

CHIRON AMERICA, INC. TERMS AND CONDITIONS OF PURCHASE

- 1. Acceptance of Purchase Order.** This document, including the terms on the front side which are incorporated herein by reference (collectively, the “**Order**”) constitutes the terms and conditions by which Chiron America, Inc. (“**Chiron**”) is to purchase from the party designated as the vendor on the front side (“**Seller**”) the goods (collectively, the “**Goods**”) and the services (collectively, the “**Services**”) described on the front side. Seller shall promptly acknowledge receipt of this Order. Seller shall be deemed to have accepted this Order by any reasonable indication of acceptance, including without limitation (i) if it fails to object to Chiron, in writing, within 10 days of receipt of this Order, or (ii) if it ships the Goods to Chiron. Seller’s acceptance, however made, is expressly limited to the terms of this Order, and Chiron objects to all additions, exceptions, or changes to these terms and any alternate or different terms whether contained in any printed form of Seller or elsewhere unless expressly approved by Chiron in writing. Any terms and conditions set forth on the front side of this Order shall control over any inconsistent terms or conditions below.
- 2. Delivery; Risk of Loss.** Unless this Order expressly provides otherwise, Seller shall deliver all Goods FCA Seller’s location specified in this Order and shall bear all risk of loss with respect to the Goods until Chiron actually receives and accepts the Goods. Time is of the essence with respect to the delivery of the Goods and performance of the Services. Chiron shall have the right to inspect the Goods and the Services before accepting them. Chiron shall have a reasonable period of time after it discovers a defect or nonconformity to reject the Goods or the Services or to revoke its acceptance of the Goods or the Services. If Chiron rejects the Goods or the Services or revokes its acceptance of the Goods or the Services, and Seller does not deliver conforming Goods or re-perform the Services on or before the delivery date specified in this Order, Chiron shall have the right, at Chiron’s election, to terminate all or a portion of this Order and to obtain an immediate refund from Seller of all payments Chiron has made with respect to that portion of this Order Chiron has terminated. Seller shall pay all costs Chiron incurs in (a) rejecting the Goods or the Services or revoking its acceptance of the Goods or the Services or (b) holding those Goods or returning them to Seller. Seller shall comply with all of Chiron’s labeling requirements for the Goods.
- 3. Warranties.** In addition to all warranties provided by law or provided in this Order, Seller represents, warrants and covenants to Chiron that: (a) Seller shall deliver to Chiron good, exclusive and marketable title to the Goods free and clear of all liens, security interests, claims, and encumbrances; (b) for a period of 12 months after delivery, or any longer period specified in this Order, the Goods shall be free from defects in materials and workmanship; (c) the Goods shall be free from infringement of any patent, copyright, trademark or other proprietary right of a third party; (d) the Goods shall comply fully with all descriptions, specifications, drawings and other terms provided by Chiron, including without limitation any specified on the front side of this Order; (e) the Goods shall be manufactured, labeled, sold and shipped in compliance with any and all applicable laws, rules and regulations of governmental authorities (including, without limitation, import/export and customs clearance regulations, and consumer product safety regulations); (f) Seller shall perform the Services in a professional and workmanlike manner, in accordance with the standards of care, thoroughness and competence normally practiced by recognized firms in the industry performing services of a similar nature and in full compliance with all final written descriptions, specifications, drawings and representations Seller provides to Chiron, including those specified in this Order; and (g) the prices and other terms that Seller offers to Chiron with respect to the Goods and the Services, taken as a whole, shall be at least as favorable to Chiron as those Seller offers to any other person or entity for similar quantities. Without limiting Chiron’s remedies, Seller shall immediately repair or replace, at Chiron’s election, all Goods and re-perform all Services that do not comply fully with these warranties. Any warranty period set forth above shall be extended by 12 additional months (or any longer period specified in this Order) after any repair or replacement with respect to the affected Goods or any re-performance with respect to the affected Services. In addition and without limiting the warranties granted in this Order by Seller, in the event Seller is not the manufacturer of the Goods, Seller shall provide Chiron with a copy of any and all warranties issued by the third party manufacturer, and Seller hereby assigns all rights relating to such warranties to Chiron.
- 4. Price.** The Price for the Goods supplied and the Services performed shall be the amount designated on the front side of this Order. Unless otherwise specified, such price includes all charges for cartage, packing, boxing, labeling, hauling, storage, transportation to the point of delivery, freight insurance, taxes, and installation.
- 5. Payment; Discounts.** Unless this Order expressly provides otherwise (i) Chiron shall pay all of Seller’s invoices within 30 days after Chiron accepts the Goods or the Services and (ii) all payments shall be made in U.S. dollars to Seller. Seller shall not send Chiron an invoice for the Goods or the Services until those Goods and Services are delivered to or performed for Chiron. All of Seller’s invoices shall refer to this Order and contain its number. Any prompt payment discount Seller offers Chiron shall be determined using the date Chiron receives a correct invoice and not the date of any incorrect invoice.
