

# Buyer

## Terms and Conditions

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**ACCEPTANCE - ENTIRE AGREEMENT** - Acceptance of this offer to purchase by acknowledgement, shipment or other performance shall be unqualified, unconditional and subject to and expressly limited to the terms and conditions of this Agreement. All previous offers by Supplier are hereby rejected. Buyer shall not be bound by terms additional to or different from those in this Agreement that may appear in Supplier's quotations, acknowledgements, invoices or in any other communications from Supplier unless such terms are expressly agreed to in a writing signed by Buyer. Acceptance of materials, Work or services, payment or any inaction by Buyer shall not constitute Buyer's consent to or acceptance of any such terms. Estimates or forecasts furnished by Buyer shall not constitute commitments. Upon acceptance, the terms contained in this Agreement shall constitute the entire agreement between Supplier and Buyer with respect to the subject matter of this Agreement, superseding all contemporaneous oral agreements and prior oral and written quotations, communications, agreements, and understandings of the parties, and may not be modified or rescinded except by a writing signed by Supplier and Buyer. All references in these terms and conditions to this Agreement or to Work, services, material, equipment, products, software or information furnished under, in performance of, pursuant to, or in contemplation of, this Agreement shall also apply to any orders issued pursuant to this Agreement. The term "Work" as used in this Agreement may also be referred to as "services."

**ASSIGNMENT AND SUBCONTRACTING** - Supplier shall not assign any right or interest under this Agreement (excepting monies due or to become due) or delegate or subcontract any Work or other obligation to be performed or owed under this Agreement without the prior written consent of Buyer. Any attempted assignment, delegation or subcontracting in contravention of the above provisions shall be void and ineffective. Any assignment of monies shall be void and ineffective to the extent that (1) Supplier shall not have given Buyer at least thirty (30) days prior written notice of such assignment or (2) such assignment attempts to impose upon Buyer obligations to the assignee additional to the payment of such monies, or to preclude Buyer from dealing solely and directly with Supplier in all matters pertaining to this Agreement including the negotiation of amendments or settlements of charges due. All Work performed by Supplier's subcontractor(s) at any tier shall be deemed Work performed by Supplier.

**CHOICE OF LAW** - The construction, interpretation and performance of this Agreement and all transactions under it shall be governed by the laws of the State of New Jersey excluding its choice of laws rules and excluding the Convention for the International Sale of Goods. The parties agree that the provisions of the New Jersey Uniform Commercial Code apply to this Agreement and all transactions under it, including agreements and transactions relating to the furnishing of services, the lease or rental of equipment or material, and the license of software. Supplier agrees to submit to the jurisdiction of any court wherein an action is commenced against Buyer based on a claim for which Supplier has agreed to indemnify Buyer under this Agreement.

**COMPLIANCE WITH LAWS** - Supplier and all persons furnished by Supplier shall comply at their own expense with all applicable federal, state, local and foreign laws, ordinances, regulations and codes, including those relating to the use of chlorofluorocarbons, and including the identification and procurement of required permits, certificates, licenses, insurance, approvals and inspections in performance under this Agreement. Supplier agrees to indemnify, defend (at Buyer's request) and save harmless Buyer, its parent, its affiliates, its and their customers and each of their officers, directors and employees from and against any losses, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorney's fees) that arise out of or result from any failure to do so.

**FORCE MAJEURE** - Neither party shall be held responsible for any delay or failure in performance of any part of this Agreement to the extent such delay or failure is caused by fire, flood, explosion, war, strike, embargo, government requirement, civil or military authority, act of God, or other similar causes beyond its control and without the fault or negligence of the delayed or nonperforming party or its subcontractors ("force majeure conditions"). Notwithstanding the foregoing, Supplier's liability for loss or damage to Buyer's material in Supplier's possession or control shall not be modified by this clause. If any force majeure condition occurs, the party delayed or unable to perform shall give immediate notice to the other party, stating the nature of the force majeure condition and any action being taken to avoid or minimize its effect. The party affected by the other's delay or inability to perform may elect to: (1) suspend this Agreement or an order for the duration of the force majeure condition and (i) at its option buy, sell, obtain or furnish elsewhere material or services to be bought, sold, obtained or furnished under this Agreement or an order (unless such sale or furnishing is prohibited under this Agreement) and deduct from any commitment the quantity bought, sold, obtained or furnished or for which commitments have been made elsewhere and (ii) once the force majeure condition ceases, resume performance under this Agreement or order with an option in the affected party to extend the period of this Agreement or an order up to the length of time the force majeure condition endured and/or (2) when the delay or nonperformance continues for a period of at least fifteen (15) days, terminate, at no charge, this Agreement or an order or the part of it relating to material not already shipped, or services not already performed. Unless written notice is given within forty-five (45) days after the affected party is notified of the force majeure condition, (1) shall be deemed selected.

