

TERMS AND CONDITIONS

1. SELLER or CONTRACTOR. "Seller" or "Contractor" means the party furnishing goods or services. Seller, Vendor or Contractor are defined as the same party and are used inter-changeably on this form.
2. BUYER. "Buyer" means the Company buying the goods or services.
3. This PO ("Contract") may be accepted only by either (1) signing this PO, (2) issuance of a PO Number by Buyer or (3) receiving the goods or services. **THIS PO IS LIMITED TO THE TERMS AND CONDITIONS ON THE FACE AND REVERSE SIDE OF THIS DOCUMENT (OR ANY ATTACHED TERMS AND CONDITIONS OR EXHIBITS CREATED BY SELLER). SELLER DOES NOT AGREE TO ANY PROPOSED CONDITION, ALTERATION, OR DELETION BY BUYER. THESE TERMS AND CONDITIONS CAN BE CHANGED ONLY BY A WRITING SIGNED BY SELLER. ANY CONDUCT BY BUYER CONSTITUTES ACCEPTANCE BY BUYER OF THIS PO AND ALL ITS TERMS AND CONDITIONS. ANY TERMS PROPOSED IN ANY FORM PROVIDED BY BUYER WHICH VARY FROM OR CONFLICT WITH THE TERMS OF THIS PO ARE HEREBY OBJECTED TO. ANY SUCH PROPOSED TERM SHALL BE VOID AND THE TERMS HEREIN SHALL CONSTITUTE THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES. IF BUYER ISSUES ANY PURCHASE ORDER OR OTHER DOCUMENT CONTAINING ADDITIONAL OR DIFFERENT TERMS, THEY ARE NOT ACCEPTED BY SELLER AND DO NOT CONSTITUTE ANY PART OF THIS PO.**
4. PRICE. Prices are subject to change by Seller without notice. Increases in labor, freight and material costs before completion of contract plus applicable overhead may be invoiced to Buyer. Premium time as required by Buyer will be invoiced as an extra item.
5. DELIVERY OR PERFORMANCE. Unless otherwise specified on the face hereof, all deliveries are FOB point of shipment. Shipment will be made in accordance with Seller's instructions. Upon delivery of goods to carrier, Buyer assumes risk of all loss and damage resulting from any cause whatsoever. Shipping, delivery or performance dates are approximate and are not guaranteed. Seller may ship and invoice for a quantity of up to ten percent over or under the quantity specified and Buyer agrees to accept and pay for such quantity and Seller's performance shall be deemed complete. Partial deliveries shall be accepted and paid for by Buyer at contract prices and terms.
6. FORCE MAJEURE. Seller shall not be liable for delay or other failure of performance due to causes beyond its reasonable control including without limitation acts of God, acts of Buyer, acts of military or civil authorities, fire or other casualty, strikes, lockouts, weather, epidemic, war, riot, delays in transportation or car shortages, or inability to obtain necessary labor, materials, components, equipment, services, energy or utilities through Seller's usual and regular sources at usual and regular prices. In any such event Seller may, at any time without further liability to Buyer, (a) postpone performance under this contract, (b) make partial performance or cancel all or any portion of this contract, or (c) allocate available quantities among its customers in any manner which Seller deems reasonable. Cancellation of any part of this contract shall not affect Buyer's duty to pay for performance of any other part hereof.
