

## TERMS AND CONDITIONS OF PURCHASE

**1. ACCEPTANCE.** This Purchase Order expressly limits acceptance to terms stated herein unless otherwise stated on the face of this Purchase Order. Any additional or different terms proposed by SELLER are objected to in advance and hereby rejected and BUYER's acceptance of SELLER's goods and services shall not be deemed an acceptance of SELLER's terms.

**2. ASSIGNMENT.** Assignment of this Purchase Order, any interest herein, or any payment due or to become due hereunder, by the SELLER without BUYER'S prior written consent shall be void.

**3. MODIFICATIONS.** This Purchase Order contains the entire agreement between BUYER and SELLER and may be modified or rescinded only by a written change order (supplement) issued by BUYER and accepted by SELLER pursuant to the terms stated herein.

**4. QUALITY AND WARRANTY.** (a) General -- SELLER warrants that all items covered by this Purchase Order conform to the blueprints, samples, drawings, plans, formulas, data sheets or other descriptions (collectively, Specifications) furnished or specified by BUYER, and are merchantable, of good material and workmanship, and free from defect. In the event Specifications are furnished by SELLER and accepted by BUYER, SELLER further warrants that such goods are fit for their intended purpose. SELLER agrees that BUYER shall have the benefit of all manufacturers' warranties and guaranties, express or implied, issued on or applicable to the goods. This Purchase Order incorporates by reference any and all representations, warranties (express or implied and whether oral or in writing) and other promises made by SELLER prior to or at the time this Purchase Order is deemed accepted, including those contained in brochures, catalogues, advertisements, owner's manuals, etc. (b) Raw Materials and Supplies -- SELLER warrants that materials furnished hereunder strictly comply with the SELLER's published specifications, unless the SELLER has agreed to furnish material complying with the BUYER's Specifications, in which event the SELLER warrants that materials furnished strictly comply with the BUYER's Specifications. SELLER agrees to notify BUYER of any changes in process or quality control. If SELLER is not the manufacturer of the material, then SELLER will specify the manufacturer and the source of material and will notify BUYER of any change in the manufacturer or source of material. (c) Equipment and Mechanical Goods -- SELLER warrants that the goods furnished hereunder are suitable for the particular purpose stated in this Purchase Order. BUYER affirms that it has relied on SELLER's skill and judgment to select or furnish the goods for a particular purpose. SELLER further warrants that the goods are new, of first quality and will be free of defects in workmanship and materials for a period of twelve months from the date of initial operation or eighteen months after delivery to job site of the entire Purchase Order, whichever date shall first occur.

**5. RIGHT OF INSPECTION.** (a) Prior to Delivery -- BUYER shall have the right, but not be obligated, to

inspect the goods at SELLER's facility prior to their delivery. Should any inspection or test by BUYER indicate a failure to meet the Specifications, BUYER may reject such goods found to be non-conforming. Such non-conforming goods shall not be delivered to BUYER and BUYER shall have no obligation to pay the Purchase Price therefor. (b) Upon Delivery - Within a reasonable time after delivery of the goods, notwithstanding any inspection pursuant to Section 5(a) hereof, BUYER shall have the right to inspect the goods to determine their conformity with the Specifications. If all or any part of the goods are found to be non-conforming, BUYER may reject all or any part of the goods, whereupon such rejected goods promptly shall be removed by SELLER at SELLER's cost and the Purchase Price with respect to such rejected goods either shall be refunded to SELLER if already paid, or shall be reduced if still owing. In either case, if BUYER so directs in writing, SELLER shall promptly replace such non-conforming goods with goods conforming to the Specifications. All direct and incidental costs of rejecting and removing such non-conforming goods shall be borne by SELLER.

**6. DELIVERY AND RISK OF LOSS.** Time is of the essence of this Purchase Order. The goods shall be delivered to BUYER at the time and place specified on the face of this Purchase Order. Title to the goods shall vest in BUYER when goods or services have been delivered (and unloaded) at the final destination designated on the face hereof and such installation or adjustments as are required to make the goods fully operational have been performed. Until title to the goods passes to BUYER, SELLER shall bear all risk of loss of damage to the goods. If the SELLER fails to deliver the goods at the time and place specified, the BUYER reserves the right to cancel this Purchase Order in whole or in part and avail itself of any remedy of an aggrieved buyer under Article II of the Uniform Commercial Code.

**7. PURCHASE PRICE.** The Purchase Price to be paid by BUYER shall be as specified on the face of this Purchase Order, subject to Section 9 hereof. BUYER shall not accept responsibility for payment of overshipments, goods not delivered due to shortages, theft, etc., or otherwise non-conforming shipments. BUYER's count or quantity measurements shall be accepted as final and conclusive for all shipments.

**8. TERMINATION FOR CONVENIENCE.** BUYER may terminate this Purchase Order at any time, at the sole discretion of the BUYER upon written notice to SELLER. Provided that the SELLER is not in breach of this Contract, upon such termination BUYER shall pay SELLER all costs incurred prior to the date of termination together with costs reasonably necessary for winding up the work, payments reasonably necessary for termination commitments to suppliers and subcontractors plus a termination fee equal to 10% of such costs, less prior payments made on account, if any; provided, however, that in no event shall the total of all payments to the SELLER exceed the Purchase Price. Other

than as stated in this paragraph BUYER shall have no liability for early termination.

