



Terms and Conditions

1. The party issuing this Purchase Order is referred to as Buyer and the party receiving the Purchase Order is referred to as Seller.
2. Merchandise means what is described in the Purchase Order including all costs, expenses, duties and taxes incurred by Seller.
3. Property: All goods and services described on the face of the Purchase Order, or in related purchasing information, become the property of the Buyer.
4. Writing includes machine or handwritten documents, facsimile transmissions and electronic mail (e-mail).
5. Conflicting Terms: The Purchase Order is considered Buyer's acceptance of an offer to sell by Seller and is binding unless Seller notifies Buyer of any discrepancies in price, quantity, delivery schedule or otherwise within 48 hours of Seller's receipt. Terms which are not contained in the Purchase Order are not binding and the Purchase Order may only be changed in writing and signed by both Buyer and Seller. Seller shall not rely upon prior sales, verbal projections of future purchases or other communications of terms and conditions not included in the Purchase Order. Any terms or conditions included in a writing sent by Seller to confirm the Purchase Order which add terms or are inconsistent with these Terms and Conditions will have no force or effect.
6. Confidentiality: Technical information, specifications, drawings and tooling provided by Buyer are proprietary and will not be disclosed without Buyer's written consent.
7. Shipping Documents: All shipments shall include a packing list showing (a) Seller's name, address and telephone number, (b) date shipped, (c) Buyer's applicable part numbers, part descriptions, part revision numbers, (d) Seller's count, Seller's unit of measure, number of cartons shipped, (e) Seller's Packing List number and (f) the Purchase Order number. All of these shipping document details are subject to verification by Buyer.
8. Invoices are to be dated the same as the corresponding shipment. If Buyer and Seller have agreed to periodic summary invoices, each shipment is to be shown by shipping date. Shipments received by the 25th of the month will be in line for payment for that month. Those received after the 25th will be considered for payment the following month.
9. Prices established by the Purchase Order are not subject to change unless Buyer notifies Seller of a change in the specification, quantity, delivery or packaging of the merchandise. If that occurs and it results in an increase or decrease in price, an adjustment will be made. If Seller's price is reduced due to closeout, rebate, offers made to others or other similar general reductions, Seller shall adjust Buyer's price accordingly.
10. Delivery will be arranged by Buyer unless the Purchase Order states otherwise and all sales are F.O.B. Seller's point of shipment. The risk of loss, cost of freight and insurance are Buyer's upon delivery of the merchandise to and signing of shipping documents by Buyer's authorized representative or freight carrier.
11. Certification Seller shall provide Certificate of Analysis for base materials (metals, plastics, glass, etc.) and processes (plating, painting, powder coating, heat treating, annealing, etc.). Seller shall sign and provide Certificates of Conformity for parts made to Buyer's specifications.
12. Tooling including the design and all drawings, blueprints, CAD files or similar information are the sole property of Buyer and shall be marked, property of the Buyer, in the name appearing on the Purchase Order. Buyer may take possession of all such property at any time at no additional

cost. No duplication of molds, tools or equipment owned by Buyer is allowed without the written consent of Buyer. Additional requirements for the purchase of tools are shown on the face of such Purchase Orders.

13. Right of Rejection: All merchandise is subject to inspection by Buyer. Buyer may return or hold at Seller's risk and expense any merchandise that is non-conforming, shipped contrary to Buyer's instructions, delivered at a time other than the date specified for delivery, or, if no date is specified, then after passage of a reasonable time, in excess of the quantities covered by the Purchase Order, allegedly contains a defect or inadequate warnings or instructions, allegedly violates any law, regulation, or court or administrative order, or allegedly infringes upon any patent, trade name, trademark, copyright or other right. Payment of any invoice does not limit Buyer's right to reject or revoke acceptance of non-conforming merchandise. Seller hereby assumes, and shall bear and pay, all risks and expense of unpacking, examining, repacking, storing, holding, handling and/or returning any non-conforming merchandise and shall reimburse Buyer actual costs. In addition to that, Fluidmaster reserves the right to charge a \$250 fee per lot for any rejected merchandise. No replacement of non-conforming merchandise shall be made unless specified by Buyer in writing. Return of non-conforming merchandise by Buyer shall not be deemed a waiver of any right or remedy which Buyer may have as a result of any non-conformity, breach of warranty or other failed performance under the Purchase Order.

14. Partial Acceptance: Acceptance of any portion of merchandise delivered under the Purchase Order shall not bind Buyer to accept future non-conforming shipments and Buyer has the right to reject goods already accepted which are later discovered to be non-conforming. Acceptance of merchandise delivered under the Purchase Order shall not be deemed a waiver of Buyer's right to make a claim for damages, including manufacturing costs, loss of profits or other special damages suffered by Buyer by reason of non-conformance, latent or patent defects, breach of Seller's warranty or breach of Seller's performance.

