

Purchase Order Terms and Conditions

1. **ACCEPTANCE.** This purchase order becomes a binding contract on the terms set forth herein when it is accepted either by Seller's acknowledgment or commencement of performance.

2. **TERMS.** All terms are stated in this purchase order. However, invoices are not payable until each shipment is inspected and accepted by Buyer. If Buyer makes payment of an invoice within the period allowed for the purpose of obtaining any cash discount offered, such payment shall not constitute final acceptance, and shall not prejudice the right of the Buyer to return goods found to be defective or which fail inspection, and to receive credit or reimbursement from the Seller.

3. **PROGRESS REPORTS.** When requested by Buyer, Seller shall submit written periodic progress reports covering the specified period and containing the information specified by the Buyer.

4. **PRICE.** This order may not be filled for a different quantity or price without Buyer's written consent. Whenever the price is not specified in the order, it must not be filled without Buyer's written consent at a price higher than last quoted or charged to Buyer. Unless otherwise stated, all prices are firm and are not subject to increase (1) for the period stated in this order, (2) for a period of one year. All of the prices, terms, warranties, and benefits granted by Seller under this purchase order shall be comparable to or better than the equivalent terms being offered by Seller to any other customer. If Seller enters into arrangements with any other customer providing greater benefits or more favorable terms, this purchase order shall thereupon be considered amended to provide the same benefits and terms to the Buyer.

5. **CHANGES.** Buyer may at any time, and from time to time by written order to Seller (a) make changes in the shipping and packaging instructions, (b) increase or decrease the quantity of products ordered, (c) change the drawing or specifications, (d) issue a suspension of work order, and/or (e) make changes in the delivery schedule. If any such changes cause an increase or decrease in the amount of work hereunder, or in the cost of performance or in the time required for performance, an equitable adjustment shall be made in the contract price and /or the delivery schedule, and the purchase order shall be modified, in writing, accordingly. Termination charges shall be limited to no more than Seller's cost of raw materials and labor for the goods to be delivered to Buyer for the next 30 days as provided in the purchase order schedule and subsequent modifications thereto, and only if such raw materials cannot be used for another customer of Seller and provided such raw materials are delivered to Buyer. Any claim for adjustment under this section must be asserted within 30 days from the date the change is ordered, but nothing provided herein shall excuse Seller from proceeding with the purchase order as changed.

6. **CANCELLATION.** Buyer reserves the right to cancel all or any part of the undelivered portion of this order if Seller does not make deliveries as specified in the schedules or if Seller breaches any of the terms hereof, including any warranties of Seller. Buyer's acceptance of a late delivery shall not constitute a waiver of any remedy or right or constitute a waiver of any subsequent schedule or delivery requirement. Buyer shall also have the right to terminate this order or any part hereof in the event of insolvency of Seller, filing of a voluntary or involuntary petition in bankruptcy of Seller, appointment of a receiver or trustee for Seller, or the execution by Seller of an assignment for the benefit of creditors.

7. **INSPECTION.** All ordered materials or articles are subject to final inspection and approval at destination by Buyer, notwithstanding prior payment. Buyer may reject any article which contains defective materials or workmanship or does not conform to specifications, drawings, samples, or as ordered. Rejected articles may be returned at Seller's risk and expense at the full invoice price, plus incoming transportation charges, if any. No replacement of defective materials shall be made unless specified in writing by the Buyer. Seller shall provide and maintain a quality control system acceptable to the Buyer for the supplies covered by this purchase order, and Seller shall permit Buyer to review Seller's procedures, practices, processes, and related documents to determine such acceptability. Seller is required to provide certification of all raw materials. Buyer shall have the right of inspection in Seller's plant at reasonable times. Such inspection by Buyer shall not relieve Seller of responsibility for defects found after delivery to the Buyer. Materials may be inspected by Buyer under the sampling plans outlined in MIL-STD-105 (and amendments thereto). Lots which fail to pass the examination may be 100% inspected by the Buyer, and Seller shall be charged for such inspection time. Buyer may reject and return any portion of a shipment which may be defective or fails to comply with specifications, drawings, samples, and descriptions stated in the order without invalidating the remainder of the order. Buyer's failure to inspect goods upon delivery shall not be a waiver of any defects or of any rights or remedies which Buyer may have thereafter.

