

PURCHASE ORDER TERMS AND CONDITIONS

1. **Applicability.** These Terms and Conditions shall apply to the purchase of all articles, materials, work or services ("Work") by the entity executing this Purchase Order (this "Order") as the buyer ("Buyer") from the party identified as Seller or Vendor (for purposes of these Terms and Conditions, the "Seller") on the face of this Order.
2. **Complete Agreement.** This Order, together with all documents attached and/or incorporated by reference, forms the entire agreement between Seller and Buyer, and all prior negotiations, proposals, and/or writings in any way related to this Order or the Work are superseded by this Order. Any references to Seller's quotation, bid document, or proposal are for information or clarification purposes only to the extent expressly provided in this Order, and do not constitute acceptance of any term, condition, or instruction contained in any such document. Except as otherwise provided herein, no conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain or supplement the terms or conditions of this Order shall be binding unless hereafter made in writing and signed by the parties.
3. **Acceptance.** This Order becomes the exclusive agreement between the parties subject to the terms and conditions herein. Any of the following shall constitute Seller's acceptance of this Order: (a) acknowledgment of this Order; (b) furnishing of any Work under this Order; (c) acceptance of any payment under this Order; or (d) commencement of performance under this Order. Additional or differing terms or conditions proposed by Seller in any format or included in Seller's acknowledgment hereof shall be deemed a material alteration of this Order, are hereby objected to and rejected, and this offer shall be deemed accepted by vendor without said additional or different terms.
4. **Price.** Unless otherwise provided in this Order, the prices in this Order (a) are firm and not subject to escalation, and (b) include any and all taxes whatsoever, whether sales, use, excise or other, or fees, duties or other governmental impositions, whether or not same are set forth separately on invoices to Buyer. If Buyer shall be required to pay any taxes or other fees relating to the Work, Seller will reimburse Buyer therefore.
5. **Quality Control and Inspection.** Seller shall provide and maintain a quality control system acceptable to Buyer. During performance of this Order, Seller's quality control, inspection system and manufacturing processes are subject to review, verification and analysis by Buyer. All Work ordered may be subject to (a) inspection, verification or testing during the period of manufacture; (b) inspection or verification prior to shipment; and (c) final inspection and acceptance at destination notwithstanding any prior payment or inspection and acceptance. If any inspection or test is made on the premises of Seller or its lower-tier suppliers, Seller shall, without additional charge to Buyer, provide and shall require its lower-tier suppliers to provide, all reasonable facilities and assistance for the safety and convenience of Buyer. Seller agrees that, notwithstanding the provisions of any warranties, expressed or otherwise negotiated, with respect to Work purchased from Seller by Buyer, it shall reimburse Buyer for labor and material cost, including overhead and general and administrative expense reasonably incurred by Buyer in connection with: (a) the unscheduled removal and replacement of such Work or components thereof from an assembly or subassembly due to defective material, workmanship or design; or (b) any such removal of said Work at Seller's request; or (c) any such removal of said Work required to incorporate any previously authorized changes to said Work that Seller has failed to incorporate in order to maintain a delivery schedule. Inspections and tests by Buyer do not relieve Seller of responsibility for defects or other failures to meet the requirements of this Order discovered before acceptance.
6. **Warranty.** (a) Seller warrants to Buyer, and its successors and assigns, that the Work will meet the specifications, drawings, descriptions and other requirements set forth in this Order and will be good and merchantable quality and free of defects in material, workmanship, or design (except for design furnished by Buyer). (b) Seller warrants that the Work will be produced, sold and delivered and Seller will otherwise perform all of its obligations under this Order as provided in this Order and in compliance with all applicable local, state, federal and foreign laws, rules, regulations, codes, and orders. (c) Seller warrants that the Work shall be free and clear of all taxes, liens or other encumbrances whatsoever, except for Seller's lien for non-payment by Buyer of amounts due Seller under this Order. (d) All Work provided hereunder is warranted as provided in this Section 6 for a period of twelve (12) months from date of commissioning (defined as demonstrated acceptable performance after start-up in buyer's operating environment), or for eighteen (18) months from date of shipment, whichever is the longer period against defects that may arise due to faulty material or workmanship, or due to faulty design where such design has not been specified in detail by Buyer. Defective Works shall be replaced by Seller without charge for labor, materials, profit, or other items. (e) If any malfunction or defects occur in the Work during the warranty period, Seller shall, upon notification by Buyer immediately proceed to correct, at its own cost, at Buyer's facility, all defects or other deficiencies in the Work including, but not limited to, the costs of repair, removal, reinstallation, new materials, equipment and transportation attributable to Seller or any of its subcontractors or suppliers or failure by Seller to comply with any obligation expressed or implied under this Order. Seller shall draw upon its spare parts and technical resources or any other available resources to ensure prompt corrective action, including overtime and express transportation if requested by Buyer, in performing rework under this Order. If Seller fails to perform rework

