



Niagara Fasteners Inc. Purchase Order Terms and Conditions

The following Terms and Conditions form part of this Purchase Order.

- 1) **CONTROLLING TERMS:** The inclusion of any different or additional terms by Seller in Seller's acceptance of this Purchase Order is unacceptable to Niagara Fasteners Inc. (NFI). If Seller includes or attaches any such different or additional terms in Seller's purported acceptance and commences performance of or, tenders the work or services, Seller agrees that a contract of sale will result upon NFI's terms and conditions, as stated herein, without inclusion of any different or additional terms or conditions. If this Purchase Order has been issued by NFI in response to an offer, and if any of the terms herein are additional to or different from any terms of such offer, then Seller agrees that the issuance of this Purchase Order by NFI shall constitute an acceptance of such offer subject to the express conditions that Seller (a) agrees to such additional and different terms herein and (b) acknowledges that the Purchase Order constitutes the entire agreement between NFI and Seller with respect to the subject matter hereof, unless Seller notifies NFI to the contrary in writing within ten (10) working days of the receipt of this Purchase order in which case the Purchase Order shall become void. Confirmation of acceptance of Purchase Order is required. Confirmation of Acceptance can be by email and fax.
- 2) All items shall be new, non-fraudulent, non-counterfeit and not sub-standard. The Supplier shall promptly replace such suspect and/or counterfeit, fraudulent and substandard items with parts acceptable to NFI. Supplier will be liable for ALL costs related to removing and replacing said parts.
- 3) **SHIPPING & RECEIVING**
 - a) Each shipment must contain a packing slip showing our Purchase Order number and where appropriate: Heat number, Lot number and any other identifying or serialised identifiers.
 - b) NFI reserves the right to cancel this order if shipment is not made at the quantities, prices, and deliver as shown. Over shipment or shipment of materials not covered by this Purchase order will remain the sole responsibility of the Seller.
 - c) Materials not conforming to specifications, unless otherwise authorized in writing, will be rejected and returned to the Seller for full credit at his expense including all incoming charges.
 - d) Material and/or equipment received are subject to inspection for quality, quantity and conformance to applicable standards. If it is impractical to make inspection at the time of arrival at destination, we reserve the right to claim for damages or shortages to material and/or equipment when inspected within a reasonable time.
- 4) **CHANGES:** NFI may at any time issue written instructions requiring additions, changes, deletions or alternations in the work to be performed under this Purchase Order. Seller shall proceed promptly with the work in accordance with the terms of such written notice. If such changes cause an increase or decrease in the cost of performance of this order, or in the time required for performance, an equitable adjustment shall be made in the Purchase Order

price and/or delivery schedule according to a written Purchase Order change. Any claim for adjustment under this clause must be asserted within ten (10) days from the written notice making the change. In the absence of such notification, NFI shall not be obligated to consider Seller's claim for an equitable adjustment.

- 5) PROPRIETARY RIGHTS: NFI data, designs, specifications, computer programs, drawings, plans, documentation, processes, models, prototypes, methods, technologies, techniques, formulae and other technology concerning its technology, products or business, in whatever form (included electronic and any embodied in NFI Property) are NFI's proprietary and confidential property. If any goods are made or services are supplied according to, by means of, or with proprietary property, the Seller shall not furnish or use these Proprietary Property for any other party. Seller shall keep all NFI Proprietary Property confidential. Any provision of any other agreement between NFI and Seller protecting the confidentiality of NFI's Proprietary Property is incorporated herein by reference. Upon completion of the Order, Seller shall turn over to NFI all NFI's Proprietary Property in its possession.
- 6) NFI SUPPLIED TOOLING AND MATERIALS: All supplies, materials, tools, jigs, dies, gauges, fixtures, molds, patterns, equipment and other items furnished or paid for by NFI, directly or indirectly, to enable or assist the Seller to perform the Order shall remain the properties of NFI. NFI Property shall not be used to manufacture goods or provide services to any other party and shall be properly housed and maintained at the Seller's cost; be deemed personally; be conspicuously marked by the Seller as Property of Niagara Fasteners Inc."; not be comingled with the property of the Seller or a Third Party; not be moved from Seller's premises; and, be fully accounted for including scrap. Upon Seller's completion of the Order or any time upon NFI's request, NFI Property shall be immediately released and delivered to NFI. NFI shall have the right to enter Seller's premises at reasonable times to inspect NFI's Property and applicable Seller records. Any NFI Property damaged or scrapped because of Seller's defective workmanship shall be repaired or paid for by the Seller. The Seller shall do and permit all acts and things reasonably necessary to protect NFI's interests in NFI's Property.
- 7) PERFORMANCE BY SELLER: Seller shall take adequate measures to accomplish all elements of the work required in connection with this Purchase Order within time limits which are compatible with the schedule set forth in the Purchase Order, if any, and if no schedule is included, within such time limits as are compatible with the due date specified herein. Such measures shall include, without limitation, expediting of its subcontractors for engineering and fabrication and expediting of its suppliers for material and parts. Time is of the essence with respect to the Seller's performance of this order. Failure of the Seller to take such adequate measures so as to maintain scheduled completion of the order shall be considered a breach by Seller of its obligations under this Purchase Order. Failure to meet the Seller's promise date in the Purchase order may damage NFI and its client's projects. Any such damages shall be for Seller's account.
- 8) DELAYS: In the event of delay to Seller resulting from the acts or omissions of NFI, or resulting from acts of God, strikes, fire or other causes beyond Seller's reasonable control, Seller shall be entitled to an extension of time by the amount of time he is actually delayed thereby in the performance of the work, provided notice is given within five (5) days. Seller shall not be entitled to, and hereby waives any and all claims to increased compensation for damages which he may suffer from any such causes.
- 9) INSPECTION AND TESTING: Neither the observations of NFI in its administration of the order nor inspections, tests or approvals by persons other than the Seller shall relieve the Seller from its obligations to perform the work in accordance with the Purchase Order.

