



## **SEAL & DESIGN INC. Standard Terms and Conditions of Purchase – 12/1/15**

**1. Acceptance and Contract Formation:** The purchase orders of Higbee Inc, hereinafter referred to as “Buyer”, become subject to the Terms and Conditions set forth on this document and those documents and specifications included with our purchase order. These Terms and Conditions supercede any submitted by Seller in any proposal, acknowledgement, invoice or other correspondence. If your terms contain additional provisions they will not be honored by Buyer unless signed off by Buyer’s authorized representative. These Terms and Conditions of Purchase are the complete and exclusive statement of the terms of the contract between us and may be modified or waived only in writing signed by Buyer and Seller. Acceptance of these terms takes place upon receipt of Seller’s order acknowledgement or commencement of work.

**2. Price:** Prices are firm for the duration of the purchase order. No additional charges of any kind will be allowed unless agreed to in writing at the time of purchase.

**3. Warranty:** Seller warrants that the items sold to us are 1) in compliance to the specifications listed on the purchase order or published by Seller (in the event of a conflict, Buyer’s purchase order shall supercede Seller’s published specifications); and 2) are free from defects in material or workmanship. Seller will reimburse Buyer for the costs of repairing or replacing defective goods supplied under these Terms and Conditions. Seller represents that it has been advised of the specific uses that Buyer intends to make of the goods, and that it is fully aware of Buyer’s performance requirements for the goods.

**4. Quality and Inspection:** All goods are expected to arrive defect free and materials may, at our option, go directly into use without incoming inspection. Seller shall perform all inspections required to ensure that Buyer receives no defective material. Seller assumes all costs for loss or damage to Buyer and indemnifies Buyer against loss for claims of product liability resulting from delivery by Seller of nonconforming goods or materials. Any rejected items may be returned to Seller at Seller’s expense including our charges for inspection, sorting, rework, freight, travel expense, Buyer’s customer imposed penalties, attorneys fees, or any other costs related to the rejected items. Each occurrence of nonconformance may be subject to a minimum charge back, taken as a credit, of \$100.00 (one hundred dollars) plus related expenses. No goods returned as defective shall be replaced without written consent of Buyer. Buyer may, at its option, require Seller to grant full refund or credit to Buyer in lieu of replacement.

**5. Delivery:** Time is of the essence in the performance of Seller’s obligations under this order. Deliveries are to be made in the quantities and time specified (with a delivery window of 2 days early and zero days late). If Seller is unable to make shipments as specified, Buyer must be notified immediately. If deliveries or performance fail to meet the schedule, Buyer may direct expedited routing and charge Seller all excess costs incurred. Deliveries made early may be 1) returned at Seller’s expense; 2) have payment withheld until the date goods are actually scheduled; or 3) placed in storage at Seller’s expense.

**6. Excusable Delay/Force Majeure:** Fires, floods, strikes, epidemics, accidents, shortages or other causes beyond the reasonable control of all parties, which prevent Seller from delivering or Buyer from receiving any of the goods covered by this order shall suspend deliveries until the cause is removed, subject however to the Buyer’s right to cancel the order.

**7. Transportation:** Ship all transportation F.O.B. destination, collect freight via our designated carriers unless otherwise specified on the face of the purchase order. Seller shall be liable for all excess shipping charges resulting from failure to ship and route as instructed. Seller is responsible for proper packaging, loading, tie down or other means necessary to prevent damage during shipment. No additional charges will be allowed for packing or crating unless agreed to by Buyer in advance.

**8. Indemnity:** Seller agrees to defend, indemnify and hold harmless the Buyer and its directors, officers, employees, agents and customers with respect to all claims, losses, damages and costs including attorney fees, arising from personal injury, death or property damage claimed as a result directly or indirectly from any product sold to us by you.

**9. Insurance:** Seller shall purchase and maintain product liability insurance with respect to any products sold to Buyer and provide upon request a certificate of insurance. The policy shall have coverage limits of at least \$5 million per claim, name Higbee Inc. as additional insured and include "vendor coverage". Seller shall provide Buyer at least 30 days written notice of cancellation of the policy. The Seller's insurance policy shall be primary to any coverage that Buyer may have.

**10. Title:** Buyer shall take title to items when they reach the destination point stated on the purchase order.

**11. Payment Terms:** If not otherwise stated on the purchase order, Buyer will pay forty-five (45) days from the date of the acceptance of the goods or receipt of the invoice, whichever is later.

