

3M Purchase Order Terms

Form 80 - 131 - J

These terms ("Terms") are incorporated in any purchase order ("Order") for goods and other deliverables (referred to as "Goods") and services ("Services") issued by 3M Company ("3M") to the supplier providing the Goods and/or Services identified in that Order ("Seller"), except to the extent any Terms conflict with a written agreement between 3M and Seller (the "Parties"), or other written terms 3M has provided to Seller, that specifically cover that transaction.

1. **SCOPE.** Seller has accepted an Order (including these Terms) if Seller gives a verbal, written or electronic acknowledgement of, or initiates performance under, that Order. By accepting an Order, Seller's acceptance is limited to the Order's terms (which include these Terms). No additional or conflicting term in any Seller acknowledgement, invoice, bid, proposal, or other documentation is binding on 3M, unless 3M specifically agreed to it in writing. All Goods and Services will be delivered to 3M in strict conformance with any packaging, product and/or service standards, specifications, and other requirements provided by 3M or approved in writing by 3M (the "Requirements").
2. **DELIVERY.** Unless otherwise stated in the Order: (a) if Seller is responsible for shipping Goods, Seller will ship Goods via the most economical route and in a single shipment; (b) all Goods provided within a single country will be delivered to 3M's designated carrier FCA (Incoterms 2000) Seller's site identified in the Order; and (c) all Goods provided internationally will be delivered to 3M's designated carrier FCA (Incoterms 2000) port of export. Seller will deliver all Goods and Services within the time period stated in the Order, unless 3M specifies a longer, or the Parties agree to a shorter, time period. Seller will make no charge for any packing, crating, storage, insurance, shipping, or delivery expense, unless authorized in the Order. Seller will pay any excess costs due to failure to follow 3M's shipping instructions. If Seller delivers any Goods amount other than that stated in the Order without 3M's prior written consent, 3M may return any of that delivery, at Seller's expense. 3M's determination of the Goods' count and weight is conclusive, unless Seller encloses a packing slip stating a different amount. **TIME IS OF THE ESSENCE FOR ALL ORDERS.** If any Goods will be shipped from another country into the United States, then Seller will secure its facilities and all of its shipments made to a 3M-designated site in accordance with the then-current U.S. Customs-Trade Partnership Against Terrorism ("C-TPAT") security guidelines, which are available at the U.S. Customs Department website (www.cbp.gov).
3. **PRICES AND PAYMENT.** Goods and Services will be delivered to 3M for the price stated in the Order. Unless the Order states different payment terms, payments are two percent/twenty net sixty to be paid in United States dollars. 3M's payments may be adjusted for Seller's errors, defects or non-compliance with the Order (including these Terms). Each invoice must relate to only one Order, and be issued and dated no earlier than the date on the Goods' and/or Services' delivery date. Each Seller invoice and all related documents (such as packaging lists, bills of lading, freight bills and correspondence) must include: (a) Order number; (b) applicable Order line item number(s) and unit of measure; and (c) 3M's identification number (if provided by 3M). Seller warrants that the prices being paid by 3M are not affected by collusion or any other anti-competitive activity.
4. **ORDER CHANGE, SUSPENSION OR CANCELLATION.**
 - 4.1 3M may change an Order by giving electronic notice to Seller prior to shipment of the applicable Goods or performance of the Services. If any Order change causes an adjustment in price or delivery date, the Parties will make an equitable adjustment and modify an Order accordingly, provided that Seller gives 3M notice of that adjustment claim within three business days after receipt of 3M's Order change notice. 3M may require Seller to suspend all or part of Seller's performance under an Order for up to twelve consecutive calendar months. Seller will suspend performance and resume performance, as directed by 3M. If any Order suspension causes an adjustment in price, the Parties will make an equitable adjustment and modify an Order accordingly, provided that Seller gives 3M notice of that adjustment claim within three business days after receipt of 3M's Order suspension notice.