8. **PACKING AND SHIPMENT.** Deliveries shall be made as specified without charge for boxing, crating, carting, or storage, unless otherwise specified. Material shall be suitably packed for protection of parts and to secure lowest transportation costs and in accordance with the requirements of common carriers. If there are any deviations from Buyer's shipping instructions without Buyer's permission which result in higher shipping charges, Seller is liable for the extra charge. A packing list shall accompany each shipment, showing Buyer's order number, quantity, and a description of materials. Buyer's count or weight shall be final and conclusive on shipments not accompanied by a packing list. Shipping receipts, original bills of lading, express receipts, and air bills shall be sent to Buyer's Accounts Payable Department on the date the material is shipped. Unless otherwise agreed in writing by the parties, all shipments are made F.O.B. destination. If Buyer specifies F.O.B. origin or freight charges for the account of Buyer: (1) all freight must be routed as specified by Buyer, (2) do not insure or declare value unless specifically directed to do so; (3) articles subject to released valuation must be released at the restricted valuation to achieve the lowest available rate; (4) consolidate shipments on the same day to the same address on one waybill; (5) list all PO numbers on the waybill.

9. **ENGINEERING INFORMATION, TOOLS AND MATERIALS.** By accepting this order, Seller agrees it will not use any design, tools, patterns, drawings, materials, or any other information or equipment furnished by Buyer in the manufacture or design of any articles or materials for any other purchaser, nor for manufacture of larger quantities than herein specified, without the prior written consent of Buyer. All special tools, dies, patterns, jigs, or fixtures supplied by Buyer, or manufactured or otherwise acquired by Seller for the performance of this order and charged to Buyer, are the property of the Buyer. Such items are to be marked for identification as Buyer may designate, and upon completion or termination of this order such items shall be returned to Buyer in good condition with reasonable wear only accepted. Seller shall also return all spoiled and surplus tools, patterns, and materials which are the subject of this paragraph, unless otherwise directed by Buyer in writing, and Seller agrees to replace, at Seller's expense, all items which are not so returned. Seller shall make no charge for any storage, maintenance, or retention of any property of Buyer and all such property shall be retained or used at Seller's sole risk of loss or damage from all hazards.

10. **LIENS AND ASSIGNMENTS.** Seller agrees that with respect to any services rendered or subcontracted to others and that with respect to any materials or equipment supplied by Seller or on Seller's behalf, Seller shall indemnify and hold Buyer harmless if any mechanic's lien, encumbrance, or other security interest arises from supplying such services, materials, or equipment. Buyer shall have the absolute right to withhold payment until Seller has provided Buyer with written releases from any person or company that has supplied Seller with services, materials, or equipment under the subject purchase order. Neither this order nor the materials and services covered hereby, nor the payments hereunder, shall be assigned or encumbered without the written permission of Buyer. Any such assignments of obligations or any assignments or rights, without prior written consent, shall be void. Breach of this provision shall give Buyer the right to cancel this order.

11. **WARRANTIES.** Seller warrants that all work shall be free from defects in labor, materials, and fabrication, and shall comply with all pertinent specifications of Buyer and Seller including performance specifications. If any direct conflicting inconsistency exists in Buyer's and Seller's specifications, Buyer's specifications shall prevail. Buyer's release or approval of data or drawings shall not relieve Seller from warranty, including those arising from prior drawings and specifications of Buyer. Nothing herein shall be construed as a waiver of Seller's warranty of merchantability or any warranties of fitness for a particular purpose which Seller may make, except for goods manufactured to Buyer's specifications where the lack of merchantability of fitness is due solely to defects or errors in those specifications.

