



## PURCHASE ORDER TERMS AND CONDITIONS

**1. General:** The term Buyer shall mean the entity identified on the face of this Order. The terms and conditions set forth below, together with the written information contained on the face of this purchase order ("Order") and all attachments and exhibits attached hereto and all specifications, drawings, notes, instructions, and other written materials and information referenced in this Order, shall apply to the purchase of the products and/or services described in this Order (collectively "Products") and are incorporated herein and are made a part of this Order. Supplier may accept this Order either by performance or the sending of an acknowledgement; provided, however, that any additional terms and conditions contained in Supplier's offer or counteroffer documents (including any acknowledgment or invoice) shall not apply to this Order unless they are specifically accepted by an individual of Buyer having the title of Contracts Manager, Director of Contracts, Vice President, President or CEO ("Buyers Representative") in writing. In the event this Order is deemed to be an acceptance of a Supplier quotation (rather than an offer or counteroffer accepted by Supplier by performance or acknowledgment), then Buyer's acceptance of Supplier's quotation is expressly conditioned on Supplier's agreement to these Terms. If a purchase agreement (signed by a Buyer Representative) exists between Supplier and Buyer with respect to the Products, the terms of such agreement shall prevail over any inconsistent Terms herein. In no event shall Buyer's silence in response to any document containing Supplier's terms and conditions be construed as an acceptance of any such terms or conditions. The Order is by and between the Supplier and the Buyer set forth on the front of this document, and does not bind any other entity, including any Affiliate of Buyer.

**2. Price, Payment and Invoices.** Prices for Products shall be in the currency set forth on the front of this Order, or if no currency is specified thereon, the United States Dollar. Supplier warrants that the prices offered for the Products hereunder are the lowest prices for these or similar Products sold by Supplier to other customers, and in the event of any price reduction between the acceptance of this Order and delivery of the Products, Buyer shall be entitled to such reduction. Supplier shall submit invoices which include, at a minimum, the following information: Order number, item number, description of item, size of item, quantity of item, unit price, applicable taxes, extended totals, and any other information specified elsewhere herein. A Bill of Lading or express receipt must accompany each invoice. The Product price includes all applicable foreign, federal, state, and local taxes, tariffs, import duties, commissions, and all shipping, freight, transportation, packing and handling charges required to deliver the Product to the delivery point in accordance with Section titled **Delivery**; provided, however, that all freight, transportation, duties and taxes (including value added taxes) shall be separately itemized. Payment terms for any valid and non-disputed invoice are net thirty (30) days from the date of receipt of product. In the event Buyer disputes any invoice, it will promptly notify Supplier, and the parties shall use their respective efforts to resolve the dispute. Payment of invoices shall be deemed correct unless Supplier notifies Buyer of any payment discrepancies within thirty (30) days after receipt of payment. Buyer's delay in paying any disputed portion of any invoice shall not constitute a breach or default of these Terms. Buyer may at any time set off any amount owing from Supplier or any

of its Affiliates to Buyer or any of its Affiliates against any amount payable by Buyer or its Affiliates to Supplier or its Affiliates. For the purpose of this Order, the term "Affiliate" of a party shall mean and include any entity which controls, is controlled by, or is under common control of Buyer or Supplier. Time in connection with any discount offered by Supplier will be computed from the latest of (i) the scheduled delivery date, (ii) the date of actual delivery, or (iii) the date on which a correct invoice is received. For the purpose of earning the discount, payment will be deemed to have been made on the date of mailing of Buyer's payment.

### **3. Delivery; Incoterms; Risk of Loss; Packing and Shipment; Overshipments:**

(a) Each shipment of goods or performance or services shall be delivered at the sites and by the delivery dates as stated herein. Time is of this purchase order ("Order"). Supplier shall immediately notify Buyer, in the event that Supplier's timely performance under this Order is delayed or likely to be delayed, in whole or in part, and Supplier shall provide Buyer with all available information regarding the reasons for the delay. Such notice shall not constitute a waiver by Buyer of any of Suppliers obligations hereunder. If delivery of the Products is not timely completed, Buyer reserves the right, without liability and in addition to all its other rights and remedies: (1) to terminate this Order by notice effective when received by Supplier as to Product not yet shipped, and to purchase substitute Products elsewhere and at Buyer's option, charge Supplier with any loss incurred, (2) to request that Supplier, at its expense, ship Product by expedited means and (3) to recover from Supplier any damages it incurs, including but not limited to any damages it is required to pay to any third party. Neither partial shipments nor shipments prior to the delivery date shall be permitted unless agreed to in writing by Buyer. Product delivered to Buyer more than three (3) days in advance of the delivery date herein or which are in excess of the ordered quantities may be returned at Supplier's expense.

