

# RAUCH North America, Inc. Purchase Order

## Terms and Conditions

1. **Sale and Purchase of Products.** All Products and/or services set forth on the face of this Purchase Order (the "Products and/or Services") shall be governed by the terms and conditions of this Purchase Order ("PO"). This PO may be issued in connection with a master Supply Agreement (a "Supply Agreement"). If any conflicts exist between this PO and the Supply Agreement, the terms of the Supply Agreement shall control.

2. **Delivery; Inspection; Title and Risk of Loss.** The Products and/or Services shall be delivered F.O.B. to the destination(s) specified on the face of this PO (each, a "Destination") within the time period specified on the face of this PO. Buyer shall have the right to inspect the Products and/or Services upon receipt and notify Supplier of any claim, including condition, quality, shortages, non-conformance or grade of the Products and/or Services. Buyer's failure to inspect the Products and/or Services shall not relieve Supplier of any claim related thereto. Title to and risk of loss of all Products and/or Services shall pass to Buyer upon delivery to the Destination. Buyer's acceptance of any Product and/or Service shall not be deemed a waiver by Buyer of any rights with respect to either the accepted Product and/or Service nor any other Product and/or Service.

3. **Pricing.** Pricing for the Products and/or Services is specified on the face of this PO. Such prices are exclusive of any applicable sales tax but include any and all fees and charges (including delivery fees) imposed or incurred by Supplier. Except for those specifically described on the face of this PO, no additional costs, fees and/or charges will be reimbursed without Buyer's prior written approval.

4. **Invoicing and Payment.** Unless otherwise specified on the face of this PO, Supplier shall invoice Buyer on a monthly basis for the Products and/or Services. Buyer shall pay the amount due within 30 days after acceptance of an approved original invoice. Buyer will not recognize the payment obligation until all data requirements are met and a valid invoice has been received. Supplier shall submit invoices with reasonable detail, including such information as Buyer may reasonably request from time to time. If there is a dispute as to the amount due, Buyer shall pay the undisputed portion of the invoice and the parties shall cooperate in good faith to promptly resolve the dispute with respect to the unpaid amount. Supplier shall be responsible for and indemnify and hold Buyer harmless from liability for any and all obligations to its Suppliers, agents, or subcontractors utilized in the performance of Services and/or supplying of Products.

5. **Warranties by Supplier.** Supplier warrants that (a) the Products and Services furnished hereunder will be furnished in accordance with the specifications comprising a part of this PO and will be free from defects in materials and workmanship; (b) Buyer will acquire good and marketable title to the Products sold to Buyer hereunder free and clear of all liens, restrictions, reservations, security interests and encumbrances; and (c) all Products will be produced, packaged, labeled, sold and delivered in accordance with all applicable laws. Supplier also provides to Buyer a warranty of merchantability and a warranty of fitness for a particular purpose which, with respect to Products intended for use in foods or beverages, means that such Products shall: (1) be safe for the purposes for which the Products were ordered by Buyer; (2) in their finished form conform to any performance test(s) imposed by the United States Food and Drug Administration, if any; (3) not cause any food or beverage contained within such Products to be adulterated or misbranded within the meaning of the United States Food, Drug, and Cosmetic Act, as amended, (collectively the "Act") or any similar federal, state or municipal law; and (4) not cause any food or beverage contained within such Products to be an article which may not, under the provisions of the Act or corresponding provision of any similar federal, state, or municipal law, be introduced in interstate or intrastate commerce. Except as provided in this Section 5, Supplier makes no other representation or warranty, whether express or implied, respecting said Products, or the production thereof. 8.2. In case of any Product defect, Buyer shall have the right, irrespective of its other rights and even if the fault is insignificant or rectifiable, to request at its own discretion (a) free delivery of a replacement by Supplier, (b) a cancellation of the applicable PO, (c) an appropriate discount from Supplier, or (d) free rectification at the sole cost of Supplier.

6. **Indemnity. Supplier shall indemnify, defend and hold Buyer harmless from, for and against all claims, demands, actions, proceedings and all damages, losses, costs and expenses (including reasonable legal and other professional advisers' fees and costs) that are made or brought against or incurred or suffered by Buyer, its officers, employees, representatives, agents or subcontractors arising out of or resulting from, among others, the following:** (a) any claim that Supplier's Products or production practices infringe the intellectual property rights of any other person; (b) where a Product has been used in the manufacture of Buyer's products and the defect had not, or could not have been, identified prior to such manufacture and said defect was a breach of Supplier's warranty whether express or implied by statute or otherwise; (c) any breach of this PO by Supplier; or (d) any negligent act or omission of Supplier, its employees, agents or subcontractors.

