

TERMS AND CONDITIONS OF PURCHASE

1. **Acceptance.** Seller has read and understands this order and agrees that Seller's delivery or tender of any goods or services under this order shall constitute full and complete acceptance of these Terms and Conditions of Purchase, without exception, unless otherwise expressly agreed to in a separate writing signed by an authorized representative of Balon Corporation ("Buyer"). All terms and conditions proposed by Seller which are different from or in addition to these Terms and Conditions of Purchase are expressly rejected by Buyer and shall not become a part of this order. This order and the Terms and Conditions of Purchase may only be amended, modified or rescinded by a separate writing signed by an authorized representative of Buyer.
2. **Prices.** Seller represents and warrants that the price invoiced to Buyer for each good or service to be supplied under this order shall not exceed: (a) the maximum amount which Seller may charge under applicable government regulations, or (b) the price paid to Seller by other customers purchasing similar quantities of the same or similar goods or services.
3. **Packing and Transportation.** At its own expense, Seller shall box, crate or package all goods: (a) to ensure the safe and undamaged arrival of all goods at the ultimate destination, (b) to secure the lowest transportation costs, and (c) to comply with all requirements of the common carrier selected to deliver such goods. Buyer's order number, quantities, part numbers and symbols shall be clearly marked on all invoices, packages, bills of lading, packing lists, shipping orders and correspondence sent by or on behalf of Seller to Buyer. A shipping memoranda or packing list shall accompany each shipment of goods. Buyer's count or weight shall be conclusive on all shipments not accompanied by a shipping memoranda or packing list. Bills of lading or shipping receipts shall be sent to Buyer on date of shipment. Seller shall bear all excess transportation or other charges and costs resulting from failure to follow Buyer's routing instructions and delivery schedules. All shipments shall be F.O.B. destination and risk of loss shall not pass to Buyer until receipt by Buyer at the ultimate destination. Seller has no right to ship under reservation. Deliveries shall be made both in quantities and at times specified in Buyer's schedules.
4. **Changes.** Buyer reserves the right at any time to direct or change drawings and specifications of the goods and services or to otherwise change the scope of work covered by this order, and Seller shall promptly make such changes. Any difference in price or time for performance resulting from such changes shall be equitably adjusted by Buyer after receipt of documentation in such form and detail as Buyer may direct. Any changes to this order shall be made in accordance with Section 1, above.
5. **Inspection.** Buyer may inspect all goods and services to be supplied or performed under this order at all reasonable times, including without limitation during manufacture. Inspection and approval by Buyer at Seller's plant shall not preclude rejection for defects upon discovery during subsequent inspection, including without limitation, inspection after receipt by Buyer at the ultimate destination. Any goods or services rejected by Buyer shall be promptly repaired or replaced at Seller's expense. Any and all expenses incurred by Buyer in connection with goods or services rejected by Buyer, including without limitation the return thereof, shall be for the account of Seller.
6. **Warranty.**
 - (a) Seller warrants that the goods and services to be supplied or performed under this invoice: (i) conform to the specifications, drawings, samples or other descriptions furnished or adopted by Buyer; (ii) are of good material and workmanship and free from defects; (iii) are new and unused; (iv) are of merchantable quality; (v) are fit for Buyer's particular purpose; and (vi) are free of all liens and encumbrances. Seller warrants it is conveying to Buyer good and marketable title to all goods supplied under this order. If Seller is responsible in whole or in part for the design of any goods to be supplied under this order, Seller warrants that such goods are free from defects in design and are fit and sufficient for the purposes intended by Buyer; approval of the design by Buyer shall not relieve Seller of its obligations under this warranty. Inspection, testing or use of

the goods shall not affect this warranty. Seller shall certificates of compliance with specifications or certified analyses, as often as reasonably requested by Buyer.

(b) Seller's warranty shall remain effective for the period of time set forth on the face of this order. If no time is specified on this order, then Seller's warranty shall remain effective for not less than one (1) year after the date of acceptance of the last goods or services supplied or performed under this order. Seller shall bear all expenses in connection with returning goods to Seller for breach of warranty, and shall bear all risk of loss or damage to such goods while in transit. This warranty shall run to Buyer, its successors, assigns, customers and users of its products and shall not be deemed exclusive of any other warranty offered by Seller or any other remedy available to Buyer either at law or in equity.