(b) Unless otherwise specifically provided on the face of this Order, the Products will be delivered FCA Buyer's facility of manufacture (Incoterms 2020). In the event this Order includes the delivery of equipment which requires installation, Supplier shall install such equipment (at Supplier's expense) at Buyer's designated site upon request from Buyer. Title and risk in Products shall remain with Supplier until they are delivered at the point specified in the Order and transferred to Buyer's possession, at which time title and risk in the Products shall transfer to Buyer.

(c) Unless otherwise specified in the Order or in another written communication from Buyer to Supplier, (i) all Products shall be packed in accordance with good commercial practices; (ii) Supplier shall attach a complete packing list to the outside of each packing container; (iii) Supplier shall mark all containers or packages with necessary lifting, loading and shipping information; (iv) Supplier shall ship Product in a manner which complies with all Laws and which is adequate to insure safe arrival of the Product at the destination.

### **4. Warranty:**

(a) In addition to any express or implied warranties, Supplier warrants that Products will be (1) new and unused, (2) free from all defects, including defects in workmanship, material, design and manufacture, (3) of merchantable quality and fit for the purposes intended by Buyer, (4) in conformance with any drawings or specifications provided to Supplier or any samples or

specifications furnished by Supplier, and (5) free from infringement of any third party intellectual property. The foregoing warranties shall (i) survive the delivery and inspection of the Product and acceptance or payment by Buyer, (ii) be in effect for as long as Buyer warrants its product (containing the Product) to its customer, but at least one year and no longer than five years from delivery, and (iii) run to the benefit of Buyer and its customers. Buyer's approval of Supplier's materials or design will not relieve Supplier of any warranties.

(b) In addition to any other rights Buyer may have, if Products delivered pursuant to this Order do not meet the foregoing warranties, Buyer shall, at its sole option, have the right to (i) require Supplier to correct any defective or nonconforming Product by repair or replacement at no cost to Buyer; (ii) return such defective Product to Supplier, at Suppliers expense and sole risk, for a credit at the price the Products were originally purchased or (iii) correct the defective or nonconforming Product itself and charge Supplier with the cost of such correction. In the event Buyer requests a return for replacement, Supplier shall (a) provide Buyer with a return material authorization ("RMA") number within 24 hours after Buyer's request, (b) replace or rework and ship the nonconforming returned Products within five (5) business days after receipt and (c) shall bear all shipping costs required to effectuate the replacement.

(c) Any repaired Product shall be warranted as set forth herein to the same extant and duration as the Product initially furnished.

(d) In addition to the foregoing warranties, Supplier warrants that the Product, the manufacture and sale of the Product complies with all Laws. Supplier further warrants the accuracy of all Product documentation it provides to Buyer, including but not limited to customs-related documents and MSDS and safety-related documents.

#### **5. Inspection and Acceptance:**

Payment for the Product does not constitute acceptance of the Product and Buyer reserves the right to take an adjustment (by means of a credit memo or otherwise) for errors, shortages, defect in the Products or other failure of Supplier to meet the requirements of this Order. Product will only be deemed accepted after it has actually been counted, inspected and tested by Buyer and determined to be in conformance with this Order. Notwithstanding the foregoing, Buyer's failure to inspect or test the Product shall not relieve Supplier of any of its responsibilities hereunder. In case any Product is not in conformity with the requirements set forth in the Order or these Terms, Buyer will have (in addition to charging Supplier for the inspection of the Products) the right to reject it, to require its correction, or to accept it with an adjustment in price. Any Product that has been rejected or required to be corrected must be replaced or corrected by and at the expense of Supplier within five business days after notice. If, after being requested by Buyer, Supplier fails to timely replace or correct any defective Product or element of service, then Buyer shall have the right (a) to exercise any remedy set forth herein, (b) to cancel this Order for default, or (c) to require an appropriate reduction in price. Buyer (on behalf of itself and its customer) reserves the right to inspect, at the Supplier's facility or at any other location, any or all of the Products and any records relating to the Products.

**6. Changes:** Buyer shall have the right at any time to suspend performance hereunder, increase or decrease the ordered quantities, change the delivery date of the Product or make changes in

drawings, designs, specifications, materials, packaging, place of delivery, and/or method of transportation ("Change(s)"). Supplier agrees to accept such Changes as though the Changes were included in the Order. If any Changes cause an increase or decrease in the cost, or the time required for performance, Supplier shall notify Buyer, and the parties shall agree on an equitable adjustment in the price and/or delivery date, and shall modify the Order in writing. No claim by Supplier for such an adjustment will be valid unless asserted in writing within twenty (20) days (or such longer period as agreed to in writing by Buyer Representative) after the date on which Supplier received the notification of the Change. Except in the event of a Change, Supplier shall not make any changes to the form, fit, function to any Products or any changes to the drawings, designs, specifications, materials, process, packaging, time and place of delivery or method of transportation without Buyer's prior written consent.

