

Felss Rotaform LLC | Terms and Conditions

I. DEFINITIONS -The addressee named in the Purchase Order is referred to herein as the "Vendor" and Felss Rotaform LLC is referred to herein as the "Purchase1".

II. ACCEPT ANCE - Purchaser shall not be bound by this Purchase Order until Purchaser has received a copy of this Purchase Order executed by Vendor. Acceptance is expressly limited to the terms contained herein. No prior terms or conditions shall apply. Vendor acknowledges and agrees to be bound by and comply with all 1.) Tenna and Conditions contained in this Purchase Order; 2.) Purchaser's Supplier Requirements and Supplier Quality Assurance Manual. 3.) Terms and conditions of Purchaser's end customer (the OEM); as all of the foregoing may be amended from time to time. Vendor shall have accepted these terms and conditions when it does any of the following: (a) executes and returns this Purchase Order or (b) when it delivers to Purchaser any of the items ordered, or (c) renders for Purchaser any of the services ordered herein, whichever shall first occur. Any terms set forth by Vendor are rejected in whole, unless specifically accepted in writing by Purchaser.

III. PRICE - This Purchase Order may not, without written authorization from Purchaser, be filled at higher prices than specified herein, or, if order is unpriced, at a price higher than last charged or quoted to Purchaser for goods or services described herein. Vendor agrees that any price reduction made in goods or services described in this Purchase Order prior to the shipment of such goods or furnishing of such services to Purchaser, will be applicable to this Purchase Order. Vendor represents that the price charged for the items or services covered by this Purchase Order, is the lowest price charged by the Vendor to purchasers of a class, similar to Purchaser, under conditions similar to those specified in this Purchase Order and that prices comply with all applicable laws and regulations. Subject only to the foregoing and any requirements from Purchaser's customer, any pricing set forth in this document is firm. Unless otherwise stated in the Order or agreed to by the parties in writing, Vendor shall be responsible for shipping costs. No additional charges of any kind including charges for packing, boxing, cartage or other extras will be allowed unless agreed to in writing by the Purchaser. The price shall include all duties, federal, state and local taxes and other governmental charges applicable to this Purchase Order, and same shall be paid by Vendor.

IV. DELIVERY - Deliveries are to be made both in quantities and at times specified in the Purchase Order or delivery order (releases). Except to the extent the result of Purchaser's breach of this Purchase Order, if Vendor's deliveries fail to meet schedule and, Purchaser may direct expedited routing and any excess costs incurred thereby shall be debited to Vendor's account. Goods which are delivered in advance of schedule may, at Purchaser's option, either (A) be returned at Vendor's expense for proper delivery, (B) have payment therefore withheld by Purchaser until the date that goods are actually scheduled for delivery, or (C) place goods in storage for Vendor's account until the delivery date specified herein. Prior to shipment, all material is to be packaged in accordance with Purchaser's packaging requirements. Vendor shall mark each individual container with the purchase order number, Purchaser's part and drawing numbers (where applicable), description, and quantity, plus all special markings as noted.

V. INVOICES. All shipping papers and packaging for production and non-production shall comply with all applicable laws. All invoices must show Purchaser's purchase order (and Purchaser's part number if applicable) for payment. For each international shipment, Vendor will comply with the customs invoicing and documentation requirements of the destination country. Vendor will include a priced invoice (if required) with the master packing slip and upon request will furnish all other documentation required for export from Vendor's country or import into Purchaser's country. Any and all benefits or credits resulting from a Purchase Order with Purchaser including but not limited to trade credits, export credits, customs drawbacks, rebate of taxes, fees, etc. will belong to Purchaser (unless otherwise stated on a Purchase Order). Vendor upon request will furnish all documents required to obtain the foregoing benefits and credits and will identify the country of origin of the materials used in the Supplies and the value added thereto in each country. Separate invoices must be rendered for each shipment, whether in part or in whole. Seller shall send original invoice and bill of lading to the "Invoice to" address noted on the face of this purchase order. The invoice shall show the purchase order number and shall separately list the items invoiced, quantities, unit prices, and taxes.

