



Purchase Order Terms & Conditions

In the terms and conditions listed herewith, and on the face of this Purchase Order, O.W. Lee, will be known as the BUYER and the Supplier or Suppliers as the SELLER.

THIS PURCHASE ORDER IS INTENDED TO CONSTITUTE AN OFFER TO PURCHASE THE GOODS OF THE SELLER AS HEREIN SPECIFIED. THIS OFFER EXPRESSLY LIMITS ACCEPTANCE TO THE TERMS OF THIS OFFER.

ACCEPTANCE MAY BE BY RECEIPT OF SELLER'S WRITTEN ACKNOWLEDGMENT OR BY SELLER'S PERFORMANCE. NONE OF THE TERMS AND CONDITIONS CONTAINED IN THIS PURCHASE ORDER MAY BE ADDED TO, MODIFIED, SUPERSEDED OR OTHERWISE ALTERED EXCEPT BY A WRITTEN INSTRUMENT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF BUYER AND DELIVERED BY BUYER TO SELLER. EACH SHIPMENT RECEIVED BY BUYER FROM SELLER SHALL BE DEEMED TO BE ONLY UPON THE TERMS AND CONDITIONS CONTAINED IN THIS PURCHASE ORDER NOTWITHSTANDING ANY TERMS AND CONDITIONS THAT MAY BE CONTAINED IN ANY ACKNOWLEDGMENT, INVOICE OR OTHER FORM OF SELLER AND NOTWITHSTANDING BUYER'S ACT OF ACCEPTING OR PAYING FOR ANY SHIPMENT OR SIMILAR ACT OF BUYER.

- 1. This Purchase Order is for immediate acceptance, limited by the terms of the Order as stated in Paragraph 1 hereof, and unless otherwise stated on the face, may be withdrawn until accepted by SELLER. BUYER shall have the right to cancel as to any goods not shipped or services not rendered within the required time.*

WARRANTIES OF SELLER. THE SELLER WARRANTS THAT THE GOODS SUPPLIED TO BUYER ARE FIT FOR THE PURPOSES INTENDED AND ARE OF MERCHANTABLE QUALITY, FREE FROM DEFECTS IN MATERIALS AND WORKMANSHIP AND FROM ALL LIENS AND CLAIMS OF TITLE, CLAIMS OF INFRINGEMENT OF PATENTS OR COPYRIGHTS BY REASON OF THE SALE OR USE OF THESE GOODS. SELLER FURTHER WARRANTS AND REPRESENTS THAT IT HAS COMPLIED WITH, AND WILL IN THE PERFORMANCE OF THIS PURCHASE ORDER AND ANY MODIFICATIONS OF IT, CONTINUE TO COMPLY WITH ALL FEDERAL, STATE AND LOCAL LAWS, ORDINANCES OR REGULATIONS.

- 2. SELLER shall indemnify and hold BUYER harmless from all claims, actions or proceedings caused by breaches of SELLER'S warranties, or by negligence in supplying goods or performing services under this Purchase Order and any modification thereof, without regard to the time of making or nature and validity of such claim. SELLER further agrees to hold BUYER harmless, and to indemnify and protect BUYER, against all liabilities, claim or damages to any person or property arising out of the performance of work by SELLER, its employees, or subcontractors. The indemnity provided herein shall include indemnification against any and all costs, damages and expenses of any kind or nature arising out of, or reasonably incurred, in contesting a claim of anyone that the manufacture, use, purchase or sale of any goods, or part thereof, which are the subject of this Order, constitutes an infringement or violation of any letters patent or trademark or tradename.*
- 3. Insurance. Seller will maintain insurance coverage in amounts requested by Buyer. Seller will furnish to Buyer a certificate showing compliance with this requirement or certified copies of all insurance policies within 10 business days of Buyer's written request. The certificate will provide that Buyer (and, if applicable, Buyer's customers) will receive 30 calendar days prior written notice from the insurer of any termination or reduction in the amount or scope of coverage. The existence of insurance does not release Seller of its obligations or liabilities under the Order.*
- 4. Goods received by BUYER are subject to count, weight, and inspection within a reasonable time after receipt. The cost of inspecting defective or nonconforming goods may be deducted from the purchase price, and at the BUYER's option, rejected goods may be returned to the SELLER at SELLER'S expense for full credit. Rejected goods shall not be replaced except upon replacement orders with approval of the Buyer. Payment for any goods is not acceptance, and inspection by the BUYER shall not relieve the SELLER of liability for breach of warranties or negligence. Furnishing by the SELLER of nonconforming goods shall give BUYER the right to cancel this entire Order without cost to BUYER.*
- 5. Where the seller, at the time of accepting Buyer's Purchase Order, either by starting work and/or acknowledging purchase order, has sufficient knowledge of the particular purpose for which the goods are*