**7. Indemnification:** Supplier shall indemnify, defend and hold Buyer, its officers, directors, employees, agents, customers, and affiliates (the "Buyer-Indemnified Parties") harmless from and against any and all demands, claims, actions, causes of action, proceedings, suits, assessments, losses, damages, liabilities, settlements, judgments, fines, penalties, interest, costs and expenses (including fees and disbursements of counsel) and, in the case of breach of warranty, including the internal or external costs of any recall (including shipping costs to and from Buyer's customer to Buyer), the costs incurred by Buyer to determine the cause of the failure, the technical support labor costs in handling customer relationships and the costs incurred by Buyer to repair the product which incorporates the Product) of every kind (each a "Claim," and, collectively "Claims") (i) which Claim alleges that the Product, the use or sale of the Product, or the equipment or processes used to manufacture and/or assemble the Product (1) infringe the patent, copyright, trademark, trade secret or other form of intellectual property right belonging to a third party or (2) Supplier has engaged in unfair competition as a result of similarity in design, trademark or appearance of the Product, (ii) based upon personal injury or death or injury to property to the extent any of the foregoing is proximately caused either by a defective Product, or by the negligent or willful acts or omissions of Supplier or its officers, employees, subcontractors or agents, or (iii) based on Supplier's breach of these Terms, including but not limited to any breach of the warranties provided in the Section titled **Warranty**. Supplier agrees upon receipt of notification from Buyer to provide and to promptly assume responsibility for defense of any claim, suit or proceeding which may be alleged or brought against the Buyer-Indemnified Parties. At its option, Buyer may be represented by and actively participate, through its own counsel in such claim, suit or proceeding, and the reasonable costs of such representation shall be paid by Supplier. Supplier shall not settle any Claim without Buyer's written approval, which approval shall not be unreasonably withheld. The rights pursuant to this Section are in addition to any other rights (of indemnification or otherwise) provided by law.

**8. Termination and Cancellation:**

(a) Buyer shall have the right to terminate this Order or any portion thereof "for cause" and without any liability to Buyer (i) in the event Supplier breaches any of these Terms or (ii) Buyer believes in good faith that Supplier will be unable to perform its obligations hereunder, requests that the Supplier give it adequate assurances of performance, and Supplier fails to do so within

five business days. In addition, this Order shall automatically terminate for cause and without liability to Buyer in the event Supplier assigns substantially all of its assets to a third party for the benefit of its creditors, files for bankruptcy or has a bankruptcy proceeding filed against it which proceeding is not dismissed within sixty days after filing. Supplier shall indemnify the Buyer-Indemnified Parties for all Claims resulting from Buyer's termination for cause, including the costs of transferring production to a third party, the procurement of substitute product and any other costs incurred by Buyer.

(b) Buyer shall have the right to terminate the Order or any portion thereof for its convenience. In the event of such a termination, Supplier shall immediately stop all affected work hereunder, place no further orders for materials to complete the affected work, and observe any instructions by Buyer as to work in process. In addition, if requested by Buyer, Supplier will assign to Buyer all Supplier's interests under any affected subcontracts and orders, settle all claims thereunder after obtaining Buyer's written approval, protect all property in which Buyer has or may acquire an interest, and transfer title and make delivery to Buyer of all articles, materials, work in process, and other things held or acquired by Supplier in connection with the terminated portion of this Order. Supplier will proceed promptly to comply with Buyer's instructions respecting each of the foregoing without awaiting settlement or payment of its termination claim. Within thirty (30) days after such termination, Supplier may submit to Buyer its written claim for termination charges, in the form and with the certifications prescribed by Buyer. Supplier's failure to submit the claim within thirty (30) days after termination shall constitute a waiver of such claim and a release of any potential Buyer liability arising out of the termination. Unless otherwise agreed, the termination charges will be limited to (i) the contract price, for Product completed (or services rendered) in accordance with this Order and not previously paid for (provided that the Product was not manufactured in advance of the leadtime previously approved by Buyer); and (ii) the cost of the components plus a reasonable charge for the labor expended for all work in process (provided that the work was not performed in advance of the leadtime previously approved by Buyer); and (iii) reasonable cancellation charges paid to third party suppliers, provided that Supplier has obtained Buyer's prior written approval. Payments under Sections (i)-(iii) above may not exceed the aggregate price specified in this Order less payment otherwise made or to be made. Any amounts payable by Supplier to Buyer for property lost, damaged, stolen or destroyed prior to delivery to Buyer will be excluded from amounts otherwise payable to Supplier under this Section.

(c) In the event a court determines that Buyer has improperly terminated this Order or a portion for cause, such termination shall be deemed to be for Buyer's convenience.

