

**TERMS AND CONDITIONS - Time and Material Under Commercial Contract**

**1. GENERAL/ACCEPTANCE**

The purchase order (which term shall be deemed to include plans, specifications, regulations and other documents to the extent that any of the same are incorporated by reference) becomes the exclusive agreement between the parties for the supplies/services subject to the terms and conditions herein. Any of the following shall constitute Seller's unqualified acceptance of this purchase order: (a) acknowledgment of this purchase order; (b) furnishing of any part of the supplies/services under this purchase order; (c) acceptance of any payment for the supplies/services or (d) commencement of performance under this purchase order. Any additional or different terms proposed by the Seller are objected to and are hereby rejected unless the same shall be accepted in writing by the Buyer. Failure of any party to enforce its rights under this purchase order shall not constitute a waiver of such rights or of any other rights under this purchase order or otherwise.

**2. ASSIGNMENT**

Neither this Purchase Order nor any payment, claim or interest hereunder are assignable or transferable without the prior written approval of the Buyer, which approval will not be unreasonably withheld. Buyer shall be entitled to the right of set-off against any amounts payable under this Purchase Order.

**3. BUYER FURNISHED PROPERTY**

If in connection with the performance of this purchase order any property is furnished to Seller by Buyer, the Seller shall assume the risk of, and be responsible for, any loss destruction of or damage to the property while in the Seller's possession or control, except to the extent that this purchase order, with the prior approval of the Buyer, provides for relief of the Seller from such liability. In the absence of such approval the Seller shall return all such property in as good a condition as when received, except for reasonable wear and tear caused by the utilization of such property in accordance with the provisions of this purchase order. Buyer shall have the right to enter Seller's premises during normal working hours to inspect its property. Seller shall maintain all Buyer furnished property at Seller's expense. Seller shall institute or have in place a property control system approved by Buyer.

**4. CHANGES**

Buyer's purchasing representatives may at any time, by written order, without notice to any surety, make changes or additions within the general scope of this purchase order in any one or more of the following: (a) drawings, designs, statement of work or specifications; (b) method of shipment or packing; (c) place of inspection, delivery, or acceptance; (d) quantities, where reasonable; (e) delivery schedule, where reasonable, and (f) the amount of Buyer furnished property.

If any such change causes an increase or decrease in the cost of, or the time required for, performance of this purchase order, whether changed or not changed by any such written order. Seller shall notify Buyer in writing immediately and an appropriate equitable adjustment will be made in the price or time of performance, or both, by written modification of this purchase order. Any claim by Seller for such adjustment must be asserted within fifteen (15) days, or such other period as may be agreed on in writing by all the parties, after Seller's receipt of notice of the change. Nothing contained in this paragraph shall excuse Seller from proceeding with the contract as changed.

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**5. CHOICE OF LAW**

Irrespective of the place of performance, this purchase order will be construed and interpreted according to the laws of the state from which the Buyer's purchase order is issued.

**6. COMPLIANCE WITH LAWS AND REGULATIONS**

Seller agrees to indemnify Buyer against loss, cost, liability, or damage by reason of Seller's violation of any applicable law, executive order, or regulation.

**7. DEFAULT OF SELLER**

In the event that Seller (i) becomes bankrupt or otherwise insolvent, (ii) commences or becomes the object of any proceeding involving Seller's insolvency, bankruptcy, reorganization, dissolution, liquidation, or any similar proceeding for the relief of financially distressed debtors, and such proceeding is not dismissed within sixty (60) days, or (iii) fails in any material way to perform any of Seller's obligations under this purchase order, or so fails to make progress as to endanger such performance and does not cure such failure within ten (10) days of receipt of Buyer's notice of such failure, then Buyer may, at its sole election, by notice to Seller, terminate this purchase order, in whole or in part, for default. Seller shall pay to Buyer any excess costs for Buyer's procurement of such supplies, goods, or services. The rights and remedies of Buyer in this clause are in addition to any other rights and remedies provided by law under this purchase order or otherwise.

**8. DEFECTIVE WORK**

Buyer, notwithstanding any prior acceptance, at its option, may reject, or require prompt correction (in place or elsewhere), of any supplies or goods which are defective in material or workmanship or otherwise fail to meet the requirements of this purchase order. All supplies or goods furnished under this purchase order shall be subject to inspection at destination notwithstanding any previous source inspection and Seller shall be given notice of any defects, other than latent defects, within a reasonable time after receipt of the supplies or goods and all records (such as affidavits, test reports, drawings, etc.) required to be furnished therewith.

