



Purchase Order Terms and Conditions

1. **Equal Employment Opportunity and Affirmative Action.** Seller will fully comply with all provisions of the equal employment opportunity clause required by Section 52.22-26, Federal Acquisition Regulation, incorporated herein by reference and contained in Section 202 of Executive Order 11246, as amended, and with all implementing rules, regulations, and orders of the Secretary of Labor. Seller will further comply with the affirmative action for disabled and Vietnam Era veteran's clause and the affirmative action for the handicapped clause required respectively by Sections 52.222-35 and 52.222-36, Federal Acquisition Regulation, incorporated herein by reference and contained in 41 CFR 60-250.4 and CFR 60-741.5.
2. **General Condition.** Seller agrees that the terms, conditions and warranties as set forth herein shall govern performance hereof and that no waiver or modification thereof or additional or different terms, conditions and warranties, whether set forth in Seller's sales order, invoice, receipt or acknowledgment of this purchase order, or otherwise, shall be effective against Buyer, it being understood that acceptance of this order is governed solely by the terms and conditions stated herein and that any such additional or different terms, conditions and warranties are hereby specifically rejected by Buyer. Any objections hereto shall be made by Seller within ten (10) days after receipt of this purchase order and may be effective only upon written acceptance thereof by Buyer.
3. **Packing and Shipments.** Deliveries of materials, goods or other articles subject to this purchase order (hereinafter "goods") shall be made as specified on the face hereof without charge for boxing, crating, carting or storage, unless otherwise specified, and goods shall be suitably packed to secure lowest transportation cost, prevent damage from weather or transportation and in accordance with the requirements of common carriers. Packing list shall accompany each box or package showing Buyer's order number and symbol, item number and description of goods. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists. Shipping receipts or bills of lading shall be sent to Buyer's Traffic Department on date goods are shipped. Invoices shall be mailed in duplicate to the attention of Buyer's Accounting Department immediately after each shipment.
4. **Warranty.** Seller warrants that all goods and work covered by this order will conform to applicable specifications, drawings, samples, and/or other descriptions given by Buyer and will be merchantable and free from defect in workmanship and material. Unless the goods covered by this order are manufactured completely to detailed design furnished by Buyer, Seller assumes design responsibility and warrants them to be fit for the particular purposes intended. These warranties of the Seller, together with Seller's service warranties and guarantees, shall run to the Buyer and/or Buyer's customers.



Inspection. If specified on the face hereof, Seller shall furnish a certificate of compliance confirming manufacture of the goods according to specification. This report shall bear Buyer's purchase order number and a description of the goods shipped and must be attached to the packing list and delivered with the goods unless otherwise agreed to by Buyer.

Seller shall provide and maintain a complete inspection system, satisfactory to Buyer and subject to review by Buyer, Buyer's Agent, or Customer to ensure that goods are manufactured according to Buyer's order and specifications, which inspection system may include, at the option and direction of Buyer, the maintenance of written inspection records to be made available for examination by Buyer, Buyer's Agent, or Customer at Buyer's request.

All goods will be subject to final inspection and approval by Buyer after delivery, notwithstanding prior payment. Payment shall not constitute final acceptance. Buyer may reject any goods which contain defective material or workmanship or do not conform to specifications or samples. Rejected goods may be returned at Seller's risk and expense at the full invoice price plus applicable transportation charges, if any. No replacement of rejected goods shall be made by Seller unless requested by Buyer.

- 5. Verification.** The Buyer or its representative shall have the right to verify, at Seller's premises, at the source of manufacture or upon Buyer's receipt thereof that the goods or services conform to the Buyer's purchase order and specifications. Buyer's verification shall not in any manner absolve or alter any of Seller's obligations of performance herein nor shall it preclude Buyer's right of rejection of such goods or services thereafter.

When Buyer or its representative elects to verify goods and services at Seller's premises or at the source of manufacture, such verification shall not be used by Seller as evidence of effective quality control by Seller.