**GOVERNMENT CONTRACT PROVISIONS** - The following provisions regarding equal opportunity, and all applicable laws, rules, regulations and executive orders specifically related thereto, including applicable provisions and clauses from the Federal Acquisition Regulation and all supplements thereto are incorporated in this Agreement as they apply to work performed under specific U.S. Government contracts: 41 CFR 60-1.4, Equal Opportunity; 41 CFR 60-1.7, Reports and Other Required Information; 41 CFR 60-1.8, Segregated Facilities; 41 CFR 60-250.4, Affirmative Action For Disabled Veterans and Veterans of the Vietnam Era (if in excess of \$10,000); and 41 CFR 60-741.4, Affirmative Action for Disabled Workers (if in excess of \$2,500), wherein the terms "contractor" and "subcontractor" shall mean "Supplier". In addition, orders placed under this Agreement containing a notation that

the material or services are intended for use under Government contracts shall be subject to such other Government provisions printed, typed or written thereon, or on the reverse side thereof, or in attachments thereto.

**IDENTIFICATION** - Supplier shall not, without Buyer's prior written consent, engage in advertising, promotion or publicity related to this Agreement, or make public use of any Identification in any circumstances related to this Agreement. "Identification" means any copy or semblance of any trade name, trademark, service mark, insignia, symbol, logo, or any other product, service or organization designation, or any specification or drawing of Buyer or its parent or its affiliates, or evidence of inspection by or for any of them. Supplier shall remove or obliterate any Identification prior to any use or disposition of any material rejected or not purchased by Buyer, and, shall indemnify, defend (at Buyer's request) and save harmless Buyer, its parent and its affiliates and each of their officers, directors and employees from and against any losses, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) arising out of Supplier's failure to so remove or obliterate.

**IMPLEADER** - Supplier shall not implead or bring an action against Buyer or its customers or the employees of either based on any claim by any person for personal injury or death to an employee of Buyer or its customers occurring in the course or scope of employment and that arises out of material or services furnished under this Agreement.

**INFRINGEMENT** - Supplier shall indemnify and save harmless Buyer, its parent its affiliates and their customers, and each of their officers, directors, employees, successors and assigns (all hereinafter referred to in this clause as Buyer) from and against any losses, liabilities, fines, penalties, and expenses (including reasonable attorneys' fees) that arise out of or result from any proved or unproved claim (1) of infringement of any patent, copyright, trademark or trade secret right or other intellectual property right, private right, or any other proprietary or personal interest, and (2) related by circumstances to the existence of this Agreement or performance under or in contemplation of it (an Infringement Claim). If the Infringement Claim arises solely from Supplier's adherence to Buyer's written instructions regarding services or tangible or intangible goods provided by Supplier (Items) and if the Items are not (1) commercial items available on the open market or the same as such items, or (2) items of Supplier's designated origin, design or selection, Buyer shall indemnify Supplier. Buyer or Supplier (at Buyer's request) shall defend or settle, at its own expense, any demand, action or suit on any Infringement Claim for which it is the indemnitor under the preceding provisions and each shall timely notify the other of any assertion against it of any Infringement Claim and shall cooperate in good faith with the other to facilitate the defense of any such Claim.

