

STANDARD PURCHASE ORDER TERMS AND CONDITIONS



1. **Definitions.** "Order" means these Standard Purchase Order Terms and Conditions (these "Terms and Conditions"), together with the purchase order to which they are physically or electronically attached and any other document incorporated by reference and attached to such purchase order. "Buyer" means the entity identified as the purchaser on the face of the purchase order. "Seller" means the entity identified as the seller on the face of the purchase order. "Goods" means the products, equipment, materials or other goods identified on the purchase order. "Services" means any services, activities or tasks identified on the purchase order. "Affiliate" means with respect to any specified person or entity, any other person or entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such specified person or entity. For purposes of this definition of Affiliate, "control", "controlled by" and "under common control with" mean the power to direct the management and policies of such person, directly or indirectly, whether through ownership of voting securities, by contract or otherwise.
2. **Acceptance of Order; Inconsistent Terms.** These Terms and Conditions govern the Order. Unless accepted earlier, shipment of any Goods or performance of any Services described in the Order constitutes Seller's acceptance of the Order (including these Terms and Conditions), regardless of whether Seller has signed or acknowledged the Order. No other terms, whether contained in a bid, estimate, acknowledgement, confirmation, invoice or other document given by Seller shall in any way modify or supersede any of the terms of the Order or be binding on Buyer. Buyer hereby expressly rejects all such other terms. The use of Seller's or Buyer's forms (other than the Order) is for convenience only and will have no effect with respect to the Order.
3. **Inspection/Acceptance.** No inspection or acceptance of, or payment by, Buyer for any of the Goods and Services described herein shall release Seller from any obligations or liabilities pertaining to the Order. Buyer shall have the right to inspect the Goods before accepting them and shall have a reasonable period of time after discovering a defect or nonconformity to reject or revoke acceptance of the Goods. Final acceptance is dependent upon completion of all applicable acceptance criteria to Buyer's reasonable satisfaction. In the case of Services, the Buyer reserves the right to inspect Services provided under the Order at all reasonable times and places. If any of the Goods or Services do not conform with the requirements of the Order, the Buyer may, in its sole discretion, require Seller to perform again in conformity with the Order requirements, with no additional payment. When defects in the quality or quantity of the Good or Service cannot be corrected by re-performance, the Buyer may (i) require Seller to take necessary action to ensure that the future performance conforms to the Order requirements and equitably reduce the payment due to Seller to reflect the reduced value of performance or (ii) terminate all or a portion of the Order and obtain a prompt refund from Seller of all payments Buyer has made with respect to that portion of the Order that Buyer has terminated. These remedies in no way limit the other remedies available to the Buyer. The Seller shall notify the Buyer of Goods or Services provided that were subsequently found not to conform to specifications.
4. **Shipping Instructions.** Seller shall be responsible for ensuring the proper packaging of materials hereunder in accordance with the requirements of the Order, or if the requirements are not specified, in accordance with standard commercial practices customary for similar shipments. Seller will deliver the material and equipment described herein in new condition, properly packaged for shipment at the F.O.B. point stated on the face of the purchase order at no additional cost to Buyer, unless otherwise specified herein. In each master carton or container in which Goods are shipped, Seller shall include a packing list indicating the purchase order number, description, quantity, item numbers, and other identifying information corresponding to the information in the Order or reasonably necessary to facilitate delivery in accordance with the requirements in the Order. The packing list shall be easily accessible. Seller shall clearly mark all packages in accordance with all applicable laws. Seller shall ensure that a receiving document/proof-of-delivery is issued to Buyer for any shipment made to a third party location. Order number(s) must appear on all correspondence, shipping labels, and shipping documents, including all packing sheets, bills of lading, air bills, and invoices. Buyer will not pay for any extra charges for packaging, marking or identification unless specified on the face of the purchase order. All costs, fines or penalties incurred or assessed due to improper packing or marking will be Seller's responsibility, and if paid by Buyer, will be deducted from amounts owed to Seller.
5. **Delivery; Title and Risk of Loss; Notice of Delay.**
 - (a) Unless otherwise stated on the face of the purchase order, Seller shall be responsible to make all arrangements, and to pay, for the loading and transportation (including insurance, any contract of carriage and, if applicable, exportation, importation and customs requirements) of all Goods to the place of delivery stated on the face of the Order (the "Place of Delivery"). The price for the Goods includes all such loading and transportation costs and expenses. Title to, and risk of loss of, the Goods will transfer from Seller to Buyer upon Buyer's receipt of the Goods at the point stated on the face of the purchase order.
 - (b) Time is of the essence and failure to deliver Goods or perform Services in accordance with the delivery schedule under the Order, shall be considered a material breach of the Order. No acts of Buyer, including without limitation modifications of the Order or acceptance of late deliveries, shall constitute waiver of this provision.
 - (c) Notwithstanding the foregoing, Seller will not be deemed to be in breach of the Order to the extent that a delay is either (i) authorized in writing by Buyer, (ii) caused solely by Buyer's act or omission in breach of the Order, or (iii) caused by a Force Majeure Event (each delay described in clauses (i), (ii) and (iii), an "Excused Delay"). A delay caused by Seller or Seller's suppliers shall not be deemed to be an Excused Delay. To be excused under this Section, Seller shall diligently attempt to promptly reinitiate performance upon the occurrence of any Excused Delay. If any Excused Delay continues for more than 30 days, Buyer shall have the right to terminate the Order (or, at Buyer's election, solely the affected portion thereof) upon written notice to Seller.
 - (d) In the event of any delay other than an Excused Delay, Buyer will have the right to require Seller to expedite the shipment of the Goods by means selected by Buyer or to obtain replacement goods or services from alternative suppliers. Seller will be solely responsible for the cost of the expedited shipment of the Goods and any costs or damages incurred by Buyer in connection with the delayed Goods or Services, including the difference between the cost of replacement goods or services from alternative suppliers and the price of the delayed Goods or Services and for any other cost or damages incurred by Buyer in connection with the delay.
 - (e) Seller shall notify Buyer in writing immediately of any actual delay or of any event likely to result in delay to the performance of the Order. Such notice shall include a proposed revised schedule but such notice and proposal or Buyer's receipt or acceptance thereof shall not constitute a waiver to Buyer's rights and remedies hereunder.
 - (f) Seller shall notify Buyer in writing immediately in the event that Seller believes that there may be a shortage of Goods. Seller shall allocate any shortage of Goods proportionately among Seller's obligations to Buyer under the Order and to Seller's other regular customers then under contract.
 - (g) The parties agree that it would be extremely difficult and impractical under the presently known and anticipated circumstances to ascertain and fix the actual damages Buyer would incur if Seller does not deliver the Goods or Services in accordance with the delivery schedule. Accordingly, the parties agree that, if

