

PURCHASE ORDER TERMS AND CONDITIONS

1. **General:**

- (a) This Purchase Order ("Order") is placed subject only to the Terms and Conditions included in this Order and the reference to any proposal from Seller is only for the purpose of specifying basic information concerning price, the description of the item(s), quantities, terms of payment, and delivery and then only as such terms are consistent with the terms and conditions herein.
- (b) Any of Seller's Terms and Conditions which are in addition to or are inconsistent with these Terms and Conditions will be construed as proposals for addition to this Order and will not be binding unless agreed to in writing by the Buyer. For the avoidance of doubt, in the event of conflict between the Seller's terms and conditions and the Buyer's Terms and Conditions, the latter will prevail. Commencement of performance by the Seller in the absence of Buyer's agreement to the proposals will constitute Seller's acceptance of these Order Terms and Conditions to the entire exclusion of Seller's terms and conditions.

2. **Assignment:** Seller may not assign either its rights or obligations under this Order without the prior written consent of Buyer except that claims for monies due or to become due under this Order may be assigned by Seller provided that Seller shall supply Buyer promptly with two copies of any such assignment. Payment to an assignee of any such claim shall be subject to setoff or recoupment against any claim(s), which Buyer may have against Seller and a provision setting forth this right of the Buyer shall be included in each such assignment. Buyer reserves the right to make direct settlements and/or adjustments in price with Seller under the terms of this Order, notwithstanding any assignment of claims for monies due or to become due hereunder and without notice to the assignee.

3. **Subcontracts:** Except for articles proprietary to Seller, none of the contemplated work to be performed hereunder may be subcontracted without Buyer's prior written consent and approval. It shall be a condition of any such consent that the Seller shall:

- (a) ensure and be responsible for the compliance by any sub-contractor with the terms of this Order;
- (b) include in the sub-contract, provisions consistent with these conditions for the benefit of and enforceable by the Buyer; and
- (c) furnish the Buyer with copies of any sub-contract upon the Buyer's request at any time.

For the avoidance of doubt, where the Seller appoints a subcontractor to perform any of the work contemplated hereunder, the prior written consent of the Buyer to the said appointment shall in no way create any contractual relationship between the Buyer and any sub-contractor. The Seller shall be fully responsible for those matters delegated to and performed by any sub-contractor appointed by it and for the acts and omissions of all of its sub-contractors to the same extent as the Seller is responsible for the acts and omissions of persons directly employed by it.

4. **Facilities and Special Equipment:** The Seller represents that it now has, or can readily procure without assistance of the Buyer, the Government, or any other party, all facilities necessary for the timely performance of this Order. Special dies, tools, patterns, and the like, used in manufacture of the articles herein ordered shall be furnished by, and at the expense of, Seller and shall be kept in good condition for follow-on orders, and when necessary, shall be replaced by Seller without expense to Buyer.

5. **Materials and Insurance:** Any material furnished by Buyer on other than a charge basis in connection with this Order will be deemed bailed to the Seller for mutual benefit, and title thereto shall at all times remain in the Buyer. Seller agrees to pay for all such materials spoiled by it or not otherwise satisfactorily accounted for. The Seller shall clearly mark and store all such materials so that they can be identified as the property of the Buyer, make them available for inspection by the Buyer at any time and comply with all instructions from the Buyer with regard to them. Seller agrees to return those materials with freight paid to the Buyer at the Buyer's request at any time, or if no request is made on completion of the Order. Seller agrees to procure a policy or policies of insurance in form satisfactory to the Buyer, insuring against all loss or damage of Buyer owned and supplied property on Seller's premises or with Seller's subcontractors or agents.

6. **Passing of Title/Risk:** Title and risk in the articles shall not pass to the Buyer until physical delivery of the articles to the Buyer or its authorized agent.