7. **Insurance.** During the entire term of this PO, Supplier shall maintain, at its own expense, through insurance companies acceptable to Buyer, the following insurance: (a) commercial general liability insurance including broad form contractual liability insurance to cover the indemnification obligations of Supplier to Buyer as set forth in this PO, but in no event less than \$5,000,000 per occurrence for bodily injury and \$5,000,000 per occurrence for property damage; (b) business automobile insurance including non-owned automobile coverage in the amount of \$1,000,000 per occurrence for bodily injury and \$500,000 per occurrence for property damage; and (c) statutory worker's compensation insurance in accordance with the law or laws of the state or states in which Supplier's employees are hired or will work; said insurance shall be endorsed to provide coverage under employer's liability insurance with a limit of not less than \$1,000,000. Supplier shall deliver certificates of all insurance policies to Buyer which certificates shall specify that the insurance cannot be canceled except after 30 days' written notice to Buyer. Supplier shall, prior to the effective date of any such change or cancellation, replace such insurance with substantially identical insurance to include Buyer's

interest as it may appear in this PO. The policies shall include Buyer as an additional insured and shall be primary, regardless of any other coverage which may be available to Buyer. All of the insurance policies described above shall be written or endorsed to provide that the insurance companies shall have no right of recovery against Buyer, affiliated and subsidiary companies or co-ventures. If Supplier fails to maintain the required insurance, Buyer may obtain the insurance policies and deduct the cost of the insurance from the payments due to Supplier hereunder.

8. **Confidentiality.** Supplier acknowledges and agrees that as a result of its dealings with Buyer, Supplier will be making use of, acquiring and adding to the confidential information of Buyer, and that this confidential information is of special and unique value to Buyer. Supplier agrees that it shall not without the prior written consent of Buyer disclose any such confidential information to any person, firm, corporation, or other entity for any purpose whatsoever or use such information for any purpose not provided for in this PO. Further, Supplier agrees to keep the existence and terms of this PO confidential. Nothing in this PO shall constitute, or be deemed to constitute, an agreement or license by Buyer to permit Supplier to use Buyer's name or logo or any other trademark of Buyer in any manner whatsoever, it being understood that any such usage is expressly prohibited.

9. **Acceptance; Controlling Terms.** By signing and returning a copy of this PO, commencing performance of any effort required to complete or deliver the Products and/or Services, informing Buyer of commencement of any effort required to complete or deliver the Products and/or Services, or shipping or delivering any Products or providing any Services, Supplier accepts Buyer's offer contained in this PO and agrees to comply with all of the terms and conditions in this PO. Any provision in Supplier's proposal, invoices, statements, acknowledgment forms or other documents of any nature that is inconsistent with or in conflict with this PO shall be null and void and of no force or effect, and Buyer hereby objects to any such provision.

10. **Construction.** The headings in this PO are inserted for convenience only, and shall not constitute a part of this PO or be used to construe or interpret any of its provisions. If a question of interpretation arises, this PO shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this PO. The word "include" or "including" means include or including, without limitation.

11. **Waiver.** No delay or omission by a party in exercising any right under this PO shall operate as a waiver of that or any other right. A waiver or consent given by a party on any occasion is effective only in that instance and shall not be construed as a bar to or waiver of any right on any other occasion.

12. **Attorney Fees.** Should any litigation be commenced under any of this PO, the successful party in such litigation shall be entitled to recover, in addition to such other relief as the court may award, its reasonable attorneys' fees, expert witness fees, litigation related expenses, and court or other costs incurred in such proceeding. For purposes of this clause, the term "successful party" means the net winner of the dispute, taking into account the claims pursued, the claims on which the pursuing party was successful, the amount of money sought, the amount of money awarded, and offsets or counterclaims pursued (successfully or unsuccessfully) by the other party. If a written settlement offer is rejected and the judgment or award finally obtained is equal to or more favorable to the offeror than an offer made in writing to settle, the offeror is deemed to be the successful party from the date of the offer forward.

13. **Remedies; Set-off.** In addition to the rights and remedies provided in this PO, each party has all of the rights and remedies available to it under the Uniform Commercial Code as adopted in the State of Arizona; provided, however, that each party agrees to waive against the other party all rights to claim or collect punitive or exemplary damages. The exercise of any right or remedy provided for in any of this PO shall be without prejudice to Buyer's right to exercise any other right or remedy provided in any of this PO, at law or in equity. All payments to be made by Buyer pursuant to this PO are subject to set-off, deduction or offset by Buyer of all sums due and owing to Buyer or Buyer's affiliates by Supplier.

14. **Governing Law.** This PO shall be governed by and construed in accordance with the internal laws of the State of Arizona, without giving effect to any choice or conflict of law provision or rule (whether of the State of Arizona or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Arizona.

15. **Entire Agreement; Amendments.** The terms and conditions of this PO (as any of them are amended from time to time and communicated to Supplier) constitute the complete and final written agreement between Buyer and Supplier and supersede all other agreements and understandings between the parties regarding the subject matter of this PO. This PO is expressly subject to Supplier's assent to each and all of the terms and conditions in this PO and no other terms, whether consistent or conflicting, are to be considered part of this PO. Any waiver or modification of the terms of any of this PO is binding only if done in writing and signed by the parties.

16. **Time of the Essence.** Time is of the essence in this PO.