

CLOOS NORTH AMERICA
PURCHASE TERMS AND CONDITIONS

1. **ENTIRE AGREEMENT.** These terms and conditions of purchase (these “**Terms**”) are the only terms which govern the purchase of the goods (“**Goods**”) and services (“**Services**”) by CLOOS North America, Inc. (“**Buyer**”) from the seller (“**Seller**”) named on the accompanying purchase order and any purchase order issued by Seller thereafter (each a “**Purchase Order**”). These Terms together with the Purchase Order (collectively, the “**Agreement**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Seller’s general terms and conditions of sale or other terms included in Seller’s acknowledgment, confirmation, invoice or other form used by Seller and, by accepting the Purchase Order, Buyer and Seller hereby expressly reject any such terms regardless of any conditions set forth therein. Fulfillment of this Purchase Order, commencement of performance hereunder, shipment of any Goods to Buyer or any other indication of agreement or acceptance constitutes acceptance of the Purchase Order and these Terms. None of the terms or conditions contained in this order may be added to, modified, superseded, or otherwise altered except by a written instrument signed by an officer of Buyer. All specifications, drawings and requirements submitted by Buyer to Seller with this Purchase Order are hereby incorporated herein and made a part hereof. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods and Services covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

2. **PRICES.** Unless otherwise agreed upon in writing by Seller and Buyer, the price of the Goods and Services is the price stated in the Purchase Order (the “**Price**”). If no price is included in the Purchase Order, the Price shall be the lower of the price set out in Seller’s published price list in force as of the date of the Purchase Order, Seller’s quote to Buyer or the most recent Purchase Order for such Goods. Except as otherwise agreed between Seller and Buyer, the Price includes, and Seller shall pay the cost of, shipping to the Delivery Point, packing the goods, insurance and any and all applicable federal, state and local taxes (including but not limited to all sales, use and excise taxes), duties, fees, import and other governmental charges. Seller shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Seller. Seller assumes all responsibility for shipments of Goods requiring any government import clearance. Buyer may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods. No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Buyer.

3. **DELIVERY.** Seller shall deliver the Goods in the quantities and on the date(s) or period(s) specified in the Purchase Order or as otherwise agreed in writing by the parties (the “**Delivery Date**”). If no delivery date is specified, Seller shall deliver the Goods within ten (10) days of Seller’s receipt of the Purchase Order. If Seller fails to deliver the Goods in full on the Delivery Date, Buyer may (a) terminate this Agreement immediately by providing written notice to Seller and Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller’s failure to deliver the Goods on the Delivery Date, or (b) demand a penalty charge of one percent (1%) of the total price for the Goods per week of the delay up to a maximum of five percent (5%), which shall not be considered liquidated damages, unless the delay results from a Force Majeure Event. Seller shall issue delivery slips, invoices and any other documents pertaining to the Purchase Order in duplicate and such documents must include Buyer’s Purchase Order number. Except as may be otherwise expressly agreed between Seller and Buyer, Seller shall deliver all Goods F.O.B. Buyer’s facility specified by Buyer in the Purchase Order (the “**Delivery Point**”). Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point. Goods shall be delivered during Buyer’s normal business hours or as otherwise instructed by Buyer. Seller shall pack all goods for shipment according to Buyer’s instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition. Seller acknowledges that time is of the essence with respect to Seller’s obligations hereunder and the timely delivery of the Goods and Services.

4. **INSPECTION AND REJECTION.** Buyer has the right to inspect the Goods on or after the Delivery Date. Buyer, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If Buyer rejects any portion of the Goods, Buyer has the right, effective upon written notice to Seller, to: (a) rescind this Agreement in its entirety; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require replacement of the rejected Goods. With respect to any non-conforming Services, Buyer may at its sole option: (i) accept such Services; (ii) demand replacement, completion, remediation of and/or credit for the non-conforming Services; or (iii) accept the Services with an equitable reduction in Price. Buyer’s exercise of one of the foregoing options as to any non-conforming goods or services shall not preclude Buyer’s exercise of any other option with respect to other non-conforming goods or services. If Buyer requires replacement of the Goods, Seller shall, at its expense, promptly (but no later than within ten (10) days) replace the nonconforming or defective Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Goods. If Seller fails to timely deliver replacement Goods, Buyer may replace them with goods from a third party and charge Seller the cost thereof and terminate this Agreement for cause pursuant to Section 9. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller’s obligations under the Agreement, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions.

5. **COUNTRY OF ORIGIN CERTIFICATION.** If Seller is making statements of the country of origin, then the following terms apply: (a) Seller shall issue Buyer a certificate of origin of the Goods; (b) Seller is obligated to avail all required and respective country of origin information and any obtained confirmation thereof to the customs authority for examination; and (c) Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to false country of origin certification or missing or non-verifiable country of origin information not accepted by the responsible customs office.