**9. U.S. Government Contract Provisions:** If required, Supplier shall comply with Section 12 of the Federal Acquisition Regulations ("FAR") (Acquisition of Commercial Items), and all such regulations are hereby incorporated by reference into this Order. In the alternative, if a contract number is shown on the face hereof, the following special terms and conditions shall apply; (1) all applicable provisions of any contract between Buyer and the Government prime contractor or subcontractor, and all statutes regulations, orders or similar Government contracting provisions which by law or regulation are required to be made a part of the Order, are incorporated herein

by reference, and shall be flowed down by Supplier to any subcontractor, sub-supplier or sub-manufacturer being utilized by Supplier. By accepting this Order, Supplier assumes toward the government, prime contractor and subcontractor the same obligations toward Buyer that Buyer has assumed in the contract or subcontract with the Government, prime contractor or subcontractor, and (2) any additional government contracting provisions of which Buyer has advised Supplier shall be incorporated herein by reference.

**10. Counterfeit Parts:** (a) For purposes of this Clause, the term “**Parts**” consists of those parts delivered under this PO that are the lowest level of separately identifiable items (e.g., articles, components, goods and assemblies). The term “**Counterfeit Part**” means a Part that fulfills any or all of the following: 1) is or contains items misrepresented as having been designed, produced and/ or tested under an approved system or other acceptable method; 2) is an item altered to resemble a product without authority or right to do so, or is an imitation of another product, with the intent to mislead or defraud by presenting the imitation as original or genuine; 3) is an approved Part that has reached a design life limit or has been damaged beyond possible repair, but is altered and misrepresented as acceptable; or 4) is a used, refurbished, sample, or reclaimed item passed off as a new one. (b) Seller agrees and shall ensure that Seller and Seller Engaged Personnel shall deliver no Counterfeit Parts to Buyer. Seller shall only purchase items to be delivered or incorporated as Parts directly from the original component manufacturer/ original equipment manufacturer, or through an authorized distributor. Parts shall not be acquired from independent distributors or brokers unless approved in advance in writing by Buyer. Seller shall, at its expense, promptly replace any delivered Counterfeit Part with a genuine Part conforming to the requirements of this PO. Notwithstanding any other provision herein, Seller shall be liable for all costs relating to the removal and replacement of Counterfeit Parts, including cost borne by Buyer, its customer or subcontractor associated with removing Counterfeit Parts, of reinserting replacement parts and of any testing necessitated by the need to identify the Counterfeit Parts and the reinstallation of Parts after Counterfeit Parts have been exchanged. The remedies contained in this Clause are in addition to any remedies Buyer may have at law, equity or under other provisions of this PO.

**11. Compliance with Buyer’s Code of Conduct:** Supplier will comply with Buyer’s Code of Business Ethics and Conduct, a copy of which will be provided upon Supplier request. In particular, Supplier shall not make or offer a gratuity or gift of any kind to Buyer’s employees or their families that could be viewed as relating to an actual or potential business relationship with Buyer. Gifts include entertainment, personal services, favors, discounts and other preferential treatment of any kind.

**12. Limitation Of Liability:** IN NO EVENT SHALL BUYER BE LIABLE TO SUPPLIER OR A THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER BASED UPON CONTRACT, TORT, OR ANY OTHER LEGAL THEORY (INCLUDING WITHOUT LIMITATION LOST PROFITS AND LOST OPPORTUNITY). IN NO EVENT SHALL BUYER'S LIABILITY HEREUNDER FOR ANY PRODUCT ORDERED HEREUNDER EXCEED THE PURCHASE PRICE OF THE

PRODUCT. NOTHING HEREIN SHALL BE CONSTRUED TO LIMIT THE LIABILITY OF SUPPLIER UNDER THE ORDER

**13. Confidentiality:** Supplier agrees to keep information provided by Buyer confidential in accordance with the terms and conditions of the nondisclosure agreement previously executed between the parties, or, in the event the parties have not previously executed a nondisclosure agreement, in accordance with the terms and conditions of Buyer's standard Supplier Nondisclosure Agreement which will be provided upon request. In addition, the parties agree that the prices at which Supplier sells the Product to Buyer shall be kept strictly confidential.

**14. Buyer Furnished Property:** All products, tools, equipment and other materials furnished by Buyer for use in the performance of this Order ("Equipment") shall remain the property of the Buyer, shall be used by Supplier solely in the performance of this Order, and shall be returned to Buyer within three (3) business days after completion or termination of this Order or of Buyer's request. Supplier shall maintain, with a reputable insurance company, sufficient insurance to cover the replacement cost of the Equipment, which policy shall name Buyer as an additional insured and loss payee. Upon request from Buyer, