

CORNING INCORPORATED
TERMS AND CONDITIONS OF PURCHASE

This purchase order constitutes an offer by Corning Incorporated (“Buyer”) to the supplier to whom this purchase order is issued (“Seller”) to purchase the articles, materials, services or equipment covered by this purchase order (the “Product”) exclusively upon the terms and conditions of purchase set forth below (or incorporated herein by reference) and shall become a binding contract including such terms and conditions upon either issuance of an order acknowledgment hereof by Seller or substantial performance hereunder by Seller (the “Agreement”). No contrary or additional terms or conditions of sale proposed by Seller will be accepted by Buyer and any such proposed contrary or additional terms are to be construed as proposals for addition to this Agreement which are hereby rejected unless otherwise indicated in a written instrument executed by an authorized officer of Buyer making specific reference to this purchase order and the specific contrary or additional term proposed by Seller. Seller’s performance pursuant to this order shall be deemed unqualified acceptance of the terms and conditions of purchase set forth below.

1. **Price.** The price for the Product sold hereunder shall not be higher than that appearing on the face of this Agreement or if no price appears thereon, then not higher than the last price quoted by Seller. Seller covenants that if it should at any time prior to the delivery of the Products covered hereby sell like articles, materials, services or equipment in similar quantities to any third party at lower prices, it will notify Buyer in writing of such lower prices and Buyer will receive the full benefit of such lower prices from the date of such sale to any third party.
2. **Warranty.** All Products sold and delivered to Buyer hereunder shall be in full conformity with Buyer’s specifications set forth or referred to on the face hereof or if none are set forth or referred to, shall be in conformity with Seller’s published specifications and samples provided to Buyer. All Products sold and delivered to Buyer will be new, fit and sufficient for the use intended by Buyer, and will be merchantable and of good quality and workmanship and free from defects. The foregoing warranty shall survive any acceptance of the Products by Buyer and shall be in addition to any warranty expressly furnished or represented to Buyer by Seller. Seller will defend, indemnify and hold harmless Buyer and its customers from and against any and all costs (including reasonable attorneys’ fees incurred), expenses, damages, losses, liabilities, penalties, or judgments attributable to any Product delivered hereunder that fails to conform to the warranty set forth herein or which is otherwise implied by applicable law.
3. **Inspection.** All Products delivered hereunder shall be subject to final inspection and acceptance by Buyer at its facility notwithstanding prior payment or inspection at Seller’s facility. Acceptance of any Products shall not alter or affect the warranties of Seller referenced above. Buyer may, at its option, either hold rejected Products for Seller’s instructions and at Seller’s risk, or return them to Seller at Seller’s expense and require their correction, and Seller shall promptly reimburse Buyer for any and all damages sustained by Buyer as a result of failure of Products to conform to the provisions and specifications set forth in this Agreement.
4. **Cancellation.** Buyer reserves the right to cancel this order or any part thereof, or terminate this Agreement, and Buyer’s sole responsibility to Seller shall be to pay the agreed price for such Products as have been delivered as of the time such cancellation is effective and to reimburse to Seller its actual costs of materials and direct labor expended by it in reasonable anticipation of its fulfillment of this Agreement which are not recoverable by Seller, provided that no allowance shall be made to Seller for any overhead or anticipated profit for undelivered Product, Buyer’s maximum liability on account thereof shall be the agreed price for the Products as set forth in paragraph 1 above, and Seller shall deliver to Buyer any inventory paid for by Buyer under this paragraph 4.
5. **Time and Delivery.** Because Buyer’s business and operations are in part dependent on receipt of the Products that are the subject of this Agreement, timely delivery of the Products is essential to the performance of Seller’s obligations hereunder. Unless otherwise specified on the face of this Agreement, terms of delivery of the Products are F.O.B. destination with freight prepaid. Deliveries shall be made at the times and of the quantities specified on the face of this Agreement, and Seller shall not, without the written consent of Buyer, make shipments in advance of such schedule. Buyer may order expedited routing in place of scheduled routing, if necessary to meet schedule or recover time lost by any delay, in which event any excess transportation costs shall be paid by Seller. Buyer may postpone delivery of any Products covered hereby. Overshipments may be returned by Buyer at Seller’s expense or retained by Buyer at no increase in price. Seller shall not make any commitment or production arrangements in excess of the amounts, or in advance of the time, necessary to meet Buyer’s delivery schedule for Products.
6. **Excusable Failure or Delay.** Neither Buyer nor Seller shall be held responsible for the failure or delay in delivery or acceptance of Products where such failure or delay is attributable to any act of God or of the public enemy, war, compliance with laws, governmental acts or regulations, in any case, not in effect as of the date of this Agreement, fire, flood, quarantine, embargo, epidemic, unusually severe weather or other causes similar to the foregoing beyond the reasonable control of the party so affected. The party seeking to avail itself of any of the foregoing excuses must promptly notify the other party of the reasons for the failure or delay in delivery or acceptance and shall exert its best efforts to avoid further delay.
7. **Intellectual Property Warranty and Indemnity.** Seller warrants that the Products delivered to Buyer hereunder, and the use of the Products for their normal purposes, will be free from any claims of alleged infringement of patent, copyright, trade mark, service mark, trade secret or any other intellectual property right of any other party. If any third party asserts any such claim or allegation against Buyer or its customers, Seller shall defend, indemnify and hold harmless Buyer and its customers from and against any and all costs (including reasonable attorneys’ fees incurred), expenses, losses, damages, liabilities, penalties, or judgments relating to such claim or allegation.
8. **Assignment of Work Product to Buyer.** All work product developed by Seller in connection with its performance under this Agreement, including (but not limited to) computer files, concepts, ideas, designs, discoveries, drawings, inventions, models, plans, programming, schedules, specifications, technical documentation, software, or source code (“Work Product”) are Buyer’s property as of the time of creation and all right, title and interest, including (without limitation) copyright interest, shall belong exclusively to Buyer. Seller is not permitted to retain copies of such Work Product and shall deliver all Work Product to Buyer with the Products ordered hereunder. This Agreement transfers all right, title or interest, including (without limitation) copyright and patent, that Seller may otherwise have in such Work Product to Buyer. Seller will at Buyer’s request execute and deliver such documents as in Buyer’s opinion may be necessary, proper, appropriate, convenient or expedient to protect, register, enforce or evidence further Buyer’s ownership of such Work Product. Seller warrants and represents that any

