

- 1. COMPLETE AGREEMENT:** Unless Seller and Buyer have both executed a separate contract or agreement concerning the subject matter herein, this purchase order, including these general conditions and any specifications or attachments hereto, constitutes the sole and entire agreement between the parties. The Seller's quotation is incorporated in and made a part of this purchase order only to the extent of specifying the nature and description of the goods, work and/or services ordered, and then only to the extent that such items are consistent with the other terms of this purchase order. No other terms or conditions shall be binding upon Buyer unless accepted by it in writing, signed by an authorized agent of Buyer. In the event that Seller and Buyer have both executed a separate contract or agreement concerning the subject matter herein, that contract or agreement shall during its term control to the extent of any conflict with the terms and conditions herein.
- 2. CHANGES:** Buyer may, by written change order, make changes in the specifications or drawings or increase or decrease the quantities originally ordered. If any such change affects the amount due or the time of performance hereunder, an equitable adjustment shall be made. Seller may not substitute the described material or service without a signed change order.
- 3. PRICE AND PAYMENT:** The price herein specified shall, unless otherwise expressly stated, exclude all sales, use and excise taxes and duties which either party is required to pay with respect to the sale of the goods, work or services covered by this agreement, but shall include all charges for packing and loading. Any taxes, freight and duties shall be shown as separate items on invoices. Payment will be made in accordance with the applicable provisions of this purchase order. Unless otherwise indicated, payment terms will be computed from the date of delivery of goods or completion of work or services, or the date of receipt of properly executed invoices, whichever is later. Payment of Seller's invoices will be delayed if the invoice does not include the correct purchase order number and/or pricing.
- 4. DELAYS:** Time is of the essence. Seller shall not, however, be liable or considered in default for delays or failure to ship or complete work or services due to force majeure causes beyond its control and not due to its fault or negligence, provided it gives prompt notice of such cause to Buyer. Notwithstanding the foregoing, if Seller does not ship as ordered on or before the shipping date shown on the order, if Seller does not commence performance of work or services on or before the commencement date shown on this order, or if Seller shall default in any respect, Buyer may terminate this order or the undelivered or uncompleted part thereof. In addition to Buyer's right of termination as herein provided, Buyer's rights and remedies shall be as provided by law or as otherwise provided herein, and shall, in no event, be limited by terms proposed by Seller or subject to arbitration.
- 5. NONWAIVER:** Failure of Buyer to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights or remedies provided herein or by law or to properly notify Seller in the event of breach, or the acceptance of or payment for any goods, work or services hereunder, shall not release Seller of any of the warranties or obligations of this purchase order, and shall not be deemed a waiver of any right of Buyer to insist upon strict performance hereof of any of its rights or remedies as to any such orders, regardless of when shipped, received, completed or accepted, or as to any prior or subsequent default hereunder, nor shall any purported oral modification or rescission of this order by Buyer operate as a waiver of any of the terms hereof.
- 6. REJECTIONS:** If any of the goods are found by Buyer within a reasonable time after delivery to Buyer's destination to be defective in material or workmanship, or otherwise not in conformity with the requirements of this purchase order, Buyer, in addition to any other rights which it may have under warranty or otherwise, shall have the right to reject and return such goods at Seller's expense, which goods shall not be replaced by Seller, without written authorization from an authorized agent of Buyer.
- 7. TERMINATIONS:** (a) In the event of cancellation, substantial modification, or delay of the project or program for which these goods, work or services are ordered, Buyer may terminate this agreement by written notice as to all or any part of the goods not shipped or work or services not completed prior to receipt by Seller of said notice. As to goods which are standard manufactured items, Buyer's only obligation shall be to pay for goods shipped to Buyer prior to receipt by Seller of notice of termination. As to goods specially manufactured for Buyer, Seller shall stop all work on receipt of notice of termination, unless otherwise directed by Buyer, and Buyer shall pay reasonable costs incurred by Seller directly connected with this order, including costs and cancellation charges actually incurred by Seller under subcontracts, and when necessary to avoid undue hardship, an allowance for overhead and profit on such costs incurred. As to work or services, Buyer's only obligation shall be to pay for the portion of the work or services completed at the time of receipt by Seller of notice of termination, determined by multiplying the percentage completed by the total price for the work or services. Such payment shall not exceed the total price of this order and shall be reduced by any refunds or salvage values available to Seller and the aggregate amount of any previous payments to Seller. Upon such payment, title to material and goods shall pass to Buyer. Buyer reserves the right to audit Seller's computation of any payments claimed under this clause. (b) If Seller ceases to conduct its operations in the normal course of business (including inability to meet its obligations as they mature) or if any proceeding under bankruptcy or insolvency laws is brought by or against Seller, or a receiver for Seller is appointed or applied for, or an assignment for the benefit of creditors is made by Seller, then in any such event Buyer may terminate the order without liability except for conforming deliveries previously made or for conforming goods covered by this purchase order then completed and subsequently delivered promptly in accordance with the terms of this purchase order.