required (Hand-crafted casual outdoor furniture) and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next paragraph an implied warranty that the goods shall be fit for such purpose.

In other words, unless properly disclaimed in the Purchase Order, an implied warranty of fitness for particular purpose arises when: (1) the seller knows, or should know, buyer's purpose for the goods; and (2) the seller knows, or should know, that buyer is relying on seller to supply what the buyer needs for that purpose.

Seller expressly guarantees, in the delivery of goods, per Purchase Order that the goods will be fit for the buyer's intended purpose (Hand-crafted casual outdoor furniture), and the seller then warrants that the item is fit for that particular purpose for 60 months from date of delivery to Buyer, unless otherwise agreed upon at time of purchase order acceptance.

- 6. Payment. Unless different payment terms are stated in the Order, Buyer will pay proper invoices within 30 days after receipt of the goods or services covered by such invoice from Seller. Payment made in United States dollars.*
- 7. Insolvency. The Order may be terminated immediately by Buyer without liability to Seller if any of the following or comparable events occur, (a) Seller becomes insolvent; (b) Seller files a voluntary petition in bankruptcy; (c) an involuntary petition in bankruptcy is filed against Seller; (d) a receiver or trustee is appointed for Seller.*
- 8. Changes. Buyer reserves the right to direct changes, or to cause Seller to make changes, to specifications, samples, or descriptions of Supplies. The buyer may also direct the supply of raw materials from itself or from third parties. In order for Seller to request a reasonable difference in price or time for performance as a result of such a change, Seller must notify Buyer of its request in writing within ten business days after receiving notice of the change.*
- 9. The SELLER shall not use or disclose any data, designs or other information belonging to or supplied by or on behalf of BUYER, except in the performance of this or other orders for BUYER. Upon BUYER's request, such data, designs, or other information and any copies thereof shall be returned to BUYER. Where BUYER's data, designs, or other information are furnished to SELLER'S suppliers for procurement of supplies by SELLER for use in the performance of BUYER's orders, SELLER shall insert the substance of this provision in its orders.*
- 10. BUYER shall be entitled to the sole benefit and exclusive ownership of any and all inventions and improvements in goods purchased pursuant to this Order, and all patents to the same, that may be made or discovered by SELLER, its employees and/or subcontractors in the process of fulfilling this Order. SELLER shall do all acts necessary or required to give effect to this section, including but not limited to, procuring from its employees and/or subcontractors the right to assign and transfer all such inventions, improvements, and patents thereto to BUYER. SELLER shall consent and acquiesce to BUYER's use of all such inventions, improvements, and patents thereto.*
- 11. Transportation of products to O.W. Lee must be following O.W. Lee's current Routing instructions. Ship Our Way We Pay, Ship Your Way, You Pay. No charges will be allowed for boxing, packing, crating, storage, or cartage without written agreement from O.W. Lee Buyer.*
- 12. Packaging; Marking; Shipping; Disclosure; Special Warnings or Instructions. Packing slips are the most important business documents, since they possess vital information to parties involved in any business transaction. Seller will: (a) properly pack, mark, and ship Supplies according to the requirements of Buyer and the relevant carriers; (b) route the shipments according to Buyer's instructions; (c) bar coded label {in standard code UCC128 or code 39} or tag each package according to Buyer's instructions; (d) provide documentation with each shipment showing the OW Lee Purchase Order number, type of good(s), quantity of pieces in the shipment, Buyer's part number(s), Seller's name, and the bill of lading number; and (e) promptly forward the original bill of lading or other shipment receipt for each shipment according to Buyer's instructions and carrier requirements.*