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6. **PAYMENT.** Seller shall issue an invoice to Buyer on or at any time after the completion of delivery of the Goods and Services, including any manuals or similar documentation related thereto. Unless otherwise set forth in the Purchase Order, Buyer shall pay all properly invoiced amounts due to Seller within 45 days after Buyer's receipt of such invoice, except for any amounts disputed by Buyer in good faith. Payment may be made by check or wire transfer. Payments are deemed on time if the check is mailed on the due date or if the request to the bank for issuance of a wire transfer was made on the due date. All payments hereunder may be in US dollars.

7. **QUANTITY.** If Seller delivers more or less of the quantity of Goods specified on the applicable Purchase Order, Buyer may reject all or any excess Goods, which will be held at Seller's sole risk and expense. Buyer may, and at Seller's direction shall, return such Goods at Seller's sole risk and expense. If Buyer does not reject the Goods and instead accepts the delivery of Goods at a reduced quantity, the Price for the Goods shall be reduced on a pro-rata basis.

8. **OTHER SUPPLIER OBLIGATIONS.** Seller shall:

- (a) comply with all applicable laws, regulations and ordinances;
- (b) obtain, and at all times during the term of this Agreement, maintain, all necessary licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement and ensure that all persons, whether employees, agents, subcontractors, or anyone acting for or on behalf of the Seller, are properly licensed, certified or accredited as required by applicable law and are suitably skilled, experienced and qualified to perform it;
- (c) when providing Services, comply with all rules, regulations and policies of Buyer, including security procedures concerning systems and data and remote access thereto, building security procedures and general health and safety practices and procedures;
- (d) maintain complete and accurate records relating to the provision of the Services, including records of the time spent and materials used by Seller in providing the Services, and sale of Goods under this Agreement in such form as Buyer shall approve. During the term of this Agreement, and for three (3) years thereafter, upon Buyer's written request, Seller shall allow Buyer to inspect and make copies of such records and interview Seller personnel in connection with the provision of the Services;
- (e) obtain Buyer's written consent prior to entering into agreements with or otherwise engaging any person or entity, including all subcontractors and affiliates of Seller, other than Seller's employees, to provide any Services to Buyer (each such approved subcontractor or other third party, a "**Permitted Subcontractor**"). Buyer's approval shall not relieve Seller of its obligations under the Agreement, and Seller shall remain fully responsible for the performance of each such Permitted Subcontractor and its employees and for their compliance with all of the terms and conditions of this Agreement as if they were Seller's own employees. Nothing contained in this Agreement shall create any contractual relationship between Buyer and any Seller subcontractor or supplier; and
- (f) require each Permitted Subcontractor to be bound in writing by the confidentiality provisions of this Agreement, and, upon Buyer's written request, to enter into a non-disclosure or intellectual property assignment or license agreement in a form that is reasonably satisfactory to Buyer.

9. **CANCELLATION AND TERMINATION.** In addition to any remedies that may be provided under these Terms, Buyer may terminate all or any part of this Agreement if Seller (a) does not make deliveries as specified, time being of the essence of this contract, (b) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, or (c) breaches any of the terms hereof including, without limitation, the warranties of Seller. Any provisions herein for delivery of Goods or the rendering of Services by installments shall not be construed as making the obligations of Seller severable. In addition to the foregoing, Buyer may at any time for its convenience terminate this Agreement, in whole or in part, by providing written notice, or verbal notice confirmed in writing. If Buyer terminates the Agreement for any reason, Seller's sole and exclusive remedy is payment for the Goods received and accepted and Services accepted by Buyer prior to the termination. In no event shall Buyer be liable for special, indirect, incidental damages (including, without limitation, lost profits), punitive damages or exemplary damages.

10. **FORCE MAJEURE.** No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such party's (the "**Impacted Party**") failure or delay is caused by or results from the following force majeure events to the extent such were not foreseeable by the Impacted Party and were outside of the Impacted Party's control ("**Force Majeure Event(s)**"): (a) acts of God; (b) flood, fire, earthquake; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or action; (e) embargoes or blockades in effect on or after the date of this Agreement; and (f) national or regional emergency. The Impacted Party shall give notice within two (2) business days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of fifteen (15) days following written notice given by it under this Section 10, the other party may thereafter terminate this Agreement upon written notice.

