



FRIMO Inc. • 50685 Century Court • Wixom, MI 48393, USA

## **FRIMO, Inc. Terms and Conditions for Purchase**

1. **GENERAL INSTRUCTIONS.** FRIMO, Inc.'s ("FRIMO") purchase order number shall appear on all packages, invoices, shipping papers and all other documentation and correspondence relating to the purchase order. The party selling its goods, as defined in Section 2, to FRIMO is referred to herein as the "Seller".
2. **GOODS COVERED.** The term "goods" includes all personal property and all services to be provided / sold by Seller to FRIMO as more specifically described in the purchase order or required to be furnished with the goods ordered hereby.
3. **PROPERTY OWNERSHIP / WORKS MADE FOR HIRE.** Seller agrees to communicate and fully assign the sole and exclusive right, title and interest to FRIMO of all inventions, discoveries, computer programs, algorithms, patents, copyrights, technical data, drawings, prototypes, writings and information resulting from services performed under the purchase order and/or made or conceived by Seller or its employees on behalf of FRIMO solely or in collaboration with FRIMO's personnel relating to the purchase order and/or goods. The Seller shall execute or cause its employees to execute any and all documents which FRIMO may deem necessary to assign or to convey to FRIMO, its successors or assigns, the sole and exclusive right, title and interest in and to such inventions, discoveries, computer programs, algorithms, patents, copyrights, technical data, drawings, prototypes, writings and information.
4. **PAYMENT.** Except as otherwise expressly stated in the purchase order and subject to the terms provided herein, FRIMO shall pay invoices Net 90 days after a proper, correct and undisputed invoice has been received by FRIMO from Seller. Extension(s) to the Net 90 day period shall be granted for any corrections and/or amendments made to the invoice(s).
5. **ENCUMBRANCES / LIENS.** Unless otherwise provided in the purchase order, Seller shall provide and pay for all labor, materials, tools, supplies, services, taxes and equipment necessary to properly execute this purchase order and FRIMO is not obligated to make any invoice payment until FRIMO receives all receipts, releases, waivers and any other evidence required to establish that such has been paid for in full by Seller. Seller shall keep the goods free from and shall promptly discharge all liens, claims, security interests and encumbrances. Seller waives all rights of mechanics' liens related to the goods against the property and premises of FRIMO.
6. **PRICE & TAX.** FRIMO shall not be invoiced at a price greater than on the purchase order unless specifically authorized to do so in writing by FRIMO. Seller represents and warrants that (1) the price charged hereunder is the lowest price charged by Seller to other third parties for goods of like grade and quality and upon conditions similar to those specified herein and (2) such price complies with applicable



government regulations in effect at the time of quotation, sale and delivery. Any price reductions made in the goods hereunder subsequent to placement but prior to payment thereof will be made available to FRIMO. The price shall include proper packing, cartage and crating and shall include all customary loading and securing on the carrier at the shipping point. Taxable status, if applicable of items purchased, is indicated on purchase order. Unless "Taxable" indicated, purchase is exempt from state tax.

7. **CHANGES.** FRIMO may at any time change the drawings, design, specifications, or any other terms applicable to the purchase order, or temporarily suspend delivery or service schedules of any goods hereunder. If any such change shall result in delay or affect expense to Seller, Seller shall notify FRIMO immediately and negotiate an equitable adjustment to the purchase order price. Seller's warranties as to the goods shall be deemed restated as to the goods as changed. Seller shall have no valid claim for equitable price adjustment for a change requested by FRIMO unless Seller submits to FRIMO in writing a claim within ten (10) days from the date of any such change requested by FRIMO which claim shall include an estimate of expenses resulting from such change. Any amendments or modifications of the purchase order shall not be binding upon FRIMO unless in writing and signed by FRIMO.
8. **DELIVERY.** Unless otherwise stated in the purchase order, the goods shall be sold F.O.B. FRIMO's place of business. Seller shall ship the goods freight prepaid at Seller's cost with a responsible carrier of Seller's choice. Seller shall maintain all delivery and shipping documents in the event proof of delivery is required. **TIME IS TO BE OF THE ESSENCE.** Delivery of the goods must be at the time specified in the purchase order or in other written instruction issued by FRIMO.
  - a. Any deadlines and delivery dates that have been arranged are strictly binding. Adherence to agreed delivery dates or deadlines is subject to the receipt at the place of delivery of a defect-free delivery or service, or successful completion of the approved procedure or other performance test.
  - b. The Seller is obliged to give FRIMO immediate notification in writing of any discernible delay in its performance, any foreseeable possible delay in its performance, or any discernible or foreseeable problems in delivering in the agreed quality. Delays not caused by the Seller itself may not be used as grounds for delay unless otherwise provided for herein.
  - c. Notification of delays by the Seller and any related written adjustment to the delivery date granted by FRIMO will by no means exempt the Seller from any consequences arising from such delays, unless, when extending the delivery date, FRIMO issues a written statement expressly waiving the matter of the consequences of the delay. As such, despite FRIMO granting an extension of the delivery dates following notification of delays by the Seller, FRIMO still remains entitled to all of its claims pursuant to the purchase order and as provided herein which result from, or are connected with, the Seller's delay.