**INVOICING** - Supplier invoices shall be rendered upon completion of the Work or at other times expressly provided for in this Agreement or order, and shall be payable when the Work has been performed to the satisfaction of Buyer. Supplier shall mail invoices with copies of any supporting documentation required by Buyer to the address shown on this Agreement or Order. The Work shall be delivered free from all claims, liens, and charges whatsoever. Buyer reserves the right to require, before making payment, proof that all parties furnishing labor and materials for Work have been paid. If Supplier is authorized to invoice Buyer for material upon shipment, Supplier shall: (1) render original invoice, or as otherwise specified in this Agreement, showing Agreement number, through routing and weight; (2) render separate invoices for each shipment within twenty-four (24) hours after shipment; and (3) mail invoices with copies of bills of lading and shipping notices to the address shown on this Agreement or order. If prepayment of transportation charges is authorized, Supplier shall include the transportation charges from the FOB point to the destination as a separate item on the invoice stating the name of the carrier used.

**OFFSET CREDIT / COUNTERTRADE CREDIT** – Supplier hereby exclusively grants to Buyer all offset or countertrade credit that may be obtained from this Agreement, or from Supplier's placement of its purchase orders and subcontracts, for Buyer's use on the offset / countertrade program of Buyer's choice. Buyer retains the right to assign any such offset or countertrade credits to third parties. Supplier shall include this clause, for the benefit of Buyer, in all lower-tier purchase orders and subcontracts awarded in the performance of this Agreement. Supplier shall maintain a record of its purchases under this Agreement or subcontract and Buyer reserves the right to review such record not more often than every six months to determine offset availability.

**PAYMENT TERMS** - Unless payment terms more favorable to Buyer appear on Supplier's invoice and Buyer elects to pay on such terms, invoices shall be paid in accordance with the terms stated in this Agreement, and due dates for payment of invoices shall be computed from the date of receipt of invoices by Buyer.

**RELEASES VOID** - Neither party shall require (i) waivers or releases of any personal rights or (ii) execution of documents which conflict with the terms of this Agreement, from employees, representatives or customers of the other in connection with visits to its premises and both parties agree that no such releases, waivers or documents shall be pleaded by them or third persons in any action or proceeding.

**RIGHT OF ENTRY AND PLANT RULES** - Each party shall have the right to enter the premises of the other party during normal business hours with respect to the performance of this Agreement, subject to all plant rules and regulations, security regulations and procedures and U.S. Government clearance requirements if applicable.

Supplier shall become acquainted with conditions governing the delivery, receipt and storage of materials at the site of the Work so that Supplier will not interfere with Buyer's operations. Storage space will not necessarily be provided adjacent to the site of Work. Therefore, Supplier shall be expected to select, uncrate, remove and transport materials from the storage area provided. Buyer is not responsible for the safe keeping of Supplier's property on Buyer premises. Supplier shall not stop, delay or interfere with Buyer's Work schedule without the prior approval of Buyer's Representative. Supplier shall provide and maintain sufficient covering and take any other precautions necessary to protect Buyer's stock, equipment and other property from damages due to Supplier's performance of Work.

**SHIPPING** - Supplier shall: (1) ship the material covered by this Agreement or order complete unless instructed otherwise; (2) ship to the destination designated in the Agreement or order; (3) ship according to routing instructions given by Buyer; (4) place the Agreement and order number on all subordinate documents; (5) enclose a packing memorandum with each shipment and, when more than one package is shipped, identify the package containing the memorandum; and (6) mark the Agreement number and order number on all packages and shipping papers. Adequate protective packing shall be furnished at no additional charge. Shipping and routing instructions may be furnished or altered by Buyer without a writing. If Supplier does not comply with the terms of the FOB clause of the Agreement or order or with Buyer's shipping or routing instructions, Supplier authorizes Buyer to deduct from any invoice of Supplier (or to charge back to Supplier), any increased cost incurred by Buyer as a result of Supplier's noncompliance.

**SUPPLIER'S INFORMATION** - Supplier shall not provide under, or have provided in contemplation of, this Agreement any idea, data, program, technical, business or other intangible information, however conveyed, or any document, print, tape, disk, semiconductor memory or other information-conveying tangible article, unless Supplier has the right to do so, and Supplier shall not view any of the foregoing as confidential or proprietary.

**SURVIVAL OF OBLIGATIONS** - The obligations of the parties under this Agreement which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, including, by way of illustration only and not limitation, those in the clauses COMPLIANCE WITH LAWS, IDENTIFICATION, IMPEADER, INFRINGEMENT, RELEASES VOID, USE OF INFORMATION and WARRANTY (and INSURANCE and INDEMNITY if included in this Agreement), shall survive termination, cancellation or expiration of this Agreement.