 - 4.2 3M may cancel an Order, without cause, at any time by electronic or written notice to Seller, but if 3M's notice of cancellation is issued less than five days prior to a scheduled Goods delivery date or Services performance date, then Seller will be entitled to reimbursement for: (a) if Goods, any unique raw materials that cannot be returned to Seller's supplier or sold to other Seller customer(s) and are necessary to provide those Goods due on that delivery date; or (b) if Services, the fees for those Services completed prior to the termination and Seller's actual, out-of-pocket expenses paid to third parties that are not refundable and were reasonably necessary to provide those Services. If Seller fails to comply with all of an Order's Terms or admits its inability to meet its financial obligations, or it otherwise becomes apparent that Seller will not be able to fulfill its obligations under that Order due to Unavoidable Delay or other cause, then 3M may cancel an Order at any time by electronic or written notice to Seller without any liability of any kind to Seller, in addition to any other legal or equitable remedies 3M may have.
5. **TRADEMARKS.** Seller will use a 3M trademark, tradename, or corporate logo ("3M Mark") only if required by the Requirements. Seller will, at 3M's direction, return to 3M or destroy all materials containing a 3M Mark. While Seller is providing Goods and/or Services for 3M and at any time thereafter, Seller will not use 3M's name or 3M Mark in any manner, including promotional or advertising materials, or otherwise assert affiliation with 3M or a 3M affiliate, except with 3M's prior written consent in each instance.
6. **3M MATERIAL & 3M EQUIPMENT.** 3M owns any material 3M provides to Seller, including, without limitation, raw material, databases, or documents ("3M Material") and any tooling or other equipment that 3M provides to Seller or for which 3M reimburses Seller ("3M Equipment"). Seller authorizes 3M to file UCC financing statements and other documentation without Seller's signature to acknowledge 3M's ownership of these items. Seller will not sell, pledge, transfer or remove from Seller's facility any 3M Material or 3M Equipment. Seller will use all 3M Material and 3M Equipment solely to perform its obligations under Orders and for no other purpose. Seller will not alter any 3M Equipment. Seller will use its best efforts to maintain the security and confidentiality of all 3M Material and 3M Equipment. Seller has all risk of loss or damage to 3M Equipment and 3M Material, and will, at 3M's request, immediately restore or replace any damaged or lost 3M Equipment or 3M Material with an equivalent item. Promptly on 3M's request, Seller will return to 3M all 3M Equipment and unused 3M Material in their original condition, except for reasonable wear, with 3M liable only for crating and shipping costs. Seller will maintain all 3M Equipment in a safe and proper condition and indemnify 3M for, and defend it against, all claims arising out of Seller's use of 3M Equipment. If the Parties establish 3M Material loss allowances, Seller will reimburse 3M for any excess losses, at 3M's delivered cost to Seller. Seller will inspect 3M Material that will be incorporated into Goods and promptly inform 3M of any non-compliance with the Requirements.
7. **WARRANTIES & REMEDIES.**
 - 7.1 In addition to all implied and express warranties available under the Uniform Commercial Code ("UCC") and/or these Terms, Seller warrants that: (a) all Goods and Services will be free from any encumbrance and conform to all Requirements and the applicable Order; (b) all Goods will be without any defect in design (except to the extent designed by 3M), manufacture, processing, materials and workmanship; (c) all Goods will be made or processed, and all Services will be performed, in compliance with all applicable international, national, state and local statutes, regulations, rules, government directives, and rulings ("Laws") and with sound environmental, health and safety practices. Seller also warrants that: (x) Seller has the expertise, and resources to perform its obligations under any Order (including these Terms); (y) no Good or Service infringes on any third party's intellectual property rights; and (z) Seller has no third party obligations that conflict in any way with Seller's obligations under these Terms.