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agreed upon in the Order, Buyer may collect, as compensation for delay, and not as a penalty, liquidated damages in the amount set forth in the Order, if any.

6. Laws and Regulations. Seller certifies that prices charged for the Goods and/or Services are not in excess of those permitted under any applicable regulation or law; and Seller further agrees to comply with all applicable federal, state, and local laws, regulations, ordinances, and rules including those relating to environmental protection, energy and labor (including those regarding discrimination, unfair labor practices, anti-kick-back and collusion); and Seller also agrees to procure at its expense all permits and licenses necessary for compliance with the Order.

7. Force Majeure. Except for defaults of Seller's subcontractors or suppliers at any tier, neither Buyer nor Seller shall be liable for any failure to perform due to acts of God or of the public enemy, unprecedented acts of the Government in its sovereign or contractual capacity, geographically widespread fires or floods, epidemics (excluding COVID 19 and its variants), physical terrorism, quarantine restrictions, strikes (other than with respect to Seller's workforce) and freight embargoes. In the event that performance of the Order is hindered, delayed or adversely affected by causes of the type described above (each, a "Force Majeure Event"), then the Party whose performance is so affected shall so notify the other Party's authorized representative in writing stating the period of time the Force Majeure Event is expected to continue. The party claiming the Force Majeure Event shall use diligent efforts to mitigate the impact of the Force Majeure Event and shall resume the performance of its obligations as soon as reasonably practicable. In the event the delay continues for a period of thirty days following written notice, and, at Buyer's option, the Order shall be completed with such adjustments as are reasonably required by the existence of Force Majeure Event or the Order may be terminated for convenience by Buyer.

