

TERMS AND CONDITIONS of purchase

These Terms and Conditions are an integral part of any Purchase Order issued by MAGNA, and submitted to a prospective SELLER ("SELLER"), for goods to be supplied or services to be performed by SELLER as described therein ("PO"). MAGNA's obligations under its PO are conditioned upon SELLER's acceptance of all of the terms set forth herein without modification.

1. **Delivery. Time is of the essence.** All deliveries are **FOB-destination** at MAGNA's plant in Cincinnati, Ohio unless specified otherwise on the face of the PO. SELLER must advise MAGNA immediately of any shortage or delay in the furnishing of goods or services and any such shortage or delay shall constitute a material breach of these terms.
2. **Risk of loss.** Risk of loss shall remain with SELLER and shall not pass to MAGNA until **actual delivery of goods to MAGNA's plant** in Cincinnati, Ohio.
3. **Inspection.** Goods or services shall at all times be subject to MAGNA's inspection provided that neither such inspection, nor failure of MAGNA to inspect, shall relieve SELLER of its obligations under the PO. Goods or services that are non-conforming may be repaired, replaced or re-performed, at the sole discretion of MAGNA, and all costs and expenses incurred shall be borne by SELLER. MAGNA shall have the right to offset such costs and expenses against any balances due SELLER.
4. **Right of entry.** MAGNA in its sole discretion and at its own expense shall have the right to enter upon the premises of SELLER at reasonable times for the purpose of determining whether SELLER is making satisfactory progress in the performance of its obligations under the PO and SELLER shall cooperate in good faith and grant reasonable access to MAGNA.
5. **No delegation of performance.** SELLER shall not delegate, sub-let, sub-contract or transfer its performance obligations under a subject PO, in whole or in part, without the prior written consent of MAGNA.
6. **Seller's representations and warranties.** SELLER represents, warrants and covenants that any and all goods supplied to or services performed for MAGNA pursuant to a subject PO shall: (a) Conform fully to all specifications contained therein; (b) Be of best quality and free from defects in materials and workmanship and, where SELLER has responsibility for design, be free from defects in design; (c) Be merchantable and fit for the ordinary purpose for such goods; (d) Be fit for the particular purpose intended by MAGNA and its customer, where SELLER has reason to know that information; (e) Be free and clear of all liens, claims, security interests and encumbrances whatsoever; (f) Not infringe on any copyright, patent, trademark, trade secret, franchise or other intellectual property right in connection with the manufacture, use, sale or distribution thereof.
7. **Taxes separate.** Any applicable federal, state or local taxes shall be shown separately on SELLER's invoice.
8. **No waiver.** Failure by MAGNA to exercise its rights under these Terms and Conditions for any breach hereof shall not be deemed to be a waiver of those rights or a waiver of any subsequent breach.
9. **Minor changes.** MAGNA in its sole discretion shall have the right to make minor changes or adjustments in quantity and/or delivery for each individual line-item in the PO and SELLER must accept those changes at the same price contained in the original PO, so long as any quantity changes are within 10% (+ or -) of the original count, and so long as any delivery changes do not exceed a 90-day delay after the original due dates. In no event shall SELLER be required to accept delivery changes before the original due dates without the opportunity to reconsider cost and pricing impact. Any changes requested by MAGNA that exceed these limits as to quantity and/or delivery shall allow SELLER to reconsider cost and pricing impact. Nothing contained herein shall relieve SELLER of its obligation to perform under the original PO or the requested changes.
10. **Termination for convenience.** **MAGNA in its sole discretion may terminate its PO in whole or in part at any time** by providing written notice to SELLER. When such termination is for convenience, MAGNA shall be liable only for SELLER's costs actually incurred in the performance of each individual line-item in the PO, but in no event greater than the purchase price of each individual line-item in the PO, and MAGNA shall be entitled to offset any salvage or scrap value for the work performed. In the event of termination, SELLER must submit notice of any claims within two months of termination.
11. **Confidentiality.** SELLER shall treat all information received from MAGNA pursuant to or in furtherance of a subject PO as trade secret and proprietary to MAGNA exclusively, and shall protect and keep confidential such information. SELLER shall not disclose nor convert such information for its own use in any way whatsoever without the prior written consent of MAGNA, except as may be necessary in the course of performing the PO.
12. **Costs and attorneys' fees.** SELLER shall indemnify, save, defend, and hold MAGNA harmless from any loss, cost, expense, or liability, including fees of accountants, attorneys, consultants, and expert witnesses reasonably incurred in defending or enforcing MAGNA's rights in connection with its PO or otherwise relating to the relationship of the parties, regardless of whether they are incurred before, during, or after any litigation or other dispute resolution procedure, regardless of success on the merits, and regardless of whether they relate to issues arising out of contract, tort, bankruptcy, intellectual property, or some other area of law.
13. **Governing law and forum.** Any disputes that arise regarding the performance of a subject PO shall be governed and construed in accordance with the laws of the State of Ohio, without regard to its conflict of law principles. Any legal action by either party against the other relating to the PO or these Terms and Conditions shall only be commenced in a court of competent jurisdiction in Hamilton County, Ohio. For this purpose, each party consents to personal jurisdiction in such court and waives any right to dismiss or transfer such action or proceeding because of the inconvenience of the forum. Nothing in this section shall prevent enforcement in another forum of any judgment so obtained.
14. **Entire agreement.** The PO together with these Terms and Conditions represent the entire agreement between MAGNA and SELLER; only the provisions contained within the PO together with these Terms and Conditions are enforceable and any attempt to modify these provisions without the prior written consent of both parties is null and void and of no effect.