- 6. Delivery and Risk of Loss.** Except as hereinafter specified, delivery shall be strictly in accordance with the delivery schedule set out or referred to on the face hereof.

When Seller has reason to believe that deliveries will be delayed, written notice setting forth the cause of the anticipated delay and the revised delivery schedule shall be given immediately to Buyer. Buyer shall have the right to reject all or part of any delayed deliveries. Buyer may direct Seller to arrange for express shipments of any delayed deliveries and Seller shall bear the expense of such express shipments in excess of standard freight rates.

Buyer has no obligation to Seller for any quantity of goods fabricated or manufactured by Seller in excess of the quantities ordered by Buyer. Invoices covering goods shipped in advance of specified delivery dates will be paid in due course as if delivered on the date specified for delivery.

Notwithstanding any price or delivery terms otherwise specified, Seller will bear the risk for loss of goods shipped under this purchase order until delivery



of such goods is made to Buyer at the destination specified on the face hereof.

7. **Exclusive Sale.** Unless otherwise agreed in writing by Buyer, goods produced to Buyer's specifications may be sold only to Buyer.
8. **Statement of Account.** Seller will send a statement of account to Buyer's Accounting Department as soon as possible after the first of each month. Buyer may withhold payment of outstanding invoices without loss of any applicable discount in the event such statement is not received promptly, or if such statement contains errors or omissions, until such receipt, or the correction of such errors or omissions by seller.
9. **Tools.**
 - a. All standard and, unless otherwise stated on the face hereof, any and all special dies, tools, patterns and other manufacturing aids used in the manufacture of the goods 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.
 - b. Upon agreement of the parties as to cost, Buyer may at any time reimburse Seller for the cost of the whole or any part of such special dies, tools, patterns, other manufacturing aids, or replacements thereof, and upon such reimbursement, Buyer will own and will be entitled to the possession thereof.
 - c. If the price stated on the face hereof includes separately the cost of any dies, tools, patterns and other manufacturing aids, or replacements thereof, to be used by Seller for the purpose of filling this order, such dies, tools, patterns, other manufacturing aids, and replacements thereof, will be the property of the Buyer and Buyer will be entitled to take possession thereof and detailed drawings for such equipment.
 - d. All dies, tools, patterns, other manufacturing aids, and replacements thereof, owned by Buyer pursuant to subsections 10(b) and 10(c), to the extent feasible, shall be marked or otherwise properly identified by Seller as the property of Buyer.
10. **Ownership of Buyer - furnished Material.** Any materials furnished by Buyer without charge in connection with this purchase order including, without limitation, drawings, artwork, drilling tapes, manufacturing software, masters, specifications, raw materials, components, data and other information, will be deemed bailed to the Seller for the mutual benefit of Buyer and Seller, and ownership and title thereto shall at all times remain in the Buyer. Seller agrees to pay for all such materials damaged while in Seller's possession or not otherwise satisfactorily accounted for.
11. **Insurance.** Seller agrees to provide a policy or policies of insurance in form and in coverage amounts satisfactory to the Buyer insuring all Buyer's property on Seller's premises, including, without limitation, any special tools, dies, patterns, other manufacturing aids, or replacements thereof, against loss or damage resulting from fire (including extended coverage), accident, malicious mischief and vandalism. Upon the request of Buyer, satisfactory evidence of procurement of such insurance shall be submitted to Buyer.