7. **Packing and Shipping:** All articles are to be suitably prepared and packed for shipment so as to secure safe delivery, the lowest transportation rates and to meet carrier's requirements. If possible to accomplish, without involving delay, orders shall be combined to make minimum less than truckload "LTL" or truckload shipments. No charges will be allowed for packing, crating or carriage unless stated in the Order. Each container must be marked to show Buyer's Order number, and a packing sheet showing Order number must be included in each package or single unit of LTL shipment or with each truckload shipment. For the avoidance of doubt, the Seller shall be liable for any damage caused to the articles during transportation and in this regard, the Buyer shall be entitled to such remedies as are set forth in paragraphs 11 and 12.

8. **Invoices:** Individual invoices must be issued for each shipment applying against this Order. Value Added Tax, where applicable, shall be shown separately on all invoices. Freight and other charges must be shown if discount is not allowed on full amount of invoice. All invoices issued must bear the Order number that the invoice is being issued against. Delay in receiving an invoice, invoicing for material shipped ahead of specified schedule, or invoices rendered with errors and omissions will be considered just cause for Buyer to withhold payment without losing discount privileges. Discount privilege will apply from date of scheduled delivery, the date of receipt of the goods or the date of invoice, whichever is later.

9. **Inspection:** All articles ordered will be subject to final inspection and approval by Buyer after delivery, notwithstanding prior payment, it being expressly agreed that payment shall not constitute final acceptance. Buyer may without liability, reject and return or require replacement of any article which contains defective material or workmanship or otherwise does not conform to this Order, applicable drawings, specifications or samples. In this regard, the Buyer shall have a right to be compensated for any resulting costs and expenses it incurs. Time is of the essence in relation to delivery of the articles and performance of the services by the Seller under this Order.

The Buyer, at its discretion, may employ either 100% inspection or an approved sample plan. Lots which fail to pass such sampling plans may be subsequently 100% inspected by Buyer (Seller will be charged for all such inspection costs) or at Buyer's option, returned to Seller. Rejected articles or lots which are returned shall be returned at Seller's risk and expense for sorting, correction, replacement, or credit, as Buyer may elect. Exercise of these remedies shall not be exclusive of any other remedies provided in law or equity, which are available to Buyer.

10. **Change:** Buyer may at any time by written change order make changes in the articles or services to be furnished hereunder or their quantities or delivery dates. If the cost of, or time required for, furnishing the articles or services ordered hereby is increased or decreased as a result of such change order, an equitable adjustment in the order price and/or delivery schedule will be made in the change order. If a price and/or delivery adjustment is not included in the change order, no increase in price or delay in delivery will be allowed unless Seller notifies Buyer in writing, within 30 days from the date of the change order, of its claim for such an increase in price or delay in delivery.

This Order shall not be deemed or construed to be modified, amended, rescinded, cancelled or waived in whole or in part, except by written change order hereto signed by a Buyer authorized representative.

11. **Delivery:** The Buyer may request the Seller to furnish such timetables, programs of manufacture or completion as the Buyer requires and may require the Seller to promptly advise the Buyer in writing if such programs are, or are likely to be, delayed. If Seller's deliveries fail to meet the schedules herein specified with the result that Buyer requires, and Seller makes, express shipments, partial shipments, or both, then Seller agrees to assume all resulting excess shipping charges. In addition, the Seller shall be responsible for any expenses incurred to deliver any incorrectly delivered articles to the correct delivery point or return any items delivered in excess of the quantity specified in the Order. Parts fabricated by Seller beyond Buyer's releases are at Seller's risk. Invoices covering material shipped in advance of that specified by delivery schedules will not be paid until their normal maturity after the date specified for delivery.

Notwithstanding the provisions of the preceding paragraph, neither party shall be liable for delays or defaults due to causes beyond its control and without its fault or negligence, except however, when, and in the event that Seller fails to give immediate written notice to Buyer, setting forth the cause of any anticipated delay when the Seller has reason to believe that deliveries will not be made as scheduled.