tangible Work Product developed by it pursuant to this Agreement will be either original to Seller, in the public domain, or obtained by Seller with the written consent of the owner thereof to use such other works or intellectual property in or to develop the Work Product. Seller shall defend, indemnify and hold harmless Buyer and its customers from and against any and all costs (including reasonable attorneys' fees incurred), expenses, losses, damages, liabilities, penalties, or judgments relating to any claim or allegation that any Work Product infringes any intellectual property right of any third party.

- 9. Indemnity for Injury to Persons or Property.** Seller will defend, indemnify and hold harmless Buyer and its officers, directors, employees, and affiliates from and against any and all costs (including reasonable attorneys' fees incurred), expenses, damages, liabilities, penalties, personal injuries or judgments suffered or incurred by any individual or to any real or personal property attributable to the Products, their use or to Seller's actions or omissions.
- 10. Confidentiality.** All data and other information obtained by Seller from Buyer in connection with this Agreement, and any Work Product to be delivered to Buyer hereunder, shall be held in strict confidence by Seller and used solely for the purposes originally intended in connection with this Agreement. Seller shall treat such data, information and Work Product with the same degree of confidence that it uses to protect its own proprietary or confidential information (but not less than a reasonable standard of care) and shall ensure that each of its employees to whom such data, information or Work Product is known is bound to maintain the confidentiality of such data, information or Work Product by separate agreement with Seller or by operation of law.
- 11. Compliance with Laws and Buyer's Zero Harassment Tolerance Policy.** In performing its obligations hereunder, Seller shall comply with the Occupational Safety and Health Act, the Fair Labor Standards Act, and all other applicable federal, state, municipal, or local laws, rules, regulations, orders, decisions or permits of any relevant jurisdiction relating to employment (including, to the extent applicable, Executive Orders 11246 and 41 CFR Chapter 60), safety, health, and environmental compliance. Buyer has a zero tolerance policy prohibiting harassment of any kind in or about its premises. Copies of this policy will be furnished to Seller upon request. Seller also agrees to make such reports to Buyer as may be required, including certification of affirmative action. Any violation by Seller, its agents, employees, representatives or subcontractors of any of the foregoing shall be deemed a breach of Seller's obligations hereunder and Buyer may terminate this Agreement (without penalty and without any payment otherwise payable to Seller pursuant to paragraph 4) at any time thereafter. Seller will defend, indemnify and hold harmless Buyer from and against any and all costs (including reasonable attorneys' fees incurred), expenses, damages, liabilities, penalties, or judgments relating to any breach by Seller, its agents, employees, representatives, or subcontractors of its obligations hereunder.
- 12. Insurance.** If Seller performs any services for Buyer on Buyer's premises, during the term of this Agreement and for a period of at least one year after completion of Seller's obligations pursuant hereunder, Seller will maintain the following levels of insurance coverage with a reputable and financially sound insurance carrier: (a) Workers' Compensation insurance as required by applicable law; (b) Employer's Liability insurance with limits not less than US \$1 million; (c) Commercial General Liability, including Products and Completed Operations and Contractual Liability, with a minimum combined single limit of US \$2 million per occurrence; and (d) Excess Liability insurance with limits not less than US \$5 million. Seller will provide Buyer with an insurance certificate from its insurance carriers for each of the required foregoing insurance coverages, which shall also name Buyer as an additional insured for Commercial General Liability and Excess Liability insurance. Seller shall require each of its subcontractors (regardless of tier), if any, to carry insurance in accordance with all of the above terms set forth in the preceding sentences.
- 13. No Assignment.** Neither this Agreement nor any right or obligation of Seller hereunder may be assigned or delegated by Seller, by contract, merger, operation of law, or otherwise, to any other party without the prior consent of Buyer, which may be granted at Buyer's sole discretion. Seller is not permitted to engage subcontractors in connection with the performance of its obligations to Buyer hereunder without the prior consent of Buyer.
- 14. Independent Contractor.** Nothing in this Agreement is intended to, or does, create any joint venture, partnership, agency or similar relationship between Buyer and Seller, other than a buyer and seller relationship. Seller shall not be, and is not authorized to represent itself as, an agent or representative of Buyer for any purposes.
- 15. Waiver.** Buyer's failure to insist in any one or more instances upon the full performance by Seller of any term, covenant, obligation, or condition imposed on it by this Agreement shall not be construed as a waiver of any right available to Buyer hereunder with respect to such nonperformance or as Buyer's condoning further nonperformance.
- 16. No Change Order.** No change, modification or extension of this Agreement shall be effective against Buyer or Seller unless it is made in a writing making specific reference to this Agreement and is signed by an authorized representative of Buyer and Seller.
- 17. Governing Law.** This Agreement shall be governed exclusively by the laws of the State of New York without regard to its conflicts of laws principles that would have a contrary result. The United Nations Convention on the International Sale of Goods shall not apply to this Agreement. Any dispute, claim, or controversy between Buyer and Seller related to this Agreement that cannot be resolved through good faith negotiations shall be finally venued in the New York State Supreme Court situate in Steuben County, New York or the US Federal District Court of the Western District of New York.
- 18. Site Rules.** If Seller performs any services for Buyer on Buyer's premises ("Site"), its employees, and its subcontractors (regardless of tier) shall comply with and observe all directions, rules, and regulations of Buyer relating to conduct while on Buyer's Site. These directions, rules, and regulations ("Rules") include, but are not limited to the following: safety and health, fire prevention, environmental, housekeeping, maintenance and protection of the Site, delivery and storage of materials, ingress and egress to the premises, parking, employee conduct, and public relations. Copies of such Site Rules will be furnished to Seller upon request.
- 19. C-TPAT Compliance.** Seller acknowledges that Buyer participates in the Customs Trade Partnership Against Terrorism or "C-TPAT" program administered by the U.S. Customs and Border Protection ("CBP"). Seller agrees to take such reasonable measures as are required by Buyer and/or CBP to ensure physical integrity and security of all shipments to Buyer. Buyer reserves the right to audit Seller's security procedures and facilities concerning C-TPAT compliance.

