



GENERAL TERMS AND CONDITIONS OF PURCHASE



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1.0 DEFINITIONS

1.1 Unless the context requires otherwise, the following words shall have the meanings hereby assigned to them.

"Attachments": means those exhibits and other documents attached to this Order, other than these General Terms and Conditions and which are specified on any Order.

"Buyer": means the company name specified on this Order.

"Change Order" means a written alteration to a previously signed Order by Buyer, which may affect the Order amount, completion date, or both.

"Date Required": means the date (s) for Delivery of the goods as specified in any Order and any attachments as part of the Order.

"Delivery" means the delivery of the goods to the delivery locations (s) specified in any Order and "Deliver" or "Delivered" shall have the same meaning.

"General Terms and Conditions" means this document entitled "General Terms and Conditions of Purchase" and forming part of the Order.

"Goods" means all supplies, goods, materials, equipment, components, and services required to be supplied by Seller in accordance with the Order.

"Order" means the Purchase Order issued by Buyer and accepted by Seller.

"Seller": the person, company or partnership named in the Order as the supplier to Buyer of Goods.

"Seller's Supplier": a third party who supplies goods or services or both to Seller for Seller's performance of work under the Order, and includes without limitation all sub-suppliers.

"Supplementary Conditions" means modifications or additions to the General Terms and Conditions of Purchase that address issues which were omitted in the General Terms and Conditions of Purchase or are specific requirements for a particular project.

1.2 This Order is an agreement solely between the Seller and the Buyer, and Seller agrees that no contractual relationship shall be formed between Seller and Buyer.

2.0 PRECEDENCE

In case of conflict in Order documentation, the following priority, in descending order, shall govern:

- 2.1 Change orders to the Order. Later change order(s) shall have priority over earlier change order(s).
- 2.2 The Order exclusive of attachments.
- 2.3 Supplementary Terms and Conditions of Purchase (if any).
- 2.4 General Terms and Conditions of Purchase Order.
- 2.5 Data/Specification Sheets.
- 2.6 Written Detailed Specifications.
- 2.7 Project Standards
- 2.8 Referenced Industry Standards (such as ANSI, ASME, API, etc.).
- 2.9 Drawings of a larger scale.
- 2.10 Drawings of a smaller scale.

Unresolved conflict within a document shall be referred to Buyer for clarification prior to commencement of work.

3.0 SCOPE

3.1 Either Seller's written acknowledgement of the Order or the shipment of any article or commencement of performance hereunder shall constitute acceptance by Seller of this Order.

3.2 Upon delivery of any article to Buyer or upon the commencement of any performance by Seller, Buyer may acknowledge, in writing, receipt of the article or acknowledge commencement of the performance, but in no instance shall such written acknowledgement be construed as altering the terms or conditions of the Order.

3.3 Timely performance and deliveries are essential to this Order. However, Seller will not be liable for delays in performing its obligations to the extent the delay is caused by unforeseeable conditions which are beyond Seller's reasonable control without Seller's fault or negligence. Acts of God such as storms or floods, as well as government priorities, acts of civil or military authorities, fires, strikes, epidemics, war and riot are examples of events which will be excusable as being beyond Seller's reasonable control. Upon the occurrence of an excusable event: (a) within (24) hours of the commencement of any excusable delay Seller shall provide Buyer with written notice of the cause and extent thereof as well as a request for a schedule extension for the estimated duration thereof, and (b) within twenty-four (24) hours of the cessation of the event causing delay, Seller shall provide Buyer with written notice of the actual delay incurred. Within a reasonable time after receipt of such written notice Buyer shall amend the date of delivery of the goods to compensate Seller for the actual delay incurred, that Seller has used reasonable effort to mitigate the delay.



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4.0 LAWS

The Seller shall comply fully with all applicable laws, ordinances, rules and regulations whether Federal, Provincial or Local, including without limitation all laws governing the transportation and handling of hazardous goods, Occupational Health and Safety, and protection of the environment. The Seller shall furnish the Buyer such evidence of compliance as may be required.

The laws of Colorado shall govern the legal obligations of the parties and the interpretation of the Order.