8. Independent Contractor. If the Order requires the use of Seller's employees, subcontractors, or others under Seller's control at Buyer's or Buyer's customer's premises, Seller agrees that:

- (a) Seller shall obtain and pay for all permits, licenses and inspection fees required for the work hereunder, unless otherwise specified.
- (b) Seller's status shall be that of an independent contractor and shall not be that of an employee of Buyer, and that no withholding shall be made from any sums due hereunder to Seller for purposes of FICA, federal income taxes, or any state or local unemployment insurance or taxes, and that the Seller is not covered by Buyer's or Buyer's customer's Workers' Compensation Insurance.
- (c) To the fullest extent permitted by applicable law, Seller shall carefully interview, screen and check its personnel and prospective personnel to determine suitability for the performance of the Services. Buyer may require Seller to remove any of Seller's personnel or subcontractors from the performance of the Services at any time and for any reason. Seller shall not use subcontractors to perform the Services without Buyer's prior written approval. Buyer may require Seller to remove any of Seller's personnel or subcontractors from the performance of the Services at any time and for any reason.
- (d) In the event of the bankruptcy or insolvency of Seller, its successors or assigns, or of any assignment by Seller for the benefit of its creditors, Buyer shall have the right to cancel the Order.

9. Assignment. Seller acknowledges that it has been selected by Buyer to meet Buyer's particular needs. Therefore, Seller may not assign any rights or subcontract or delegate any of its obligations due or to become due under the Order without the prior written consent of Buyer. Any purported assignment, subcontracting or delegation by Seller without such consent shall be void. Buyer may assign the Order to (i) an Affiliate,

(ii) any successor in interest by way of merger, stock purchase or otherwise, or (iii) Buyer's customer.

10. Insurance. Seller shall be responsible for the actions and failure to act of all parties retained by, through, or under Seller in connection with the performance of the Order. Seller shall maintain, and shall cause its subcontractors to maintain, adequate liability, employer's liability and workers' compensation insurance in amounts customary in the industry, but no event less than an amount satisfactory to Buyer to protect Buyer, its Affiliates, and their respective officers, employees, directors and agents with respect to the indemnity in Section 13 and any claims under workers' compensation, safety and health and similar laws and regulations. Such insurance shall be primary without any right of contribution by Buyer. Upon request, Seller also shall maintain property insurance coverage in types and amounts satisfactory to Buyer for all Goods that are or at any time become so identified to the Order. Such property insurance shall name Buyer as a loss payee as its interests may appear.

Seller shall provide Buyer with certificates evidencing required insurance upon Buyer's request. Seller shall make no charge to Buyer for any insurance relating to the Goods or Services purchased hereunder or relating to the transportation thereof.

11. Changes.

- (a) Buyer shall have the right by written order to suspend work or to make changes from time to time in the Services to be rendered or Goods to be furnished by Seller hereunder or the delivery date. If such suspension or changes cause an increase or decrease in the cost of performance of the Order or in the time required for its performance, an equitable adjustment shall be negotiated promptly, and the Order shall be modified in writing accordingly. Any claim by Seller for adjustment under this Section must be asserted in writing within fifteen (15) days from the date of receipt by Seller of notification of the change or suspension and shall be followed as soon as practicable with a notice of amount claimed and supporting cost figures. However, nothing herein shall excuse the Seller from proceeding with the Order as changed pending resolution of the claim.
- (b) No change, alteration, or modification of the Order shall be binding upon either party hereto, unless in writing signed by a duly authorized officer or representative of such party.

12. Disputes.

- (a) The Order shall be governed by, and construed and enforced in accordance with, the laws of the State of New York without regard to its conflict of laws rules. The 1980 United Nations Convention on Contracts for the International Sale of Goods or any version thereafter shall not govern the Order. Any controversy or claim that may arise out of or in connection with the Order that after good faith negotiations cannot be resolved to both Parties' satisfaction may be submitted to a court of competent jurisdiction within the state of New York.
- (b) Pending resolution of settlement of any dispute arising under the Order, Seller will proceed diligently as directed by Buyer with the performance of the Order irrespective of the place of performance.

13. Indemnification. To the greatest extent permitted by law, Seller shall defend Buyer and Buyer's customer, and their Affiliates, officers, agents and subcontractors against all claims, actions, suits or other proceedings, and shall indemnify and hold each harmless from all losses, liabilities, damages and expenses (including reasonable attorneys' fees and disbursements), arising or alleged to have arisen from, or that are related to, any of the following: (a) breach of the Order by Seller or any of its employees, agents or subcontractors, (b) defects in the Goods or their failure to otherwise comply with the Specifications, (c) the negligence, gross negligence or willful misconduct of Seller or any of its employees,



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agents or subcontractors in the performance of the Order, including, but not limited to, for injury to or death of any and all persons (including but not limited to employees) and for damage to property arising out of or in connection with the performance of work hereunder, or (d) intellectual property infringement or misappropriation that may arise from the Goods or Services, any of the means or processes used to manufacture or provide the Goods or Services, or Buyer's use of the Goods or Services. If as a result of any suit or proceeding, the Goods or Services or any part thereof, are held to constitute any such infringement or misappropriation and their use by Buyer is enjoined, Seller, at its option and at no cost to Buyer, either shall (1) procure for Buyer the right to continue using the Goods or Services, (2) replace the Goods or Services with a non-infringing equivalent or (3) modify the Goods or Services so they become non-infringing provided that such modification does not result in a degradation of the functionality, performance or quality of the Goods or Services.