7.21 In addition to all available remedies, 3M may reject any Goods or Services not meeting Seller's warranties, and: (a) obtain substitutes and offset, or require Seller to reimburse 3M for, all additional costs associated with the substitutes; or (b) require Seller, at 3M's option, to either replace the affected Goods or re-perform the affected Services without charge, or to reimburse 3M that Good's price, plus any 3M Material's delivered cost, or that Service's price. 3M may, but is not obligated to, inspect or test Goods and Services at 3M's premises, Seller's premises or those of any Seller subcontractor performing under an Order. 3M's acceptance of delivery, inspection, or payment for any Good or Service does not waive any of Seller's warranties or other obligations. Seller will use its best efforts to assist 3M in investigation of, and corrective action for, 3M customer complaints related to the Goods and/or Services.

8. COMPLIANCE WITH LAWS & PRODUCT CONTENT.

8.1 Before or at shipment of any Good that requires a Material Safety Data Sheet ("MSDS"), Seller will deliver a current and complete MSDS to 3M. Seller warrants that each Good is in compliance with, or exempt from, all applicable chemical control Laws ("Chemical Control Laws"), including, without limitation, the United States Chemical Control Law known as "TSCA" and any other Chemical Control Law(s) referenced in an Order. Seller will promptly inform 3M in writing of any change in a Good's regulatory status under any Chemical Control Law.

8.2 Goods, or 3M's products to which Goods relate, may need to comply with all applicable Laws that restrict product content, including, but not limited to, the European Union's Directive on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment, known as "RoHS." Seller warrants that Goods (exclusive of any 3M Material) will not contain any of the following substances in excess of the following maximum concentration values in any homogeneous material ("Restricted Values") unless the applicable Specifications specifically permit that substance in a higher concentration value: (a) 0.1% (by weight) for each of lead, mercury, hexavalent chromium, polybrominated biphenyls or polybrominated diphenyl ethers; or (b) 75 parts per million for cadmium. Seller will provide to 3M: (i) satisfactory documentation that all non-3M Material do not exceed the Restricted Values; (ii) certification of the exact concentration of each substance subject to the Restricted Values in all non-3M Material so 3M can determine if 3M Material combined with non-3M Material do not exceed the Restricted Values; and (iii) reports on the occurrence of other substances that may require disclosure to governmental bodies, customers and/or recyclers by completing the supplier questionnaires provided by 3M.

8.3 Seller warrants that all Seller employees, agents, and subcontractors ("Seller Personnel") performing any of Seller's obligations under an Order will have employment authorization that complies with all applicable Laws. On 3M's request, Seller will provide 3M with all documentation and information 3M requires to conduct an export control license assessment relating to Seller Personnel. If 3M determines that an export license is needed for certain Seller Personnel, 3M may, in its discretion, pursue that export license or instruct Seller not to use that Seller Personnel to perform Seller's obligations under an Order. Seller warrants that no Seller Personnel performing any of Seller's obligations under an Order is on the U.S. government's "Restricted Parties Lists," which are: (a) the Commerce Department's Entity List, Denied Persons List, and Unverified List; (b) Treasury Department Specially Designated Nationals & Blocked Persons List; and (c) State Department Debarred Parties List.

8.4 If Seller provides any finished electrical and/or electronic Products to 3M and a Product's Specifications indicate that it is subject to the European Union's Waste Electrical and Electronic Equipment Directive or any related standards (collectively referred to as "WEEE"), then Seller will: (a) mark that Product at no cost to 3M with the WEEE symbol and any other WEEE-required markings; (b) within ten business days after that Product's first delivery, provide to 3M the WEEE-required information for treatment and recycling facilities by completing the 3M-approved form for this purpose and provide instructions for that Product's disassembly by a treatment and recycling facility; and (c) design (to the extent designed by Seller) and produce that Product with goals of facilitating their dismantling, recovery, reuse and recycling. Seller will not prevent, through specific design features or manufacturing processes, any Product subject to WEEE ("WEEE Product") from being reused, unless those features or processes present overriding advantages, such as environment protection and/or safety requirements. To the extent designed by Seller, Seller will design all WEEE Products to: (a) meet energy efficiency standards and maximize energy efficiency; and (b) reduce or minimize WEEE Products' weight as is feasible.

9. CONFIDENTIAL INFORMATION.

9.1 The term: (a) "products" as used only in this Section 9 means all products manufactured or sold by or for 3M or services performed for 3M, including the Goods and Services; and (b) "3M Confidential Information" means information or tangible materials, whether or not designated by 3M as confidential, pertaining to: (i) product development, design, formulations, composition, research and development, or specifications; (ii) product manufacturing techniques, rates or quantities; (iii) equipment used to make products; (iv) any other aspects of 3M's business relating to products and services, including without limitation marketing, sales, customers and non-public financial data; (v) all Orders placed by 3M; and (vi) the Parties' relationship.