12. **Warranties:** Seller warrants that all articles furnished under this Order will be free from defects in material and workmanship, and will conform to applicable specifications, drawings, samples or other descriptions and that articles of Seller's design will also be free from defects in design. Seller further expressly warrants that all services performed under this Order will be free from defects in workmanship. Seller further warrants that all articles furnished under this Order will be free from liens, claims or other encumbrances. In addition, the Seller shall use its best efforts to assign to Buyer all benefits of any manufacturers' warranties or any other guarantee to which the articles may be subject. These warranties shall remain in effect, as to each product furnished, serviced and/or repaired hereunder for a period of time consistent with the warranty life normally offered by the Seller. All warranties shall be construed as conditions as well as warranties and shall not be deemed to be exclusive. The benefits of this warranty shall accrue to Buyer's customers, and assigns to the same extent they shall accrue to Buyer. Articles ordered to Government specifications shall comply with such specifications as are current at the date of this order unless otherwise particularly specified by the Buyer. Under circumstances of Breach of Warranty, Buyer shall be entitled to avail itself cumulatively of all remedies provided in law or in equity. Seller shall make timely responses to Buyer's notifications of Breach of Warranty and shall respond understanding (and Seller agrees) that time will be of the essence in all instances. The Seller shall defend, indemnify and hold the Buyer harmless from any claim in respect of loss, damage or injury made against the Buyer by any third parties and any costs and expenses arising in connection with them, which result from the Seller's failure to comply with the Order (whether negligent or otherwise) and in particular resulting from any defect in the articles or their materials, construction, workmanship or design (to the extent that the Seller is responsible for design). These obligations to defend and indemnify shall remain in full force and effect after conclusion of, or sooner termination by either party of the Order.

The Seller represents and warrants that the articles are safe and without risk to health when properly used and comply in all respects with all legal obligations in force at the date of delivery. The Seller shall supply in respect of the articles such information about the use of them as is required by law and which enables the Buyer to comply with them insofar as it is required by law to do so.

13. **Intellectual Property:** Seller agrees to save Buyer, its customers, and agents harmless from any loss, damage, or liability incurred on account of any alleged infringement of any patent, copyright or trademark or misappropriation of any trade secret, confidential information or other intellectual property right with respect to any product furnished under this Order provided that such product is not manufactured pursuant to Buyer's design. Seller also agrees that it will, at its own expense, defend any action, suit, or claim in which infringement, misappropriation or other violation is alleged provided Seller is duly notified as to such action, suit or claim. In case the product or any part thereof is held to constitute an infringement, misappropriation or violation and the use of the product or any part thereof is enjoined, Seller shall, at its own expense, either procure for Buyer the right to continue using the product or any part thereof, or replace same with non-infringing, non-misappropriating, or non-violating product or part thereof, or modify the product so that it becomes non-infringing, non-misappropriating, or non-violating or in the event of the impossibility of the foregoing options grant Buyer a credit for the purchase price of such product. Seller shall not be liable to Buyer if any patent infringement or claim thereof is based upon the use of the product in combinations with other items where such infringement or claim thereof would not have occurred from the normal use for which the product was designed.

Where performance under this Order includes experimental, developmental, or research effort and such work is paid for, in whole or in part as such by Buyer, Seller agrees to disclose to Buyer all confidential processes, or know-how, or trade secrets resulting therefrom and, on request, to assign to Buyer each invention and property right resulting therefrom.

