

GENERAL TERMS AND CONDITIONS

Title:

General Terms and Conditions - Purchasing

Document # : 301-123

Date : 4/22/2014

Version # : 1.0

Doc. Owner : Terry Koetter

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1. Purpose

- 1.1. General Terms and Conditions for purchased parts and services.

2. Scope

- 2.1. All Sites

3. General Terms and Conditions

- 3.1. **ORDERS AND ACCEPTANCE** - This purchaser order constitutes the offer of Buyer to Seller to purchase the goods or services described in the purchase order. This purchase order consists only of the terms contained herein and in any documents or specifications expressly incorporated by reference. This purchase order does not constitute an acceptance by Buyer of the terms contained in any quotation, proposal, or order confirmation furnished by Seller and Buyer hereby objects to the inclusion of such terms. This purchase order must be accepted in writing by Seller. However, if Seller does not accept this purchase order in writing, any conduct by Seller which recognizes the existence of a contract pertaining to the subject matter of this purchase order shall constitute acceptance by Seller of this purchase order and of all of its terms and conditions.
- 3.2. **SHIPPING NOTICES** – Seller shall send advice of shipment, including original bill of lading and other memorandum, as soon as the material or articles are forwarded pursuant to this purchase order, giving current purchase order number and marking instructions, description of materials or articles and, if shipment is made by rail, car initials, number and routing.
- 3.3. **DELIVERY** – Time is of the essence for completion of this purchase order. Buyer reserves the right to reject any early shipment, late shipment or over-shipment. If Seller delivers the goods or completes the services later than scheduled, Buyer may assess as liquidated damages a sum equal to (i) 0.5% of the purchase order value for each week (full or partial) of delay, up a maximum of 5% of the purchase order value, or (ii) the amount set forth on the face of this purchase order. The parties agree that such amounts are a reasonable pre-estimate of the damages Buyer will suffer as a result of delay based on circumstances existing at the time the purchase order was issued; and are to be assessed as liquidated damages and not as a penalty. Said amounts shall be deducted from any monies due or that may become due to Seller. If said monies are insufficient to cover the total amount of liquidated damages owed by Seller, then Seller shall immediately pay the amount of the difference to Buyer. In the absence of liquidated damages, Buyer shall be entitled to recover damages that it incurs as a result of Seller's failure to perform as scheduled. Buyer's resort to liquidated damages for the delay does not preclude Buyer's right to other remedies under this purchase order, including, but not limited to Buyer's right to terminate this purchase order.
- 3.4. **INSPECTION AND ACCEPTANCE** - All goods shall be received subject to Buyer's inspection and rejection. Defective goods or goods not in accordance with Buyer's specifications will be held by Buyer

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at Seller's risk and expense and, at Buyer's option, returned to Seller at Seller's expense. No goods returned as defective shall be replaced without a new purchase order and schedule. Payment for goods or services prior to inspection shall not constitute an acceptance thereof, nor will acceptance remove Seller's responsibility for defects. Prior to shipment, Buyer shall be allowed free access to Seller's facilities at reasonable times for the purpose of inspecting or testing the goods, manufacturing processes, and the quality thereof. Buyer's cost of attending shall be borne by Buyer, unless Buyer's attendance at Seller's facilities is caused by or related to Seller's quality issues, in which case Buyer reserves the right to charge the costs associated with such attendance to Seller.

- 3.5. **WARRANTY** - Seller warrants that the goods covered by this purchase order shall (i) be new and unused; (ii) conform to the specifications, drawings, samples, or other descriptions furnished or specified by Buyer; (iii) be free from defect in material and workmanship; and (iv) be merchantable, and fit and sufficient for its intended purpose. Seller further warrants that the services shall be performed in a professional and workmanlike manner in accordance with any specifications provided by Buyer. In addition to any other remedy Buyer may have as a matter of law as a result of a breach by Seller of the foregoing warranties, Buyer shall have the right to (a) rework such goods or services at Seller's expense and deduct such cost from any monies due or that may become due to Seller, or (b) return goods to Seller for replacement, correction or credit. Seller shall reimburse Buyer for any costs incurred in returning goods to Seller for replacement or correction, and shall promptly credit or pay Buyer the purchase price of any good returned for credit, plus the cost of returning same. Buyer's inspection or acceptance of goods or services furnished by Seller shall not release Seller from liability under the foregoing warranties.
- 3.6. **INDEMNITY** - Seller shall indemnify and hold Buyer harmless against liability incurred by Buyer as a result of bodily injury, death, or property damage to the extent such liability arises in connection with the goods or services furnished by Seller. However, Seller shall not be obligated to indemnify Buyer for any liability caused by Buyer's sole negligence.
- 3.7. **INDEMNIFICATION FOR INFRINGEMENT** - Seller warrants that the manufacture, sale or use of the goods or services, alone or in combination with other goods or services, in the manner Seller recommends or in the manner for which such goods or services are designed for use or are customarily used will not infringe any United States or foreign patents, trade names, trade secrets, copyrights, or other intellectual property rights (the "Intellectual Property Rights"). Seller agrees to defend, indemnify and hold Buyer (or anyone using or selling the goods or services) harmless against all claims, demands judgments, decrees, costs and expenses (including attorney fees) for actual or alleged infringement of any Intellectual Property Rights arising from the use or sale of the goods or services.
- 3.8. **INTELLECTUAL PROPERTY RIGHTS/CONFIDENTIALITY** – (a) Any inventions, discoveries, patents, copyrights, trade names, trade secrets, mask works or other intellectual property created in the performance of this purchase order shall be the sole property of Buyer, and Seller shall do all things requested by Buyer to transfer the ownership thereof and to perfect the same; and (b) Seller may have