VI. WARRANTIES - Vendor represents and warrants to Purchaser that all articles, machines, products, materials and/or services covered by this Purchase Order (I) will conform to all specifications, drawings, samples or other description furnished or specified by Purchaser (collectively "Specifications"); (II) will be fit for the use for which they are intended and to which they are normally put and for any special uses known by Vendor to be contemplated by Purchaser; and (III) will be merchantable and of good material and workmanship, and free from defect, and (IV) comply with all State and Federal laws relative thereto, including, but not limited to all such laws relative to the manufacture thereof. The above warranties are in addition to (and not in limitation of) the other warranties of Vendor, expressed, implied, and provided by law.

VII. CHANGES IN ORDER, EXISTING CONTRACT AND NON ASSIGNMENT - This Purchase Order contains the complete agreement between the Purchaser and Vendor, and no agreement or other understanding purporting to modify the terms and conditions hereof shall be binding upon Purchaser unless otherwise agreed to by Purchaser in writing on or subsequent to the date of this Purchase Order. If this Purchase Order is placed under an existing written contract between Vendor and Purchaser, any terms of this Purchase Order which are inconsistent with that contract shall be governed by the written contract. If Vendor assigns monies due and to become due under this Purchase Order, Purchaser shall be entitled to assert against the assignee thereof all rights, claims, and defenses of every type (including without limitation, rights or setoff, recoupment of counterclaim) which Purchaser could assert against Vendor, whether acquired prior or subsequent to such assignment. Vendor may not assign this order or any part hereof without Purchaser's written consent.

VIII. TERMINATION - Purchaser reserves the right to terminate this Purchase Order or any portion thereof if delivery is not made when and as specified herein or if Vendor fails to deliver articles, machines, products, materials and/or services which conform in all respects to Purchaser's Specifications hereof or otherwise fails in the due performance of each and all of the terms and conditions of this Purchase Order. Purchaser's schedules are based upon the agreement that the goods will be delivered to Purchaser by the dates specified on the face of the Purchase Order. Time is therefore of the essence and if goods are not delivered within the time specified hereon, Purchaser may reject such goods and terminate this Purchase Order. The acceptance of late or defective deliveries shall not be deemed a waiver by Purchaser of its right to terminate this Purchase Order. Without prejudice to the foregoing, Vendor agrees promptly to report to the Purchasing Department of the Purchaser, at the address shown on the other side of this page, any actual or anticipated delays in the shipment or furnishing of articles, machines, products, materials and services covered by this Purchase Order.

IX. INSPECTION - REJECTION - All goods delivered to and all work done for Purchaser hereunder shall be exactly as specified by Purchaser and shall be subject to inspection, and approval or rejection by Purchaser, in whole or in part, at all reasonable times and places, before, during, and after manufacture or delivery. Vendor shall advise Purchaser upon request when goods are ready for inspection. Any goods not conforming to the Specifications may be returned to Vendor at Vendor's risk and expense, may be made conforming by Purchaser at Vendor's expense, or may be held at Vendor's risk and expense for disposition by Purchaser after notice to Vendor.

X. PATENTS, Vendor warrants that (a) No article, machine, product, material, or services covered by this Purchase Order shall infringe any patent, copyright or trademark not owned or controlled by Vendor and that neither the normally anticipated uses thereof by Purchaser, nor any specified methods of using same known by Vendor to be contemplated by Purchaser, will infringe any patent, trademark or copyright; (b) Vendor shall indemnify Purchaser, its subsidiaries and associated corporations against and hold it and them free and harmless from any claim, judgment, decree, cost or expense they may suffer or incur (including attorney's fees and other legal expenses) resulting from, incident to, or arising from any infringement of claim of infringement of any patent, copyright or trademark relating to any articles, machines, products, materials or services covered by this Purchase Order or its use or the use of any components, in the manufacture or sale of Purchaser's products or services.