**TAXES** - Buyer shall reimburse Supplier only for the following tax payments with respect to transactions under this Agreement unless Buyer advises Supplier that an exemption applies: state and local sales and use taxes, as applicable. Taxes payable by Buyer shall be billed as separate items on Supplier's invoices and shall not be included in Supplier's prices. Buyer shall have the right to have Supplier contest any such taxes that Buyer deems improperly levied at Buyer's expense and subject to Buyer's direction and control.

**TITLE AND RISK OF LOSS** - Title and risk of loss and damage to material purchased by Buyer under this Agreement shall vest in Buyer when the material has been delivered at the FOB point. If this Agreement or order issued pursuant to this Agreement calls for additional services including, but not limited to, unloading, installation, or testing, to be performed after delivery, Supplier shall retain title and risk of loss and damage to the material until the additional services have been performed. Notwithstanding the foregoing sentence, if Supplier is expressly authorized to invoice Buyer for material upon shipment or prior to the performance of additional services, title to such material shall vest in Buyer upon payment of the invoice, but risk of loss and damage shall pass to Buyer as provided in the foregoing sentence.

**USE OF INFORMATION** - Supplier shall view as Buyer's property any idea, data, program, technical, business or other intangible information, however conveyed, and any document, print, tape, disk, tool, or other tangible information-conveying or performance-aiding article owned or controlled by Buyer, and provided to, or acquired by, Supplier under or in contemplation of this Agreement (Information). Supplier shall, at no charge to Buyer, and as Buyer directs, destroy or surrender to Buyer promptly at its request any such article or any copy of such Information. Supplier shall keep Information confidential and use it only in performing under this Agreement and obligate its employees, subcontractors and others working for it to do so, provided that the foregoing shall not apply to information previously known to Supplier free of obligation, or made public through no fault imputable to Supplier.

**NO WAIVER/CUMULATIVE REMEDIES** - No failure to exercise and no delay in exercising, on the part of any party, of any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

**WARRANTY** - Supplier warrants to Buyer and its customers that material furnished will be new, merchantable, free from defects in design, material and workmanship and will conform to and perform in accordance with the specifications, drawings and samples. These warranties extend to the future performance of the material and shall continue for the longer of (a) the warranty period applicable to Buyer's sales to its customers of the material or of products which incorporate the material, (b) one year after the material is accepted by Buyer or (c) such greater period as may be specified elsewhere in this Agreement. Supplier also warrants to Buyer and its customers that services will be performed in a first class, workmanlike manner. In addition, if material furnished contains one or more manufacturers' warranties, Supplier hereby assigns such warranties to Buyer and its customers. All warranties shall survive inspection, acceptance and payment. Material or services not meeting the warranties will be, at Buyer's option, returned for or subject to refund, repaired, replaced or reperfomed by Supplier at no cost to Buyer or its customers and with transportation costs and risk of loss and damage in transit borne by Supplier. Repaired and replacement material shall be warranted as set forth above in this clause.

Supplemental Terms Applicable if Services are Ordered

**CHANGES** - Buyer may at any time during the progress of the Work require additions to or alterations of or deductions or deviations (all hereinafter referred to as a "Change") from the Work called for by the specifications, drawings and samples. No Change shall be considered as an addition or alteration to or deduction or deviation from the Work called for by the

specifications, drawings and samples nor shall Supplier be entitled to any compensation for work done pursuant to or in contemplation of a Change, unless made pursuant to a written Change Order issued by Buyer. Within ten (10) days after a request for a Change, Supplier shall submit a proposal to Buyer which includes any increases or decreases in Supplier's cost or changes in the delivery or Work schedule necessitated by the Change. Buyer shall, within ten (30) days of receipt of the proposal, either (i) accept the proposal, in which event Buyer shall issue a written Change Order directing Supplier to perform the Change or (ii) advise Supplier not to perform the Change in which event Supplier shall proceed with the original Work.