14. Title to Intellectual Property. Definitions: "Intellectual Property" ("IP") as used in the Order shall mean all intellectual property and industrial property rights of any kind, worldwide, including without limitation: (a) utility patents, design patents, industrial designs and all applications for the foregoing, including continuation, divisional, and continuation-in-part applications, post-grant review proceedings, and other similar filings or stages thereof; (b) registered and unregistered trademarks, service marks, trade dress, logos, domain names, and other source identifiers, and all applications and registrations for the foregoing, and all goodwill associated with the foregoing; (c) published and unpublished works of authorship, registered and unregistered copyrights, moral rights, database rights, and all registrations and applications for the foregoing; and (d) trade secrets, know-how, technical and business information, ideas, algorithms, inventions, improvements, data, and other confidential and proprietary information, in whatever form.

- (a) **Warranties and Covenants.** Seller acknowledges that certain rights, title and interest in the IP associated with the Goods may be owned by a third party. In such event, Seller warrants and represents that it is authorized by such owner to market, offer for sale, sell and distribute the Goods to Buyer. In any event, Seller covenants that neither the Goods nor Services, nor any of the means or processes used to manufacture the Goods or provide the Services, nor Buyer's use of the Goods or Services will infringe or misappropriate the IP of any third party.
- (b) **No Acquired Rights.** Except as expressly authorized by the Order, or as otherwise set forth herein, neither party shall acquire directly or by implication, any rights in the IP of the other party which existed prior to the effective date of the Order, including, but not limited to inventions described and claimed in the application for U.S. Patents filed prior to the effective date of the Order.
- (c) **Buyer's IP.** Seller shall respect the IP of Buyer and its Affiliates. Seller may not make, use or sell any materials reflecting the IP of Buyer or its Affiliates for any purpose other than to fulfill the Order, without Buyer's express written permission. Seller may not sell or distribute or cause to be sold or distributed either directly or indirectly, any Goods that display or incorporate the IP of Buyer or any of its Affiliates, to anyone other than Buyer. All IP developed by the Buyer as part of the Order shall be solely owned by the Buyer, without any rights granted to the Seller. All IP developed by the Buyer outside of the Order, including without limitation IP developed with Buyer internal research and development funds, shall be solely owned by the Buyer and, if set forth in the Order, licensed to Seller only pursuant to a separate license agreement.
- (d) **Seller's IP.** Subject to 14(b) above, all IP developed by the Seller under this Order shall be solely owned by the Buyer.
- (e) **Joint IP.** All IP developed jointly by the Parties shall be solely owned by the Buyer, subject to the confidentiality obligations set forth in the Order.

- (f) **Patent Applications and Inventions.** All patent applications filed on Inventions shall be paid for by the Party that owns title to the Invention. The non-filing party shall reasonably cooperate with the filing party in connection with the prosecution, filing, and maintenance of such patent applications. In the case where Seller is the non-filing Party, the Buyer will reimburse the Seller at reasonable rates for labor and expenses for such cooperation.