as required by Buyer or cannot perform rework in a time period acceptable to Buyer, Buyer shall be entitled to have such work carried out by its own employees or other contractors and recover from Seller the total cost to buyer thereof or deduct the same from any monies due or which may become due to Seller. If no sums or if insufficient sums are available for full set-off by Buyer, then Seller, upon receipt of Buyer's written notice of Seller obligations hereunder, shall promptly remit to Buyer all sums due and owing to Buyer pursuant to the terms of this Order. (f) The warranty period for repaired or conditioned parts, whether performed by Seller or any subcontractors, shall be as for new equipment. The warranty period for the remaining equipment shall be extended by the number of days, or fraction thereof, that the equipment was inoperable because of warranty defects. In the case of repeated failures of a particular component or system, Buyer shall have the right to require the Seller to make the necessary design or component selection changes to eliminate the failures, at the cost of the Seller. (g) Without limiting Seller's obligations to Buyer under this Purchase Order, Seller shall at all times notify Buyer of all notices made or received by Seller related to the Work, including, but not limited to, any health and safety advisories and notices. (h) Buyer objects to any disclaimer of warranty, fitness for a particular purpose, merchantability, freedom from defects, or other disclaimer of the terms and conditions of this Order.

7. **Changes.** Buyer may at any time make changes within the general scope of this Order in any one or more of the following: (a) drawings, designs or specifications; (b) method of shipping or packing; (c) place of inspection, acceptance or point of delivery; and (d) delivery schedule. Should any such change increase or decrease the cost of, or the time required for, performance of this Order, an equitable adjustment may be requested by Seller or Buyer in the price, delivery schedule or both. No request by Seller for such adjustment will be valid unless submitted to Buyer within thirty (30) days from date of such change. The request for adjustment should include Seller's entire claim. Any claim for the cost of redundant material or work in process shall be required to be on the forms and in the detail prescribed by Buyer. SELLER AGREES THAT ITS FAILURE TO SUBMIT SUCH CLAIM OR CLAIMS WITHIN THE APPLICABLE TIME PERIOD SHALL CONSTITUTE A WAIVER THEREOF. Any clarification, direction, approval or assistance as may be provided by Buyer's program, engineering or technical personnel concerning the work to be performed or the Work to be furnished pursuant to this Order shall not constitute nor be construed as a change to this Order. Nothing contained in this Section shall relieve Seller from proceeding without delay in the performance of this Order as changed.
8. **Use of Buyer's Data and Patent Rights.** Seller shall not reproduce, use or disclose any data, designs or other information belonging to or supplied by or on behalf of Buyer, or developed as a result of the performance of this Order, except as necessary in the performance of orders for Buyer.
9. **Assignment.** Neither this Order nor any duty or right under it shall be subcontracted, delegated or assigned by Seller without the prior written consent of Buyer. Buyer may subcontract, delegate or assign this Order to any other third party, including any successors and assigns of Buyer.
10. **Termination.** Buyer may terminate this Order, in whole or in part, without liability, (a) if deliveries are not made at the time or in the quantities specified; (b) in the event of any breach hereof by Seller; (c) in the event of the institution of any proceedings by or against Seller in bankruptcy or insolvency; or (d) in the event of the appointment of a receiver or trustee for Seller or any assignment by Seller for the benefit of creditors. Buyer may terminate this Order, in whole or in part, at any time for its convenience by written notice. Seller shall immediately comply with Buyer's instructions and, within thirty (30) days of receipt of such notice, Seller shall advise Buyer of the actions taken to comply with Buyer's instructions and shall also notify Buyer of Seller's intent to file a termination claim. In the event Buyer terminates and Seller submits a termination claim, Buyer shall pay to Seller the following: (a) amounts due for Work delivered and accepted or services completed in accordance herewith and not theretofore paid for prior to the effective date of termination; and (b) actual work in process costs incurred by Seller if properly allocable under generally accepted accounting principles to the terminated portion of the contract, including liabilities to subcontractors that are so allocable, excluding any and all costs of supplies that either can be diverted to other orders of Seller or retained by Seller for its own use for future orders and exclusive of any costs attributable to Seller's supplies paid or to be paid for under (a) above. The total settlement shall not exceed the Order price. Such termination claim shall be submitted within six (6) months after the effective date of the termination on forms provided by Buyer. Buyer shall not be required to make any determination on any late claim. SELLER AGREES THAT ITS FAILURE TO SUBMIT SUCH CLAIM OR CLAIMS WITHIN THE SIX (6) MONTH TIME PERIOD SET FORTH ABOVE, SHALL CONSTITUTE A WAIVER THEREOF. Any termination by Buyer for any reason shall be without prejudice to any claims for damages or other rights of Buyer against Seller.
11. **Indemnification.** (a) Seller shall assume the risk of and release, defend, indemnify and hold harmless Buyer and its affiliates, agents, employees, successors, and assigns ("Indemnitees") from and against all loss, damage, liability, cost and expense (including, without limitation, reasonable attorneys' fees) arising out of any injury (including death) to any person or damage to any property resulting from or in any way connected with the performance of this Order or the goods furnished hereunder, regardless of whether or not such loss, damage, liability, cost or expense is caused in any way in part by an Indemnitee including, but not limited to, any negligent act, omission or strict liability of any Indemnitee, but only to the extent that Seller is negligent in the performance of its obligations under this Order. (b) Further, for all claims not covered by Section 11(a)