15. Customer Returns: Buyer may revoke acceptance of any merchandise returned by Buyer's customers for any commercially acceptable reason, including those set forth in Sections 11, 13 and 14, above.

16. Refund; Offsets: Seller shall grant a full refund or a credit for any price reduction, non-conforming or rejected merchandise and Buyer may offset any such credit against amounts owed to Seller.

17. Warranty: The merchandise and services covered by the Purchase Order shall be free from defects in workmanship and materials, shall be in conformity with any specifications, drawings, samples and descriptions attached to the Purchase Order, shall be manufactured in accordance with good manufacturing practices and shall be suitable for the particular purposes and uses specified by Buyer. Inspection, testing and acceptance by Buyer does not affect these warranties.

18. Termination:

18.1 Without Cause: Buyer may terminate all or a portion of the Purchase Order without cause and without liability if Buyer gives Seller at least sixty (60) days' written notice of such termination prior to a scheduled date of shipment. If less than sixty (60) days' written notice is provided, Buyer shall reimburse Seller for its actual costs of producing canceled merchandise. The amounts then payable to Seller shall not exceed the purchase price of the merchandise canceled, and shall be reduced by Seller's commercially reasonable efforts to mitigate damages.

18.2 Delay: Whenever any actual or potential labor dispute, shortage in materials or supplies, act of God or other event outside of Seller's control is delaying or threatens to delay the timely performance by Seller, Seller shall immediately give written notice to Buyer. If Buyer determines that any threatened delay of the timely performance of the Purchase Order may jeopardize Buyer's business operations, Buyer may terminate the Purchase Order, in which case Buyer will have no continuing obligation or liability to Seller.

18.3 Nonconformity: Buyer may terminate all or a portion of the Purchase Order for any non-conformity of merchandise.

19. Indemnity: Seller shall protect, defend, hold harmless and indemnify Buyer and its parent, subsidiary and affiliated companies, and their respective officers, directors, employees, attorneys, agents, insurers, and representatives (collectively, "Buyer") from and against any claim, liability, demand, settlement, judgment, cost or expense (including reasonable attorneys' fees) (collectively, "Damages") arising from death or injury to any person(s), and/or damage to property, alleged to have resulted from the use, display, sale, or distribution of Seller's merchandise or services, sold or supplied to, or for the benefit of, Buyer, arising out of or in connection with: any alleged or proven product defect, whether design or manufacturing defect, or a failure to adequately warn, or to otherwise misrepresent or conceal any instruction for use, risk or other material aspect of the merchandise or services to Buyer or to ultimate consumer; any negligence, malfeasance, breach of implied or express warranty, failure to meet specifications or other default on the part of Seller in the manufacture, shipment or sale of its merchandise or the rendition of its services to the Buyer. This indemnity shall apply to all Damages regardless of whether such Damages result from Seller's negligence; provided, however, that this indemnity shall not cover any Damages arising from Buyer's sole negligence.

20. Insurance: Seller shall keep in full force and effect at all times a public general liability insurance policy or policies (including bodily injury and property damage) with coverage for both product liability and completed operations, written by an insurance carrier acceptable to Buyer, with coverage of not less than \$1,000,000 combined single limit per occurrence and which identify Buyer as an additional insured. Seller will deliver to Buyer Certificate(s) of Insurance, certifying that such insurance has been issued to Seller and is in full force and such Certificates will reflect the additional insured endorsement form number. Seller's broker shall review these requirements and expressly warrant to Buyer that any insurance procured complies with these requirements. If the insurance is canceled or changed, at least ten (10) days' prior written notice of such cancellation or change must be delivered from Seller to Buyer. Buyer reserves the right to terminate all obligations to Seller for Seller's failure to keep insurance coverage that complies with this paragraph and recover any damages from Seller for any such failure.

21. No Infringement: All merchandise supplied to Buyer and its use or sale will not infringe any patent or patent right of any party. Seller shall indemnify and defend, at its own expense, with legal counsel reasonably acceptable to Buyer, any claim brought against Buyer, or against those selling or using Buyer's products, for any alleged infringement of any patent or patent right by reason of any sale or use of the merchandise.

22. No Assignment: The Purchase Order is not assignable.

23. Buyer's Verification: Buyer, Buyer's agent or Buyer's customer may perform any activities to ensure that the merchandise meets specified purchase requirements, including those at Seller's and subcontractor's sites. Buyer shall give reasonable advanced notice to Seller and Seller shall grant access to Seller's site for these activities. Seller shall also assist in arranging access to Seller's subcontractor's sites when required.

