



GENERAL TERMS AND CONDITIONS OF PURCHASE
UPDATED March 25, 2011

1. **ACCEPTANCE:** Unless otherwise noted on this purchase order, this purchase order may be accepted only by delivering the goods or services ordered by the specified delivery date. THIS PURCHASE ORDER IS LIMITED TO THE TERMS AND CONDITIONS SPECIFIED ON THE FACE OF THIS PURCHASE ORDER AND THIS DOCUMENT AND ANY ATTACHMENTS. BUYER DOES NOT AGREE TO ANY PROPOSED ADDITION, ALTERATION, OR DELETION BY SELLER. THESE TERMS AND CONDITIONS CAN BE VARIED ONLY BY A WRITING SIGNED BY BUYER. ANY OTHER STATEMENT OR WRITING OF SELLER SHALL NOT ALTER, ADD TO, OR OTHERWISE AFFECT THESE TERMS AND CONDITIONS. THIS PURCHASE ORDER IS SUBJECT TO THE TERMS AND CONDITIONS OF ANY WRITTEN AGREEMENT BETWEEN SELLER AND BUYER. IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS OF THIS PURCHASE ORDER AND THE TERMS OF ANY SUCH WRITTEN AGREEMENT, THE TERMS OF THE WRITTEN AGREEMENT BETWEEN SELLER AND BUYER SHALL GOVERN AND CONTROL.
2. **ORDER NUMBERS:** Buyer will communicate a Purchase Order Number to Seller by telephone, fax or e-mail. Seller shall include the Purchase Order Number on every packing sheet, invoice and every other communication related to this order.
3. **PACKING AND SHIPPING:** All items must be properly prepared for shipment to secure lowest transportation rates and comply with carrier regulations. No charges will be paid by Buyer for packing, crating, or cartage unless so stated in the order. All shipments to be forwarded on one day via one route must be consolidated. To the extent practicable, items ordered under separate Purchase Order Numbers shall be segregated within the pallet, box or shipping container. A separate packing sheet for each order included in a shipment, showing Purchase Order Number, must be included with each shipment.
4. **SHIPMENT OR DELIVERY:** Time is of the essence to shipment or delivery and to any other performance required of Seller. Shipment or delivery shall be in accordance with the schedule set out in the purchase order, and in exact quantities ordered. If it appears Seller will not meet such schedule or if Seller fails to meet such schedule, Seller shall, upon request of Buyer and in addition to any other rights or remedies provided to Buyer by laws or under this purchase order, ship via expedited routing necessary either to meet such schedule or to recover the maximum possible time lost by failure to ship or deliver on schedule, and the difference between the expedited routing and the purchase order routing cost shall be borne by Seller. Buyer reserves the right at Seller's expense to return any goods shipped in advance of the schedule set out in the purchase order.
5. **INSPECTION:** All items are subject to final inspection and acceptance by Buyer at destination notwithstanding any prior payment or inspection at source. Acceptance of any items by Buyer shall not be deemed to alter the obligations of Seller or the rights of Buyer and its customers under the Warranty clause or any other provision of this purchase order.
6. **REJECTION:** Buyer shall notify Seller if any items delivered hereunder are rejected; and, at Buyer's election and Seller's risk and expense, such items shall be returned to Seller at Seller's expense. No replacement or correction of rejected items shall be made by Seller unless the prior written approval of Buyer is obtained.
7. **WARRANTY:** Seller warrants that all goods delivered hereunder shall be merchantable, fit for their particular purpose and free from defects, whether latent or apparent. Seller warrants that all services performed hereunder shall be performed in a workmanlike manner, free from errors. Seller's warranties shall be enforceable by Buyer and shall run to Buyer's customer(s). Seller warrants that all services shall be performed in a good and workmanlike manner by qualified, trained personnel consistent with industry

standards and that level of care and skill ordinarily exercised by other reputable providers under similar circumstances at the time the services are performed

8. **CHANGES:** Buyer may make changes to any services to be performed or to any goods to be specifically manufactured, but no change shall be effective, nor shall Buyer be obligated to pay any increase in compensation as a result of a change, unless Buyer issues a written change order. Changes which increase or decrease pricing shall be revised as mutually agreed to in writing.