12. **PATENT PROTECTION.** Seller agrees to indemnify and hold harmless Buyer, its customers, and all persons claiming under Buyer against claims, demands, expense, loss and/or liability for actual or alleged infringement of any patent, copyright, maskwork right, trademark, or similar right by the materials or articles called for hereunder. Buyer shall have the right to control any such matter, and Seller shall reimburse Buyer as to any expenses incurred in connection therewith. This provision shall not apply if such materials or articles are made to Buyer's drawings or design and the alleged infringement arises solely therefrom (as distinguished from Seller's standard products).

13. **NOTICE OF LABOR DISPUTES.** Whenever an actual or potential labor dispute delays or threatens to delay the timely performance of this contract, Seller shall immediately give notice thereof to Buyer. Such notice shall include all relevant information with respect to such dispute.

14. **HAZARDOUS SUBSTANCE INFORMATION.** Seller shall provide Buyer with a Material Safety Data Sheet ("MSDS"), as defined in 29 CFR § 1910.1200, or equivalent information, for any Hazardous Substance delivered pursuant to this purchase order. For purposes of this paragraph, "Hazardous Substance" shall be defined as provided by California Health and Safety Code § 25316 and California Labor Code § 6390, and shall include all hazardous chemicals and mixtures for which an MSDS is required under the Occupational Safety and Health Act of 1970 (29USCA § 651 et. seq.) and regulations promulgated under that Act. Nothing contained in this paragraph shall relieve Seller from complying with applicable federal, State and local laws, codes, ordinances, and regulations relating to Hazardous substances, including California Health and Safety Code § 25249.5-§ 25249.13.

15. **LIMITATION ON LEGAL ACTION.** Seller hereby agrees to limit all statutes of limitation on any claim or right under this purchase order to one (1) year if permitted by law, and otherwise to the minimum period possible by law.

16. **ENTIRE AGREEMENT.** This purchase order shall be deemed to have been executed and delivered in Oceanside, California and shall be construed and interpreted under the laws of California. Jurisdiction and venue with respect to any suit in connection with this purchase order shall reside in the courts of San Diego County, California. The provisions contained on this form and in any specially incorporated condition, drawing, price report, or other form constitute the entire agreement between the parties, and there will be no deviation therefrom unless accepted in writing from Buyer.

17. **ATTORNEY'S FEES.** If any litigation arises out of this purchase order, the prevailing party shall be entitled to actual attorney's fees and costs.

18. **CONFIDENTIALITY.** All materials and information provided by Buyer to Seller shall be treated by Seller as confidential and shall not be disclosed to third parties without the written consent of Buyer.

19. **ARBITRATION.** All disputes concerning the terms and conditions of this purchase order less than \$25,000 shall be subject to expedited binding arbitration outside of the American Arbitration Association ("AAA") before an attorney or expert who is knowledgeable and

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experienced in the field of commercial law and who is selected by mutual agreement of the parties, a party shall commence arbitration by delivering written notice to the other party. If the parties fail to agree on an attorney as arbitrator within 30 days after notice of a commencement of arbitration is delivered, arbitration shall be by the AAA in San Diego County, California, subject to the rule of the AAA then in effect. Judgment upon the award rendered in any arbitration may be entered in any court having jurisdiction of the matter.

20. COMPLIANCE WITH THE LAW. In accepting this order, Seller warrants that the good to be furnished hereunder are produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended ("the Act"), and with all orders and regulations (as amended) of the Administrator of the Wage Hour Division issued under the Act. Seller agrees that this warranty may be considered as the written assurance contemplated by the Act that all items delivered hereunder were produced in compliance with the Act. Seller warrants that it has complied with all other applicable laws, regulations, and ordinances of the United States Government or any state or municipal government which may now or hereafter govern performance under this contract.

21. EQUAL OPPORTUNITY. In performing work under this order, Seller agrees to not discriminate against any employee or applicant for employment because of race, creed, color, natural origin, or sex, and further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies of raw materials.