9.2 Seller will: (a) keep all 3M Confidential Information confidential; (b) use 3M Confidential Information only as necessary to perform Seller's obligations under the Agreement; and (c) assure that its employees, agents, and 3M-approved subcontractors abide by these confidentiality obligations. If Seller receives any tangible materials constituting 3M Confidential Information, then Seller will return those to 3M, on 3M's request or at the end of the applicable Order. 3M Confidential Information does not include information that is: (x) available to the public in any publication; (y) known to Seller prior to its receipt from 3M as evidenced by Seller's written records; or (z) available to Seller from another source without breach of any agreement or violation of law. If required by judicial or administrative process to disclose 3M Confidential Information, Seller agrees to promptly give 3M notice, allow 3M reasonable time to oppose such process, and seek to have the third party treat the information confidentially to the extent legally permissible.

10. **PERSONAL INFORMATION.** "Personal Information" means information about a particular individual that, on its own or in combination with other information, identifies an individual, in any form and any media. Seller may access, collect, or process Personal Information during its performance under an Order. Seller must keep all that Personal Information confidential, use it only as necessary to perform Seller's obligations under an Order, and promptly notify 3M of any judicial process that might require its disclosure. Seller will, at 3M's option, either return or destroy all that Personal Information on 3M's request. In addition, Seller will: (a) create, obtain, process and use Personal Information only in compliance with all applicable Laws; (b) restrict access to Personal Information to only those Seller employees as is necessary to perform Seller's obligations under an Order; (c) ensure that all Seller employees with such access have obligations as strict as Seller's obligations under this Section and have been informed of those obligations; (d) use security measures to protect all Personal Information from unauthorized access, use, disclosure, alteration or destruction; (e) maintain any records that include Personal Information in accurate and current form; (f) on 3M's request, provide reasonable assistance with updating, correcting, verifying, and providing individuals with access to their Personal Information related to an Order; and (g) promptly notify 3M if any unauthorized person accesses, uses, or discloses any Personal Information related to an Order, or if any individual requests access to, correction of, or revokes consent for, Personal Information related to an Order.

11. **PRODUCTION DISCONTINUATION.** Prior to Seller's discontinuing the manufacture or sale of any Good identified in any Order issued by 3M during the preceding twelve months: (a) Seller will fill all current Orders for that Good; (b) Seller will give 3M at least six months' prior written notice of that discontinuation; and (c) 3M will have the right to issue a last-time buy Order for, and Seller will deliver, that discontinued Good at its then-current price in an amount up to 3M's largest twelve-month purchase volume (based on Orders issued).

