

# TERMS OF PURCHASE

## 1. ACCEPTANCE

Agreement by Seller to furnish the materials or services hereby ordered price or delivery, Buyer will be bound as to prices or delivery only upon its written approval. The terms and conditions of this order may in some instances conflict with some of the terms and conditions fixed to the Seller's terms of sale. Therefore, acceptance of the Seller's offer is made only on the express understanding and condition that insofar as the terms and conditions of the Seller's offer. The terms and conditions to this purchase order shall govern, irrespective of whether the Seller accepts these conditions by a written acknowledgment, by implication, by proceeding with work under this order, by delivery of any goods or services ordered hereunder, or by acceptance of any payment made for any goods or services ordered hereunder. Buyer's failure to object to provisions contained in any communication from Seller shall not be deemed a waiver of the provisions of this purchase order. Any changes in the terms and conditions of purchase contained herein must specifically be agreed to in writing by the Buyer before becoming binding on either the Buyer or the Seller. These terms and conditions, together with such modifications and with such data relating to price and delivery as are accepted in writing by Buyer, constitute the entire agreement between the parties. Buyer's rights hereunder shall be in addition to all its rights and remedies at law or equity. Failure of Buyer to enforce any of its rights shall not constitute a waiver of such rights or of any other rights.

## 2. SHIPPING DIRECTIONS

Unless otherwise specified, for shipments at Buyer's risk, declare full value on B/L by rail and motor freight, insure for actual value or \$50.00 whichever is less where shipped by Railway express or Air Express, and where shipped by Parcel Post insure for minimum rate. No charges will be allowed for packing, carting, freight, express or cartage unless specifically agreed to in writing.

## 3. NOTICE OF LABOR DISPUTES: DELIVERY

Seller shall notify Buyer immediately of any actual or potential labor disputes which is delaying or that threatens to delay the timely performance of this order. Time is and shall remain of the essence of the order, failure to deliver acceptable materials or services when due shall constitute a material breach hereof; and no acts of the Buyer, including without limitation modifications of this order or acceptance of the late deliveries, shall constitute waiver of this provision. Buyer also reserves the right to refuse, or return at Seller's risk and expense, shipments made in advance of required schedules.

## 4. QUANTITY

Material shipped in excess of the Buyer's orders may be returned at Seller's expense. Buyer will not be responsible for any material furnished without a written order signed by Buyer.

## 5. TERMINATION; BREACH OF CONTRACT; DAMAGES

Buyer may, by notice in writing, direct Seller to terminate this order or work under this order in whole or in part at any time and such termination shall not constitute a default in such event, unless the Seller shall have defaulted or be in default in performance hereof. Buyer and Seller shall have the rights and obligations contained in the Uniform Termination Clause for Subcontracts set forth in Section 8.706 of the Armed Services Procurement Regulations as amended to the date of this order, which clause is hereby incorporated by reference and made a part hereof. The insolvency or adjudication of bankruptcy of, or the making of an assignment for the benefit of creditors by either party, shall be a material breach hereof. Each party shall have, and hereby reserves, all its rights and remedies in law or in equity, in the events of the default of the other or its performance hereunder; but in no event shall Seller be entitled to anticipatory profits or to special or consequential damages. In the event of Seller's default or potential inability to perform this order, Buyer shall have the right in addition to its other remedies to remove from Seller's plant the new materials and work in process acquired in order to perform under this order, and to complete the work, deducting the cost of such completion from the price.

## 5. BUYER'S PROPERTY

All specifications, drawings, tools, jigs, dies, fixtures, materials, and other items which are supplied by Buyer or which are to be furnished by Seller as an item or items on this order shall be confidential. They shall be and remain the property of Buyer (or of the United States Government in those cases where this contract is entered into pursuant to a contract between Buyer and the Government providing for retention of title by Buyer for the benefit of the Government) and Buyer shall have the right to enter Seller's premises and remove them at any time without being guilty of trespass or liable to Seller for damages of any sort. All such items shall be used only in the performance of work under this contract unless Buyer consents otherwise in writing. Seller shall prominently mark all such items as the property of and, if directed, the area in which they are located as containing property of Buyer (or, as the case may be, of the United States Government). Seller shall similarly list all such items on invoices, and shall be responsible for them as an insurer until delivered to Buyer. Seller shall not dispose of any such item without buyer's written consent. Seller shall indemnify and save Buyer harmless from all claims which may be asserted against said property, including without limitation mechanics liens or claims arising under Workmen's Compensation or Occupational Disease laws and from all claims for injury to persons or property arising out of or related to such items unless the same are caused solely and directly by Buyer's negligence. The provisions of this Article 6 shall survive delivery and payment and remain in full force until said items are delivered to Buyer, or otherwise disposed of with Buyer's written consent.

