manufacture, remanufacture or operation of the Goods and which is caused in whole or in part by (1) any breach of warranty by Seller; (2) any negligent act or omission of Seller or any agent or employee of Seller regardless of whether or not it is caused in part by Buyer; or (3) any design or other defect in the Goods. Upon the request of Buyer, Seller shall at its expense, defend all claims, proceedings or suits against Buyer or any Affiliate of Buyer in which any of the aforesaid claims are alleged. Buyer agrees to notify Seller promptly upon its receipt of notice of any claim.

6. **RISK OF LOSS:** Unless otherwise noted herein, the risk of loss shall not pass to Buyer until the Goods are accepted by Buyer in accordance with Paragraph 3 hereof.

7. **INSURANCE:** Before commencing work the contractor or subcontractor shall furnish Certificate of Insurance giving 10 days notice of cancellation.

Contractor will indemnify, save and hold harmless Kress Corporation from and against all injury, loss or damage including liability claims and demands of whatsoever kind of nature arising out of or occurring in connection with the performance of work by contractor for or in behalf of Kress Corporation, whether such injury, loss or damage shall have been occasioned by any act or omission, including negligence of contractor, any of his subcontractors or by Kress Corporation agents, servants or employees. Contractors will defend at his own expense any actions based thereon and shall pay all charges of attorneys and all costs and other expenses arising therefrom.

In the event Seller is acting as contractor or subcontractor, performing work in any plant or on any premises of Buyer or customer of the Buyer, Seller shall provide and maintain the following forms of insurance.

1. Workmen's Compensation (including occupation disease) and Employer's Liability Insurance under the statutory provisions of the State in which the operations are to be performed.
2. Comprehensive general and automobile liability insurance, including all contractual liability without special contract endorsement. Without limiting the foregoing, the insurance shall afford coverage for explosion, collapse or damage to underground property where the subcontractor performs work involving these risks. The insurance shall be subject to the following limits: Bodily Injury and Property Damage: \$1,000,000.00 (or in such amounts as the buyer may approve).

The insurance shall be on the Occurrence rather than Accident basis.

Before commencing work, the contractor or subcontractor shall furnish a Certificate of Insurance giving 10 days notice of cancellation.

Contractor will indemnify, save and hold harmless Kress Corp. from and against all injury, loss or damage, including liability, claims and demands of whatsoever kind or nature, arising out of or occurring in connection with the performance of work by contractor for or in behalf of Kress Corp. whether such injury, loss or damage shall have been occasioned by any act or omission, including negligence of contractor, any of his subcontractors or by its agents, servants, or employees. Contractors will defend at his own expense any actions based thereon and shall pay all charges of attorneys and all costs and other expenses arising therefrom.

8. **CHANGES:** Buyer reserves the right to cancel or modify this Order: (1) at any time prior to Buyer's receipt of the attached acknowledgment copy duly executed by Seller, without notice and without prejudice, and thereafter upon five days written notice but without prejudice to adjustments in favor of Seller in respect of money reasonably due for special materials purchased by Seller; or (2) if delivery is not made within the time specified or within a reasonable time if no time is specified; or (3) if the quantity or quality of any Goods delivered is not as specified; or (4) if Seller is otherwise in default in its performance of this Order.

9. **REMEDIES:** If the Goods, or any portion thereof, are accepted by Buyer, and Buyer is unaware of a non-conformity in any part of the Goods at the time of acceptance, Buyer may, at any time within thirty days after actual discovery of such non-conformity and without notice or notification to Seller, revoke its acceptance of all of the Goods, or such portion thereof as Buyer may determine. All costs incurred by Buyer, including transportation, labor and other incidental and consequential expenses, in connection with such non-conforming Goods may be charged back to and shall be paid by Seller, in the event of any breach by Seller, whether by way of delivery of non-conforming Goods or otherwise. Buyer shall be entitled to all remedies afforded it by the Code and otherwise by law without the necessity of notice of notification of any kind, whether required by Sec. 2-607(3) of the Code or otherwise. If the rights and remedies afforded Buyer under this Order conflict with rights and remedies provided by any and all other clauses and paragraphs of this Purchase Order and to all other rights and remedies on law or equity including, but not limited to, the right of Buyer to set-off amounts payable to Seller hereunder against any amounts otherwise owed to Buyer by Seller.

10. **CONFIDENTIALITY:** Seller shall not without Buyer's written consent advertise or publish the fact that Seller has furnished or will furnish or sell the Goods or any other items to Buyer. Seller shall not disclose the existence of or any particulars concerning this Order to any person except as may be required by law. All patterns, tools, dies, designs, knowhow, specifications and other tangible and intangible property furnished by Buyer to Seller shall be and remain the property of Buyer and shall not be sold, assigned, shown or disclosed to any person except as may be required by law. All such property: (1) shall be plainly marked or otherwise adequately indented by Seller as the property of Buyer; (2) shall be used by Seller for the sole purpose of filling this Order and other orders of Buyer; (3) shall be held by Seller at Seller's risk; (4) shall be adequately insured by Seller; and (5) shall be delivered to Buyer upon request, in which event Seller shall deliver such property to Buyer in the same condition as when received by Seller, reasonable wear and tear excepted.

11. **PRICES AND OTHER CHARGES:** Unless otherwise stated on this Order, all prices for the Goods shall be F.O.B. destination, and no additional charge may or shall be made by Seller for packaging, wrapping, packing, crating, drayage or any other expenses incurred by Seller. All federal, state and local sales, excise or similar taxes shall be borne by Seller, and Buyer shall, upon Seller's request, furnish any exemption certificate available to Buyer.

By acceptance of this Order, Seller represents that the prices charged for the Goods are the lowest prices by Seller to buyers of a class similar to Buyer under quantity and delivery terms similar to those specified on the front of this Order.

12. **DELEGATION OF DUTIES AND ASSIGNMENT OF RIGHTS:** Without Buyer's prior written consent, Seller shall neither delegate in any manner to any other person the performance of any of Seller's obligations hereunder nor assign any amount which may be or which may become due hereunder.

13. **ARBITRATION:** All claims, disputes and other matters in question arising out of, or relating to, this Order and any contract arising out of this Order may be decided either in accordance with remedies afforded by law or, at Buyer's option, by arbitration in Peoria, Illinois, in accordance with the Commercial Arbitration Rules then obtaining of the American Arbitration Association. This agreement to arbitrate at Buyer's option shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Buyer and Seller consent to the jurisdiction of all federal and state courts in Peoria, Illinois in connection with all arbitral and judicial proceedings hereunder.

14. **GOVERNING LAW:** All claims, disputes and other matters in question arising out of, or relating to this Order and any contract arising out of this Order shall be governed and decided in accordance with the law of the State of Illinois.

15. **ENTIRE AGREEMENT:** The provisions contained herein, together with any attachment hereto initiated by the parties, shall constitute the entire agreement between the parties. All previous communications, representations, and agreements, either verbal or written, between the parties hereto with respect to the subject matter hereof are hereby superseded.