Buyer may, in addition to any rights it may have by law, prepare for shipment and ship the supplies to Seller, require Seller to remove them, direct their correction in place or, with authorization by Seller, correct them, and the expense of any such action, including any transportation, if any, shall be borne by Seller. If Seller fails promptly to remove such supplies or goods and to proceed promptly to replace or correct them, Buyer may replace or correct such supplies or goods at the expense of Seller, including any excess cost. Seller shall not again tender rejected or corrected supplies or goods unless Seller discloses the former tender and rejection or requirement of correction.

**9. DELIVERY**

Time is of the essence of this purchase order. Unless otherwise provided in this purchase order, delivery in whole or in part shall not be made more than ten (10) days prior to required delivery dates. Buyer may return earlier deliveries at Seller's risk and expense. Seller shall comply with the delivery schedule but shall not make material or production commitments in advance of such time as the Seller reasonably believes necessary to meet the schedule without prior written approval by the Buyer. Representatives of Buyer shall during Seller's regular working day have access to Seller's plant for the purpose of assuring delivery in accordance with the schedule.

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**10. DISPUTES**

Any dispute arising under this purchase order which is not settled by agreement of the parties will be litigated in the state or federal courts of the state from which the Buyer's purchase order is issued. Pending any decision, appeal or judgment in such proceedings, or the settlement of any dispute arising under this purchase order, Seller shall proceed diligently with the performance of this purchase order in accordance with the decision of the Buyer.

**11. FEDERAL, STATE AND LOCAL TAXES**

Except as may be otherwise provided in this Purchase Order, the price includes all applicable federal, state and local taxes and duties.

**12. FORCE MAJEURE**

Seller shall not be liable for delays in manufacturing or delivery resulting from any circumstances beyond Seller's reasonable control not occasioned by Seller's fault or negligence or due to compliance with any sovereign decrees, orders, acts, instructions or priority requests of any federal, state, or municipal government or any department or agency thereof, civil or military, acts of god, acts or failures to act of the Buyer, fires, floods, strikes, lockouts, embargoes or wars. Upon the happening of any circumstances or causes aforesaid, the Seller shall notify the Buyer without delay and any relief granted to the Seller shall be limited to an extension of delivery dates or times of performance to the extent caused thereby.

**13. INDEMNITY**

If Seller, in connection with the performance of this purchase order, shall send any of its agents or employees onto premises owned or controlled by Buyer, Seller shall provide safety protection for persons and property in accordance with all applicable laws and regulations and indemnify and save harmless Buyer from and against any and all liabilities and losses whatsoever, whether resulting from or contributed to by negligence of Buyer, including without limitation, costs and expenses in connection therewith, on account of, or by reason of, injury to, or death of, any person whomsoever, or loss of or damage to any property whatsoever, suffered or sustained in the course of, or in connection with, the performance of the work. Buyer, at its option, may require Seller to furnish evidence of insurance reasonably satisfactory to Buyer covering the liabilities and indemnification provided above but no acceptance of such evidence by Buyer shall be deemed a waiver or release of such liabilities or duty to indemnify.

**14. INSPECTION**

Buyer may inspect and test material, work in progress and supplies at all times and places, during manufacture and otherwise. If inspection and test are made on Seller's premises, Seller, without additional charge, shall provide reasonable facilities and assistance for the safety and convenience of the inspectors in performing their duties. Inspections and tests by Buyer shall be performed in such manner as not to delay the work unduly. Buyer may charge to Seller any additional cost of inspection and test when material, work or supplies are not ready at the time such inspection and test is requested by Seller. In the case of rejection, Buyer shall not be liable for any reduction in value of samples used in connection with such inspection or test. Except as otherwise agreed in writing, all shipments and supplies furnished under this purchase order shall be subject to final inspection and acceptance by Buyer after receipt by Buyer at destination notwithstanding any previous source inspection or acceptance. Seller shall maintain an inspection and quality control system acceptable to Buyer.

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**15. INTELLECTUAL PROPERTY INDEMNITY**

Seller shall indemnify Buyer, and/or Buyer's customer, and their respective officers, agents and employees against liability, including costs, for infringement of any patent, copyright, trademark or other intellectual property arising out of the manufacture or delivery of supplies or goods or performance of services under this purchase order or out of the use or disposal by, or for the account of, Buyer, and/or Buyer's customer, of such supplies or goods. The foregoing indemnity shall not apply unless Seller shall have been informed as soon as practicable by Buyer, and/or Buyer's customer of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules or regulations to participate in the defense thereof. Such indemnity shall not apply if: (a) the infringement results from compliance with specific written instructions of Buyer directing a change in the supplies or goods or services to be delivered or in the materials or equipment to be used, or directing a manner of performance of this purchase order not normally used by Seller or, (b) the infringement results from an addition to, or change in, the supplies or goods or services furnished made subsequent to delivery or performance by Seller, or (c) the claimed infringement is settled without the consent of Seller, unless required by final decree of a court of competent jurisdiction.