5.0 DEFAULT

If Seller breaches any provision hereof or becomes insolvent, enters voluntary or involuntary bankruptcy or receivership proceedings or makes an assignment for the benefit of creditors, Buyer shall have the right (without limiting any other rights or remedies which Buyer may have hereunder or by operations of law) to terminate the Order by written notice to Seller whereupon Buyer shall be relieved of all further obligation hereunder except the Buyer to pay the reasonable value, as determined by Buyer, of Seller's prior performance (and not exceeding the rate prescribed in the Order) and Seller shall be liable to Buyer for all costs in excess of the Order price herein specified which are incurred by Buyer in completing or procuring the completion of performance specified in the Order provided that Buyer does so in a commercially reasonable manner.

Notwithstanding the foregoing, in the event of default by Seller, without prejudice to Buyer's other rights, Buyer at its sole discretion may cancel all or any part of the Order and Buyer may return part or all of any shipment made prior to the default. In such circumstances, Buyer shall be liable to Seller for the purchase price of only those items so retained by Buyer.

6.0 PATENTS & PATENT INFRINGEMENT

6.1 Seller grants to Buyer a royalty-free, transferable, irrevocable license under patents now or hereafter owned by Seller to use and sell the specific items purchased under the Order. Except and to the extent that items purchased under the Order are made to the design, specification, or instruction of Buyer, Seller shall be liable to, and in addition at its own expense defend, indemnify and hold harmless Buyer, its successors, assignees and agents, and buyers and users of said items from and against any and all claims, demands, losses, costs and liabilities arising out of or resulting from the actual or alleged infringement of any rights under patents, trademarks, copyrights or other third party intellectual property rights or any litigation based thereon.

6.2 Other than as may be required for the performance of the work of the Order, nothing in the Order shall be construed as granting to Seller any license or other right under any Canadian or foreign patent which Buyer may now or hereafter own or in which it may hold licensing rights. Any discovery or

invention conceived by Seller or any of Seller's Suppliers, servants, employees or agents for a process, method or device developed through the performance of the work of the Order, shall be owned by Buyer.

7.0 INSPECTION & EXPEDITING

Buyer, or its authorized agent and designees shall have access at all reasonable times to Seller's and Seller's Suppliers' manufacturing shops and warehouses for purposes of quality assurance, inspection or ascertaining the status of work or materials.

All orders issued by Seller which are associated with the goods covered by the Order shall carry the notation "This order is subject to inspection and expediting by Buyer or its authorized agent or representatives."

Seller shall ensure that similar requirements are stipulated in the conditions of purchase applicable to Seller's Suppliers, in order that Buyer has access for inspection and expediting at the source of supply.

At Buyer's request, Seller agrees to furnish Buyer with copies of Seller's unpriced purchase orders or other contracts with any sensitive commercial information redacted for all purchased materials, components and services required for the manufacture or fabrication, as applicable, of items specified in the Order promptly after said orders are placed. In addition, Seller will cooperate with Buyer to provide the production schedule, documentation and any other information necessary to determine whether production is scheduled, and progressing in a logical manner to meet required delivery dates.

Any inspection and/or expediting by Buyer shall in no event relieve Seller from its responsibilities and liabilities under the Order, and Buyer does not either expressly or by implication waive any rights it may have under the Order or at law, as a consequence of any inspection or expediting performed under this Article.

8.0 CONFIDENTIALITY

In this Order, "Confidential Information" means all proprietary information of Buyer or Seller disclosed, directly or indirectly, by such party (the "Discloser") to the other party (the "Recipient") hereunder or proprietary information of Buyer acquired by Seller in the performance of the work, other than:

- i. information which at the time of disclosure hereunder is in the public domain;
- ii. information that the Recipient can prove was in its possession at the time of disclosure hereunder and was not acquired, directly or indirectly, from Discloser or its affiliates or from a third party under any confidentiality obligation to Discloser;
- iii. information which, after disclosure hereunder, is published or otherwise becomes part of the public domain through no fault of Recipient; or
- iv. information which, following its disclosure hereunder, was acquired by Recipient without binder of secrecy from a third party who did not acquire it, directly or indirectly, from Discloser or any of its affiliates under any confidentiality obligation.

Recipient shall not, without Buyer's prior written consent, disclose or permit the disclosure of any Confidential Information to any third party, or use any Confidential



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Information for any purpose other than the performance of the work. Seller may disclose Confidential Information of Buyer only to those of its employees, and Seller's Suppliers who require it for the purposes of the work, and Seller shall require such employees, and Seller's Suppliers to maintain such Confidential Information in confidence on terms substantially as specified in this Order. Buyer may disclose Confidential Information of Seller only to those of its employees who require it for the purposes of the work, and Buyer shall require such employees to maintain such Confidential Information in confidence on terms substantially as specified in this Order.

