



## GENERAL TERMS AND CONDITIONS

Acceptance of this order and its Terms and Conditions by Seller shall be evidenced by either Seller's written acknowledgement or commencement of performance. This order constitutes the entire agreement between Seller and Buyer and may be changed or modified only by written instrument signed by Buyer's authorized representative.

As used herein, the term "goods" shall include without limitation all products, raw materials, parts, sub-assemblies and services purchased by Buyer from Seller.

Seller's commencement of work on the goods subject to this order or shipment of such goods, whichever occurs first, shall be deemed an effective mode of acceptance of Buyer's offer to purchase contained in this order. Any acceptance of this order is limited to acceptance of the express terms of the offer contained on the face and back hereof. Any proposal for additional or different terms or any attempt by Seller to vary in any degree any of the terms of this offer in Seller's acceptance is hereby objected to and rejected, but such proposals shall not operate as a rejection of this offer unless such variances are in the terms of the description, quantity, price or delivery schedule of the goods, or shall be deemed a material alteration thereof, and this offer shall be deemed accepted by Seller without said additional or different terms. If this order shall be deemed an acceptance of a prior offer by Seller, such acceptance is limited to the express terms contained on the face and back hereof.

**1. Price:** If no price is specified in this order, the goods shall be billed at the price last quoted or paid or the prevailing market price, whichever is lower. Prices of the goods covered hereby shall not exceed Seller's lowest prices in effect at the date of shipment for comparable articles in comparable quantities, except as otherwise agreed in writing. Seller warrants that prices shown on this order shall be complete and no additional charges of any type shall be added without Buyer's express written consent. Such additional charges include, but are not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing, and crating. In case it shall ever be determined that any tax included in the prices herein was not required to be paid by Seller, Seller agrees to notify Buyer and to make prompt application for the refund thereof, to take all proper steps to procure the same and when received to pay the same to Buyer.

**2. Inspection:** All goods will be subject to final inspection and approval by Buyer after delivery, notwithstanding prior payment it being expressly agreed that payment will not constitute final acceptance. Buyer at its option may either reject any goods not in conformity with the requirements in the terms of this order or re-work the same at Seller's

expense. Buyer may reject the entire shipment where it consists of a quantity of similar goods and sample inspection discloses that five (5%) percent of the goods inspected are defective, unless Seller agrees to reimburse Buyer for the cost of the complete inspection of the goods included in such shipment. Rejected goods, including goods supplied in excess of quantities called for herein, may be returned at Seller's risk and expense at the full invoice price plus applicable transportation and handling charges. In the event Buyer receives goods whose defects or nonconformity is not discovered on examination resulting in deterioration of Buyer's finished product, Buyer reserves the right to require the replacement as well as payment of damages.

**3. Delivery:** Delivery shall be strictly in accordance with Buyer's delivery schedule. The obligation of the Seller to meet the delivery dates, specifications and quantities set forth herein is of the essence of this order. If Seller's deliveries fail to meet such schedule, Buyer, without limiting its other remedies, may direct expedited routing, and the difference between the expedited routing and the other routing costs shall be paid by Seller. Goods fabricated beyond Buyer's releases are at the Seller's risk. Seller shall not make material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet Buyer's delivery schedule, and unless otherwise specified herein no delivery shall be made in advance of Buyer's delivery schedule. Goods which are delivered in advance of schedule are delivered at the risk of Seller and may, at Buyer's option, be returned at Seller's expense for proper delivery or be stored at Seller's expense and/or have payment therefore withheld by Buyer until the date that the goods are actually scheduled for delivery. When Seller has reason to believe that deliveries will not be made as scheduled, written notice setting forth the cause of the anticipated delay will be given immediately to Buyer.

**4. Statement of Account:** An itemized statement of account must be sent to Buyer's Accounting Department in time to be received by the fifth calendar day of the following month. Delays in receiving the statement or invoice and also errors and omissions on the statement or invoice, will be considered just cause for withholding settlement without losing discount privilege.

**5. Special Tools:** (a) Unless otherwise herein agreed, special tools, dies, jigs, fixtures and patterns (hereinafter collectively referred to as "Special Tooling"), used in the manufacture of said articles shall be furnished by and at the expense of Seller, shall be kept in good condition and when necessary, shall be replaced by Seller without expense to Buyer. Buyer may at any time reimburse Seller for the cost

of any of the special tooling and/or replacements and shall be the owner and entitled to the possession of same.

(b) If the price stated on the face hereof includes the cost of any special tooling or special equipment fabricated or required by Seller for the purpose of filling this order, such special tooling and equipment and any process sheets related thereto shall be the property of Buyer and to the extent feasible shall be identified by Seller as such. Unless otherwise modified herein, Buyer shall make payment therefore only upon acceptance of the first run of parts fabricated therewith. Seller shall at its own expense maintain such special tooling and equipment in proper working order and shall be responsible for all loss of or damage thereto while in its possession and shall use the same only for the production of material for Buyer, unless otherwise authorized in writing. Seller shall follow its own industrial practice in maintaining property control records on such special tooling and equipment and when this order has been completed, such special tooling and equipment shall be disposed of as Buyer may direct. Seller shall include the substance of this sub-paragraph in all sub-contracts issued by it hereunder.

**6. Buyer's Property in Seller's Possession:** Title to any property furnished by Buyer hereunder on other than a charge basis shall, at all times, remain in Buyer, but Seller assumes the risk of and shall be responsible for any loss thereof or damage thereto however caused. Without limiting the foregoing Seller agrees to procure insurance satisfactory to Buyer insuring to the full insurable value thereof all Buyer's property in Seller's possession. Satisfactory evidence of procurement of such insurance shall be submitted to Buyer promptly upon Buyer's request. Seller further agrees to pay all taxes assessed against Buyer's property or the use thereof while in Seller's possession and to file all necessary declarations and reports in connection therewith.

Buyer shall not be liable for any loss, damage or expense resulting directly or indirectly, including any incidental or consequential damages, from any defect in or delay in delivery or non-delivery of such property to be furnished by Buyer. Buyer's liability is expressly limited to the replacement of defective property upon return thereof to Buyer within two (2) months from receipt thereof by Seller.

**7. Warranty:** Seller warrants to Buyer and its customers that: (i) Seller is conveying good title, that the transfer is rightful, and that the goods shall be delivered free of any security interest, lien or other encumbrances and free of the rightful claim of any third person for infringement, (ii) all goods shipped under the contract are as represented to Buyer by Seller's catalogs, sales representatives or otherwise; and (iii) goods covered by this order will conform strictly to the specifications, drawings, samples, symbols or other description specified by Buyer, will be merchantable, of good material and workmanship and free from defect, and will be fit and sufficient for the purpose intended.

No warranty of merchantability or of fitness for a particular purpose or arising from usage of trade shall be

excluded from or modified by this contract. Buyer's remedies for breach or any warranty, express or implied, shall not be limited or excluded by this contract. Breach of any warranty shall be deemed to have occurred when Buyer discovers the defect and not sooner.

**8. Indemnification Insurance:** Seller shall defend and indemnify Buyer against all damages, liabilities, claims, losses and expenses (including attorney's fees) arising out of, or resulting in any way from any act or any defect in the goods purchased hereunder or from any act or omission of Seller, its agents, employees or subcontractors or any of Seller's personnel while such personnel are on premises owned or controlled by Buyer in connection with the performance of this order. Seller shall maintain each public liability insurance, including products liability, completed operations, contractors liability and protective liability, automobile liability insurance (including non-owned automobile liability) and Workman's Compensation, and employer's liability insurance as will adequately protect Buyer against such damages, liabilities, claims, losses and expenses (including attorneys' fees). Seller agrees to submit certificates of insurance, evidencing its insurance coverage when requested by Buyer.

**9. Patent Indemnity Clause:** Seller guarantees that the sale of Seller's goods will not infringe any U.S. or foreign patent, and Seller shall save Buyer harmless from all judgments and decrees that may be entered against Buyer or Buyer's vendees mediate or immediate and against all costs and expenses (including attorneys' fees) that Buyer shall incur by reason of any infringement or claim thereof, whether such infringement be direct or indirect by use of Seller's goods. Seller covenants that it will, upon Buyer's request, at Seller's expense defend or assist in the defense of any suit or action that may be brought against Buyer or Buyer's vendees, mediate or immediate, or against those selling or using Seller's goods by reason of infringement or claim thereof predicated upon the sale of Seller's goods or use thereof as above provided.

**10. Changes:** Buyer may at any time by a written order, and without notice to sureties, if any, make changes to (i) drawings, designs, or specifications; (ii) method of shipment or packing; (iii) place or time of delivery; and (iv) properly to be furnished by Buyer, if any such changes causes an increase in the cost and/or the time required for performance of this order, and equitable adjustment shall be made in the price or delivery schedule, or both, and the order shall be modified in writing accordingly. Any claim by Seller for adjustment under this article must be asserted within twenty (20) days from the date of notification of the change or within such additional period of time as may have been approved by Buyer. Where the cost of material made obsolete or excess as a result of a change is included in Seller's claim for adjustment, Buyer shall have the right to prescribe the manner of disposition of such property. Nothing in the article shall relieve Seller from proceeding without delay in the fulfillment of this order as changed.

**11. Advertising, Announcements, and News Releases:** Seller shall not without first obtaining written consent of

Buyer, in any manner advertise or publish or issue any news releases or make any public announcement, denial or confirmation of same concerning the fact that Seller has furnished or contracted to furnish Buyer the goods herein mentioned or concerning work done by Seller hereunder.

**12. Proprietary Information:** All drawings, specifications and data furnished by Buyer to Seller hereunder shall remain the property of Buyer and shall not be disclosed by Seller and shall be used by Seller only as and to the extent required for the performance of this order unless Buyer shall otherwise approve in writing. Upon completion of work by Seller under this order and under Buyer's request, Seller shall promptly return to Buyer all drawings, specifications and other data furnished by Buyer and in connection therewith, together with all copies or reprints then in Seller's possession or control, and Seller shall thereafter make no further use either directly or indirectly of any such drawings, specifications or data or of any information derived therefrom, without Buyer's written consent.

**13. Compliance With Applicable Laws:** Seller agrees that, in the performance hereof, it will comply with all applicable laws, statutes, rules, regulations or order of the United States Government or of any state or political subdivision thereof, and the same shall be deemed incorporated herein by reference. Seller agrees to indemnify Buyer against any and all liability, including reasonable attorneys' fees, on account of noncompliance therewith.

**14. Cancellation Termination:** (a) Buyer reserves the right to cancel or suspend all or, from time to time, any undelivered or unexecuted portion of the order (1) for cause if Seller fails to make any delivery or to perform any work as scheduled or if Seller breaches any of the terms hereof or (2) without cause upon written confirmation to Seller, Buyer will reimburse Seller for its expenses (which shall not include lost profits) resulting directly from any such cancellation or suspension made without cause and which is not a result of any act of force majeure as set forth in article 15, which amount shall in no event exceed the applicable pro rata portion of the contract price. Except for liability with respect to government contracts which is dealt with in paragraph (b) of this article, the forgoing states Buyer's entire liability and Seller's exclusive remedy for any change and/or cancellation or suspension of all or any part of this order. Any claims under this paragraph must be asserted in writing within 30 days after the change, cancellation or suspension of all or any part of this order. Any claims under this paragraph must be asserted in writing within 30 days after the change, cancellation or suspension as ordered, and the amount of such claim must be stated in detail in writing within 30 days thereafter.

(b) Buyer may terminate work under this order in whole or in part at any time by written or telegraphic notice, whenever (1) the government requests the termination of this order or (2) the contract between Buyer and government requiring for its performance items or services covered by

this order is terminated or amended so as to eliminate or reduce such requirements. Such notice shall state the extent and effective date of termination and upon receipt thereof Seller will as and to the extent directed by Buyer, stop work under this order and placement of future orders and subcontracts hereunder, terminate work under orders and subcontracts outstanding hereunder and take any necessary action to protect property in Seller's possession in which Buyer has or may acquire an interest. After termination pursuant to paragraph (b) of this article as distinguished from paragraph (a), the rights, liabilities, and obligations of the parties shall be governed by the Federal Acquisition Regulations, 48 CFR 52.249-2 (b) – (m) as in effect at the date of termination (For the purpose of this article, all reference in 48 CFR 52.249-2 to the Government and to the Contracting Officer shall mean Buyer and all references to the Contractor shall mean Seller.) Should Seller fail to submit its termination claim pursuant to the above paragraph, such failure will constitute a waiver thereof and Buyer shall not be required to notify Seller or make any determination thereof.

**15. Force Majeure:** Buyer may delay delivery and/or acceptance occasioned by causes beyond its control without any liability to Seller.

**16. Assignment:** None of the sums due or to become due nor any of the work to be performed under this order shall be assigned nor shall Seller subcontract for completed or substantially completed goods called for by this order without Buyer's prior written consent.

**17. Set-Off:** Seller agrees that Buyer shall have the right to set-off against any amounts which may become payable to Buyer to Seller under this order or otherwise, any amounts which Seller may owe to Buyer, that are arising under this order or otherwise.

**18. Application of DMS Ratings:** If this order specifies a Priority Rating and is certified for National Defense under DMS Regulation 1, Seller is required to follow the provisions of DMS Regulation 1 and all other applicable regulations and orders of the Bureau of Domestic Commerce in obtaining controlled materials and other products and materials needed to fill this order.

**19. Invalidity/Waiver:** This invalidity in whole or in part of any condition of this purchase order shall not affect the validity of the other conditions. No waiver or a breach of any provision of this purchase order shall constitute a waiver of any other breach or of such provision.

**20. Disputes:** This agreement is deemed to be entered in Massachusetts and to be a Massachusetts contract and shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts. Buyer and Seller specifically agree that any legal action brought relating to goods purchased or relating to this contract will be bought and tried in Massachusetts. All objections to venue are hereby waived by Seller, and Seller consents to service of process by certified mail.