**16. LIENS**

Seller warrants that, on the date Buyer pays for all the supplies or goods delivered under this agreement, all liens, rights of lien and claims against Buyer or the supplies or goods arising by virtue of work performed by Seller or any subcontractor with respect to the provision of the supplies or goods will have been released or satisfied. Upon request, Seller will provide to Buyer certification, together with receipts, releases or other satisfactory evidence in support thereof, stating that no such liens, right of lien or claims exist on such date of payment.

**17. NEWS OR ADVERTISING RELEASE**

No news release in any way relating to Buyer or Seller concerning the purchase order shall be made by either party to any news media or the general public without prior approval of the other party. The parties agree that in the event a news release is so approved and made, such news release will recognize the Buyer and Seller.

**18. ORDER OF PRECEDENCE**

In the event of any inconsistency in this purchase order, unless otherwise provided herein, the inconsistency will be resolved by giving precedence in the following order: (a) the purchase order face sheet/schedule, (b) the specification/work statement, (c) any special terms and conditions, and (d) standard terms and conditions incorporated into this order, including this document.

**19. PAYMENTS**

The amounts due to the Seller hereunder will be paid upon the submission of monthly invoices certified by two (2) officers or other authorized officials of the Seller, one of whom shall be a person supervising accounting with respect to this Purchase Order. Their certification shall be to the effect that the amount contained therein is correct and just, and payment for the amount claimed has not been received or previously covered by a prior invoice. The Seller shall be paid as follows upon the submission of invoices or vouchers approved by Buyer.

(a) Hourly Rate

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- (1) The amounts are computed by multiplying the appropriate hourly rate, or rates, set forth in the Schedule by the number of direct labor hours performed, which rates shall include wages, overhead, general and administrative expense and profit. Fractional parts of an hour shall be payable on a prorated basis. Vouchers may be submitted once each month (or at more frequent intervals, if approved by Buyer), to Buyer. The Seller will substantiate vouchers by evidence of actual payment and by individual daily job time cards, or such other substantiation approved by Buyer. Promptly after receipt of each substantiated voucher, Buyer shall, except as otherwise provided in this Purchase Order, and subject to the provisions of (e) below, make payment thereon as approved by Buyer.
  - (2) Unless otherwise set forth in the Schedule, five percent (5%) of the amount due under this paragraph (a) shall be withheld from each payment by Buyer but the total amount withheld shall not exceed \$50,000. Such amounts withheld shall be retained until satisfactory completion of this Purchase Order.
  - (3) Unless provisions of the Schedule hereof otherwise specify, the hourly rate or rates set forth in the Schedule shall not be varied by virtue of the Seller having performed work on an overtime basis. If no overtime rates are provided in the Schedule and overtime work is approved in advance by Buyer, overtime rates will be negotiated. If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Buyer.
- (b) Materials and Subcontracts
- (1) The Seller shall be reimbursed for items and services purchased directly for the Purchase Order only when cash, checks, or other forms of actual payment has been made for such purchased items or services. The Seller shall support all material costs claimed by submitting paid invoices or storeroom requisitions, or by other substantiation acceptable to Buyer. Direct materials, as referenced by this clause, are defined as those materials which enter directly into the end product, or which are used or consumed directly in connection with the furnishing of such product.
  - (2) The cost of subcontracts which are authorized pursuant to the "Subcontracting" clause hereof shall be reimbursable costs hereunder, provided such costs are consistent with subparagraph (3) below.
  - (3) The Seller shall, to the extent of his ability, procure materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials, and take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. The Seller agrees that any refunds, rebates, or credits (including any interest thereon) accruing to or received by the Seller or any assignee which arise under the materials portion of this Purchase Order and for which the Seller has received reimbursement, shall be paid by the Seller to Buyer. The Seller and each assignee, under an assignment entered into under this Purchase Order and in effect at the time of final payment under this Purchase Order, shall execute and deliver, at the time of and as a condition precedent to final payment under this Purchase Order, an assignment to Buyer of such refunds, rebates, or credits (including any interest thereon) in form and substance satisfactory to Buyer.
- (c) It is estimated that the total cost to Buyer for the performance of this Purchase Order will not exceed the ceiling price set forth in the Schedule. If at any time during the performance of this

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Purchase Order, the Seller has reason to believe that the total price to Buyer for the performance of this Purchase Order will be substantially greater or less than the then stated ceiling price, the Seller shall so notify Buyer, giving his revised estimate of the total price for the performance of this Purchase Order, together with supporting reasons and documentation. If at any time during the performance of this Purchase Order, Buyer has reason to believe that the work to be required in the performance of this Purchase Order will be substantially greater or less than the stated ceiling price, Buyer will so advise the Seller, giving the then revised estimate of the total amount of effort to be required under this Purchase Order.