Seller's and Buyer's obligations under this Article shall survive the cancellation, termination, or expiration of this Order.

9.0 WARRANTY

9.1 Seller warrants that all goods supplied by Seller hereunder shall, unless otherwise specifically permitted, be new of good quality and be free from any defects and failures, latent or patent, and fit and suitable for the purpose stated in the Order for a period of 18 months after delivery or 12 months after mechanical completion, whichever occurs first (the "Warranty Period").

9.2 Promptly after receipt of notice from Buyer within the Warranty Period, at Seller's expense and to the extent of Seller's original scope of supply, shall correct, repair or replace any deviations from the Order, or any defective equipment, materials or workmanship furnished by Seller or Seller's Suppliers and deliver the same to Buyer at the address described on the face of the Order (i.e. FOB point).
If Seller makes corrections or repairs or replaces equipment, materials or workmanship the provisions of this Article 9.0 shall then apply to said corrections, repairs or replacements for a period of one (1) year from the date such corrections, repairs or replacements were completed, or for the duration of the original warranty period, whichever is greater.

9.3 If Seller fails to make the necessary corrections, repairs or replacement, within a reasonable time Seller will be so notified and Seller shall promptly refund to Buyer an amount equal to the costs that Seller would have expended if it had been required to make the corrections, repairs or replacements. The remedies set forth in this Article 9 shall be the sole and exclusive remedy of Buyer against Seller for breach by Seller of the foregoing warranty.

9.4 The foregoing warranty excludes any remedy for damages, defects, deficiencies or failures to the extent due to: (i) negligence, abuse, willful misconduct or neglect by Buyer or a third party not subject to the control of Seller; (ii) any accident following the delivery of the goods, which is not itself attributable to a breach of the foregoing warranty; except to the extent such accident is caused by the employees or representative of Seller; (iii) failure to store, operate and maintain any item of equipment in accordance with the written instructions of Seller; (iv) modifications, repairs or alterations not performed or authorized in writing by Seller; (v) consumable or wearable parts of any item of equipment subject to replacement as part of a program of normal or scheduled maintenance; or

(vi) corrosion, erosion or abrasion; abnormal conditions of temperature, moisture or dirt; or deterioration or wear occasioned by chemicals.

9.5 Seller warrants that the goods will meet any performance guarantees made by Seller as more fully described in the Order. Compliance with any such performance guarantees shall be conclusively demonstrated by the successful completion of the performance tests described in the Order and be strictly based upon receipt by Seller of any process and operational Deliverables from Buyer as described in the Order.

9.6 **THE WARRANTIES EXPRESSLY SET FORTH IN THIS ORDER ARE THE SOLE AND EXCLUSIVE WARRANTIES OF SELLER. SELLER MAKES NO OTHER WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS, IMPLIED, ORAL, WRITTEN OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING BY CUSTOM, TRADE USAGE, PROMISE, EXAMPLE OR DESCRIPTION, ALL OF WHICH WARRANTIES ARE EXPRESSLY DISCLAIMED BY SELLER AND WAIVED BY BUYER.**

10.0 SUPPLIERS AND SUB-SUPPLIERS

When Seller purchases goods or services it shall bind Seller's Suppliers to conditions similar to these General Terms and Conditions of Purchase Order in all material respects.

11.0 ASSIGNMENT

The Order (including Seller's right to receive payments hereunder) shall not be assigned or sub-contracted in whole or in part by Seller or Buyer without the prior written consent of the non-assigning party. Seller's subcontracting of any of its duties hereunder shall not relieve Seller of its primary obligation for performance of the Order. Any attempted assignment of this Order in violation of this section is void.

12.0 Seller's RESPONSIBILITY

By acceptance of the Order, Seller covenants and agrees at all times:

12.1 To be liable to Buyer for all loss, costs, damages and related expenses which Buyer may sustain, pay or incur as a result of, or in connection with the wrongful performance, purported wrongful performance or non-performance by Seller of its obligations under the Order.

12.2 In addition, to indemnify and save harmless Buyer and its principals, successors, assigns, directors, officers, employees and agents (the "Buyer Indemnified Parties") of and from and against all manner of actions, proceedings, claims, demands, losses, costs, damages, and expenses whatsoever which may be brought or made against the Buyer Indemnified Parties, or which the Buyer Indemnified Parties may sustain, pay, or incur to the extent resulting from or arising out of the negligent acts or negligent omissions of Seller, including without



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limitation any actions, proceedings, claims, demands, losses, costs, damages and expenses made or sustained in respect of property damage, personal injury or death, and infringement of copyright, trademark, or patent of invention.

12.3 The obligations of Seller pursuant to Articles 12.1 and 12.2 shall apply whether the loss, costs, damages, expenses, actions, proceedings, claims, demands, debts or liabilities (i) affect property associated with Facility or (ii) affect third parties or (iii) affect property belonging to or in the custody of, Buyer or third parties. Neither party shall bear any liability to the other for consequential damages such as loss of production, loss of opportunity, loss of reputation, loss of profits, or loss of business.

12.4 To permit no claims of any kind to be fixed upon or against the Buyer's property or plant or against the materials covered by the Order. If a lien or charge attaches to Buyer's property or the materials covered by the Order, or any part thereof, by reason of failure of Seller or Seller's Suppliers to pay such indebtedness, Seller shall be liable to Buyer, and in addition shall indemnify, protect and save Buyer harmless against all such claims and liens.

12.5 That the location of manufacture shall not be altered from the specified location in the Order without Buyer's prior approval.

13.0 OWNERSHIP OF DOCUMENTS

Ownership of any documents, including without limitation specifications or drawings, supplied by Buyer, or produced by Seller upon request of Buyer, shall at all times be and rest with the Buyer, and Buyer shall have the unlimited right to their use.

14.0 TERMS OF PAYMENT

Where Buyer has made progress payments to Seller during manufacture and before delivery of goods to Buyer, Buyer shall have title to that portion of the goods for which progress payments have been made. All such materials shall specifically bear the shop work number and indicate that it is the property of the Buyer. The goods, however, shall remain at Seller's risk until delivery is made to Buyer.

Buyer shall have the right (but not duty) to withhold any monies payable by Buyer hereunder and apply same to the payment of any obligations of Seller to Buyer or any other parties arising in any manner out of the Order or its performance, or as a set off against Seller's indebtedness to Buyer either hereunder or under any other Order. Final payment will not be made by Buyer until:

- all aspects of the Order have been fulfilled by Seller;
- Seller has provided any documents, affidavits and assurances which Buyer may reasonably require to ensure immunity of Buyer from any liens or claims arising out of Seller and Seller's Suppliers' performance of work under the Order; and

- Seller has provided (if so requested), releases from Seller discharging Buyer and its representatives and affiliated companies and their respective officers, directors, agents, employees and representatives of and from all liabilities, obligations and claims arising out of or under the Order and agreeing to defend, indemnify and hold harmless Buyer and its representatives and affiliated companies and their respective officers, directors, agents, employees and representatives of and from all liabilities, obligations and claims of Seller's Suppliers arising out of or under the Order.

15.0 PREPARATION FOR SHIPMENT

15.1 Packing List

Each package or crate must contain a copy of the packing list. If provided in an exposed area, it must be placed in a waterproof envelope securely fastened to the package or crate.

When assembly drawings or operating instructions accompany the shipment, such documents shall also be properly identified and carefully packaged to prevent damage or loss in shipment or unpacking.

15.2 Crating & Packaging

All costs pertaining to crating and packaging shall be included in the price unless specifically detailed in the Order.

16.0 RETURN OF GOODS

Materials and equipment delivered in error, rejected materials and equipment, and overages in excess of trade practice will be returned at Seller's expense and risk.

17.0 TERMINATION

Buyer may terminate the Order at any time, and thereupon Buyer shall be relieved of all further obligations hereunder except for the payment of the balance outstanding for the work performed to the time of termination, plus all proper costs incurred by Seller resulting directly from termination. In no event shall Seller be entitled to damages or compensation for anticipated profits that may be lost because of such termination.

18.0 AUDIT

Seller shall keep, and shall cause Seller's Suppliers to keep, accounting records relating to the Order and the goods and services procured thereunder for one year following the end of the Warranty Period and Buyer may audit such records of Seller or Seller's Suppliers during such period on reasonable notice and during business hours. Buyer's right to audit shall not apply to lump sum amounts or to the composition of Seller's or Seller's Suppliers' rates expressed as rates, or percentages of or mark-ups to other costs, but only to the application of said rates, mark-ups or percentages of other costs.