**12. Assignment:** Seller may not assign, transfer or subcontract this order without Buyer's written prior consent.

**13. Changes:** The Buyer reserves the right at any time to change by written or electronic notification any of the following: 1) specifications, drawings or data; 2) quantity; 3) methods of shipment or packaging; 4) place of delivery; 5) time of delivery; or 6) any matters affecting a purchase order. Seller will notify Buyer promptly if any change affects price or delivery.

**14. Termination:** The Buyer may terminate any part of a purchase order for our convenience at any time. If this occurs, Seller's claim shall be limited to reasonable costs that you incurred on account of the terminated order and which you must submit to us within 10 calendar days. Buyer may terminate any part of the purchase order without liability if Seller defaults in performing the terms of the purchase order or these Terms and Conditions or your performance is delayed for a cause beyond your reasonable control. If Buyer terminates due to Seller's default, Seller will be liable for any costs or damages incurred by Buyer.

**15. Compliance:** Seller warrants that the goods and services provided were produced in compliance with all applicable state and federal regulations including but not limited to fair employment, environmental, health and safety as well as Haz Com and MSDS requirements. Also, seller will comply with the United States Foreign Corrupt Practices Act and any other anti-bribery laws and regulations of any applicable jurisdiction. Seller will further comply with United States import and export control and sanctions laws, regulations, and orders, as they may be amended from time to time, applicable to the import, export and re-export of goods, software, technology, or technical data ("Items") or services, including without limitation the Customs regulations, Export Administration Regulations ("EAR"), International Traffic in Arms Regulations ("ITAR"), and all regulations and orders administered by the U.S. Department of Treasury, Office of Foreign Assets Control (collectively, "Import and/or Export Control Laws"). Seller shall indemnify Seal and Design against all losses and penalties resulting directly or indirectly from Seller's delay in furnishing such documents in support of any Free trade agreement ("FTA") duty free claim made and from any errors or omissions contained in certifications provided by Seller, or from any non-compliance by Seller with FTA regulations/requirements.

**16. Governing Law:** The laws of the State of New York shall govern this agreement. Venue for any litigation arising out of this Agreement shall be in a court of competent subject matter jurisdiction in Erie County, New York and Buyer and Seller agree to submit to the personal jurisdiction of such court.

**17. Our Property:** Everything that we provide or pay for under the purchase order is our property. Examples of our property may include tools, dies, test equipment, material, inventions and trade secrets developed in performing work under the purchase order and technical and business information. You will mark our property "Property of Seal & Design Inc.", keep it in good repair and use it only to perform our orders, insure it at your expense for replacement cost and ensure that any information we disclose to you or you develop with us is kept confidential. At our request, you will prepare our property for return.

**18. Audit Rights:** At our request Seller will allow Buyer to inspect and to copy any documents relating to the performance of the purchase order. If required, Buyer (and the Buyer's customer representative) may verify purchased product at Seller's facility. Buyer verification does not prevent subsequent rejection.

**19. Publicity:** Seller will not issue any press release, use any of our products or our name in promotional activity or otherwise publicly announce or comment on this order without Buyer's prior written consent.

**20. Nondisclosures:** If Buyer discloses or grants Seller access to any research, development, technical, economic or other business information or "know-how" of a confidential nature, whether reduced to writing or not, Seller agrees, as a condition of receiving such information, that Seller will not use or disclose any such information to any other person at any time without Buyer's written consent.

**21. Gifts and Gratuities:** Seller has not and will not offer or give to any employee, agent or representative of Buyer any gratuity or gift with a view toward securing or influencing any business from Buyer.

**22. Captions:** Captions used herein are for convenience only, and shall not limit or extend the language of these Terms and Conditions.

**23. Severability:** If any provisions of this agreement were declared invalid under any statute, regulation, ordinance, or other rule of law, such provision shall be deemed reformed or deleted to the extent necessary to comply with such statute, regulation, ordinance or other rule of law. The remaining provisions shall remain in full force and effect.

**24. Change Management and Control of Existing Parts:** Seller agrees to notify Buyer of all changes made to parts, processes and materials including equipment and manufacturing location changes, tooling and sub-tier supplier changes. Seller assumes responsibility for all costs incurred for failure to notify of such changes.