**INDEMNITY** - All persons furnished by Supplier shall be considered solely Supplier's employees or agents, and Supplier shall be responsible for payment of all unemployment, social security and other payroll taxes, including contributions when required by law. Supplier agrees to indemnify and save harmless Buyer, its parent, its affiliates and its and their customers and each of their officers, directors, employees, successors and assigns (all hereinafter referred to in this clause as "Buyer") from and against any losses, , claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorney's fees) that arise out of or result from: (1) injuries or death to persons or damage to property, including theft, in any way arising out of or occasioned by, caused or alleged to have been caused by or on account of the performance of the Work or services performed by Supplier or persons furnished by Supplier; (2) assertions under Workers' Compensation or similar acts made by persons furnished by Supplier or by any subcontractor or by reason of any injuries to such persons for which Buyer would be responsible under Workers' Compensation or similar acts if the persons were employed by Buyer; (3) any failure on the part of Supplier to satisfy all claims for labor, equipment, materials and other obligations relating directly or indirectly to the performance of the Work; or (4) any failure by Supplier to perform Supplier's obligations under this clause or the INSURANCE clause. Supplier agrees to defend Buyer, at Buyer's request, against any such claim, demand or suit. Buyer agrees to notify Supplier within a reasonable time of any written claims or demands against Buyer for which Supplier is responsible under this clause.

**INSPECTION** - Buyer's Representatives shall at all times have access to the Work for the purpose of inspection or a Quality Review and Supplier shall provide safe and proper facilities for such purpose.

**INSURANCE** - Supplier shall maintain and cause Supplier's subcontractors to maintain during the term of this Agreement: (1) Workers' Compensation insurance as prescribed by the law of the state or nation in which the Work is performed; (2) employer's liability insurance with limits of at least \$300,000 for each occurrence; (3) comprehensive automobile liability insurance if the use of motor vehicles is required, with limits of at least \$1,000,000 combined single limit for bodily injury and property damage for each occurrence; (4) Commercial General Liability ("CGL") insurance, including Blanket Contractual Liability and Broad Form Property Damage, with limits of at least \$5,000,000 combined single limit for bodily injury and property damage for each occurrence; and (5) if the furnishing to Buyer (by sale or otherwise) of products or material is involved, CGL insurance endorsed to include products liability and completed operations coverage in the amount of \$5,000,000 for each occurrence. All CGL and automobile liability insurance shall designate Buyer, its parent, its affiliates, and each of their officers, directors and employees (all hereinafter referred to in this clause as "Buyer") as an additional insured. All such insurance must be primary and required to respond and pay prior to any other available coverage. Supplier agrees that Supplier, Supplier's insurer(s) and anyone claiming by, through, under or in Supplier's behalf shall have no claim, right of action or right of subrogation against Buyer and its customers based on any loss or liability insured against under the foregoing insurance. Supplier and Supplier's subcontractors shall furnish prior to the start of Work certificates or adequate proof of the foregoing insurance including, if specifically requested by Buyer, copies of the endorsements and insurance policies. Buyer shall be notified in writing at least thirty (30) days prior to cancellation of or any change in the policy.

**TERMINATION** - Buyer may at any time terminate this Agreement, in whole or in part, by written notice to Supplier. In such case, Buyer's liability shall be limited to payment of the amount due for Work performed up to and including the date of termination (which amount shall be substantiated with proof satisfactory to Buyer), and no further Work will be rendered by Supplier. Such payment shall constitute a full and complete discharge of Buyer's obligations. In no event shall Buyer's liability exceed the price for the Work being terminated.

**TOOLS AND EQUIPMENT** - Unless otherwise specifically provided in this Agreement, Supplier shall provide all labor, tools and equipment (the "tools") for performance of this Agreement. Should Supplier actually use any tools owned or rented by Buyer or its customer, Supplier acknowledges that Supplier accepts the tools "as is, where is," that neither Buyer nor its customer have any responsibility for the condition or state of repair of the tools and that Supplier shall have risk of loss and damage to such tools. Supplier agrees not to remove the tools from Buyer's or its customer's premises and to return the tools to Buyer or its customer upon completion of use, or at such earlier time as Buyer or its customer may request, in the same condition as when received by Supplier, reasonable wear and tear excepted.

**WORK DONE BY OTHERS** - If any of the Work is dependent on work done by others, Supplier shall inspect and promptly report to Buyer's Representative any defect that renders such other work unsuitable for Supplier's proper performance. Supplier's silence shall constitute approval of such work as fit and suitable for Supplier's performance.