15. Rights in Materials.

- (a) All drawings, blueprints, photographs, sketches, software (in source code and object code format), specifications, models and similar items (the "Materials") developed or prepared by Seller for the purpose of or in the course of fulfilling the Order shall belong to Buyer (the "Developed Materials") unless (i) otherwise required by the U.S. government regulations referred to in this Order, or (ii) the Buyer has executed a separate agreement restricting the use and disclosure of such Developed Materials. Seller hereby irrevocably assigns to Buyer, and shall require its employees, subcontractors and agents to assign to Buyer, all rights, title and interest, including copyrights, patents and any other intellectual property rights, in and to any of the Developed Materials.
- (b) Unless otherwise expressly agreed to in writing to the contrary and subject to Section 15(d) below, all Materials that are (i) supplied to Seller by Buyer or (ii) obtained or developed by Seller in the performance of the Order or paid for by Buyer shall be the property of Buyer (all such materials, together with the Developed Materials, the "Buyer Materials"). Buyer Materials may not be used for or disclosed to any non-party without Buyer's prior written consent, other than to Seller's subcontractors and agents to the extent required to fulfill the Order. Seller agrees to execute, and shall cause the Seller personnel to execute, any documents or take any other actions as may reasonably be necessary, or as Buyer may reasonably request, to evidence, perfect, maintain and enforce Buyer's ownership of any Materials. Upon Buyer's request, Seller shall provide, or return to, Buyer all Buyer Materials, including any copies made. Seller may, however, retain one copy of such Buyer Materials solely for record purposes. Seller consents to the entry of temporary and permanent injunctive and other equitable relief in favor of Buyer to require the delivery of the Buyer Materials upon Seller's refusal to deliver such Buyer Materials after Buyer's request. All such items supplied by Buyer or obtained by Seller in performance of the Order or paid for by Buyer shall be promptly provided to Buyer on request or upon completion of the Order.
- (c) Unless otherwise expressly agreed in writing to the contrary and subject to Section 15(d) below, any invention or other IP first made or conceived by Seller in the performance of the Order or which is derived from or based on the use of information supplied by Buyer, shall be considered to be the property of Buyer; and Seller shall execute such documents necessary to perfect Buyer's title hereto. Buyer agrees to provide assistance reasonably required to perfect such rights. Unless otherwise expressly agreed to in writing to the contrary and subject to Section 15(d) below, any work performed pursuant to the Order shall be considered a "work made for hire". To the extent that any invention or other IP may not, by operation of law, be works made for hire, the Seller hereby assigns to Buyer the ownership thereof. To the extent that any Seller-owned, duly marked pre-existing materials, tools, algorithms, codes and utilities are contained in the invention or other IP, the Seller grants to Buyer and its Affiliates an irrevocable, non-exclusive, world-wide, royalty-free license to: use, execute, reproduce, display, and prepare derivative works based upon such pre-existing materials and derivative works thereof; and, to authorize others to do any, some, or all of the foregoing. The term "pre-existing materials" shall include tools, algorithms, codes and utilities developed prior to or during the term of the Order by the Seller at Seller's expense.