9. **INVOICES/PAYMENT:** A separate invoice shall be issued for each shipment and for each Purchase Order Number, with the Purchase Order Number stated on the face of the invoice. No invoice shall be issued prior to shipment of goods, and no payment shall be made prior to receipt and acceptance of conforming goods and invoice. Payment terms commence upon receipt of a correct invoice. Payment terms are net minus 2% within 10 days of receipt of correct invoice, net within 45 days of receipt of correct invoice.

10. **RESPONSIBILITY FOR PROPERTY:** Unless otherwise provided in this purchase order, Seller, upon delivery to it or manufacture or acquisition by it, of any materials, parts, tooling or other property, the title to which remains with Buyer, assumes the risk of and shall be responsible for any loss or damage. Seller, pursuant to the provisions of this purchase order, but in any event upon completion thereof, shall return such property to Buyer in the condition in which it was received except for reasonable wear and tear and except to the extent that such property has been incorporated in items delivered under this purchase order, or has been reasonably consumed in performance of work under this purchase order.

11. **INDEMNITY:** Seller shall indemnify, hold harmless, and defend Buyer, its officers, directors, agents, representatives, employees, customers and users of Seller's goods and services from any and all claims (including, without limitation, claims by vendees of Buyer), liabilities, damages and expenses (including attorneys' fees) on account of (i) death or injury to any person or damage to any property arising directly or indirectly from or in connection with any goods and services supplied under this purchase order, notwithstanding that such death or injury to person or damage to property may have been caused or alleged to have been caused in whole or in part by the negligence of Buyer, its officers, directors, agents, representatives, employees, customers or users of Seller's goods and services, (ii) , contamination of or adverse effect on the environment, (iii) violation of any law or regulation or (iv) alleged infringement of any patent, copyright or trademark or violation of any other intellectual property right of a third party. This indemnity shall apply without regard to whether the claim, damage, liability or expense is based on breach of contract, breach of warranty, negligence, strict liability, or other tort. This indemnity shall survive delivery and acceptance of goods or services.

12. **INSURANCE:** Seller shall furnish Buyer with certificates of insurance evidencing insurance for the types and in the amounts required by Buyer before the commencement of any work on Buyer's premises. All such insurance certificates shall provide that such insurance shall not be cancelled or amended without thirty days prior written notice to Buyer and shall be with insurance companies reasonably satisfactory to Buyer. Insurance shall be maintained for the period specified by Buyer or so long as work on the premises is ongoing, if no period is specified.

13. **PATENTS AND TRADEMARKS:** Seller warrants that all goods and services supplied under this purchase order shall not infringe on any third party's patent, copyright, trade secret, trade name, trademark or service mark, or other proprietary right.

14. **TITLE AND RISK OF LOSS:** Seller warrants title to all goods sold and bears the risk of loss or damages to the items purchased under this purchase order until they are delivered in conformity with this purchase order at Buyer's delivery point specified in this purchase order and, upon such delivery, title shall pass from Seller and Seller's responsibility for loss or damage shall cease except for loss or damages resulting from Seller's negligence. Passing of title shall not constitute acceptance of the items by Buyer.

15. **CONFIDENTIALITY:** Seller shall keep confidential all designs, processes, drawings, specifications, reports, data and other technical or proprietary information and the features of all parts,

equipment, tools, gauges, patterns and other items furnished or disclosed to the Seller by Buyer in connection with this purchase order (“Buyer’s Confidential Information”). Unless authorized by Buyer in writing, Seller shall use such Buyer’s Confidential Information only as contemplated in this purchase order and any other agreement between the parties. Upon completion or termination of this purchase order, Seller shall return all Buyer’s Confidential Information to Buyer or make such other disposition thereof as may be directed and approved by Buyer and shall certify to such return or destruction.

16. **COMPLIANCE:** Seller warrants that all goods and services supplied under this purchase order shall comply with all applicable federal, state, and local laws, rules, regulations and ordinances at the time of delivery. For on-site performance of services, if applicable, Seller shall adhere to all safety, health or other administrative requirements, rules, regulations or procedure of Buyer and its facilities where services are performed provided to Seller.

17. **EQUAL EMPLOYMENT OPPORTUNITY:** The provisions of Executive Order 11246, as amended, and particularly Subpart B, §202, paragraph (1) through (7); the Rehabilitation Act of 1973; and the Vietnam Era Veterans Readjustment Act of 1974 are hereby incorporated, including the applicable Rules and Regulations (41 CFR 60-2, 41 CFR 60-250, and 41 CFR 60-741) issued pursuant thereto. Seller represents by acceptance of this purchase order that it will comply with such Executive Order and rules, regulations and amendments thereto, to the extent the same are applicable to the sale of goods or services hereunder.