## **6. SUBCONTRACTING**

None of the work contemplated by Buyer as to be performed by Seller under this order shall be subcontracted without the prior written consent of Buyer.

## **7. SPECIFICATIONS; WARRANTY; INSPECTION**

Material made in accordance with buyer's specifications and drawings shall not be furnished or quoted to any other person or concern without Buyer's written consent. In the event of conflict between specifications, drawings, samples, designated type, part number or catalog description, the specifications shall govern over drawings, drawing over samples, whether or not approved by Buyer, and samples over designated type, part number or catalog description, the specifications shall govern over drawings, drawings other requirements of this order, Seller must, before proceeding consult Buyer whose interpretation shall be final. Seller warrants the materials the material s delivered or services rendered on this order to be free from defects in workmanship, materials, and design, and to be in accordance with Buyer's specifications, drawings and/or samples in all respects. These warranties shall survive acceptance and payment. Seller shall save Buyer harmless from any loss, damage or expense whatsoever that Buyer may suffer from breach of any of these warranties, including without limitation the reasonable cost incurred by the Buyer of reworking materials delivered.

All material and workmanship shall be subject to inspection by Buyer, before and after delivery. Buyer reserves the right upon receipt of nonconforming material to either a) require Seller to replace rejected material at Seller's expense, or b) accept any material s that conform to Seller's warranties and reject or keep and rework at Seller's expense any material not do conforming, or c) require Seller to refund to the Buyer any monies paid for articles rejected which the Buyer does not wish the Seller to either repair or replace. Buyer may make one hundred per cent inspection at Seller's expense or reject an entire shipment, if spot inspection indicates more than two per cent thereof (or such greater percentage as Buyer and Seller may agree upon in writing) fails to conform to Seller's warranties.

## **8. CHANGES**

Buyer shall have the right by written order to suspend work or make changes from time to time in the services to be rendered or the materials to be furnished by Seller hereunder. If such suspension or changes cause an increase or decrease in the cost of performance of this 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 clause must be asserted in writing within 30 days from the date of receipt by Seller of notification of the change or suspension, and shall be followed as soon as practicable with specification of the amount claimed and supporting cost figures.

## **9. PATENTS**

The sale, use, or incorporation into manufactured products of all machines, devices and material furnished hereunder which are not of Buyer's design, composition or manufacture shall be free and clear of infringement of any valid patent, copyright or trademark. Seller shall save Buyer and its customers harmless from any and all expenses, liability and loss of any kind (and the costs and expenses, including attorneys' fee) growing out of claims, suits or actions alleging such infringement, which claims, suits or actions Seller agrees to compose or defend.

## **10. EXCISE TAXES**

All local, state and Federal excise, sales and use taxes, when applicable, shall be stated separately on Seller's invoices.

## **12. ASSIGNMENT**

Seller may not assign monies due or to become due under this order without the prior written consent of Buyer, which will ordinarily be given subject to Buyer's standard conditions. In any case, assigned accounts shall be subject to set off, recoupment or other claim or Buyer against Seller.

## **11. COMPLIANCE WITH LAW; GRATUITES**

Seller warrants that the materials to be furnished and the services to be rendered under this order, and the classes of property described in Article 6, shall be manufactured, sold and used in compliance with all relevant Federal, state and local laws and regulations. All invoices must carry the following certificates: "Seller certifies that with respect to the production of the articles and/or the performance of the services covered by this invoice, it has fully complied with Section 12(a) and 15 of the Fair Labor Standards Act of 1938, as amended."

Seller warrants that it has not offered or given and will not offer or give to any employee, agent or representative of Buyer any gratuity with a view toward securing any business from Buyer or influencing such person with respect to the terms, conditions or performance of any contract with or order from Buyer. Any breach of this warranty shall be a material breach of each and every contract between Buyer and Seller.

## **14. WORK ON BUYER'S OR THIRD PARTY'S PREMISES**

If Seller or any of its agents or subcontractors in the performance of this order enters upon the premises occupied by Buyer or, as agent of Buyer, upon the premises of a third party, Seller shall take all precautions necessary to prevent injury to persons or property. Seller shall indemnify Buyer against all loss on account of claims of injury to persons (including death) or damage to property which may result in any way from any act or omission of Seller, or its agents, employees, or subcontractors. Seller shall also maintain such Public liability, Property Damage, Employers' Liability and Compensation insurance and Motor Vehicle Liability

(Personal Injury and Property Damage) as will protect Seller (or its subcontractors) and Buyer from said risks and from any claims under any applicable Workman's Compensation or Occupational Disease statutes.

## GOVERNMENT CONTRACT PROVISIONS

If a Government Contract Number appears on the face of this Purchase Order, the materials or products furnished are for use in connection with a Government contract or subcontract, and in addition to the above provisions, the applicable provisions of the Armed Services Procurement Regulations, as in effect of the date of this order, as well as the additional provisions set forth hereinafter shall apply.

### 15. INSPECTION

Materials to be used in the performance of Government contracts may be inspected and tested at all times and places, either before, during or after manufacture by Buyer or by the Government Agency concerned, at Buyer's discretion. If inspection and test are made on the premises at Seller or Seller's subcontractor, Seller shall furnish without additional charge all reasonable facilities and assistance for the sale and convenient inspection and tests required by the inspectors in the performance of their duty. The foregoing provisions of this Article are supplementary to, and not in lieu of in derogation of, the provisions of Article 8 above.

### 16. INSPECTION AND AUDIT

The Seller agrees that its plant, books and records, as well as those of any subcontractor shall be subject to inspection and audit at all reasonable times by any authorized representative of the Governmental Agency with which the prime contract of subcontract of the Buyer is made, and that Seller shall include, in each subcontract hereunder appropriate provisions to effectuate the intent hereof.

### 17. NONDISCLOSURE OF INFORMATION

It is understood that disclosure of information relating to the work of materials referred to in this order to any person not entitled to receive it or failure to safeguard all "Confidential," "Secret," or "Top Secret" matter that may come to the Seller, or any person under its control in connection with the work or materials referred to in this order, may subject the Seller, its agents, employees, and subcontractors to criminal liability under the laws of the United States. See Title 1 and particularly subparagraph (d) and (e) of an Act approved March 28, 1940 (54 Stat. 79) and the provisions of an Act approved January 12, 1938 (52 Stat. 3), as supplemented by Executive Order No. 8381, dated March 22, 1940, 5 F.R. 1147 O.I. See also Second War Powers Act 12942, sections

1402, 1403, Act March 22, 1942 (P.I. No. 507, 77<sup>th</sup> Congress). Such disclosure or failure shall constitute a breach of contract by the Seller.

### 18. EMPLOYMENT OF ALIENS

No aliens in the employ of Seller shall be permitted to have access to the plans or specifications, or the work under this order, or to participate in the test, trials or inspections without the written consent beforehand of the Secretary of the Government Department concerned or his duly authorized representative, except where the articles furnished hereunder are standard or commercial products purchased under specifications not disclosing the nature or subject matter of the prime contract of Buyer with the Government and not disclosing any other classified information.

### 19. ADDITIONAL GOVERNMENT CONTRACT PROVISIONS

The following clauses set forth in the Armed Services Procurement Regulations, as in effect at the date of this purchase order, are incorporated herein by reference with an appropriate substitution of parties, as the case may be, i.e., "Contracting Officer" shall mean "Buyer," "Contractor" shall mean "Seller," and the term "Contract" shall mean this purchase order.

1-707.3(a), Utilization of Small Business Concerns, 1-805(a), Utilization of Concerns in Labor Areas; 6-104.5, Buy American Act; 6-403(a), Communist Areas; 6-605.2, Duty Free Entry - Canadian Supplies; 7-103.1, Definitions; 7-103.6, Title and Risk of Loss; 7-103.10, Federal, State, and Local Taxes; 7-103.13(a), Renegotiation; 7-103.15, Communist Areas; 7-104.4, Notice of the Government of Labor Disputes; 7-104.11 Excess Profits; 7-104.12, Military Security Requirements; 7-104.14, Utilization of Small Business Concerns; 7-104.15, Examination of Records; 7-104.18, Priorities, Allocations, and Allotments; 7-104.20, Utilization of Concerns in Labor Surplus Areas; 9-203(b) and (c), Rights in Technical Data; 12-203, Convict Labor; 12-303, Contract Work Hours Standards-Overtime Compensation; 12-605, Walsh-Healey Public Contracts Act; 12-802, Equal Opportunity.