12. **Changes.** Buyer may from time to time, by written order or by oral order confirmed in writing, make changes in drawings and specifications, require additional work or direct the omission of work covered by this purchase order or direct changes for shipping or delivery of goods or in Seller's inspection system. If such changes cause an increase in the cost or time, or a decrease in cost, of performance of this order, Seller shall notify Buyer's Purchasing Department in writing of such increase or decrease within 10 days of receipt of the change order or within such other time limit agreed to by Buyer, and a mutually satisfactory adjustment shall be negotiated and recorded in writing, which writing shall constitute an amendment of this purchase order. Failure of Seller to notify Buyer of an increase in cost or time shall constitute Seller's agreement to perform such changes or other modifications without increase in cost or time.
13. **Advertising.** Seller shall not, without first obtaining written consent of Buyer, advertise, publish or otherwise disclose any information relating to the fact that Seller has sold or contracted to sell to Buyer the goods or services subject to this purchase order.
14. **Infringement Indemnity.** Seller agrees to indemnify Buyer and hold Buyer harmless from any loss, claims, damages, expenses and liabilities, including reasonable attorneys' fees, that may result by reason of any claim against Buyer for infringement or other wrongful use brought as a result of or arising out of the manufacture, use or sale of any goods furnished to Buyer under this purchase order, except where such goods are developed especially for the Buyer solely in accordance with Buyer's detailed specifications or design. Seller agrees to give prompt notice to Buyer of any such claim and to fully assist Buyer in the defense or settlement of any such claim.
15. **Patent Rights.** With respect to inventions made by Seller in the performance of this purchase order, Seller hereby grants to Buyer a permanent, paid up, and irrevocable license, to make, have made, use and sell devices or material incorporating or made through use of such inventions. If, however, such inventions result from research and development work performed by Seller for which work Buyer pays Seller, either directly or indirectly, Seller hereby assigns to Buyer all right, title and interest in and to such inventions and will assist Buyer, at Buyer's expense, in securing United States and foreign patents with respect thereto, including the execution of all necessary documents.
16. **Compliance with Applicable Laws, etc.** Seller will fully comply with all applicable federal and state or local laws, statutes, rules, regulations, ordinances or orders and shall hold Buyer harmless from all liability losses, costs or expenses resulting from any failure by Seller to so comply. This purchase order and performance hereunder shall be governed by and according to the laws of the State of Minnesota as applied to residents of such State entering into contracts wholly to be performed in such State.
17. **Cancellation.** In addition to the right to reject delayed deliveries under Section 7, Buyer may cancel all or any part of any undelivered portion of this order (i) if Seller does not make deliveries as provided on the face hereof or if Seller breaches any of the terms hereof, including the warranties of Seller; or (ii) if Buyer and Seller are unable to agree on the amount of any increased cost or time of performance of this purchase order as a result of changes requested by Buyer pursuant to Section 13. Buyer shall also have the right to

- cancel this order or any part hereof in the event of the happening of any of the following: insolvency of Seller; filing of a voluntary petition in bankruptcy; filing of an involuntary petition to have Seller declared bankrupt provided it is not vacated within thirty (30) days from the date of filing; the appointment of a receiver or trustee for Seller, provided such appointment is not vacated within thirty (30) days from the date of such appointment; or the execution by Seller of an assignment for the benefit of creditors. In the event that Buyer shall so cancel or reject, Buyer may be charged only for goods actually delivered and received and not rejected.
18. **Assignment.** Seller may not assign this purchase order, or any portion thereof, except that Seller may, upon the prior written consent of Buyer, assign claims for monies due or to become due hereunder, provided in such event, Seller shall supply Buyer promptly with two copies of any such assignments and provided further that payment to an assignee of any claim hereunder shall be subject to setoff or recoupment for any present or future claim or claims which Buyer may have against Seller.
 19. **Subcontracting.** This order or any substantial portion thereof may not be subcontracted out without Buyer's prior written approval.
 20. **Customs Responsibility.** When Buyer furnishes materials or components to Seller for assembly abroad, Seller shall be responsible for payment of all customs duties, charges, surcharges, penalties or any other tax or duty imposed with respect to the exportation of said material from the United States to the country of assembly and the importation by the Seller of the assembled products from the country of assembly to the United States or such third country as Buyer shall specify on the face hereof. All prices quoted to Buyer by Seller shall be inclusive of all United States and foreign customs duties, fees, penalties, and other payments. Seller shall be responsible for providing to the appropriate United States and foreign customs officials any and all required documentation. For United States Customs purposes, such documentation shall include, but not be limited to, evidence of the value of materials or components provided by Buyer to Seller and information relating to country of origin marking of imported goods. It is understood that for United States Customs purposes, Seller shall at all times be the importer of record and that Seller has no authority to bind Buyer with respect to liability for duties, fees, penalties or other payments or to make representations to customs authorities on its behalf without prior written approval from Buyer. Seller hereby agrees to indemnify Buyer against liability for, and hold Buyer harmless from, any and all customs, duties, fees, penalties or other amounts due with respect to the exportation of materials or components furnished by buyer from the United States to the country of assembly and importation into the United States or such third country of products assembled in whole or in part of Buyer's materials or components.
 21. **Cumulative Remedies, Waivers, Survival of Warranties.** The remedies herein reserved to Buyer shall be cumulative, and additional to any other or further remedies provided in law or equity. No waiver by Buyer of any term or condition of this purchase order shall be construed as a permanent waiver of such term or condition or the waiver of any other term or condition. Seller's warranties and indemnifications given hereunder shall survive the completion or cancellation of this purchase order.