- d. Should the Seller not deliver the goods in accordance with the time specified in the purchase order, FRIMO is entitled to liquidated damages from the Seller. The total amount owing on the purchase order shall be discounted by 0.5% of said total amount for every five (5) days the delivery is delayed, but said cumulative discount shall not exceed 10% of the total value of the purchase order. These liquidated damages shall not affect any other claims FRIMO may have against Seller for delay in delivery or otherwise. Seller's invoice shall be reduced in accordance with this liquidated damages provision.

#### 9. FORCE MAJEURE

- a. In the event of acts of God, labor disputes and/or civil unrest, the parties to the purchase order are to be temporarily relieved of their obligations for the duration of the disturbance. The parties are obliged to supply the necessary information without delay, insofar as reasonably possible, and to adapt their commitments to the changed circumstances in good faith.
- b. Should acts of God cause obligations to be suspended for a period exceeding two weeks, FRIMO will be entitled to terminate the purchase order with immediate effect. In this case, the Seller shall be entitled to request reimbursement for any expenditure it can prove to have incurred up to the suspension of the purchase order.

10. RESERVATION OF RIGHTS. FRIMO may reject and return to Seller at Seller's expense and risk any nonconforming or defective goods, or excess or partial shipments. FRIMO expressly reserves its right to inspect and/or test goods prior to acceptance and payment. FRIMO is deemed to have accepted goods only after it has provided Seller written notification of acceptance of the goods. FRIMO's failure to make any inspection of the goods shall not impair such right nor constitute acceptance by FRIMO. If FRIMO accepts and/or pays for nonconforming goods, the price thereto shall be appropriately adjusted downward and/or reimbursed by Seller to FRIMO if already paid for.

11. WARRANTY. Seller warrants full, clear and unrestricted title to FRIMO for all goods furnished hereunder free and clear of all liens, restrictions, reservations, security interests, encumbrances and claims of others, whether or not Seller has knowledge thereof. Seller expressly warrants that the goods hereunder (1) shall be new and of the best grade of their respective kinds, unless otherwise stipulated in the purchase order; (2) shall be free from all defects and shall strictly conform to the requirements in the purchase order and applicable specifications of FRIMO and (3) neither acceptance nor payment by FRIMO shall waive any breach of any warranty. All warranties shall inure to the benefit of FRIMO, its parent company and any and all of their respective affiliates, customers and subsequent owner/users of the goods hereunder or of the end products of which they form a part. FRIMO shall notify Seller within ninety (90) days after its discovery of any defect, error, omission, performance deficiency or breach of warranty of the goods.



12. INDEMNIFICATION: Seller shall indemnify, defend and hold harmless FRIMO, its parent company and all of FRIMO's respective affiliates, customers and subsequent owners/users of the goods from and against any and all losses, expenses, third party claims and other incidental and consequential damages, court costs and attorneys' fees arising as a result of actual or alleged breach of any of the terms and/or warranties contained in the purchase order or provided herein or arising as a result of any tort, negligence or other claim premised on either an actual or alleged defect in the goods. At FRIMO's request, Seller will assume promptly full responsibility for the defense of any action described in this paragraph which may be brought or threatened by a third party against FRIMO.

13. INSURANCE. Seller shall maintain the following types of insurance, in the following amounts, while performing pursuant to the purchase order:

<b>General Liability</b>	<u>\$5 million</u> aggregate; <u>\$2 million</u> per occurrence; <u>\$2 million</u> personal and advertising injury; <u>\$2 million</u> products-completed operations aggregate; <u>\$50 thousand</u> fire damage (any one fire); <u>\$5 thousand</u> medical expense (any one person limit)
<b>Automobile Liability</b>	<u>\$1 million</u> combined single limit
<b>Workers' Compensation</b>	<u>Statutory coverage</u> ; employer's liability <u>\$500 thousand</u> each accident and <u>\$500 thousand</u> disease (each employee)

Notwithstanding Seller's obligations under this Section, except to the extent prohibited by law, each insurance policy furnished hereunder shall (i) name FRIMO as an additional insured and (ii) provide for written notice to FRIMO at least 10 days prior to any cancellation, expiration or modification thereof. Before undertaking work under the purchase order, Seller shall provide FRIMO with evidence of coverage required as provided herein. The failure of Seller to purchase or maintain such insurance coverage, or the failure of Seller to provide FRIMO a copy of the certificates evidencing such coverage shall not be considered or construed as a waiver by FRIMO of the requirement that Seller maintains such coverage and Seller shall remain liable for all injuries and/or damages in accordance with these terms and conditions.