XI. INDEMNITY AND INSURANCE - Vendor will indemnify Purchaser, its parent, subsidiaries, associated corporations, officers, directors, employees and agents, against and hold it and them free and harmless from any and all claims, demands, judgments, losses, damages or expenses it or they may suffer or incur (including attorney's fees and other legal expenses) resulting from, incident to, or arising out of this Purchase Order in any manner whatsoever, including but not limited to any acts or omissions of Vendor or Vendor's servants, agents or employees. Vendor further agrees to maintain commercially reasonable public liability, property damage and compensation insurance during the term of this Purchase Order. Purchaser shall have the right to request, and Vendor shall provide within seven (7) days, a certificate of insurance. Failure to maintain commercially reasonable types of insurance and coverage amounts shall constitute a material breach of this Purchase Order.

XII. SERVICES - If this Purchase Order requires any work or services to be performed by Vendor and Vendor accepts this Purchase Order as above provided, the Vendor covenants and agrees that it will (I) perform such work or services as an independent contractor and not as an employee, (II) have sole liability for all salaries, payroll taxes, social security taxes, and unemployment taxes and contributions and indemnify Purchaser against any loss that may result from Vendor's failure to comply with such laws.

XIII. MOLDS, TOOLS, ETC. -Any and all molds, tools, dies or fixtures ordered hereon by the Purchaser shall be used in the manufacture of goods for the Purchaser exclusively. Any and all molds, tools, dies, fixtures, and other capital equipment purchased by Purchaser specifically for this Purchase Order shall, upon payment, become the exclusive property of Purchaser. Each tool, mold, die or fixture is to be clearly stamped or stenciled with:

1. Vendor's Tool Identification Number,
2. Purchaser Product Number, and
3. Labeled "Property of Rotaform LLC" or Purchaser's customer as directed by Purchaser.

- Tooling will be approved for payment upon approval of Production Part Approval Process (PP AP) sample submission. PP AP sample submissions sent 45 days after due date allows Purchaser the option to cancel Tooling Contract for this part. - Listing of tool numbers, descriptions and confirmation that each is properly marked should be submitted to Purchaser prior to first production shipment. The following statement must appear on Vendor's final tooling invoice:

Tools included in this invoice are:

1. Completed and have produced parts accepted by Purchaser (approved Part Submission Warrant (PSW) documentation attached);
2. Stamped or stenciled with Tool Identification and Product Numbers (as specified above); and
3. Clearly labeled "Rotaform LLC" or Purchaser's customer as directed by Purchaser.

XIV. DESIGN RIGHTS - Purchaser retains all rights including any patent, trademark or copyright rights in any designs, drawings, or models (including prototype) furnished by Purchaser to Vendor in connection with this order, except designs, drawings or models on Vendor's stock parts, subassemblies, assemblies or packaging not originated by Vendor especially for Purchaser at Purchaser's direct or indirect expense. No such drawing or model, in which rights are retained by Purchaser shall, without Purchaser's written permission, be disclosed to any third party or incorporated in, or duplicated or otherwise used in connection with goods or services furnished to others by Vendor.

XV. COMPLIANCE WITH LAWS- Vendor, in the performance of this Order, shall comply with the provisions of the Fair Labor Standards Act, as amended, as well as the Regulations and Orders of the Department of Labor issued thereunder, Executive Order No. 11246 as amended, the provisions of the Occupational Safety and Health Act of 1970, and all other applicable Federal, state, and local laws, regulations, rules and ordinances.

XVI. NOT A REQUIREMENTS CONTRACT - This Purchase Order shall not be considered a requirements contract for purchaser unless so noted on the face of this Purchase Order and may be terminated by Purchaser at the convenience of the Purchaser.