- (d) Buyer shall not be obligated to pay the Seller any amount in excess of the ceiling price set forth in the Schedule, and the Seller shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until Buyer shall have notified the Seller in writing that such ceiling price has been increased and shall have specified in such notice a revised ceiling which shall thereupon constitute the ceiling price for performance under this Purchase Order. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Seller in excess of the ceiling price prior to the increase shall be allowable to the same extent as if such hours expended and material costs had been incurred after such increase in the ceiling price.
- (e) Upon receipt and approval of the voucher or invoice designated by the Seller as the "completion voucher" or "completion invoice" and substantiating material, and upon compliance by the Seller with all provisions of this Purchase Order (including, without limitation, provisions relating to patents and the provisions of (f) below), Buyer shall as promptly as may be practicable pay any balance due and owing the Seller. The completion invoice or voucher, and substantiating material, shall be submitted by the Seller as promptly as may be practicable following completion of the work under this Purchase Order, but in no event later than one (1) year (or such longer period as Buyer may, in its discretion, approve in writing) from the date of such completion.
- (f) The Seller and each assignee, under an assignment entered into under this Purchase Order and in effect at the time of final payment under this Purchase Order, as a condition precedent to final payment under this Purchase Order, releases and discharges Buyer, its officers, agents, and employees from all liabilities, obligations and claims arising out of or under this Purchase Order.

**20. PROPERTY RIGHTS**

Seller agrees to make prompt and complete disclosure to Buyer of all inventions and disclosures made or conceived as a result of work performed under this purchase order. Seller agrees to keep necessary records supporting such inventions and discoveries and will furnish to Buyer upon request all such records.

Any invention, discovery, proprietary information, mask work, software, system, data, or report resulting from the work performed under this purchase order shall be the sole property of the Buyer. All patents, copyrights, trade secrets, trademarks, mask works or other intellectual property resulting from work under this purchase order shall be the sole property of Buyer. Buyer shall have the full right to use such property in any manner without any claim on the part of the Seller and without any duty to account to the Seller for such use. Seller agrees to assign to Buyer any patent or patent application resulting from work performed under this purchase order, and to provide reasonable support for the Buyer's prosecution of such patent application. The parties agree that any original work of authorship created

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under this purchase order is a work made for hire for purposes of copyright ownership. To whatever extent the Seller has any interest in any original work of authorship created under this purchase order, Seller agrees to assign and hereby assigns its entire interest in such work to Buyer, including all rights to derivative works.

This purchase order does not confer or grant, in any manner whatsoever, any license or right under any patent, trademark, trade secret, mask work, copyright or other intellectual property right held by Buyer, unless specifically set forth in the body of the purchase order.

**21. PROTECTION OF INFORMATION**

Trade secrets and proprietary information of Buyer (herein after collectively referred to as "Information") shall mean information disclosed to Seller by Buyer in connection with this Purchase Order which is either identified to Seller as being proprietary to Buyer or which is information that a reasonable person would understand to be such Information. Examples of Information include, but are not limited to, customer lists, pricing policies, market analyses, business plans or programs, software, specifications, manuals, print-outs, notes and annotations, performance data, drawings, photographs, and engineering, manufacturing or technical information related to Buyer's products and services, as well as duplicates or copies thereof.

Information shall not mean any information previously known to Seller without obligation of confidence, or which becomes publicly disclosed, or which is rightfully received by Seller from a third party without obligation of confidence.

Information furnished to Seller shall remain Buyer's proprietary property, shall be duplicated only as authorized in writing by Buyer, and shall be returned to Buyer upon request or when no longer required for the performance of this purchase order. Seller shall not disclose Information to any third party, and shall take all reasonable precautions to prevent the disclosure of Information to third parties, including any foreign national, firm, or country, and foreign nationals employed by or associated with Seller's company except as specifically authorized by the Buyer. Seller shall comply with all applicable government security regulations, and access to such Information as may contain classified information shall be restricted accordingly.

Data and information provided by Seller shall be considered proprietary only when marked as proprietary. Seller's proprietary data and information will be used by Buyer only upon approval of Seller. Buyer may use unmarked Seller's data and information for any purpose.

