

PURCHASING TERMS & CONDITIONS

1. CONTRACT: The performance of the Purchase Order by Seller shall constitute acceptance hereof and agreement to a contract containing the terms and conditions set forth herein. If Seller wishes to take exception to any of these terms and conditions, he shall do so in writing prior to performing the Purchase Order. Such exceptions shall become part of this contract only if accepted in writing by Buyer. The Purchase Order constitutes the sole agreement between the parties relating to the subject matter hereof, except for amendments agreed to in writing by both Buyer and Seller. The terms contained herein supersede all prior written understandings, assurances and offers.

2. WARRANTIES: Seller warrants that all goods, materials and services furnished hereunder shall be free from defects in the material and workmanship and that all goods and materials furnished will be merchantable and will conform to applicable specifications, drawings, samples, and/or other descriptions. Unless manufactured pursuant to detailed design furnished by Buyer, Seller assumes design responsibility and warrants all goods to be suitable for the purpose intended. The warranties of Seller, together with its service warranties shall run to Buyer and each successive customer. Seller's liability under this contract shall apply to any and all product liability claims, actions or lawsuits and shall include, without limitation as to amount, incidental or consequential damages of any form or nature. Further, and without limiting the foregoing, Seller's liability is not limited to the adjusted base price of the contract and shall include damages for loss of profits or revenue or the loss of either reason of increased cost of purchasing or improving equipment, material, supplies or services outside of Buyer's scope of supply; claims of Buyer's customers; and inventory or use charges. All warranties shall survive any inspection, delivery, acceptance of or payment for the goods or services by Buyer.

3. INSPECTION: Buyer shall have the right to inspect and test the materials and workmanship of all goods at all times and places including, when practicable, during manufacture; and if any such inspection or test is made on the premises of Seller. Seller shall furnish without additional charge all reasonable facilities and assistance for safe and convenient inspection or test. Each item observed will be subject, to final inspection, and acceptance by Buyer, at destination notwithstanding that title may have been passed to Buyer, that Buyer may have made a prior payment or that Buyer or its customer may have performed some type of source inspection.

4. REJECTION: In case any goods delivered hereunder are defective in material, or workmanship or otherwise not in conformance with the drawings, specifications, samples and/or other descriptions, such goods shall be returned to Seller, for credit or refund and shall not be replaced or repaired by Seller except upon written instructions from Buyer, excepting however those goods which Buyer and Seller agree in writing shall be repaired by Buyer at Seller's expense. Any returns shall be F.O.B. Buyer's plant, transportation collect (declared at full value, unless Seller advises otherwise), and Seller shall have all risk of loss from and after the time of shipment. The inspection rights set forth herein are in addition to and not in limitation of any other rights and remedies and the failure to Buyer to exercise its right to reject any goods shall not by implication or otherwise cause a waiver of any such rights or remedies. Any goods returned to Seller for credit or refund, not repaired by Seller, pursuant to written instructions, shall be destroyed and not resold or disposed of to any other party or parties.

5. RISK OF LOSS: Seller shall have the risk of loss until the goods specified herein have been delivered to Buyer, at the specified location in the Purchase Order. Unless otherwise instructed, Seller shall prepay all transportation costs to such location. All risk of loss shall pass from Seller to Buyer only when delivery has been completed.

6. CHANGES: Buyer may at any time, by written order, make changes within the general scope of the Purchase Order, in an one or more of the following: (i) drawings, designs or specifications pertaining to this Order (ii) method of shipment or packing (iii) place of delivery; and (iv) the amount of goods to be made available by Buyer for use by Seller in performance of the Purchase Order. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under the Purchase Order, whether changed or not changed by any such order, an equitable adjustment, shall be made in the order price, or the delivery schedule, or both. Any claim by Seller for adjustment under

this clause must be asserted within thirty (30) days from the date of receipt by Seller of the notification of change. Buyer will have the right to change all claims hereunder at any reasonable time or times by inspecting and auditing the records, facilities, work, or materials of Seller relating to the Purchase Order.

7. PRICE INCREASE: Seller shall provide Buyer with written notification of a price increase at least thirty (30) days in advance of the effective date of such increase. Any price increases will not become effective until thirty (30) days after written approval is received from the Buyer.

8. USE OF BUYER'S NAME: (a) Seller shall not, without first obtaining the written consent of Buyer, in any manner publish the fact that Seller has furnished or contracted to furnish Buyer the articles herein mentioned, or use the name of Buyer or any of its customers in Sellers advertising or other publication; (b) if the goods specified in the Purchase Order are peculiar to Buyer design, either as an assembly or component part of an assembly, or if the material bears Buyer's trademark and/or any other identifying mark, it shall not bear the trademark or other designation of the maker or Seller and similar material shall not be sold or otherwise disposed of to anyone other than Buyer.

9. PATENTS: The extent that the goods delivered hereunder are not manufactured pursuant to designs originated by Buyer, Seller guarantees that the sale or use of any or all goods delivered hereunder or processes used will not infringe any United States patent, service mark, trademark, trade name or copyright and agrees that Seller will save Buyer and its successive customers harmless from any expense, loss, damage or liability which may be incurred on account of infringement or alleged infringement of any patent, trademark or copyright with respect to such goods or processes, and that Seller will at its own expense defend any action, suit or claim in which such infringement is alleged. Buyer shall duly notify Seller as to such suits claims, Buyer and its successive customers shall have the right to participate in the defense of any such action.

10. CONFIDENTIAL INFORMATION: All disclosures, drawings, specifications, patterns or technical information furnished to Seller by Buyer are the sole property of Buyer and are submitted in confidence upon the understanding and agreement by Seller that they shall not be disclosed or furnished to any third party, shall not be used by Seller in whole or in part for any purpose not designated by Buyer and shall be returned to Buyer immediately upon Buyer's request.

11. BUYER'S PROPERTY: Unless otherwise provided in writing, property of every description, including all tools, equipment and materials furnished or made available to Seller, title to which is in Buyer, and any replacement thereof, shall be and remain the property of Buyer. Property other than materials shall not be modified without the written consent of the Buyer. Such property shall be plainly marked or otherwise adequately identified by Seller as property of Buyer (by name) and shall be safely stored separately and apart from Seller's property. Seller shall not use such property except for performance of work hereunder or as authorized in writing by Buyer. Such property while in Seller's possession or control shall be kept in good condition, shall be held at Seller's risk, and shall be kept insured by Seller, at its expense, in an amount equal in the replacement cost to the Buyer. To the extent such property is not materially consumed in the performance of the Purchase Order, it shall be subject to inspection and removal by Buyer and Buyer shall have the right of entry for such purposes without any additional liability whatsoever to Seller. As and when directed by Buyer, Seller shall disclose the location of such property and/or prepay it for shipment and ship F.O.B. its plant to Buyer in as good condition as originally received by Seller, reasonable wear and tear excepted.

12. TIME OF ESSENCE: Time is the essence with this contract. Failure to tender conforming goods by the delivery date specified herein shall constitute a breach by Seller, and Seller shall have no right to make a later conforming tender except upon prior written authorization of Buyer.

13. CANCELLATION: If Seller fails (i) to deliver the goods at the time specified therein or any extension thereof authorized by Buyer in writing, or (ii) to perform any of the other provisions of the Purchase Order and does not cure such failure with a period of ten (10) days (or such longer period as Buyer may authorize in writing) after receipt of notice from Buyer specifying such failure. Buyer may by written notice of default to Seller cancel the whole or any part of the goods

ordered without liability except for completed goods delivered and accepted and except under that portion of the Purchase Order not cancelled. Provided, however, that with respect to finished, in-process or otherwise unfinished work under the Purchase Order, Buyer shall have the right to take full title to and possession of all of part of the work immediately upon notice to Seller to that effect regardless of whether or not final price terms have been agreed upon.

14. ASSIGNMENT: Except as otherwise expressly provided herein, neither this Order or any interest hereunder shall be assignable by Seller without the prior written consent of Buyer.

15. INDEMNIFICATION/HOLD HARMLESS: Seller assumes entire responsibility and liability for any and all damage and/or injury of any kind or nature whatsoever, (including death resulting therefrom) to all persons, and to all property caused by, resulting from, arising out of or occurring in connection with Seller's product. Except to the extent, if any, expressly prohibited by statute, should any claims, actions and/or lawsuits for such damage, injury and/or death be made or asserted, Seller agrees to defend, indemnify, save and keep harmless Buyer, its officers, agents, servants and employees from and against any and all such claims, actions and/or lawsuits and further from and against any and all loss, cost, expense, judgment settlement liability damage or injury, including legal fees and disbursements, that Buyer, its officers, agents, servants and employees may directly or indirectly sustain, suffer or incur as a result thereof and the defense of any action at law which may be brought against Buyer, its officers, agents, servants and employees upon or by reason of any such claim, actions, and/or lawsuits and to pay Buyer, its officers, agents, servants and employees upon or by reason of any such claim, actions, and/or lawsuits and to pay on behalf of Buyer, its officers, agents, servants and employees upon demand, the amount of any judgment and/or settlement that may be entered against Buyer, its officers, agents, servants and employees in any such claim, action and/or lawsuit.

16. INSURANCE: Seller shall procure, maintain and at all times continue in effect at its own expense, commercial general liability insurance including completed operations and products liability coverage with primary limits not less than One Million Dollars per occurrence, combined single limit, for bodily injury, personal injury and property damage liability and following for excess, or umbrella liability insurance with limits of not less than Five Million Dollars ultimate net loss. Said products, complete operations and contractual liability coverage are to name Buyer as an additional insured and further provide that the policies insurance referred to and coverage afforded pursuant to said policy shall not be cancelled or materially changed without thirty (30) days prior notice to Buyer.

17. VENDOR'S ENDORSEMENT: Seller shall obtain, at its own expense, an additional insured, vendor's broad form endorsement comparable to ISO Form GL 20 15 07 66 on all policies of insurance procured in accordance with insurance requirements set forth above. Said endorsements are to name Buyer as an additional insured and further provide that the policies of insurance referred to and coverage afforded pursuant to said endorsement shall not be cancelled or materially changed without thirty (30) days prior notice to Buyer. Seller agrees to furnish Buyer, within fifteen (15) days following the signature on the Purchase Order Acknowledgement, a certificate evidencing that the insurance coverage's required herein under Sections 16 and 17 are in full force and effect. Failure of Seller to furnish Buyer with a corresponding certificate of insurance shall not constitute a waiver on the part of the Buyer, and the requirement that Seller defend, indemnify and hold harmless Buyer as set forth shall remain in full force and effect without regard to Seller's failure under this section.

18. FORCE MAJEURE: Any order pursuant to these terms and conditions is subject to modification by Buyer in the event of fire, accidents, strikes, government acts or other conditions beyond Buyer's control, upon notification to Seller by telegram or letter, and without penalty to Buyer except that cancellation for such causes may not be made without reimbursement to Seller for expenditures actually made for labor and materials upon the authority of the Purchase Order.

19. LABOR DISPUTES: Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the Purchase Order, Seller shall immediately give notice thereof, including all relevant information with respect

thereto to Buyer.

20. CUMULATIVE REMEDIES: The rights and remedies herein reserved to Buyer shall be cumulative and additional any other of further rights and remedies available at law or in equity.

21. WAIVER: The failure of Buyer in one or more instances to insist upon performance of the Purchase Order or the waiver to Buyer of any breach of any terms or conditions of the Purchase Order, or the failure to Buyer to exercise any right or privileges contained herein, shall not be construed as hereafter waiving such terms, conditions, rights or privileges and the same shall continue and remain in force and effect. Buyer's failure to object to provisions contained in any communication from Seller shall not be deemed acceptance of such provisions or as waiver of the provisions thereof.

22. CAPTIONS: Captions, as used herein, are for convenience of reference only and shall not be deemed or construed as in any way limiting or extending the language of the paragraphs to which such captions may refer.

23. INDEPENDENT CONTRACTOR: Seller shall perform the work necessary for performance of this contract with Seller's employees and agents under the control of Seller. Seller agrees to utilize specified Sub-Contractors as deemed necessary, and pursuant to Buyers written authorization / approval.

24. COMPLIANCE WITH LAWS AND REGULATIONS: Seller agrees that it will comply with all federal, state and local laws and regulations applicable to the production, sale and delivery of the goods or the furnishing of any labor or services called for by the Purchase Order and any provisions required thereby to be included herein shall be deemed to be incorporated herein by reference. Without limiting the generality of the foregoing.

(a) **SAFETY REGULATIONS:** Seller warrants that the goods covered by the Purchase Order will comply with all applicable regulations and standards of the Occupational Safety and Health Act of 1970 and of the American Nations Standards Institute. Furthermore, Seller agrees to comply with and to put into effect all of Buyer's requests for particular safety features regardless of whether they are required by the Occupational Safety and Health Act of 1970 or the American National Standards Institute. In the event that Buyer incurs damages or losses of any nature whatsoever as a result of Seller's failure to comply with this Paragraph, Seller agrees to indemnify and hold Buyer harmless for all such damage or losses.

(b) **LABOR LAWS:** By accepting the Purchase Order, Seller warrants that it will comply with all applicable requirements of the Fair Labor Standards Act of 1938 (29 U.S. Code 201-219) and insofar as applicable to this Order, the Walsh-Healey Pub Contracts Act (41 U.S. Code 35-45) and the Work Hours Act of 1932 (40 U.S. Code 327-332) and any amendments thereto as well as with the provisions of any other Federal Law with respect to labor relations, minimum wages and hours of employment, now in effect or hereafter enacted.

(c) **EQUAL EMPLOYMENT OPPORTUNITY:** Seller agrees that it shall be bound by the Equal Opportunity Clause contained Section 202 of Executive Order 11246 and all implementing rules and regulations when applicable (41 C.F.R. S60-1.4), which requirements are incorporated herein by reference. Pursuant to Executive Order 11246 as amended and Executive Order 11375 and regulations presented thereto; it is agreed that clause relating to Equal Opportunity referred to in Subpart 6r 2.21 b(2) and provisions as set forth in Section 503 of the Rehabilitation Act of 1973. (Employment of Handicapped persons) and Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 are incorporated by reference in each contract and each order to you which is within the scope of the regulations.

(d) **CLEAN AIR ACT:** Seller warrants that it complies with all labeling requirements concerning ozone-depleting substance pursuant to Section 611 of the Clean Air Act Amendments of 1990, and associated regulations.

25. GOVERNING LAW: Any dispute, controversy or claim arising out of or relating to the Purchase Order governed by this contract shall be governed by and construed in accordance with the laws of the State of New York. The venue for any dispute controversy or claim arising out of or relating to this contract shall be the County of the State in which the Purchase Order was initiated.