**9. PAYMENT.** BUYER may withhold payment for goods until it has received and inspected same and has determined they are conforming. In no event, however, shall payment by BUYER be deemed an acceptance of any goods delivered hereunder. Invoices shall be considered as dated the day they are received by BUYER. With respect to invoices covering mechanical equipment and similar goods which cannot immediately be put into operation, BUYER reserves the right to withhold from payment of such invoice either (i) retainage of 10% of the amount thereof pending approval of the operation of such equipment and/or goods or (ii) such other amounts, and for such other periods, as may be specified in the Specifications. (a) Procedures-- Prompt payment of invoices depend upon SELLER carefully complying with the procedures established hereunder. A separate invoice must be sent for each Purchase Order and each invoice must refer to the Purchase Order No. The Purchase Order No. must also appear on all packing slips, containers, packages, cartons, labels and correspondence. A detailed packing slip must accompany each delivery or shipment. (b) Discounts - Discount shall be calculated from date invoice is received in proper form or from date material is received, whichever is later. (c) Freight - Freight must be prepaid on all material sold on a delivered or freight allowed basis. (d) Taxes - SELLER agrees to pay any taxes imposed by law upon, or on account of the materials and/or services purchased hereunder unless otherwise agreed.

**10. PATENTS.** SELLER warrants that the services, material or any other item purchased hereunder by BUYER do not infringe any patent or other property right, and agrees to bear the expense of defending any suit brought against BUYER charging that the services, material or other item purchased infringes any patent or other property right, and to pay any profits or damages that may be awarded in any such suit.

**11. CONFIDENTIAL INFORMATION.** SELLER shall not copy, disclose to any third party, or use in any way outside the scope of the authorized work, without BUYER'S written permission, formulations, drawings, specifications, methods, trade secrets, or proprietary data that has been entrusted to the SELLER by BUYER in connection with this Purchase Order. SELLER shall not in any manner advertise or publish the fact that it has furnished or contracted to furnish BUYER with goods, nor shall the SELLER disclose any details of this Purchase Order to any third party.

**12. COMPLIANCE WITH REGULATIONS.** SELLER warrants that all goods and services purchased hereunder including, without limitation, the packaging and labeling thereof, shall conform with all applicable local, state, and federal laws, ordinances and regulations and shall indemnify, defend and save BUYER harmless from loss, cost or damage (including attorneys' fees and costs) by reason of any violation thereof.

**13. EQUAL EMPLOYMENT OPPORTUNITY.** If applicable to this Purchase Order, or any related subcontract or bill of lading, the affirmative action clause for disabled workers (41 CFR Sec. 60-741.4), the equal opportunity clause in Section 202 of Executive Order 11246, and the affirmative action clause for disabled veterans, Vietnam-era and other eligible veterans (41 CFR Sec. 60-250.4), are hereby incorporated herein by reference.

**14. INSURANCE.** In the event SELLER shall, under the terms of this purchase order, be required to perform labor or services at BUYER's premises or the job site, SELLER shall procure and maintain, at its own expense, the following insurance: Workers' Compensation in the required statutory limits; Automobile Liability and Comprehensive General Liability Insurance, including contractual liability, completed operation and products liability, all such insurance to be carried with companies acceptable to BUYER, and all such Automobile Liability and Comprehensive General Liability Insurance to have limits satisfactory to BUYER.

**15. INDEMNIFICATION.** To the fullest extent permitted by law, SELLER shall indemnify and hold harmless BUYER from and against all claims, damages, losses and expenses (including attorneys' fees and costs), arising from or relating to the undertaking of SELLER hereunder or any defect(s) in the materials, equipment or goods furnished, provided such claims, damages, losses and expenses are caused in whole or in part by any act or omission of SELLER or anyone for whose acts SELLER may be liable, or provided SELLER may be held responsible for same under products liability law or under other applicable legal or equitable principles. SELLER further agrees to assume the defense of any suit brought against BUYER and to protect BUYER from all costs, damages and expenses arising out of claims for patent infringements in the use, either by itself or its customer, of the items or materials covered by this Purchase Order.

**16. RAW MATERIALS ONLY.** SELLER warrants that (a) unless excluded by definition from the United States Toxic Substances Control Act (the "Act") all material shipped hereunder is included in the inventory list promulgated under the Act, or is exempt from Par. 5 of the Act, and complies in all other respects with applicable requirements and regulations thereunder; and (b) shipments hereunder will comply in all respects with all other applicable laws and regulations. SELLER agrees to indemnify, defend and hold BUYER harmless from all damages and liability (including attorney fees) resulting from any breach of these warranties.

**17. GOVERNING LAW.** This Purchase Order shall be governed by and interpreted and construed in accordance with the substantive laws of the Commonwealth of in the Commonwealth of Massachusetts, including without limitation the Uniform Commercial Code then in effect in the Commonwealth of Massachusetts.