- 6. Cancellation and Delay.** Chiron shall have the right at any time to cancel all or part of this Order or to delay the delivery or performance date of some or all of the Goods or the Services, for any reason, including at its convenience, by giving Seller written notice, without liability. In the event of such notice of cancellation or delay, Seller must notify Chiron within 10 days thereafter of any request for an equitable adjustment to the price or delivery terms, pursuant to the terms in this Order, to reflect changes in Seller’s cost or delivery schedule caused by the changes. If Chiron cancels all or a portion of this Order, unless this Order expressly provides otherwise, Chiron shall pay Seller reasonable cancellation charges agreed to in writing by the parties, but consisting solely of direct costs for labor and materials for the portion of this Order cancelled that was expended by Seller before the cancellation, minus the salvage amount that Seller can realize by selling or using any materials. If Chiron delays the delivery or performance date of some or all of the Goods or the Services under this Order, Chiron shall pay Seller reasonable delay charges agreed to in writing by the parties, but which shall consist solely of necessary increases in the direct costs of labor or materials for the portion of this Order delayed and for which Seller has not been otherwise compensated. Seller shall take all reasonable actions to minimize any cancellation or delay charges and shall provide an accurate accounting of all charges to Chiron at the time Seller makes a request for payment of those charges. Cancellation and delay charges shall not include any incidental, consequential or indirect charges, expenses or damages. If the sum of Chiron’s prior payments and deposits under this Order exceed the cancellation and delay charges, Seller shall promptly refund the balance to Chiron.
- 7. Indemnification.** Seller shall defend, indemnify and hold harmless Chiron and its subsidiaries, affiliates, directors, officers and employees from and against all claims, demands, losses, damages, liabilities, obligations, and attorneys’ and other professionals’ fees and expenses arising out of or relating to: (a) any claim that the Goods or the Services or the use of the Goods or the Services by Chiron or its customers infringes any patent, copyright, trademark, trade name, service mark, trade secret or other property right; (b) any breach of a warranty by Seller; (c) any claim that the Goods are defective or caused personal injury or property damage; and (d) any act or omission of Seller or its employees, contractors and agents in the performance of the Services, including any claim arising out of Seller’s failure to comply with applicable laws, rules, regulations or orders. In the case of a claim that the Goods are infringing, Seller shall have the right, at its sole expense, to obtain for Chiron the right to continue using the Goods without interference or to modify or replace the Goods in a manner acceptable to Chiron in its sole discretion. Chiron shall give Seller reasonable notice of any claim Chiron contends falls within this indemnification, provided any failure to do so shall only limit Seller’s obligations to the extent Seller is directly prejudiced by such delay. This indemnification section shall survive the delivery and acceptance of the Goods or any termination of this Order for any reason.
- 8. Confidentiality.** Seller shall keep confidential and not disclose, directly or indirectly, to any person any confidential information of Chiron or its affiliates, and shall not use, directly or indirectly, any information (including confidential information) of Chiron or its affiliates, except Seller may use such information, and may disclose such information to employees who have a need to know, in order for Seller to perform its obligations under this Order. Seller shall not use Chiron’s name or the fact that Seller is selling Goods or Services to Chiron in any press releases, media statements or communication to third parties or publicize this Order without Chiron’s prior written consent.
- 9. Default.** If Seller defaults under any term of this Order, Chiron shall be entitled: (a) to suspend its performance under this Order; (b) to terminate this Order and have no further obligation to Seller; (c) to declare all or part of Seller’s obligations to Chiron under this Order immediately due and payable; and (d) to pursue any other right or remedy Chiron may have. Chiron shall be entitled to set off any claims and amounts owed by Seller against all amounts Chiron owes Seller under this Order or otherwise.
- 10. Assignment.** Without limiting Chiron’s rights to transfer and assign this Order, Chiron may transfer and assign any warranties and other rights and remedies under this Order to any customer of Chiron that purchases, leases or uses any machine or item that includes any of the Goods supplied by Seller under this Order. Seller shall not assign, delegate or subcontract all or any portion of this Order (whether by merger, operation of law, or otherwise) without the prior written consent of Chiron. Any attempted assignment, delegation or subcontracting without Chiron’s prior written consent shall be ineffective and void.
- 11. Applicable Law.** This Order, the purchase and sale of the Goods and the performance of the Services and any dispute or controversy relating thereto, shall be governed and construed according to the laws of the State of North Carolina, excluding its conflict of law principles; and not by the provisions of the 1980 United Nations Convention on the International Sale of Goods.
- 12. Forum; Venue; Jurisdiction.** Any suit, action or other proceeding relating to this Order or the purchase and sale of the Goods or the performance of the Services may be instituted and maintained in the state courts for Mecklenburg County, North Carolina, or the United States District Court for the Western District of North Carolina. Seller consents to the exercise of jurisdiction over it by such courts for the purpose of any such suit, action or proceeding, and agrees that the venue in such courts is appropriate and the forum is not inconvenient.
- 13. Remedies; Entire Agreement.** The remedies of Chiron in this Order are cumulative and in addition to all rights and remedies at law and in equity. Chiron may exercise their rights and remedies in any order or combination it chooses. No delay in exercising or failure to exercise by Chiron a right or remedy shall impair that or any other right or remedy or be construed as a waiver of any default. This Order contains the entire agreement of the parties relating to the subject matter and supersedes all prior and contemporaneous agreements, understandings, usages of trade and courses of dealing, whether written or oral. This Order may only be modified by a written agreement, signed by both parties, expressly modifying this Order.