- 10) SUBCONTRACTORS, VENDORS AND SUBSUPPLIERS: NFI reserves the right to approve or disapprove all subcontractors, sub vendors or sub suppliers proposed by Seller to be involved in Seller's implementation of the Purchase Order.
- 11) General Indemnity: Seller shall indemnify, defend and hold NFI and/or its Customer (Owner) harmless from and against any and all loss, costs, damage or expenses of every kind of nature (including, without limitation, reasonable legal fees and disbursements) arising out of:
- a) injuries to or death of persons (including, without limitation, Owner, NFI and any subcontractor and their respective employees, agents, licenses and representatives and the employees of Seller);
 - b) damage to or destruction of property (including, without limitation, property of Owner, NFI and any subcontractor and the property of their respective employees, agents, licensees and representative);
 - c) infringement of any patent, trademark of copyright or other proprietary right of any third party; and
 - d) breach by Seller of any of its representations, warranties, guarantees covenants or other agreements under this Purchase Order.
- 12) WARRANTY: Notwithstanding NFI's inspection and acceptance of work and services delivered, Seller warrants that all work and services furnished hereunder are free from any defects in design, materials and workmanship, and fully conform to the specifications, drawings, and other documents included in this order, are suitable for the use intended and conform to recognized industrial standards of quality and function. Seller's warranty shall extend one (1) year from the date of start of service, or for eighteen (18) months from date of delivery, whichever occurs sooner. If within the warranty period specified above, NFI discovers defects or deficiencies in the work or services in question. If Seller fails after reasonable notice to proceed promptly with the repair or replacement of the defective work or services, NFI may repair or replace the work and services and charge all related costs including access costs to Seller without voiding the warranties herein. The rights and remedies of NFI provided in law, equity, or under this Purchase Order.
- 13) CANCELLATION: NFI shall have the right to cancel all or any separable part of this Purchase Order by written notice. NFI shall have the immediate right to possession and removal of the work and all drawings, records, and material and equipment to be incorporated into the work from Seller's premises. Cancellation payment, if any, shall be mutually agree to by NFI and Seller, based on that portion of the Purchase Order price as the work satisfactory performed to the date of the cancellation bears to the entire work contracted for, less any sum of money paid to Seller. Seller shall not be entitled to any prospective profits or damages because of cancellation.
- 14) ASSIGNMENT: This Purchase Order or the monies due hereunder shall not be assigned in whole or in part without NFI's prior written consent which may be withheld for any or no reason.
- 15) TITLE AND RISK OF LOSS: Title to the work and in the event that the work is made to order, then title to all materials, inventory, work in progress, design data, other documentation, and all contractual rights relating thereto, shall vest in NFI immediately upon identification to this Purchase Order. Seller warrants full and clear title to the work free and clear of any and all liens, restrictions, reservations, security interests and encumbrances. Irrespective of vesting of title, Seller shall bear the risk of loss and shall insure or self-insure for the benefit of Seller and NFI the work in its

care, custody and control until the same are delivered in good condition in accordance with the provisions of the Purchase Order.

- 16) CONFIDENTIALITY: All data, designs, drawings and other documents supplied to Seller by NFI are confidential and shall not, without prior written approval of NFI, be used for any purpose whatsoever other than in the connection with Seller's obligation under this Purchase Order, and shall be returned to NFI upon request.
- 17) COMPLIANCE WITH THE LAW: Seller warrants and agrees that all work delivered or services performed pursuant to this Purchase Order shall be produced, performed, sold and delivered to NFI in compliance with and conforming to all applicable laws and governmental orders, rules and regulations.
- 18) APPLICABLE LAW: This Purchase Order shall be governed by and constructed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The Parties hereby agree that all actions or proceedings that may be litigated under the Purchase Order and that arise directly or indirectly out of the Purchase Order shall be litigated solely in the courts of the Province of Ontario, or a Federal Court sitting in Ontario, if appropriate.