

**BABUSH MATERIAL HANDLING SYSTEMS, INC.**  
**TERMS AND CONDITIONS FOR PURCHASE**

1. **OFFER.** This purchase order constitutes an offer by Babush Material Handling Systems, Inc. ("Buyer"), to buy goods or services according to the description and other terms set forth on its face and reverse side. No additional or different terms offered by Seller shall be or become part of this order, and any such terms are hereby rejected. This order shall not be modified without the express written approval of Buyer.
2. **MODIFICATION.** No variations in the delivery schedule, price, quantity, specifications or other provisions of this order will be binding on Buyer unless agreed to in writing and signed by the Purchasing Agent or other authorized representative of Buyer.
3. **CANCELLATION.** Buyer, without waiving any other legal rights, reserves the right to cancel this order, in whole or in part by written or facsimile notice at any time when: (1) the Seller fails to meet the agreed to delivery dates and/or quantity requirements. If such default is due to a cause beyond the control of the Seller, the time of completion may, with consent of Buyer, be extended a period equal to the period of such delay, if the Seller gives Buyer notice in writing to the cause of such delay within a reasonable time after the beginning thereof. (2) Cancellation is caused by the United States or any of its agencies, embargoes, acts of civil or military authorities, acts of the public enemy, inability to secure transportation facilities, strikes, accidents at the plant of Buyer, acts of God or other causes beyond the control of the Buyer. (3) Causes other than specified above, in such event, Buyer shall negotiate an amount to be paid to the Seller in full settlement for reasonable and necessary expenses incurred directly related to this order up to date of cancellation; Buyer, however, shall not be liable for any loss of profits on this order or portion thereof so canceled. If such cancellation is caused by termination of a government contract, Buyer will reimburse the Seller in accordance with standard government subcontract provisions.
4. **SUBCONTRACTORS.** Subcontractor agrees to provide information deemed to be acceptable and inclusive solely by the Buyer which demonstrates Subcontractors financial viability.  
Subcontractor agrees within ten (10) days after written demand, to cause the effect of any lawsuit, lien, and/ or claim on bond filed by a party employed and/or contracted by Subcontractor, to be removed. In the event Subcontractor shall fail to do so, Buyer is authorized to use whatever means in its discretion it may deem appropriate to cause said lawsuit, lien and/or bond claim to be removed or dismissed and Subcontractor shall be responsible for the costs including attorney fees incurred by Buyer.  
If the Subcontractor at any time shall refuse or neglect to supply sufficient properly skilled workmen, materials or equipment of the proper quality and quantity, or fail in any respect to prosecute Subcontractor's work with promptness and diligence, or cause by any action or omission the stoppage or interference with the work of the Buyer or other subcontractors, the Buyer may at his option at any time after serving written notice of such default with direction to cure in a specific period, and the Subcontractor's failure to cure the default, terminate the Subcontractor's services by delivering written notice of termination. Thereafter, the Buyer may, through himself or others, provide labor, equipment and materials to prosecute Subcontractor's work on such terms and conditions as may be necessary, and shall deduct the cost thereof, including without restrictions thereto, all charges, expenses, losses, costs, damage and attorney fees, incurred as a result of subcontractors' failure to perform, from any money then due or thereafter to become due to the Subcontractor under this agreement.  
Subcontractor agrees that Buyer may deduct or setoff against any amount due Subcontractor (or any amount to become due Subcontractor), any claim that Buyer may have against Subcontractor arising out of this contract, or any other transaction/contract between Subcontractor and Buyer.  
Buyer also reserves the right to assess interest charges on the balance the Buyer's customer is holding back payment, as a result of delays in the contract; or an inability to fulfill the contract Buyer has with its customer, due to delays caused by Subcontractor's failure to perform. Interest charges will be calculated at a rate of one and one half (1½) percent (%) per month or the maximum rate permitted by law (whichever is less) for the number of days customer withholds payment beyond the established contract payment terms.
5. **DELIVERY SCHEDULE.** Unless otherwise agreed to in writing, Seller shall not make material commitments or production arrangement in excess of the amount ordered or in advance of the time necessary to meet the delivery schedule of Buyer. It is the Seller's responsibility to comply with this schedule, but not to anticipate the requirements of Buyer. Goods shipped to Buyer in advance of schedule may be returned to Seller at Seller's expense or payments of invoices may be withheld until the required delivery dates, unless specific authorization is granted by Buyer for advance delivery. If payments of invoices are withheld, they will be discounted in the usual way, effective from the required delivery date.  
Partial shipments of material where no partial shipment is specified may be returned to the Seller at Seller's expense unless specific authorization is granted by Buyer for partial delivery, or payment of invoices may be withheld until order is complete. Discount terms will be calculated from the date the final invoice is received or from the date material is received completing the order, whichever is later.
6. **CHARGES.** This order may not be billed at prices higher than quoted or therefore charged or in effect at the time of shipment without the consent of Buyer. No charges of any kind, including charges for boxing or cartage will be allowed unless specifically authorized by Buyer in writing. Transportation charges on materials or articles furnished under this purchase, shall be in accordance with the Carrier's tariffs lawfully in effect at the time shipments are moved or the services performed.
7. **INSPECTION.** All materials and articles will be subject to inspection and approval by Buyer. Final inspection will be made after receipt by Buyer; if rejected, they will be held for disposition at the Seller's risk and any expense or payment on account thereof will be promptly refunded by the Seller without prejudice to any other rights of Buyer under warrants or otherwise. Any inspection or approval at the Seller's plant or elsewhere during or after manufacture, whether or not such inspection or approval be provided for by the terms of this purchase order, shall be provisional only, and shall not constitute final acceptance or be construed as a waiver of the foregoing right of inspection and approval or rejection after receipt of the materials or articles by Buyer.
8. **WARRANTY.** The Seller expressly warrants that all materials, articles or work covered by this order will conform to stated specifications, will be suitable for the intended use and will be free from defects in design, material and workmanship.
9. **TOOLS AND MATERIALS.** Patterns, specifications, drawings, tool and dies are to be delivered to Buyer on demand, are to be maintained in first class operative condition by Seller at your expense as long as you have production orders, are to be marked in the manner required by Buyer, and are to be disposed of only on our written instructions and shall be kept confidential and cannot be used for any purpose other than supplying Buyer's requirements and shall remain Buyer's property.
10. **ASSIGNMENT.** This order may not be assigned without written consent and no modification of it may be made except with written consent of both parties.
11. **INSURANCE.** Until delivery to Buyer, the Seller shall assume the risk for Buyer's equity in the materials to be supplied under the terms of this Purchase Order. The usual forms of insurance shall be maintained in an amount at least equal to their value and in no event less, at any time, than the aggregate of all the amounts paid the Seller on account thereof. Such insurance policies shall provide that all claims for losses thereunder shall be paid to Buyer or the Seller, as interest may appear and shall be delivered to Buyer on request. If this order deals with construction repairs or maintenance of any building equipment or machinery located on the Buyer's premises, the Seller shall (i) maintain and carry Public Liability, Workman's Compensation and Employer's Liability Insurance covering all employees engaged in the performance of the work and all other persons who are on the property of Buyer at the invitation of Seller, (ii) save Buyer harmless from losses due to injury to person or property in connection with the work and premises upon which the work is done and (iii) indemnify Buyer against any loss arising from workmanship or materials furnished by the Seller.  
If Buyer's order requires Seller to install the goods or services at Buyer's location or the location of Buyer's customer, Seller shall provide Buyer with a certificate of insurance naming Buyer as an additional insured and otherwise indicating a satisfactory level of insurance to Buyer.
12. **TAXES.** Unless expressly prohibited by law, any applicable Federal, State, municipal or other sales, use or transportation tax and any other present or future tax that may apply, will be paid by the Seller.
13. **LAWS & REGULATIONS.** Seller agrees to comply with all applicable Federal, State and local laws and ordinances.
14. **TITLE.** The Seller warrants that at the time of delivery to Buyer of the articles called for by this order and/or at the time payment is made by Buyer on account of such articles or on account of any materials, equipment, suppliers or other property to be incorporated in the articles, there shall be no liens or rights in rem or any kind lying or attached upon or against any such articles and materials; and as a condition precedent to any payment, the Seller shall, upon Buyer's request, furnish such affidavits and other documents and agreements with respect to liens and rights in rem as Buyer may require.
15. **COPYRIGHT.** Seller shall at its expense settle or defend and pay costs and damages finally awarded in any suit against Buyer or its vendees to the extent based upon a finding that the design of articles as furnished infringes a United States copyright (except infringement occurring as a result of incorporating a design or modification at the request of Buyer),