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- (d) If the Order indicates on the face that it is a government subcontract, the applicable government regulations incorporated into the Order shall, when applicable, take precedence over any conflicting provision of this Section 15 to the extent that such regulations so require. The incorporation by reference of such U.S. government regulations dealing with subcontractor's rights in Technical Data, subject inventions, copyrights, software and similar IP are not intended to, and shall not, unless otherwise required by applicable law, obviate or modify any greater rights which Seller may have previously granted Buyer pursuant to prior agreements between the parties.
- 16. Buyer's Property.** All property supplied or paid for by Buyer shall be and remain the property of Buyer or Buyer's customer as appropriate; and if Seller fails to return such property upon Buyer's demand, Buyer shall have the right, upon reasonable notice, to invoice Seller for the cost of replacement of such property. All Buyer's property shall be used only in the performance of work under the Order unless Buyer consents otherwise in writing. Seller shall have the obligation to maintain any and all property furnished by Buyer to Seller and shall be responsible for all loss or damage to said property except for normal wear and tear.
- 17. Warranty.**
- (a) Seller represents, warrants and covenants that, unless a different timeframe is set forth specifically in the purchase order, for a period of one year from acceptance, all Goods delivered under the Order will (i) conform strictly to the general description, model number and specifications stated in the Order and in any manufacturer warranties that accompany the Goods (the "Specifications"), (ii) be free from defects in materials, workmanship, and design, (iii) be merchantable and fit for their intended purpose, (iv) be free of contaminants, and (v) be of first quality and made of new materials and components.
- (b) Seller represents, warrants and covenants that the Services performed under the Order will (i) be performed in a good, prompt and diligent manner and in strict accordance with all conditions and requirements contained in the Order and (ii) reflect the level of skill, knowledge and judgment required or reasonably expected of suppliers performing comparable services.
- (c) With respect to any Goods designed by Seller or any of Seller's subcontractors or suppliers, Seller assumes and acknowledges full and complete responsibility for the suitability, adequacy, and safety of the design of such Goods, including compliance with the warranties in Section 17(a). Seller shall extend to Buyer all applicable warranties extended to Seller with respect to all Goods not manufactured by Seller. Seller's extension of such warranties, however, will not relieve Seller of its obligation to replace, repair or refund non-conforming Goods.
- (d) Seller represents, warrants and covenants that title to all Goods will be good, and their transfer rightful, and that the Goods will be free from all security interests, claims, demands, liens and other encumbrances. If any Goods fail to conform to the above warranty of title, Seller shall defend the title and, at Buyer's option and at no cost to Buyer, shall promptly remove any security interest, claim, demand, lien or other encumbrance or replace the Goods with substitute Goods conforming to the terms of the Order, including the above warranty of title. If Seller fails to do so within five business days after receiving Buyer's request, then Buyer, at Buyer's option, may either (i) cause the removal of such security interest, claim, demand, lien or other encumbrance by bonding, in which case Seller will be liable to Buyer for the expenses incurred by Buyer in doing so, or (ii) revoke acceptance of the Goods, in which case Seller shall promptly refund any compensation Seller received for the Goods together with all costs incurred by Buyer in connection with such revocation.
- (e) If Buyer discovers that any Goods or Services fail to conform to the above warranties, then, Buyer shall give Seller written notice of the nonconformity within a reasonable time after discovery. Upon receipt of such notice, Seller shall, at Buyer's option and at no cost to Buyer, promptly repair, replace with conforming Goods or modify any non-conforming Goods or re-perform the Services so that they conform or refund to Buyer the price of the non-conforming Goods or Services. Seller shall provide all labor, engineering, supervision, equipment, tools and materials necessary to affect the appropriate remedy and bear all expenses in connection with such remedy, including costs to expedite shipment of the replacement Goods, or, at Buyer's option, to recover or dismantle the Goods, as applicable. If Seller is unable to remedy such nonconformity during a time period consistent with Buyer's reasonable requirements, Buyer may undertake to remedy the nonconformity, and in such case, Seller shall reimburse Buyer for any reasonable costs Buyer incurs in excess of the prices for such Goods that would have been due Seller under the Order.
- (f) SELLER MAKES NO WARRANTIES OTHER THAN THE WARRANTIES SET FORTH IN THE ORDER AND HEREBY DISCLAIMS ALL OTHER WARRANTIES OF QUALITY, WHETHER EXPRESS OR IMPLIED, WHETHER CREATED BY CONTRACT OR BY OPERATION OF LAW.
- 18. Invoices; Payment.** Seller shall issue an invoice to Buyer with each shipment of Goods. For Services, Seller shall issue the invoice(s) in accordance with the schedule agreed upon by the parties. All invoices shall be in the form of invoice approved by Buyer. Unless otherwise expressly agreed by the parties, all amounts shall be invoiced in U.S. Dollars. If no schedule has been agreed upon, then Seller shall issue the invoice upon completion of the Services. Buyer has the right to unilaterally adjust any invoice to reflect the quantity of Goods actually received by Buyer. Seller shall not invoice, and Buyer shall not be responsible for the payment of, any amounts that are billed more than 90 days past the date of delivery of the Goods or performance of the Services to which such amounts apply. Each invoice shall be accompanied by all required documentation necessary to support all charges. Seller shall identify sales and use taxes, applicable rebates and discounts separately on each invoice. Seller shall separately state charges for Services from charges for Goods on each invoice. Any invoice submitted to Buyer in an improper format or without the required documentation will be returned unpaid to Seller for correction and resubmission. If Buyer has agreed in writing to pay for transportation, Seller shall show the freight charge as a separate item on the invoice and attach a copy of the freight bill to the invoice. Buyer will pay all undisputed and properly documented invoices within sixty days after receipt of the invoice, or receipt of the Goods or performance of the Services described on the invoice, whichever is later. If Buyer disputes any portion of an invoice, Buyer shall return the disputed invoice unpaid to Seller indicating the reason Buyer is disputing any amount, and Seller shall reissue the invoice to include only the undisputed portions. Neither the payments made to Seller, nor the method of such payments, will relieve Seller of its obligation to perform its obligations in strict compliance with the Order. In addition, no payment by Buyer of any invoice will be deemed Buyer's acceptance of the Goods or Services described on the invoice. Unless otherwise expressly agreed by the parties, all payments shall be made in U.S. Dollars.
- 19. Termination for Convenience.** The Buyer may terminate the Order in whole or in part, for its convenience. The Buyer shall give written notice of the termination to the Seller specifying the part(s) of the Order terminated and when termination becomes effective. Upon receipt of the notice of termination, Seller shall incur no further obligations except to the extent necessary to mitigate costs of performance. Upon such termination, Seller will be entitled to (a) compensation for all conforming Goods delivered and Services performed prior to such termination and (b) reimbursement of all reasonable, documented costs actually incurred by Seller prior to such termination in connection with the Services or Goods (except with respect to any Goods that are in Seller's standard

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stock). Seller will not be entitled to any lost profits or other amounts not described in this Section with respect to any Services not performed or Goods not completed or completed but not delivered to Buyer.