14. CONFIDENTIALITY. Performance under this purchase order may involve confidential or proprietary information. In accordance with Seller's obligations thereunder, Seller shall forever maintain the confidentiality of all FRIMO's confidential information, shall take steps as may be reasonably necessary to prevent the disclosure of such information to third parties, shall use such information solely for the limited purpose of performance of the purchase order and shall not, without the prior written consent of an authorized representative of FRIMO, deliver, discuss, disclose, or otherwise communicate orally or in writing to any third party any such information, the fact that FRIMO has submitted or executed this purchase order or any of the terms hereof. If Seller is required to execute a Confidentiality Agreement in connection with this purchase order the provision of such Agreement are incorporated herein by reference as if herein stated and shall govern in event of a conflict with any provision herein.



15. SAFETY EQUIPMENT. Seller shall, at its own cost and expense, supply and maintain all safety equipment, tools and other items necessary to enable Seller's employees to perform safely pursuant to the purchase order (including, if necessary, steel toed shoes, safety glasses, long pants, long shirts, ear plugs, gloves, etc.).
16. DRUG SCREENING. Seller's employees that are contracted to work for FRIMO pursuant to the purchase order may be required to submit to a drug screening, at Seller's own cost and expense, prior to beginning said work. At FRIMO's request, Seller shall provide copies of the screening records to FRIMO and maintain the screening records in accordance with privacy standards.
17. TERMINATION. FRIMO shall have the right, without cause, to terminate all or any part of the purchase order at any time by providing notice to Seller. Upon receipt of such notice, Seller shall, unless notified otherwise, immediately discontinue all work, cease ordering of material, and make reasonable efforts to cancel existing orders, contracts and subcontracts upon terms satisfactory to FRIMO, but shall, with the approval of FRIMO, continue to perform any work necessary to preserve and protect any work in progress, until relinquishing possession and control of the goods to FRIMO.

Upon compliance thereto, Seller shall be compensated for its properly documented costs and incurred expenditures up to the date of termination, less payments and credits previously received by Seller from FRIMO. Any claim for such costs and expenditures must be submitted to FRIMO within thirty (30) days after the effective date of termination.

FRIMO shall also have the right to terminate the purchase order or any part hereof by notice to Seller, without any prejudice to any other rights or remedies FRIMO may have, if (1) Seller fails to make delivery in accordance with the agreed delivery schedule or otherwise fails to comply with any other instruction, term, condition, covenant or warranty applicable to the purchase order; (2) Seller fails to pay its subcontractors in accordance with applicable agreements or generally fails to pay, or admits in writing its inability to pay, debts as they become due; (3) any proceedings are commenced by or against Seller in bankruptcy; (4) a receiver, trustee or other custodian is appointed with respect to assets of Seller; (5) an assignment for benefits of creditors is made or any dissolution or liquidation proceeding is commenced in respect of Seller; or (6) Seller makes a violation of any federal, state, municipal, or local law, ordinance, order, rule or regulation. In the event of default as provided in this paragraph, in addition to any and all other rights and remedies provided herein, FRIMO shall be entitled to complete the purchase order itself or have it completed by a third party and Seller shall be liable for any and all costs incurred by FRIMO to complete the purchase order after an event of default as provided in this paragraph.

18. LEGAL PROCEEDINGS. The purchase order, except where expressly herein provided otherwise, shall be interpreted and construed in accordance with the laws of the State of Michigan without regard to principles of conflict of laws. Each of FRIMO and Seller irrevocably (1) agrees that any suit, action or other legal proceeding arising out of the purchase order be brought in the State Court of Michigan in



Oakland County, Michigan or in the United States District Court for the Eastern District of Michigan, (2) consents to the personal jurisdiction of such courts and (3) waives any objection to venue in such courts. In the event of default of the purchase order or these terms and conditions by Seller, Seller will pay any and all attorneys' fees incurred by FRIMO in enforcing the purchase order and/or these terms and conditions.

19. ENTIRE CONTRACT. The purchase order and these terms constitute the entire agreement between FRIMO and Seller regarding the goods and supersedes all prior and contemporaneous agreements and understandings whether oral or written between the parties with respect to the subject matter.