- 8. WARRANTIES – GUARANTEES:** Seller warrants that the goods, work and services shall be free from defects in design, material, workmanship and title; shall conform in all respects to the terms of this purchase order, shall be fit and suitable and perform satisfactorily for the purposes and under the conditions made known by Buyer or reasonably to be inferred; and shall be at least equal to nationally recognized standard or codes or of the best quality, if no quality is specified. If it appears within one year from the date of placing the goods into service for the purpose for which it was purchased or the completion of work or services that the goods, work or services or any part thereof does not conform to these warranties, and Buyer so notifies Seller within a reasonable time after its discovery, Seller shall thereupon promptly correct such nonconformity at its sole expense. Goods used and work or services performed to correct nonconformity shall be similarly warranted for one year. Except as otherwise provided in this purchase order, Seller's liability hereunder shall extend to all damages proximately caused by the breach of any of the foregoing warranties or guarantees or any other obligations under this Agreement. The foregoing is in addition to any warranty or service guarantee offered by Seller or implied or provided by law. No disclaimer of any implied warranty shall be effective unless agreed to in a writing signed by Buyer's representative.
- 9. INFRINGEMENT OF PATENTS, TRADEMARKS OR COPYRIGHTS:** The following terms apply to any infringement, or claim of infringement, or any patent, trademark or copyright based on the manufacture, normal use or sale of any material or equipment furnished to Buyer hereunder or in contemplation hereof. Seller shall indemnify Buyer and its customers for any loss, damage, expense or liability that may result by reason of any such infringement or claim (including without limitation attorney's fees and expenses), except where such infringement or claim arises solely from Seller's adherence to Buyer's written instructions or directions which relate to material or equipment other than (1) commercial material or equipment which is available on the open market or is the same as such material or equipment (2) items of Seller's origin, design or selection, and Buyer shall indemnify Seller in such excepted cases. Each party shall defend or settle, at its own expense, any action or suit against the other for which it is responsible hereunder. Each party shall notify the other promptly of any claim of infringement for which the other is or may be responsible hereunder, and shall cooperate with the other in every reasonable way to facilitate the defense of any such claim.
- 10. COMPLIANCE WITH LAWS:** Seller warrants that goods manufactured or services performed pursuant to this purchase order are performed or manufactured and shipped in compliance with all applicable federal, state and local laws, rules and regulations, including but not limited to the Massachusetts 201 CMR 17.00 and any other applicable data or privacy laws, the USA Patriot Act of 2011, Toxic Substances Control Act, the Occupational Safety and Health Act, the Clean Air Act, the Federal Water Pollution Control Act, the Solid Waste Disposal Act, the Resource Conservation and Recovery Act and the Hazardous Materials Transportation Act. **In addition, the Seller shall abide by the requirements of 41 CFR 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against protected veterans and qualified individuals on the basis of disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified veterans and qualified individuals with disabilities.** Seller also represents and warrants that neither it nor its employees or subcontractors has engaged in any conduct prohibited by any legal requirement of any program administered by the Office of Foreign Asset Control ("OFAC") of the U.S. Department of Treasury, including any program the regulations of which are codified in Chapter 5 of Subtitle B of Title 31, Code of Federal Regulations (the "OFAC Regulations"); and Seller has not engaged in any conduct that would cause adverse consequences to the Buyer under any program administered by OFAC, including the OFAC Regulations, by virtue of their involvement in the transactions contemplated by this Agreement.
- 11. WORK ON BUYER'S OR ITS CUSTOMER'S PREMISES:** If Seller's performance under this purchase order involves the presence by Seller on the premises of Buyer or one of its customers, Seller shall comply with applicable provisions of federal, state and local laws and regulations and shall take all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of such performance. Except in the event that any such injury is due solely and directly to Buyer's or customer's gross negligence, as the case may be, Seller shall indemnify Buyer and its customers against all loss which may result from any act or omission of the Seller, its agents, employees, or subcontractors. Seller shall maintain such Public Liability, Property Damage and Employee's Liability and Compensation insurance as will protect Buyer and its customers from such risks and from any claims under any applicable Workman's Compensation and Occupational Disease Acts. Seller shall provide a certificate of insurance at Buyer's request and ensure that Buyer is named as an additional insured on all applicable policies.
- 12. SHIPPING:** Seller shall suitably pack, mark and ship in accordance with instructions, if any, from Buyer and the requirements of common carriers to secure the lowest transportation costs. Seller shall be liable for any difference in freight charges or damages to the goods by its failure to comply herewith. Seller will send Buyer, as soon as the goods have been forwarded, a notice of shipment giving order number, car number and initials, if any, and a condensed description of the goods; otherwise, Seller is liable for any demurrage charges incurred. If the quantity ordered is sufficient, cars shall be loaded to minimum capacity, otherwise, the Seller agrees to pay the excess freight. No charges of any kind, including, without limitation charges for boxing, packing, loading, bracing, cartage or extra insurance, will be allowed unless specifically agreed to by an authorized agent of Buyer in writing.
- 13. APPLICABLE LAW – DEFINITIONS:** The definition of terms used, interpretation of this agreement and the rights of all parties hereunder shall be construed under and governed by the laws of the Commonwealth of Massachusetts. The goods means those articles, equipment, materials, supplies, drawings, data and other property specified or required to be furnished under this purchase order. Work and services includes design, delivery, installation, inspection, testing and expediting specified or required to be furnished under the purchase order.
- 14. NON-ASSIGNMENT:** Assignment of this purchase order or any interest herein or any payment due or to become due hereunder, without the written consent of an authorized agent of Buyer, shall be void and of no effect and may, at the option of the Buyer, render this purchase order void.
- 15. SUBCONTRACTING:** The Seller shall not subcontract or delegate performance of all or any part of the work called for under this purchase order without the written consent of an authorized agent of Buyer.