22. **Confidentiality, Limited Use.** Unless otherwise agreed by Buyer, Seller shall keep confidential all materials, including, without limitation, drawings, artwork, drilling tapes, manufacturing software, masters, specifications, raw materials, components, data and other information furnished by Buyer or prepared by Seller specifically in connection with the performance of this order, together with all copies and shall not make copies or permit copies to be made except in accordance with Buyer's prior written consent or except as required for Seller's performance of this order and/or at request of Buyer. Seller shall promptly return to Buyer all such materials furnished by Buyer or prepared by Seller in connection therewith that are not consumed in the performance of this purchase order, together with all copies or reprints then in Seller's possession or control. Seller shall make no use either directly or indirectly of any such materials furnished by Buyer or prepared by Seller, or of any information derived there from, in the performance of work for any other customer, without Buyer's prior written consent.
23. **Independent Contractor.** Seller shall perform under this purchase order as an independent contractor. Seller shall not have the right to bind Buyer in any manner or thing and nothing herein shall be interpreted to make Seller an agent or representative of Buyer.
24. **GOVERNMENT CONTRACTS.** WHEN THIS PURCHASE ORDER IS ISSUED UNDER A GOVERNMENT CONTRACT, AS SHOWN ON THE FACE HEREOF, ADDITIONAL TERMS AND CONDITIONS ARE APPLICABLE AND SUPERSEDE THE TERMS AND CONDITIONS OF THIS PURCHASE ORDER TO THE EXTENT THAT THEY CONFLICT THEREWITH. SUCH ADDITIONAL TERMS AND CONDITIONS ARE SET FORTH IN AN ADDENDUM TO THIS PURCHASE ORDER, A COPY OF WHICH MAY BE OBTAINED BY SELLER FROM BUYER'S PURCHASING DEPARTMENT IN THE EVENT THE ADDENDUM IS NOT ATTACHED TO THIS PURCHASE ORDER WHEN RECEIVED BY SELLER
25. **ENVIRONMENTAL.** Seller shall provide the Buyer with detailed information as requested by the Buyer regarding the composition of and substances used in goods furnished hereunder (e.g. percent concentration by weight of substances). Unless Buyer waives this requirement in writing for a specified timeframe for specific products(s), Seller represents and warrants that the goods provided hereunder shall be compliant with all applicable environmental readiness laws and regulations including but not limited to Directive 2002/95/EC of the European Parliament and of the Council of 27. January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment, and Directive 2002/96/EC of the European Parliament and of the Council of 27. January 2003 on waste electrical and electronic equipment, and Seller shall defend, indemnify and hold Buyer harmless from damages and claims against Buyer related to, or that may result from, or in connection with, the goods supplied or to be supplied, and or services performed, or to be performed hereunder.