20. Termination for Breach. Buyer may terminate the Order in whole or in part, effective immediately upon written notice to Seller or upon such later date as set forth in such notice, if Seller (a) fails to deliver any Goods or perform any Services by the time(s) specified in the Order (unless excused as an Excused Delay); (b) gives Buyer reasonable cause to doubt Seller's ability to deliver the Goods or perform the Services in accordance with the Order (including Seller's delivery obligations); or (c) fails to cure a breach of any representation, warranty or other obligation under the Order, including the delivery of nonconforming Goods or the performance of nonconforming Services, within 30 days of Seller's receipt of notice of such breach from Buyer (the cure period being applicable only to the extent such breach is capable of cure). Upon any such termination, Buyer will have no further liability under the Order except to pay for conforming Goods delivered and conforming Services performed prior to such termination.

21. Release of Information. Seller shall not publish, distribute, or use any information developed under or about the existence of the Order, or use the Buyer's name or logo for the purpose of advertising, making a news release, creating a business reference, creating a website content or for Goods or Services endorsement without the prior written approval of Buyer.

22. Severability. If any provision of the Order or application thereof is found to be invalid, illegal or unenforceable by law, the remainder of the Order will remain valid, enforceable and in full force and effect, and the parties will negotiate in good faith to substitute a provision of like economic intent and effect.

23. Government Contract Terms. If the Order indicates on its face that it is a government subcontract, then the flowdown clauses required by the Buyer's prime contract shall apply, including those clauses attached to the Order. By entering into the Order, Seller represents and certifies that it, and any officer or employee of Seller, are not currently debarred or suspended from doing business with the federal government and are not listed on the Excluded Parties List System.

24. Integration. The Order, together with all documents incorporated herein by reference, constitute the entire agreement between Buyer and Seller, and there are no terms, conditions, or provisions either oral or written between the parties hereto, other than those herein contained, and the Order supersedes any and all oral or written representations, inducements, or understandings of any kind or nature between the parties hereto relating to the subject matter hereof.

25. Survivability. Notwithstanding the expiration or earlier termination of the Order for any reason, however described, the rights and obligations of the parties under Sections 3 (Inspection/Acceptance), 5 (Delivery; Title and Risk of Loss; Notice of Delay), 6 (Laws and Regulations), 10 (Insurance), 12 (Disputes), 13 (Indemnification), 14 (Title to Intellectual Property), 15 (Rights in Materials), 16 (Buyer's Property), 17 (Warranty) 29 (Nondisclosure and Confidentiality) and 32 (Records and Audits), as well as any of the rights and obligations set forth in the Order which by their nature must survive in order to achieve the Order's fundamental purposes, shall survive any such expiration or termination.

26. Export/Import Controls

(a) Seller shall control the disclosure of and access to technical data, information and other items received under the Order in accordance with U.S. export control laws and regulations, including but not limited to the ITAR and EAR. It shall be the sole responsibility of Seller to determine whether the information provided by Buyer is technical data as outlined in the regulations prior to any release to a third party abiding by the terms outlined herein. Seller shall indemnify, defend and hold harmless Buyer and Buyer's customer, and their Affiliates, officers, agents and

subcontractors, in accordance with Section 13 (Indemnification) for any violations of such laws and regulations by Seller.

(b) Seller shall immediately notify Buyer if it is, or becomes listed, on any Excluded or Denied Party List of an agency of the U.S. government or its export privileges are denied, suspended or revoked.

27. Priority Rating. If the Order is a "rated order" certified for national defense use under the Defense Priorities and Allocations System ("DPAS") and the Defense Production Act, such categorization shall be set forth on the face of the purchase order. If set forth as such, Seller agrees to comply with 15 CFR § 700, et seq. including the required prioritization of rated orders for such order and other orders where compliance is required. Should the Seller be unable to comply with the requirements of 15 CFR § 700, et seq., it will notify Buyer immediately. By accepting any order explicitly or by failing to reject it within the time proscribed by Buyer, Seller agrees to prioritize such order and flow down the DPAS regulations, as needed, to its supply chain. It also acknowledges that Buyer provided all the elements necessary for a proper rated order in 15 CFR § 700.12.