14. Termination:

- (a) Buyer reserves the right to terminate this Order, or any part hereof, and to cancel all or any part of the undelivered portion of this Order if Seller does not make deliveries as provided in this Order, or if Seller breaches any of the terms hereof, including the following warranties. Buyer shall also have the right to terminate this Order or any part thereof, and cancel all or any part of the undelivered portion in the event of the happening of any of the following: (i) Insolvency of Seller, (ii) filing of a voluntary petition in bankruptcy, (iii) filing of an involuntary petition to have Seller declared bankrupt provided it is not vacated within thirty days from the date of such filing, or (iv) the execution by Seller of any assignment for the benefit of creditors. Buyer shall have no obligations to Seller in respect of the cancelled portion of this Order and Buyer's liability shall be limited to payment for the delivered portion of this Order at the rate specified on the face hereof (reflecting quantity prices as though this Order had gone to full completion). If, as a result of default of performance by the Seller, this Order is terminated in whole or in part and it is necessary to procure any of the specified products or services elsewhere, then Seller will be liable for any re-procurement charges, which exceed the amount which would have been due the Seller if it had satisfactorily completed this Order. These remedies shall be cumulative and additional to any other or further remedies provided in law or in equity.
 - (b) Buyer may, for its convenience, terminate work under this Order, in whole or in part, at any time by giving notice to Seller in writing. Seller will thereupon immediately stop work on this Order or the terminated portion thereof and notify any subcontractors to do likewise. Seller shall be entitled to reimbursement for its actual costs incurred up to and including the date of termination, such costs to be determined in accordance with recognized accounting principles. Seller shall also be entitled to a reasonable profit on the work done prior to such termination at a rate not exceeding the rate used in establishing the original purchase price. The total of such claim shall not exceed the pro rata portion of this Order, which is cancelled.
 - (c) Termination claims shall be subject to inspection and audit by the Buyer in the event of cancellation under the above clause.
15. **Compliance with Applicable Laws:** Seller certifies that all of the products and services to be furnished hereunder will be manufactured or supplied by Seller in accordance with all applicable provisions and stipulations, as of this date, of the Walsh Healy Act, Fair Labor Standards Act, Equal Employment Opportunity Provisions and Executive Orders wherein such Acts, Provisions and Orders may be applicable.
16. **Proprietary Information:** Seller agrees that all information contained in drawings, specifications, etc., which are submitted by Buyer to Seller under or pursuant to this Order, is proprietary to Buyer and is submitted with the understanding and agreement by Seller that such information shall not be utilized in whole or in part by Seller, except for fulfillment of this Order, without written permission of Buyer.
17. **Information Proprietary to Seller:** Any information which is proprietary to Seller and which is disclosed in the products or documents furnished to Buyer hereunder shall be deemed to have been disclosed as a part of the consideration for this Order and the Buyer shall have full right to its use as Buyer sees fit.
18. **Advertising:** Any advertising of this Order (including the articles supplied hereunder and pictures, descriptions, or samples thereof) by Seller is prohibited except with Buyer's prior written approval.
19. **Taxes:** Buyer shall not be liable for any Federal, State, or Local taxes unless separately stated on this Order and billed as a separate item.
20. **Governing Laws:** This Order shall be construed in accordance with, and governed by, the laws of the State of Buyer's business address and constitutes the entire agreement between Buyer and Seller. Any dispute arising out of this Order that cannot be resolved between the parties amicably within thirty (30) days shall be litigated in any court of competent jurisdiction within the State of Buyer's business address.
21. **Equal Employment Opportunity:** During the performance of this Order, the Seller agrees as follows:
- (a) The Seller will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation or national origin. The Seller will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Seller agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Seller setting forth the provisions of this nondiscrimination clause.
 - (b) The Seller will, in all solicitations or advertisements for employees placed by or on behalf of the Seller, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation or national origin.
 - (c) The Seller will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, as amended and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - (d) The Seller will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended and of the rules, regulations, and relevant orders of the Secretary of Labor.

- (e) The Seller will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended and by the rules, regulations, and orders of the Secretary of Labor or pursuant thereto, and will permit access to its books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (f) In the event of the Seller's noncompliance with the nondiscrimination clauses of this Order or with any of such rules, regulations, or orders, this Order may be cancelled, terminated or suspended in whole or in part and the Seller may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (g) The above conditions will be applicable to all transactions with the exception of those that fall within the purview of the exemptions set forth in section 60-1.5 of Federal Register Number 104 Volume 33 Part 11 dated May 28, 1968. A transaction may also be deemed not applicable if the Seller can show proof of an exemption ruling from the Federal Commissioner.