above, and in consideration of the payments agreed to be made by Buyer to Seller under this Order, Seller shall assume the risk of and release, defend, indemnify and hold harmless Indemnitees from and against all loss, damage, liability, cost and expense (including without limitation, reasonable attorneys' fees) arising out of any injury (including death) to any person or damage to any property resulting from or in any way connected with the performance of this Order or the goods furnished hereunder, regardless of whether or not such loss, damage, liability, cost or expense is caused in any way in part by an Indemnitee including, but not limited to, any negligent act, omission or strict liability of any Indemnitee, but only to the extent that Seller is negligent in the performance of its obligations under this Order. (c) Except for Section 11(a) above, no provision of this Order shall be construed in any circumstances to constitute an indemnification against any loss, damage, liability, cost or expense caused solely by the negligence of such Indemnitee. (d) The indemnity obligations in this Order shall be considered to be modified as required to exclude indemnification that is expressly prohibited by applicable statute or law, with all other obligations of Seller under this Order enforced to the extent permitted by law.

12. **Patent Indemnity, Trademarks, Trade Secrets and Copyrights.** Unless of Buyer's design, Seller warrants that the sale or use of Work or the use of any processes or methods therein will not infringe any United States or foreign patents, trademarks, trade secrets, copyrights or other property rights ("Intellectual Property Rights"). Seller shall defend, indemnify and hold Indemnitees and Buyer's customers harmless from any loss, cost, damage, expense (including attorneys' fees), or liability arising on account of infringement or alleged infringement of any Intellectual Property Rights with respect to such Work and defend at Seller's own expense any action or claim in which such infringement is alleged.
13. **Remedies.** The rights and remedies of Buyer provided herein shall be cumulative and in addition to any other rights and remedies provided by law or in equity or otherwise.
14. **Waiver.** The failure of Buyer in any one or more instances to insist on performance of any provision of this Order shall not be construed to be a waiver of such provision in any subsequent instance.
15. **Nondisclosure of Information.** Seller shall not, without prior written consent of Buyer, disclose any information relative to this Order.
16. **Additional Rights.** Seller shall permit Buyer to inspect and copy Seller's books and records containing information related to this Order, provided, that Buyer shall provide Seller with reasonable prior written notice of its request to perform such inspection.
17. **Governing Law.** The validity, interpretation and performance of this Order and any dispute connected herewith shall be governed by and construed in accordance with the laws of the State where the Buyer's facility is located, excluding its conflicts of laws rules.
18. **Jurisdiction and Venue.** To the fullest extent permitted by applicable law, the parties agree that any action brought in connection with this Order may be maintained only in any court of competent jurisdiction located in the State where the Buyer's facility is located, and the parties each agree to submit personally to the jurisdiction of any such court and hereby waives the defenses of forum non conveniens or improper venue with respect to any action brought in any such court in connection with this Order.
19. **Severability.** If any provision of this Order is determined to be ineffective or invalid, all other provisions of this Order shall remain effective and valid to the fullest extent permitted by law consistent with the purpose of this Order.
20. **Payment Terms.** Payments under this Order are due 30 days following receipt of goods or Seller's invoice, whichever is later.