7. WARRANTY AND REMEDY. Unless otherwise expressly stated on the face hereof, Seller warrants to Buyer that its services hereunder are performed in a good and workmanlike manner and that goods delivered hereunder are free from material defects in materials and workmanship, except that materials furnished by Seller's suppliers or subcontractors are warranted by Seller only to the extent of the supplier's or subcontractor's express warranty to Seller. If Buyer promptly notifies Seller in writing of any breach of such warranty and complies with any applicable warranty procedures of Seller, Seller shall at Seller's option, re-perform services, repair or replace any defective goods at Seller's site (Buyer shall pay all transportation charges) or refund the price of the goods or services or part thereof which gives rise to the claim. Seller shall make no allowance for repairs or alterations made by Buyer, unless made with the Seller's prior written consent. The foregoing shall constitute the sole and exclusive remedy of Buyer and the full liability of Seller for any breach of warranty. THE FOREGOING IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL OR IMPLIED, INCLUDING ANY WARRANTY OF PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND SUPERSEDES AND EXCLUDES ANY ORAL WARRANTIES OR REPRESENTATIONS, OR WRITTEN WARRANTIES OR REPRESENTATIONS, NOT EXPRESSLY DESIGNATED IN WRITING AS A "WARRANTY" OR "GUARANTEE" OF SELLER, MADE OR IMPLIED IN ANY MANUAL, LITERATURE, ADVERTISING BROCHURE OR OTHER MATERIALS.
8. LIMITATION OF SELLER'S LIABILITY. Seller's liability on any claim of any kind, including negligence, with respect to the goods or services covered hereunder, shall in no case exceed the price of the goods or services or part thereof which gives rise to the claim. IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOST PROFITS, OR FOR DAMAGES IN THE NATURE OF PENALTIES.
9. LIMITATION OF ACTIONS. Any action for any loss or damage with respect to the goods or services covered hereunder must be commenced by Buyer within one year after Buyer's cause of action has accrued.
10. INDEMNIFICATION AND WAIVER. Buyer shall defend, indemnify and hold harmless Seller from any loss or damage sustained directly by Seller and from and against all claims asserted against Seller with respect to the goods or services covered hereunder arising in whole or in part of (a) failure of Buyer, its agents, employees or customers to follow specifications, instruction, warnings or recommendations furnished by Seller, (b) failure of Buyer, its agents, employees or customers to comply with all applicable legal requirements, (c) misuse of the goods by Buyer, its agents, employees or customers, (d) misrepresentation by Buyer, its agents, employees or customers, (e) the sole or contributing negligence of Buyer, its agents, employees or customers, or (f) alleged infringement of any patent, trademark or copyright as a result of Seller's performance in accordance with Buyer's designs, plans or specifications, Buyer hereby waves and releases Seller from all rights of contribution or indemnity to which it may otherwise be entitled. As used in this paragraph, the term "Seller" shall mean Seller, its officers, directors, agents, employees, subcontractors, parent, subsidiaries, divisions and affiliates.
11. CANCELLATION BY BUYER. Buyer may cancel this contract only upon written notice to Seller and payment of reasonable cancellation charges including (1) the price of goods and services completed prior to Seller's receipt of such notice; (2) all costs previously incurred in connection with the uncompleted goods or service together with reasonable profit thereon; and (3) the expenses incurred by Seller by reason of such cancellation.
12. TAXES. All taxes and other charges imposed by federal, state, local or foreign government on the manufacture, sale, shipment, import, export or use of the goods or services (other than income taxes) shall be paid by Buyer. Buyer shall defend, indemnify and hold harmless Seller from and against all