13. *Prerequisite for Supplier to Qualify for Dock to Stock: Supplier must incorporate Advanced Shipping Notice (ASN) electronic data interchange (EDI 856 Standard) message or extensible markup language (XML) format sent from the shipper to the Buyer prior to the departure of the shipment from the shipper's facility. The message includes complete information about the shipment and its contents providing information about when an order will be shipped, which items are being shipped, how many of each item is being shipped and physical characteristics about the shipment such as the shipment's weight, the number of boxes and a description of how the shipment units are packaged. An ASN, which is usually sent over the Internet in an electronic data information (EDI) or extensible markup language (XML) format. Smooth flows lead to timely payment and avoidance of deductions or chargebacks and less frequent audits on inbound orders.*
14. *Seller will promptly provide Buyer with material safety data sheets and (certificates of analysis) of any hazardous or restricted material requiring any special handling instructions that are needed to advise carriers, Buyer, and their employees how to take appropriate measures while handling, transporting, processing, using, or disposing of the Supplies, containers, and packing.*
15. *Tooling, Seller will not acquire any rights, title, or interest in or to the Tooling used to produce the Product of Buyer's furnished tooling, as well as any tooling that is a separately priced line item for tooling or equipment even if held and used by the Seller. Seller shall be responsible for the routine maintenance, storage, repair, usage, (within their useful life, fair wear and tear excepted) and calibration of all Tooling in Seller's possession for performance of this Agreement. The Seller may not take any action concerning the tooling that is inconsistent with the Buyer's ownership of the tooling.*
16. *Tooling Inventory Management a. The Seller shall furnish a Tooling Inventory of all Tooling owned by Buyer (active and inactive) in the Seller's possession. The Tooling Inventory shall be submitted to Buyer annually by January 31, or upon request by Buyer at any time. The Tooling Inventory shall contain the following information for each piece of Tooling owned by Buyer: i. Tool part number(s) (typed in numerical order) ii. Current tool revision iii. Description of Tool iv. Date of last ordered of Tool v. Total cost of Tool vi. Quantity of parts produced from Tool vii. Remaining Tool life viii. Any previous part number if Tool has been changed to produce a new part number b. While Buyer's Property is in Seller's possession and until Seller delivers Buyer's Property back to Buyer, Seller bears the risk of loss, theft, and damage to Buyer.*
17. *Return of Buyer's Tooling: Seller agrees that Buyer has the right, at any time and from time to time, with or without reason and without payment of any kind, to retake possession of or request the return of Buyer-owned Tooling. Without further notice or court hearings, which rights, if any, are hereby waived, Buyer or its designee(s) will have the right to enter Seller's premises and take possession of any and all of Buyer's Tooling. Upon Buyer's request and in accordance with Buyer's instructions, Buyer's Tooling will be immediately released to Buyer or delivered to Buyer by Seller, either (i) Ex Works (Incoterms 2010) at Seller's plant properly packed and marked in accordance with the requirements of the carrier selected by Buyer to transport such Buyer's Property or (ii) to any location Buyer designates, in which event Buyer will pay Seller the reasonable costs of delivering Buyer's Property to the location Buyer designates. If Seller does not release and deliver any Buyer's Tooling in accordance with this Article, Buyer may obtain an immediate writ of possession without notice and without the posting of any bond and/or enter Seller's premises, with or without legal process, and take immediate possession of Buyer's Tooling.*
18. *Stenographic and clerical errors are subject to correction, but except for such corrections and unless otherwise mutually agreed, all quantities, prices, shipping dates and descriptions are absolute, and no substitute performance is permitted.*
19. *Neither SELLER nor BUYER shall be liable for delays occasioned by unforeseeable causes beyond their respective control and without their fault or negligence; provided, however, that if any such delay occurs, BUYER shall have the option to cancel all or any part of this Order and shall also have the right to acquire goods furnished, work in process and special raw materials set aside for the performance of this Order, upon payment of the reasonable proportion of the price.*
20. *Any money due for goods furnished hereunder may, at BUYER's option, be applied by BUYER to the payment of any sums which SELLER may owe to BUYER.*