20. If this purchase order is placed under a Government Contract, the following additional provisions are applicable:

- (a) **Government Contract:** The work covered by this Agreement relates to a prime contract with the United States Government and is within jurisdiction of a Department or Agency of the United States.
- (b) **Right of Inspection:** On request, Seller will provide assistance to permit the Buyer or United States government representative to inspect the premises where and when the work is being performed and the Seller shall make available without cost adequate facilities for the inspection. Seller agrees that the Comptroller General of the United States, or any of his duly authorized representatives shall, until the expiration of three (3) years after the final payment under this Agreement, have access to and the right to examine any books, documents, papers and records of Seller related to this Agreement.
- (c) **Rights in Data:** If this Agreement is placed under a Government contract having rights in data clauses of FAR 52.227-14 or DFAR 252.227-7013 those provisions are incorporated herein. Seller assumes the obligations of such FAR or DFAR clauses as they pertain to this Agreement.
- (d) **Government Procurement Regulations:** The following clauses set forth in the Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation (DFAR) as in effect on the date hereof, are incorporated herein by reference. Where necessary to make the context applicable hereto, the term "Contractor" shall mean Seller. "Government" and "Contracting Officer" shall mean Buyer or the Government, and "Contract" shall mean this Agreement.
- FAR 52.244-6, Subcontracts for Commercial Items and Commercial Components (OCT 1998)
 - FAR 52.219-8, Utilization of Small Business Concerns
 - FAR 52.222-26, Equal Opportunity (E.O. 11246)
 - FAR 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212(a))
 - FAR 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793)
 - FAR 52.222-41, Service Contract Act of 1965, as amended
 - FAR 52.247-64, Preference for Privately-Owned U. S. Flag Commercial Vessels
 - FAR 52.244-6, Subcontracts for Commercial Items
 - DFAR 252.225-7014, Preference for Domestic Specialty Metals, Alternate I (10 U.S.C. 2241 note)
 - DFAR 252.247-7023, Transportation of Supplies by Sea (10 U.S.C. 2631)
 - DFAR 252.247-7024, Notification of Transportation of Supplies by Sea (10 U.S.C. 2631)

The following clauses apply if this Agreement is for greater than \$500,000 and issued to a large business:

- FAR 52.219-9, Small Business Subcontracting Plan
 - FAR 52.219-10, Incentive Subcontracting Program
- (e) **The following provisions are incorporated herein and replace Clause 4 "Cancellation":**
- Termination:** (a) Buyer may terminate this Agreement, in whole or in part, in accordance with the provisions of the "Default" clause set forth in FAR 52.249-8 if Seller fails to comply with any of the provisions hereof, or if Seller becomes the subject of a proceeding under state or federal law for relief of debtors or makes an assignment for the benefit of creditors. (b) Without affecting its right to terminate this Agreement under paragraph (a) hereof, Buyer may, for its convenience, terminate this Agreement in whole, or from time to time, in part, in accordance with the provisions of the "Termination" clause set forth in FAR 52.249-2. (c) The FAR clauses referred to in paragraphs (a) and (b) are hereby incorporated herein by reference as in effect on the date hereof, with the following changes: the words "Government" and "Contracting Officer" shall mean Buyer, the word "Contract" shall mean this Agreement and the word "Contractor" shall mean Seller.
- (f) **Priorities and Allocations:** If this is a rated order issued under the Defense Priorities and Allocations Systems Regulation (15 C.F.R. 700), Seller is required to follow all the provisions of that regulation in filling this order and in obtaining items needed to fill this order.
- (g) **Stop Work Order:** The provisions of the clauses contained in FAR 52.242-15 in effect on the date hereof are hereby incorporated herein by reference with the following changes: the words "Contracting Officer" and "Government" shall mean Buyer; the word "Contractor" shall mean Seller; the words "ninety (90) days" are hereby changed to one hundred (100) days; the words "thirty (30) days" are hereby changed to twenty (20) days whenever they appear; and the reference to the "Termination for Convenience" clause shall be deemed to refer to paragraph (b) of the clause hereof entitled "Termination."