liabilities for such taxes or charges and attorney's fees or costs incurred by Seller in connection therewith.

13. ADVICE AND ASSISTANCE. Upon request, Seller in its discretion may furnish as an accommodation to Buyer technical advice or assistance regarding the goods or services. Seller assumes no obligation or liability for the advice or assistance given or results obtained, which shall be at Buyer's sole risk.

14. BUYER'S MATERIALS. All of Buyer's tooling, goods and other property in Seller's possession shall be fully insured by Buyer and Buyer releases Seller from all liability for loss/or damage to such materials caused by Seller's negligence or otherwise. At any time after one year since completion of any order requiring the use of such materials, Seller may use or dispose of such materials without liability to Buyer.

15. SELLER'S PROPRIETARY RIGHTS. All drawings, inventions, or improvements made by or for Seller in connection with the performance of this contract shall be Seller's property. Buyer shall not use or disclose any of Seller's trade secrets, proprietary or confidential information, whether or not designated as such, except as required in connection with the use of the goods or services covered hereunder.

16. SECURITY AGREEMENT: CREDIT AND COLLECTION. To secure payment of all sums due Seller hereunder or otherwise, Seller shall retain a security interest in the goods delivered hereunder and this contract shall be deemed a Security Agreement under the Uniform Commercial Code. Buyer authorizes Seller as its attorney to execute and file on Buyer's behalf all documents Seller deems necessary to perfect such security interest.

A service charge of one and one-half percent (1½%) per month, but not to exceed the highest amount lawfully allowed by contract in this state, shall be made on all sums due Seller, which have not been paid within thirty (30) days from the invoice dates, and Buyer agrees to promptly pay said service charge. If Seller commences litigation or employs attorneys to collect payment of any amounts due it from Buyer, Buyer agrees to pay reasonable attorney's sums which may be due.

Except to the extent otherwise specified by Seller in its quotation, prorate payments shall become due without setoff as shipments are made. If Seller consents to delay shipment after receipt of any specially ordered products, payment shall become due on the date when Seller is prepared to make shipment. In the event of any such delay, products shall be held at Buyer's risk and expense.

Any order for products by Buyer, shall constitute a representation that Buyer is solvent and has the ability to pay its obligations as they become due. In addition, upon Seller's request, Buyer will furnish a written representation concerning its solvency at any time prior to shipment. If Buyer's financial condition at any time does not justify continuance of the work to be performed by Seller hereunder on the agreed terms of payment, Seller may require full or partial payment in advance. In the event of Buyer's bankruptcy or insolvency, or in the event any proceeding is brought against Buyer, voluntary or involuntary, under any bankruptcy or insolvency laws, Seller shall be entitled to cancel any outstanding order at any time during the period allowed for filing claims against the estate, and shall receive reimbursement for its proper cancellation charges. Seller's rights under this article are in addition to all rights as they are available to it at law or in equity.

17. COMPLIANCE WITH LAWS. Seller and Buyer shall comply with all statutes, rules, regulations and orders, state, federal and local, applicable to its performance and the goods and services provided hereunder, including but not limited to, the Drug Free Workplace Act of 1988, the Federal Coal Mine Health and Safety Act, the Occupational Safety and Health Act, the Fair Labor Standards Act of 1938, the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Vietnam Era Veterans Readjustment and Assistance Act of 1974, the Uniformed Services Employment and Reemployment Rights Act (USERRA), Executive Order 11625 (October 13, 1971), the Family and Medical Leave Act of 1993, and U.S. Government Policies concerning Affirmative Action Compliance Programs [41 CFR 60-250.4 (Disabled Veterans And Veterans of the Vietnam Era) and 41 CFR 60-741.4 (Handicapped Workers)], Minority Business Enterprises Subcontracting Programs, the Utilization of Minority Business Enterprises, Utilization of Small Business Concerns and Small Disadvantaged Concerns, and the Utilization of Labor Surplus Area Concerns, all as amended.

18. NONSEGREGATED FACILITIES. Seller and Buyer shall not maintain any segregated facilities or permit employees to work at any location where segregated facilities are maintained. See 41 CFR 60-1.8.

19. EQUAL OPPORTUNITY. Seller is an Equal Opportunity Employer complying with Executive Order 11246. Certain companies are Prime Government Seller/Contractors as that term is defined in 41 CFR 60. During the performance of this Purchase Order, Seller agrees to abide by all requirements of Executive Order 11246. Paragraphs one thru seven of the Equal Opportunity Clause in 41 CFR 1.4 are made a part of this Purchase Order by reference.

20. MISCELLANEOUS. This contract constitutes the entire agreement between Buyer and Seller relating to the goods or services covered hereunder. No modifications shall be binding upon the Seller unless in a writing signed by Seller's duly authorized representative. No waiver by Seller of default by Buyer shall be deemed a waiver of any subsequent default. Captions used herein shall have no substantive significance.

21. GOVERNING LAW. For all purposes this Purchase Order shall be governed by the procedural and substantive law of the state in which the goods are used or where services are provided. The terms on the front of this Purchase Order shall govern any conflicting terms on this side.

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