21. *This Purchase Order and the agreement between the BUYER and SELLER shall be governed by the commercial code and other applicable laws of the State of Texas.*
22. *Termination for Breach or Nonperformance. Buyer may terminate all or any part of the Order, without liability to Seller, if Seller: (a) repudiates, breaches or threatens to breach any of the terms of the Order; (b) fails or threatens not to deliver Supplies or perform services in connection with the Order; (c) fails to make progress or to meet reasonable quality requirements so as to endanger timely and proper completion or delivery of Supplies and does not correct the failure or breach within 10 business days (or such shorter period of time if commercially reasonable under the circumstances) after receipt of written notice from Buyer.*
23. *Termination for Convenience. In addition to any other rights of Buyer to cancel or terminate the Order, Buyer may at its option immediately terminate all or any part of the Order at any time and for any reason by giving written notice to Seller. Upon receipt of notice of such termination, and unless otherwise directed by Buyer, Seller will promptly terminate all work under the Order and transfer title and deliver to Buyer the finished Supplies, the work in process, and the parts and materials that Seller reasonably produced or acquired according to quantities ordered by Buyer and that Seller cannot use in producing goods for itself or for others. Upon termination by Buyer under this Section, Buyer will be obligated to pay only the following: (i) the Order price for all finished Supplies in the quantities ordered by Buyer that conform to the Order; and (ii) Seller's reasonable actual cost of work-in-process and the parts and materials transferred to Buyer pursuant to the preceding sentence. Notwithstanding any other provision, Buyer will have no obligation for and will not be obligated to pay Seller for loss of anticipated profit.*
24. *Force Majeure. Any delay or failure of either party to perform its obligations will be excused if and to the extent that it is caused by an event or occurrence beyond the reasonable control of the party and without its fault or negligence, such as: acts of God; restrictions, prohibitions, priorities or allocations imposed or actions taken by a governmental authority; embargoes; fires; explosions; natural disasters; riots; wars; sabotage; inability to obtain power; or court injunction or order.*
25. *Confidentiality. Seller acknowledges that proprietary and confidential information will be received from Buyer or developed for Buyer under the Order, regardless of whether such information is marked or identified as confidential. Seller agrees to keep all proprietary or confidential information of Buyer in strictest confidence, and further agrees not to disclose or permit disclosure to others or use for other than the purpose of the Order, any proprietary and confidential information of Buyer. Following the expiration or termination of the Order, upon Buyer's request, Seller will promptly deliver to Buyer any and all documents and other media, including all copies thereof and in whatever form, that contain or relate to Buyer's confidential or proprietary information. Seller's obligation under this Section will continue for a period of five years from the date of disclosure of information covered by this Section unless a longer period is specified in writing by Buyer.*
26. *Relationship. Seller and Buyer are independent contracting parties and nothing in the Order will make either party the employee, agent, or legal representative of the other for any purpose. The Order does not grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.*
27. *Governing Law; Arbitration; Authority. The Order is to be construed according to the laws of the State of Texas. At Buyer's option, exercised by written notice any time before or within 30 calendar days following the service of process in a legal action, any dispute regarding the Supplies, the Order, the validity of the Order or any of these Purchase Terms, or any other matter between the parties (other than requests for injunctive relief) will be resolved by binding arbitration using a single arbitrator selected by the parties. The arbitration will be conducted under the commercial arbitration rules of the American Arbitration Association (AAA) in a location agreed by the parties; if the parties cannot agree on a location within 30 calendar days of either party's written request for arbitration, the arbitration will be conducted in metropolitan San Antonio, TX USA; and (c) if the parties cannot agree on an arbitrator within 30 calendar days of the selection of the arbitration location, each party will select a person from the AAA-approved commercial arbitrator list and those two people will jointly select a third person from such list who will conduct the arbitration as the sole arbitrator.*



28. *Severability; No Implied Waiver. If any term of the Order is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, the term will be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with applicable law. The remaining provisions of the Order will remain in full force and effect.*
29. *Survival. The obligations of Seller to Buyer survive termination of the Order, except as otherwise provided in the Order.*
30. *This Order shall not be assigned without BUYER's written consent.*
31. *Intentionally Left Blank*
32. *This writing is intended as a complete and exhaustive statement of the terms of the agreement between BUYER and SELLER provided that the BUYER's remedies shall be cumulative and additional to remedies provided in law or in equity. Acceptance of performance or waiver of rights by the BUYER is without prejudice to the right to demand strict performance at any time and to recover damages, if any, for previous non-compliance.*
33. *End of Purchase Order Terms & Conditions*