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access to certain confidential information of Buyer and Seller agrees not to divulge to anyone the confidential information of Buyer or use for its own benefit any such confidential information, including drawings or other documentary information of a confidential nature provided to Seller by Buyer.

- 3.9. **LIENS** - All goods delivered and services performed under this purchase order shall be free of all liens. If Buyer so requests, a proper release of liens or satisfactory evidence of freedom from liens shall be delivered to Buyer.
- 3.10. **ASSIGNMENTS** – This purchase order shall not be assigned, in whole or in part, without the prior written permission of Buyer.
- 3.11. **ADVERTISING** - Seller shall not, without the prior written consent of Buyer, in any manner, advertise or publish the fact that Seller has contracted to furnish Buyer the goods or services herein ordered. Buyer shall have the right to terminate the order without any obligations to accept deliveries after the date of termination, or make further payments except for completed articles delivered prior to the termination in the event of a breach of this provision.
- 3.12. **MODIFICATIONS** - No modification of this purchase order shall be binding, nor shall materials other than those specified be substituted, unless Buyer consents in writing.
- 3.13. **TAXES** - Unless otherwise indicated on the face of a purchase order, all federal, state, and local taxes applicable to the sale, purchase, delivery, storage, processing, or use of the goods or services shall be included and separately identified as a line item on the invoice to Buyer.
- 3.14. **COMPLIANCE WITH LAWS** - Seller warrants that (a) the goods or services delivered under this purchase order shall comply with (i) all requirements of the Fair Labor Standards Act of 1938, as amended, (ii) all applicable federal standards prescribed by the Occupational Safety and Health Act of 1970, as amended, and (iii) all requirements of any applicable health or safety statute or regulation of any state or local government having jurisdiction in the location to which such goods are to be shipped or service is to be performed pursuant to this purchase order; and (b) it will comply with all other applicable laws, rules and regulations of federal, state and local governments and agencies thereof.
- 3.15. **CHOICE OF LAW** - This purchase order shall be governed, construed, and enforced in accordance with the laws of the state from which this purchase order is issued as shown by the address of Buyer set forth on the face of the purchase order, excluding any conflict of law provisions that would require application of another choice of law. Any action or proceedings by Buyer against Seller may be brought by Buyer in any court(s) having jurisdiction over Seller or, at Buyer's option, in the court(s) having jurisdiction over Buyer's location, in which event Seller consents to jurisdiction and service of process in accordance with applicable procedures. Any actions or proceedings by Seller against Buyer

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may be brought by Seller only in the court(s) having jurisdiction over the location of Buyer from which this purchase order is issued.

- 3.16. **TERMINATION** – In the event Seller does not correct or, if immediate correction is not possible, commence and diligently pursue correction of any default of Seller under this purchase order within seven (7) days after written notice by Buyer of such default, Buyer may, by written notice to Seller, immediately terminate this Agreement, without prejudice to any other rights or remedies which Buyer may have under law. In the event of such termination, Buyer may take possession of all goods and complete the performance of this purchase order by such means as Buyer selects and Seller shall be responsible for any additional costs incurred by Buyer in doing so. In addition to the foregoing, Buyer reserves the right to terminate this Agreement for its convenience at any time for any reason on written notice to Seller. In such event, Seller will be paid for all goods or services authorized and satisfactorily performed or received prior to the termination.
- 3.17. **FORCE MAJEURE** - Delays in performance of obligations of either party due to force majeure occurrences such as acts of God, or, strikes or other similar causes beyond the party's control, and which the party could not have reasonably prevented or foreseen, shall be excused. In such event, a party shall take all reasonable steps to avoid or mitigate the effects of such delay. In the event of a force majeure involving the date of delivery or performance by Seller, the time for delivery or performance will be extended for a period equal to the duration of the delay, but Seller shall not be entitled to any additional compensation for such delay. In the event the force majeure delays delivery more than thirty (30) days from the scheduled delivery date, Buyer shall have the right to cancel the Agreement or any part thereof upon written notice and without liability to Buyer.