28. Electronic Transmission. The parties agree that if the Order is transmitted electronically, neither party shall contest its validity, or any acknowledgment thereof, on the basis that the Order or acknowledgment contains an electronic signature.

29. Nondisclosure and Confidentiality. The Order and its terms and conditions are confidential. Seller shall not disclose the Order or its terms and conditions to any third party except as may be required by a court, government agency or proper discovery request. If Seller is required to disclose the Order or any of its terms and conditions, Seller shall make such disclosure on a confidential basis and shall promptly notify Buyer in writing prior to making such disclosure. Seller agrees that Buyer's Confidential Information that may from time to time be made available to Seller is to be treated as confidential. The term "Confidential Information" as used herein includes all information and know-how provided to Seller by or on behalf of Buyer or one of its Affiliates whether written or disclosed orally except (a) information that Seller can demonstrate by competent proof to have been in its possession prior to disclosure of such information to Seller by Buyer, (b) information that has been furnished to Seller by a third party as a matter of right without restriction on disclosure and that was not received directly or indirectly from Buyer, (c) information that is or becomes available to Seller on a non-confidential basis from a source which, to the best of Seller's knowledge after due inquiry, is not prohibited from disclosing such information to Seller by a legal, contractual or fiduciary obligation to Buyer, (d) as evidenced by written records, information that is independently developed by Seller without use or reference to the Confidential Information, and (e) any other information once it becomes part of the public domain by publication or otherwise through no act or omission of Seller. Seller may disclose Confidential Information only to those of Seller's employees and subcontractors who need it in connection with the Order. Seller shall be responsible for any breach of confidentiality by its employees and subcontractors. Seller shall make no use of such Confidential Information nor disclose the same to any third party except as specifically provided herein.

30. Right of Access. Seller shall allow right of entry and/or allow for surveillance/inspection activities at any level of the supply chain by the Buyer, the Buyer's customer, and/or regulatory authorities at the applicable areas of the Seller's or its subcontractors' or agents' facilities or any other location where the work is being performed and shall allow access to applicable documented information.

31. Employee Awareness. The Seller shall ensure that individuals performing work are aware of their contribution to product or service conformity, their contribution to product safety, and the importance of ethical behavior.

STANDARD PURCHASE ORDER TERMS AND CONDITIONS



- 32. Records and Audits.** Seller shall maintain complete financial records and accurate documentation relating to the performance of the Order (including the manufacture, storage, shipment, other transportation, and sale of the Goods and all components thereof) during the performance of, and for three years after final payment under, the Order or longer if otherwise required by governmental authorities with jurisdiction over Seller. Buyer or its designee has the right (but not the obligation) to audit and inspect Seller's records with respect to amounts invoiced to Buyer (including pass-through costs from third parties) and Seller's compliance with the provisions of the Order. This right extends during the performance of, and for three years after final payment under, the Order. Buyer will give Seller reasonable prior notice of its audit or inspection. If an audit or inspection reveals an overcharge, then an appropriate adjustment shall be made within 30 days by Seller. Buyer shall pay for any audit or inspection unless such audit or inspection is conducted subsequent to Seller's default or overcharge, in which case Seller shall pay for all audit or inspection costs incurred by Buyer. Seller shall pay all expenses incurred by Seller in supporting the audit and inspection.
- 33. Notices.** All notices and approvals under the Order shall be in writing and deemed given to the receiving party when: (a) received at the facsimile number specified, (b) delivered by hand to the person specified at the address specified, or (c) delivered by third party courier service, including FedEx, UPS and DHL, to the person specified at the address specified. If a party does not specify such information, the address on the face of the Order shall be used. Either party may change its notice information upon 10 days' notice to the other party.
- 34. Miscellaneous.** The rights and remedies in the Order are cumulative and not exclusive of any other right or remedy that might be available at law or in equity. If either party fails to require the other party to perform any term of the Order, such failure will not prevent the party from enforcing such term later. If either party waives the other party's breach of any term of the Order, such waiver will not be deemed a waiver of a later breach of such term. The Order binds the parties, as well as their legal representatives, successors and permitted assigns. Amendments to the Order shall be in writing and signed by both parties. No course of dealing, usage of trade or course of performance shall be used to supplement or explain any term, condition or instruction in the Order, nor be deemed to amend this Order.