XVII. QUALITY ASSURANCE AND MISCELLANEOUS REQUIREMENTS - Vendor shall be and remain QS 9000, TS 16949, and ISO 9000 registered and compliant during the term of this Purchase Order. In the event that such standards are discontinued Vendor shall attain registration and compliance with equivalent then existing industry standards. Vendor shall, in the performance of work or services under this Purchase Order, fully comply with all applicable Federal, State, or local Laws, Rules, Regulations, or Ordinances and shall hold Purchaser harmless from any liability resulting from failure of such compliance.

XVIII. REMEDIES JURISDICTION, VENUE -The remedies provided Vendor herein shall be cumulative and in addition to any other remedies provided by law or equity. A waiver of breach of any provision hereof shall not constitute a waiver of any other breach. This Purchase Order is governed by laws of the State of Wisconsin which laws are incorporated herein by reference. Vendor agrees and consents to exclusive jurisdiction and venue in the state and federal courts of Waukesha County, Wisconsin.

XIX. FORCE MAJEURE - "Force Majeure" shall mean any causes reasonably beyond the control and without fault or negligence of the party affected thereby which cannot be foreseen, or, if foreseeable, cannot be avoided, which occur after the effective date of the Purchase Order and which wholly or in substantial part prevent or delay performance of obligations under the Purchase Order. If due to Force Majeure a party is prevented from or delayed in performance and provided that such party promptly following the commencement of such Force Majeure notifies the other party, in writing, expressly claiming Force Majeure then the obligations of the party giving such notice shall be suspended to the extent made necessary by such Force Majeure and during its continuance provide the party invoking Force Majeure takes reasonable steps to mitigate the effect of such Force Majeure. A party sending a notice of Force Majeure shall, upon termination of such Force Majeure, promptly notify the other party in writing. If due to Force Majeure Vendor is unable to deliver the full quantity of the items purchased, Purchaser may, by notice to Vendor at any time, require Vendor to deliver such percentage of the lesser output as Vendor can reasonably deliver under the circumstances. Deficiencies in shipment, failures to ship when agreed, inability to receive due to suspension, or reduction of obligations for reasons or Force Majeure shall, at Vendor's option, be made up in whole or in part even though subsequent deliveries occur after the delivery date. Purchaser shall exercise such option by written notice to Vendor.



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XX. WORK ON PREMISES. If items include work to be performed on premises specified by Purchaser, Vendor represents that it has or will examine the premises and any specifications or other documents furnished in connection with the items and satisfy itself as to the condition of the premises and site. Vendor agrees that no allowance shall be made in respect of any error as to any of the foregoing on the part of Vendor. Vendor shall abide by all requirements of Purchaser's Environmental and Safety Statement. Vendor shall at all times keep the premises free from accumulations of waste material or rubbish. At completion of the items, Vendor shall leave the premises and the items broom clean. Risk of loss or damage to Vendor's materials or equipment, or risk of personal injury or death to Vendor's employees or agents while on premises specified by Purchaser shall remain in Vendor. Purchaser shall have no responsibility or liability to Vendor and Vendor shall indemnify Purchaser against anyone claiming through Vendor, in respect to any loss or damage, or injury or death to Vendor's materials or equipment or employees or agents, respectively, notwithstanding the fact that facilities or storage space on such premises is provided by Purchaser. Vendor will provide Purchaser a certificate of insurance naming Purchaser as an additional insured.

XXI. COMPETITIVENESS, Improvements in productivity are required of Vendor. Vendor must remain competitive in all respects, including but not limited to price, quality, delivery and reliability. It is agreed that if new technology becomes available which would provide a different and more economical method of manufacture for the goods provided by Vendor, that Vendor shall have an obligation to undertake the implementation of such technology and processes. The savings achieved in connection with such improvements shall be divided equitably between the Parties with consideration given to the source of such savings and the capital or other expenditures required to achieve such savings. If the Vendor fails to maintain its competitive status, Purchaser may terminate this Agreement by giving three (3) months prior written notice of termination to Vendor, the "Termination Period". The Termination Period shall not be construed as a cure period.