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11. **BUYER'S CHANGES.** Buyer reserves the right at any time to make changes to the Purchase Order, including but not limited to the following: (a) specifications, drawings and requirements of Services or Goods included in the Purchase Order; (b) methods of shipment or packing; (c) place of delivery; and/or (d) time of delivery. Such changes shall If any such change causes a decrease in the cost of or the time required for performance under this Agreement, an equitable adjustment shall be made in the Price or delivery schedule, or both. If any such change causes an increase in the cost of or the time required for performance under this Agreement, Seller shall notify Buyer thereof and the parties shall agree in writing to an equitable adjustment in the Price. Any claim by Seller for an increase in Price under this paragraph shall be deemed waived unless Buyer is notified in writing within thirty (30) days from receipt by Seller of the change request. Price increases or extensions of time for delivery shall not be binding on Buyer unless approved in writing by an officer of Buyer. Buyer reserves the right to modify or cancel any part of the undelivered portion of a Purchase Order by providing Seller with a change order or notice of cancellation which shall effectively amend the Purchase Order.

12. **WARRANTY.** In addition to all other express, implied and statutory warranties, Seller warrants that for a period of one (1) year from the date of acceptance of any Goods hereunder, such Goods shall (a) be free from defects in design, workmanship and materials, (b) conform strictly to Buyer's specifications, drawings and approved samples, if any, (c) be merchantable and fit for its intended purpose, (d) be free and clear of all liens, security interests and other encumbrances, and (e) not infringe on any United States or foreign patent, copyright, trademark or any other intellectual property right. Seller warrants to Buyer that it shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement. All warranties shall survive inspection, acceptance and payment by Buyer. The warranties set forth in this Section 13 are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the Goods or Services with the foregoing warranties. If Buyer gives Seller notice of noncompliance pursuant to this Section, Seller shall, at Buyer's option and at Seller's cost and expense, in addition to any other remedies, (a) either return for credit or require prompt repair or replacement of the non-conforming Goods or correction, completion or remediation of such non-conforming Services; and (b) cancel all or any part of the undelivered portion of this order.

13. **SELLER'S INDEMNIFICATION.** Seller shall indemnify, defend (at Buyer's option) and hold harmless Buyer, its successors, assigns employees, agents, customers and users of its products, from and against all claims, losses, injury, death, deficiency, liability, penalties, damages (including incidental and consequential damages) costs and expenses (including reasonable attorneys' fees) arising out of (a) any alleged or actual infringement or contributory infringement of any patent, trade secret, trademarks, service marks or any other intellectual property right by reason of the use, sale or lease of any Goods or Services purchased hereunder, or (b) any alleged or actual defects in the Goods or Services, breach by Seller of any of the representations, warranties or covenants contained herein, or Seller's failure timely to deliver the Goods or provide the Services purchased hereunder, (c) Seller's negligence or willful misconduct, or (d) any alleged or actual failure of the Goods to include necessary safety features or otherwise conform to the requirements of any federal, state or local health or safety law, standard regulation or ordinance, when used in a manner and for a purpose intended by Buyer. Seller shall, at its own expense, if so requested by Buyer, defend all claims, proceedings or suits against Buyer, its successors, assigns, officers, directors, employees, agents, customers and users of its products, in which any of the aforesaid claims are alleged, provided Seller is duly notified of such claims, proceedings or suits.

14. **INSURANCE.** Seller agrees to procure and maintain, at its own expense, insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than \$5,000,000 and other appropriate insurance covering Seller's obligations hereunder, and including Buyer as one of the name insureds, as evidenced in a certificate of insurance, such insurance to be of a type, in an amount, and written by a company satisfactory to Buyer. Seller agrees to furnish evidence of said insurance satisfactory to Buyer as Buyer may request from time to time. All policies of insurance procured or maintained hereunder (a) shall provide that coverage thereunder shall not be terminated without thirty (30) day's written notice to Buyer, and (b) shall apply separately to each insured against whom claim is made or suit is brought and shall contain no provision which excludes coverage under a claim made by one insured under the policy against another insured under the policy. Except where prohibited by law, Seller shall require its insurer to waive all rights of subrogation against Seller's insurers and Seller.

15. **BUYER'S PROPERTY.** All material, including tools and equipment furnished by, or paid for by Buyer and any replacement thereof shall be and remain the property of Buyer, shall be subject to removal at any time without additional cost upon demand by Buyer, shall be used only in filling Purchase Orders from Buyer, shall be kept separate from other materials and shall be clearly identified as the property of Buyer. Seller shall maintain such tools, material and equipment in good condition so that they at all times have the capacity to produce goods in conformance with Buyer's order. Seller shall bear all risk of loss to such material, tools and equipment while they are in Seller's possession or control, except for normal wear and tear. Seller, at its expense, shall insure them in an amount equal to their replacement cost with any loss payable to Buyer.