18. **TERMINATION:** Buyer may terminate all or any portion of this purchase order at any time by giving notice to Seller. In the event of termination without cause, Buyer's liability shall be the lesser of: (a) a reasonable price for raw materials, components, work in progress, and any finished units on hand; or (b) the contract price per finished unit, after giving effect to any discount Buyer would otherwise be entitled to. In the event of termination without cause of any separate services specifically ordered, liability shall be the lesser of: (a) a reasonable price for properly performed services rendered prior to termination; or (b) the contract price for the services. If any hourly or other time-based rate for services is specified in this purchase order, such rate shall be used in determining a reasonable price. **THE FOREGOING STATES BUYER'S ENTIRE LIABILITY FOR TERMINATION.**

Additionally, Buyer may, by notice to Seller, terminate in whole or in part this purchase order in the event of suspension of Seller's business, insolvency of Seller, institution of bankruptcy, reorganization, or liquidation proceedings by or against Seller, the appointment of a trustee or receiver for Seller's property or business or any assignments by Seller for the benefit of creditors. The rights and remedies of Buyer provided in this Termination clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this purchase order.

19. **SUBCONTRACTING AND ASSIGNMENT.** Seller shall not assign this purchase order or any rights hereunder, nor delegate any duties, nor subcontract any work, without first securing the written approval of Buyer. Any attempts to do so will be null and void. The price quoted by Seller includes the price of any goods or services obtained from any subcontractor or supplier to Seller, unless otherwise agreed in advance by Buyer. Seller shall incorporate the within terms and conditions on any order or subcontract approved by Buyer and procured from third parties pertaining to this Purchase Order. Seller shall remain fully responsible for all work performed by subcontractors, sub-vendors, or subsuppliers and shall indemnify and hold Buyer harmless for any payment required to be made to any such subcontractor sub-vendors, or subsuppliers.

20. **DEFAULT.** No waiver of any default by either party shall act as a waiver of a subsequent or different default.

21. **MINORITY/WOMEN/VETERAN-OWNED FIRMS.** Buyer and Seller shall support the utilization of qualified minority-owned, women-owned and service disabled veteran-owned business enterprises (“M/W/VBEs”). Seller shall institute and maintain a supplier diversity program.

22. PUBLICITY. Except as may required by law or governmental rules or the requirements of any exchange on which securities of Seller or an affiliate of Seller are traded, Seller shall not, without the prior written consent of Buyer, which may be granted or withheld at Buyer's sole discretion: (a) use Buyer's name, brand, trademarks or any descriptions of Buyer and/or its industry that would allow a third party to identify Buyer ("Buyer's Brand"), in advertising or promotional material, publicity releases or for any other commercial purpose; (b) in any manner advertise, publish or disclose the fact that Buyer has placed this purchase order with Seller; or (c) disclose the subject matter or terms and conditions of this purchase order. Seller shall comply with the restrictions accompanying Buyer's consent, including but not limited to scope and term limitations. Unless otherwise specified by Buyer in writing, Buyer consents shall be deemed to be "initial use only," and will expire immediately after Seller's first use of Buyer's Brand as set forth in the applicable Buyer consent. Any and all subsequent uses, including but not limited to re-publication of advertising or promotional material, duplicate or follow-up press releases or like publications shall each require an updated consent, duly executed by the Buyer. In no case shall Seller or an affiliate of Seller use Buyer's Brand or information about Buyer's industry, equipment or operations in a manner that disparages Buyer.

23. MISCELLANEOUS. Section headings are for convenience only and shall have no legal or interpretive effect. This purchase order shall be governed by and construed under the laws of the State of Texas without regard to its conflicts-of-law rules. Any dispute arising under this purchase order that cannot be resolved by informal negotiation shall be resolved by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association by a single arbitrator in Houston, Texas. The decision of the arbitrator shall be final and binding, and judgment thereon may be entered in any court having jurisdiction. Nothing herein shall be construed as creating an exclusive relationship between Buyer and Seller regarding the goods or services. Buyer reserves the right to engage other persons or entities to provide goods and services similar to those provided hereunder. Any notices required hereunder shall be given in writing to the addresses set out in the purchase order and shall be deemed effective on the same day any such written notice is personally served, or on the third (3rd) day after such notice is deposited in the United States mail or with a nationally recognized overnight delivery service.