24. Recalls: In the event merchandise is the subject of a recall for any reason other than improper product specifications provided by Buyer, Seller shall be responsible for all expenses and losses incurred by Buyer including product testing, legal and consulting fees in recalling non-conforming merchandise, refunds to customers of Buyer and the cost of unsold merchandise.

25. Compliance with Laws: Seller warrants all merchandise will be in compliance with all applicable federal, state and local laws and regulations. The provisions of Section 202 of Executive Order 11246, the provisions, of the Equal Opportunity Cause Section 503 of the Rehabilitation Act of 1973 are expressly incorporated by reference and shall be applicable to the Purchase Order. Fluidmaster is a Certified Company member under the Customs-Trade

Partnership Against Terrorism (C-TPAT). At Fluidmaster's request Sellers are required to comply with C-TPAT requirements regarding security for shipment of goods.

26. Waiver: The failure of Buyer to insist upon strict performance of the terms and conditions of the Purchase Order, or to exercise any of its rights or remedies under applicable law, shall not be construed as a waiver of Buyer's right to assert or to rely on any such terms or conditions or laws at any time thereafter.

27. Notices; Time of Delivery; Addresses: All notices, demands and other communications shall be in writing and shall be deemed to have been duly delivered upon personal delivery; as of the third business day after mailing by United States registered or certified mail, return receipt requested, postage prepaid; as of the following day after deposit with Federal Express or other similar overnight delivery service; or as of the same day upon facsimile transmission (with confirmation of receipt) if sent on or before 5:00 p.m. Pacific Standard Time, addressed to Buyer and Seller at the addresses set forth in the Purchase Order, or to such other address or to such other person as either party may designate.

28. Notice and Defense of a Claim. In the event a claim is asserted or threatened against Buyer, which, if valid, would subject Seller to an indemnification obligation under Section 19, above, Buyer shall notify Seller, using the name and address below, within a reasonable time period after investigating the claim. Seller may assume the defense of any such claim, but does not have the obligation to assume the defense of the claim so long as Seller acknowledges in writing its obligation to indemnify Buyer. Seller specifically agrees to obtain the written consent of Buyer if Seller seeks to settle or otherwise resolve a claim if the result of such settlement or resolution is that Buyer would become subject to injunctive or other equitable relief or the business of the Buyer would be adversely affected in any manner. In the event that a claim is asserted or threatened for which Buyer believes there is a reasonable probability that the claim may adversely affect its business, Buyer shall have the right to defend the claim, at its own cost and expense for the defense, and Buyer shall have the right to settle or compromise the claim with the consent of Seller, such consent not to be unreasonably withheld. At any time Seller acknowledges its obligation to indemnify Buyer for any claim, Buyer still may obtain separate counsel at its expense. Each party agrees to notify the other of claims, proposed compromises and settlements. The parties each agrees to render to the other such assistance as may reasonably be requested in order to insure the proper and adequate defense of any claim.

29. The Purchase Order, Purchase Order Terms and Conditions and Buyer's "Supplier Instructions" 5.3 MAT - 35.2, Confidentiality Agreement and Indemnification Agreement contain the entire current understanding between the parties and supersede all prior agreements or understandings.

The Purchase Order shall be construed in accordance with the laws of the State of California without regard to the rules regarding conflict of laws and both parties hereby submit to the exclusive jurisdiction of state and federal courts in Orange County, California. In the event of litigation the prevailing party shall be entitled to an award of all attorneys' fees and expenses incurred.

Seller shall not make any news release, public announcement, denial or confirmation of this Purchase order or its subject matter nor in any manner advertise or publish the fact that Buyer has placed this Purchase Order without the prior written consent of Buyer.

Nothing herein shall create a partnership, joint venture, or agency relationship for any purpose whatsoever and neither party shall have authority to bind the other. The Purchase Order shall inure to the benefit of and be binding upon the parties hereto, their respective heirs, executors, administrators, successors and assigns, except that Seller may not transfer any rights or obligations under the Purchase Order without Buyer's prior written consent. No modification,

waiver, amendment, discharge or change of the Purchase Order shall be valid unless the same is in writing and signed by the parties. If any provision of the Purchase Order is held to be illegal, invalid or unenforceable, the remaining provisions will remain valid and enforceable, and the illegal, invalid or unenforceable provision will be replaced by a mutually agreeable provision which is enforceable and closest to the original intent of the parties. The Purchase Order and the wording have been arrived at by mutual negotiations of the parties, and no provision shall be construed against one party in favor of another party merely by reason of draftsmanship.