provided Buyer promptly notifies Seller of any charge of such infringement and Seller is given the right to settle such charge and to defend or control the defense of any suit based upon such charge.

16. **INVOICE.** A separate invoice bearing our order number must be mailed the same day shipment is made for each shipment on this order. Invoices are to be mailed to the address listed on the face of the purchase order. A bill of lading or express receipt must be attached to each invoice. In the event Buyer's purchase order provides for stage or progress payments, the terms of Buyer's purchase order shall take precedence over any other payment schedule.  
When articles or material invoiced by the Seller are shipped by another concern, the invoice shall bear the name of the shipper and the point from which shipment originated.
17. **PAYMENT.** Payment of net and discount invoices will be calculated from the date acceptable invoices are received at Buyer's offices or from the date of receipt of acceptable material at Buyer, whichever is later. Upon receipt of payment, Seller shall provide Buyer, upon request, a lien waiver for the goods or services purchased.
18. **SHIPPING.** Unless otherwise instructed, the Seller shall prepay all transportation and related shipping charges and shall itemize such charges on the invoice. In the absence of specific routing instructions, shipments are to be made "Best Way".
19. **STATIONERY OR PRINTED FORMS.** If this order covers stationery or printed forms, a sample must be placed on the outside of each package or group of packages, boxes or cartons and a label must also be placed on the outside of each package showing our purchase order number, quantity and form number if available.
20. **PRIOR AGREEMENT.** This purchase order, and any documents referred to herein, supersede all prior understandings, transactions and communications, or writings with respect to the matters referred to herein.
21. **FAIR LABOR ACT.** Seller warrants that the articles ordered will be produced in compliance with the Fair Labor Standards Act of 1938, as amended. All invoices must carry the following certificate in order to be passed for payment: "Seller represents that, with respect to the production of the articles and/or the performance of the services covered by this invoice, it has fully complied with all applicable provisions of the Fair Labor Standards Act of 1938."
22. **NONWAIVER.** Any waiver or failure of Buyer to require strict compliance with the provision of this order in any respect shall not be deemed a waiver of its right to insist upon strict compliance in other respects or thereafter in the same respect.
23. **RIGHTS.** Buyer retains all rights and remedies granted to it by operation of law in addition to those set forth herein.
24. **FEES.** Each party is responsible for their own legal and accounting fees unless otherwise expressly provided for herein.