12. **INDEMNIFICATION & INSURANCE.** Seller will indemnify, defend, and hold harmless 3M, its affiliates, and their successors, assigns, officers, directors, employees, and agents for, from and against any claim, liability, loss, damage, lien, judgment, duty, fine, civil penalty and cost, including attorneys' fees and litigation expenses, arising out of: (a) Seller's failure to comply with any of its obligations under an Order (including these Terms), which may include, without limitation, those relating to a resulting Good recall or other reasonable action 3M takes regarding any such failure; and (b) claims arising out of handling, packaging, labeling, storage, treatment, removal, transportation, and disposal of any waste material at any Seller site or related to the Goods under any Laws, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Sections 9601 et seq. as amended, known as "CERCLA"), the Hazardous Materials Transportation Act (49 U.S.C. Sections 5101 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. Sections 6901 et seq., known as "RCRA"), or any other current or future Law of similar effect. These indemnities do not affect any other 3M remedies. Seller will at all times maintain liability, property damage, and other insurance to protect 3M from all the foregoing risks, and will, on request, supply certificates evidencing this coverage.
13. **U.S. GOVERNMENT CONTRACTS.** To the extent required by applicable U.S. federal Laws, the following Federal Acquisition Regulation ("FAR") clauses and Defense FAR Supplement ("DFARS") clauses, as in effect on an Order's date, are hereby incorporated by reference and made a part of each Order: (a) FAR 52.219-8, Utilization of Small Business Concerns; (b) FAR 52.222-26, Equal Opportunity; (c) FAR 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans; (d) FAR 52.222-36, Affirmative Action for Workers with Disabilities; (e) FAR 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees; (f) FAR 52.222-41, Service Contract Act of 1965, as Amended; (g) FAR 52.222-50, Combating Trafficking in Persons (Seller will send to 3M the notification required in its paragraph (d) for 3M to forward to the contracting officer); (h) FAR 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels; (i) DFARS 252.247-7023, Transportation of Supplies by Sea; and (j) DFARS 252.247-7024, Notification of Transportation of Supplies by Sea. By accepting or beginning performance of any Order, Seller certifies that: (i) to the extent required by applicable U.S. Laws, it complies with FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions; and (ii) neither Seller nor any of its principals is debarred, suspended, or proposed for debarment, from the award of contracts by the U.S. Government. If Seller cannot provide any of these certifications, or subsequently becomes aware that any certification is incorrect for any reason, Seller must immediately notify 3M in writing.
14. **UNAVOIDABLE DELAY.** If a Party cannot perform its obligations, in whole or in part, under an Order as a result of civil or military authority, war, flood, fire, epidemic, or other condition or cause beyond its reasonable control and not related to its fault or negligence (an "Unavoidable Delay"), that Party will be excused from that performance during the Unavoidable Delay to the extent that performance is prevented or delayed. If Seller has an Unavoidable Delay, 3M may modify or terminate any Orders on notice to Seller without liability to Seller. During a Seller Unavoidable Delay period, Seller will allocate any available Goods as is fair and reasonable. Unavoidable Delay will not include: (a) any labor dispute; (b) non-performance by Seller's supplier, unless the goods or services were unobtainable from another 3M-approved source in a reasonable time; or (c) any delay preventable by Seller moving the affected Goods to an alternate 3M-approved Seller facility.
15. **SELLER WAIVER OF DAMAGES.** 3M WILL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO SELLER FOR SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS) IN ANY WAY RELATED TO GOODS, SERVICES, AN ORDER, OR ITS TERMINATION, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY ON WHICH THE DAMAGES ARE SOUGHT.
16. **DISPUTE RESOLUTION.** Any claim or dispute arising from, or relating to, a Good, Service, or an Order (including these Terms) will be: (a) governed by the laws of the State of Minnesota, United States of America, without regard to its conflicts of law provisions; and (b) must only be litigated in a federal or state court of competent jurisdiction in Ramsey County, Minnesota. Each Party consents to the Minnesota courts' personal jurisdiction. Each Party will bear its own costs in dispute resolution, except that if a Party commences litigation, the losing Party in that litigation will pay all the prevailing Party's attorneys' fees, court costs, and other expenses related to that litigation. The 1980 United Nations Convention on Contracts for the International Sales of Goods will not govern an Order. All negotiations will be conducted in English, and all documents, including all Orders, will be written in English.
17. **NOTICES.** Unless otherwise stated in these Terms, any permitted or required notice must be in writing and personally delivered, including via any internationally recognized overnight service: (a) to 3M at: 3M Sourcing Operations, Building 0216-02N-007, 3M Center, St. Paul, Minnesota USA 55144-1000, Attention: Vice President; and (b) to Seller at the address to which the applicable Order was sent. Notice of a Party's address change will be given as stated above.
18. **GENERAL TERMS.** Each Order (including these Terms) is the Parties' final and complete agreement, and it terminates all their prior written or oral agreements and understandings as to that Order's subject matter except: (a) for any additional Seller obligations in a Bidding Participation Agreement; and (b) no Order is intended to terminate or supersede any existing confidentiality or intellectual property agreement by the Parties, including, without limitation, a General Supplier & Patent Agreement or Supplier Agreement. All these Terms including, without limitation, those relating to safety, regulatory compliance, warranty, insurance, indemnification, confidentiality, will survive an Order's end and be fully enforceable thereafter to the full extent necessary to protect the Party in whose favor they run. A Party's failure(s) to insist on strict performance, or to exercise its rights, under an Order, does not waive subsequent compliance with that Order. All 3M rights and remedies under an Order are cumulative, and in addition to any other rights and remedies provided in law or equity. Seller may not assign an Order or any of its rights or obligations under an Order, including, without limitation, any subcontracting ("Assignment"), without 3M's prior written consent. No purported Assignment by Seller is binding on 3M without its written consent. No 3M consent to a Seller Assignment relieves Seller of any obligations under an Order, and Seller will ensure that any full assignee assumes all of Seller's obligations under these Terms and that any subcontractor is bound by terms as stringent as these Terms. Except as otherwise provided in these Terms, an Order may only be modified by a written document signed by the Parties' authorized representatives.