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16. **TECHNICAL INFORMATION; DEVELOPED IP.** Any specifications, drawings, instructions, engineering notices, or technical data referred to in this order shall be deemed to be incorporated herein by reference. Seller shall refer all discrepancies or questions to Buyer for resolution by Buyer by written notice to Seller. Any and all work product prepared by or delivered by Seller in relation to the Services as well as the specifications, drawings, instructions, engineering notices, technical data and any modification, feedback or derivative work of any intellectual property right of Buyer shall be the sole property of Buyer (collectively, the “**Developed IP**”). Seller shall disclose to Buyer any and all such Developed IP, including copies of all documents created in the ordinary course of its business that disclose any conception or reduction to practice of any intellectual property constituting Developed IP. If the Developed IP consists of any work product that is protectable by copyright, such work product shall be considered work(s) made for hire (as the phrase “work(s) made for hire” as defined in the U.S. Copyright Act (17 U.S.C. § 101)). If by operation of law any such Developed IP is not owned in its entirety by Buyer automatically upon creation or considered a work made for hire, then Seller agrees to transfer and assign to Buyer, and hereby transfers and assigns to Buyer, the entire right, title and interest throughout the world in and to such Developed IP. Seller shall use such Developed IP and any other information as may be disclosed to Seller by Buyer only in connection with this order and shall not disclose the same to any person or entity, except on a need to know basis to Seller’s employees in connection with this order. Upon completion of this order or earlier upon Buyer’s request, Seller shall promptly return or deliver all Developed IP to Buyer.

17. **ASSIGNMENT.** Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under this Agreement without the prior written consent of Buyer. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Seller of any of its obligations hereunder. Buyer may at any time assign or transfer any or all of its rights or obligations under this Agreement without Seller’s prior written consent to any affiliate or to any person acquiring all or substantially all of Buyer’s assets.

18. **SET-OFF.** Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller.

19. **INDEPENDENT CONTRACTOR.** Seller acknowledges and agrees that the relationship of the parties hereunder shall be that of independent contractor and that neither Seller, nor its officers, representatives, employees or agents shall be deemed to be an employee of Buyer for any reason whatsoever. Neither Seller nor Seller’s officers, representatives, employees or agents shall be entitled to any Buyer’s employment rights or benefits whatsoever. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

20. **CONFIDENTIALITY.** All information furnished by Buyer to Seller is confidential and Seller shall not disclose any such information to any other person, or use such information for any purpose other than performing this contract, unless Seller obtains written permission from Buyer to do so. This paragraph shall apply, without limitation, to drawings, specifications, or other documents prepared by Seller for Buyer in connection with this Agreement as well as any samples, patterns, designs, plans, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as “confidential.” Upon Buyer’s request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section. Seller shall not advertise or publish the fact that Buyer has contracted to purchase goods from Seller, nor shall any information relating to the order be disclosed without Buyer’s written permission. Unless otherwise agreed in writing, Seller shall not disclose to Buyer any confidential information of Seller, including but not limited to any commercial, financial or technical information disclosed in any manner or at any time, and Seller shall have no rights against Buyer with respect to any disclosure thereof, except such rights as may exist under patent laws.

21. **GENERAL.** All notices and other communications hereunder shall be in writing and shall be effective upon personal delivery or upon mailing by certified or registered mail to the address set forth in the Purchase Order or, if none is set forth therein, to the last known address of the party to be served. Waiver by Buyer of any breach of these terms and conditions must be in writing and shall not be construed as a waiver of any other breach, and failure to exercise any rights arising from any breach hereunder shall not be deemed to be a waiver of such right which may be exercised at any subsequent time. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement. The invalidity of any provision of this order shall not affect the validity of any other provision. All rights and remedies of Buyer herein shall be cumulative and in addition to those available at law or equity. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Confidential Information, Governing Law and Arbitration.

22. **GOVERNING LAW AND ARBITRATION.** This Agreement, and all matters arising out of or relating to this Agreement, shall be governed by and construed in accordance with the internal laws of the State of Illinois, without giving effect to its conflicts of laws principles. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply. The parties agree that any dispute arising hereunder or related to this Agreement shall be arbitrated in Cook County, Illinois in accordance with the commercial arbitration rules of the American Arbitration Association. The parties hereby agree that the sole proper jurisdiction and venue for any disputes not subject to arbitration hereunder shall be either a state or federal court located in Cook County, Illinois. For such purpose, Seller, if not located in the State of Illinois, irrevocably appoints the Secretary of State of Illinois as its agent for receipt of service of process or notices.

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23. **COSTS AND EXPENSES.** Should either party incur costs in connection with the enforcement of the terms and provisions of this order against the other party, which may include but shall not necessarily be limited to the institution of a lawsuit or other legal proceedings, the prevailing party shall be entitled to and the non-prevailing party shall pay to the prevailing party all of the prevailing party's costs, expenses and reasonable fees of its attorneys in connection therewith.