7. **Force Majeure.** If Seller is prevented from performing its obligations hereunder because of an Act of God or other cause beyond the reasonable control of Seller, then Seller's obligations hereunder shall be suspended beginning upon receipt by Buyer written notice from Seller that it is unable to perform timely its obligations hereunder and continuing for such time as such conditions continue to exist. Provided, however, Buyer shall have the right within a reasonable time after receipt of such a notice to cancel all or any portion of this or any other order then pending with Seller and seek alternative sources of supply without being in breach hereof and all purchase made from alternate sources of supply to fill any canceled order with Seller shall be included within any volume commitments made by Buyer to Seller.
8. **Nondisclosure and Ownership.** All plans, drawings, designs and specifications supplied by Buyer to Seller shall remain the property of Buyer. Seller shall regard and keep strictly confidential any information derived therefrom or otherwise communicated to or discerned by and shall not disclose such information to any third party without the express, prior, written permission of Buyer.
9. **Cancellation for Breach.** Buyer reserves the right to cancel, without liability to Seller, all or any part of this or any other order pending with Seller, if Seller: (a) repudiates or breaches any of the terms of this order, including without limitation Seller's warranties; (b) fails to perform services or deliver goods as specified by Buyer; or (c) fails to make progress so as to endanger Seller's timely and proper completion of services or delivery of goods and does not correct such failure or breach within ten (10) days (or shorter period if commercially reasonable under the circumstances) after receipt of written notice from Buyer specifying such failure or breach.
10. **Termination.** In addition to any other rights of Buyer to cancel or terminate this order, Buyer may at its option immediately terminate all or any part of this order at any time and for any reason by giving written notice to Seller. If termination of an order occurs under this Section 10, except as specified below, Buyer shall pay to Seller without duplication: (a) the order price for all goods or services completed under this order and not paid for; (b) the actual costs of raw material and work-in-process incurred by Seller in furnishing the goods or services under this order to the extent that such costs are reasonable in amount and are properly allocable or apportionable under generally accepted accounting principles to the terminated portion of the order; less, however, the reasonable value or cost (whichever is higher) of any goods or material used or sold by Seller with Buyer's written consent, and the cost of any damaged or destroyed goods or material. Buyer will make no payment for furnished goods, work-in-process or materials fabricated or procured by Seller in amounts in excess of those authorized in delivery releases nor for any undelivered, goods, work-in-process or raw materials in Seller's standard stock or which are readily marketable. Payments made under this Section 10 shall not exceed the aggregate price payable by Buyer for finished goods produced under delivery or release schedules outstanding at the date of termination. Except as provided in this Section 10, Buyer shall not be liable for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering cost, facilities and equipment rearrangement costs and general and administrative overhead burden charges from termination of this order. Within sixty (60) days from the effective date of termination, Seller shall submit a comprehensive termination claim to Buyer with sufficient supporting data to permit Buyer's audit. Buyer,

or its agents, shall have the right to audit and examine all books, records, facilities, work, material, inventories, and other item relating to any termination claim of Seller.

11. **Infringement.** Seller warrants that the use or sale of goods or services in the form, state and condition as delivered does not infringe on any U.S. or foreign patent, copyright or trademark covering the goods, or their method of manufacture, or the services.
12. **Indemnification.** Seller shall defend, indemnify and hold Buyer and Buyer's officers, directors, employees, agents, stockholders and customers and their respective successors and assigns (collectively, the "Buyer Group") harmless from and against any and all loss, liability, expense (including attorneys' fees), damages, decrees or obligations directly or indirectly resulting either in whole or in part from Seller's misrepresentation of any fact or breach of any condition, covenant, term or warranty set forth in this order or these Terms and Conditions of Purchase. Seller shall maintain commercial general liability insurance covering completed operations, workers' compensation insurance and business property insurance written by a reputable and financially stable insurance carrier reasonably acceptable to Buyer in amounts sufficient to protect Buyer from any liability directly or indirectly arising either in whole or in part from Seller's performance under this order and to insure fully the value of all goods identified in this order against loss or damage before receipt by Buyer.
13. **Setoff.** Buyer may setoff any amount owing at any time from Seller to Buyer against any amount payable at any time by Buyer to Seller.
14. **Compliance with Law.** Seller represents and warrants and upon request will certify that the goods sold under this order are manufactured, produced, marked, labeled and sold in conformity with all federal, state, and local laws and such foreign laws as may apply, and all rules and regulations promulgated in furtherance thereof.
15. **Waiver.** Failure or delay by Buyer to enforce any of the provisions of this order shall not constitute a waiver of such provisions or of the right of Buyer to enforce such provisions at any time.
16. **Assignment.** Seller shall not assign any of the its rights nor delegate any of its duties or obligations under this Order without the express, prior, written permission of Buyer and any attempt to do so in violation of the terms of this Section 16 shall be null and void *ab initio*.
17. **Governing Law.** This order shall be subject to and governed by the laws of the state of Oklahoma without regard to any choice of law principles or any other law, rule or provision which would direct the application of the law of any other state.
18. **Exclusive Venue.** Buyer and Seller agree that any dispute arising out of this order shall be decided by a state or federal court in Oklahoma County, Oklahoma. Buyer and Seller agree to submit to the jurisdiction of the courts and that service of process by certified mail, return receipt requested shall confer said court with *in personam* jurisdiction. Seller express waives any right to assert that a state or federal court in Oklahoma County, Oklahoma is a forum *non conveniens*.
19. **Interpretation.** If an ambiguity or question of intent or interpretation arises, this order and these Terms and Conditions of Purchase shall be construed as if drafted jointly by Buyer and Seller and no presumption or burden of proof shall arise favoring or disfavoring either Buyer or Seller by virtue of the authorship of any of the provisions of this order or these Terms and Conditions of Purchase.
20. **Severability.** If a court of competent jurisdiction declares that any provision of this Agreement or any Exhibit hereto is illegal, invalid or unenforceable, then such provision shall be modified automatically to the extent necessary to make such provision fully enforceable. If such court does not modify any such provision as contemplated herein, but instead declares it to be wholly illegal, invalid or unenforceable, then such provision shall be severed from this Agreement and such declaration shall in no way affect the legality, validity and unenforceability of the other provisions of this Agreement to which such declaration does not relate. In this event, this Agreement shall be construed as if it did not contain the particular

provision held to be illegal, invalid or unenforceable, the rights and obligations of the parties shall be construed and enforced accordingly, and this Agreement shall remain in full force and effect.

21. **Specifications.** The purchase order, or functionally equivalent or similar document or instruction, to which these Terms and Conditions apply (the “Purchase Order”) shall be deemed to include any specifications provided to Seller that relate to or are applicable to the goods or services to be procured, rendered or supplied under the Purchase Order (the “Specification”) which are hereby expressly incorporated by reference as if fully set forth herein.
22. **Entire Agreement.** The Purchase Order, together with the Specifications, these Terms and Conditions of Purchase, and any attachments, exhibits or supplements specifically referenced in the Purchase Order collectively constitute the entire agreement between Buyer and Seller and supersede all prior agreements regarding the transactions contemplated by this order.