Seller agrees not to use Information to develop any product, service or system, or to support any third party in the development of any product, service or system. In recognition of the inherent difficulty of differentiating between the use of trade secret information and the independent development of similar information by one who has access to the trade secret information, and for the convenience of both parties in avoiding disputes, Seller further agrees, for a period of three years from the completion or termination of this Purchase Order, to refrain from providing any product, service or system of the same nature as that contemplated under this Purchase Order to any competitor of Buyer.

**22. QUANTITY**

Buyer need not accept any variation in quantity except as specified in this purchase order. Overshipments may be returned to Seller at Seller's expense, which shall include a reasonable cost for the Buyer's handling, or be retained by Buyer at no increase in price. To the extent that supplies covered by this purchase order are produced in accordance with drawings or specifications which are proprietary to Buyer or to Buyer's customer, Seller shall not manufacture or retain for the purpose of

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display, or otherwise, any more such supplies, or parts thereof, than are required to be delivered under this purchase order. Any such excess supplies, or parts therefore, shall be delivered free of charge to Buyer at the designated delivery point at Seller's risk and expense or destroyed and the destruction certified by Seller.

**23. RESPONSIBILITY FOR SUPPLIES OR GOODS**

Notwithstanding the f.O.B. Point designated on the face sheet of this purchase order, Seller shall be responsible for supplies or goods covered by this purchase order until final inspection and acceptance thereof by Buyer and shall bear all risks as to rejected supplies or goods or supplies or goods requiring correction after notice of rejection notwithstanding any prior acceptance.

**24. STANDARDS OF SERVICES**

All services hereunder shall be performed by employees or agents of Seller who are experienced and highly skilled in their professions and in accordance with the highest standards of workmanship in their profession. Seller shall not change or transfer such employees once assigned except for good cause. Buyer shall have the right to request and have replaced any personnel who fail to perform to Buyer's satisfaction.

**25. SUBCONTRACTING**

Seller shall not subcontract all or substantially all work on any article to be supplied under this purchase order without prior written approval of Buyer. This provision shall not apply to purchases of standard commercial articles or raw materials including castings, forgings, and rough welded structures on which Seller will perform further work.

**26. SUBSTITUTIONS**

Seller shall not substitute materials or accessories without written consent of Buyer.

**27. TERMINATION**

This purchase order and any and all rights granted and obligations assumed hereby may be terminated in whole or in part by the Buyer giving written notice to the Seller. Upon receipt of a notice of termination and except as otherwise mutually agreed, Seller shall:

- a. Stop work under this purchase order on the effective date of the notice of termination; and
- b. Submit a termination claim within six (6) months after the effective date of the termination notice incorporating all claims of Seller. The amount to which Seller shall be entitled upon complete termination of this purchase order shall be determined by the parties hereto as being a fair and reasonable amount for the effort performed prior to the date of termination.

In the event payment has been made by Buyer in excess of the amount determined as being the entitlement of Seller under the provisions of this article, Seller shall repay such excess amounts. Buyer may deduct as a set-off any excess amounts from other open subcontracts with Seller, if any.

In the event payments made by Buyer are less than the amount determined as being the entitlement of Seller under the provisions of this article, Buyer shall pay to Seller such difference between the amount so paid and the total amount determined to be due Seller in accordance with this article.



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Notwithstanding the foregoing, the parties hereto may mutually agree to a partial termination of the purchase order provided such agreement: (1) equitably revises the price for work remaining to be performed by Seller thereafter; (2) equitably revises all such other rights, risks, obligations and/or responsibilities as may be affected by such partial termination; and (3) is evidenced by a formal modification to this purchase order signed by both parties.

Buyer's total liability to Seller for any termination pursuant to this clause shall not exceed the purchase price of the supplies, goods, or services to which such termination applies. Further, Seller shall have no claim against Buyer for loss of anticipated profits or consequential damages suffered by reason of such termination.

**28. WARRANTY**

Seller warrants that the services and necessary supplies covered by this Purchase Order will conform to the design and specifications and to drawings, samples or other descriptions referred to in this Purchase Order, will be free from defects in material and workmanship, and, to the extent that the Seller knows or has reason to know of the purpose for which the supplies are intended, will be fit and sufficient for such purpose. The warranties contained in this paragraph shall run to Buyer and its Customer.

Seller warrants that supplies/services provided under this Purchase Order shall not infringe upon the rights of any third party, and that Seller is subject to no agreement which in any manner would interfere with Buyer's property rights as described in Paragraph 20. Property Rights.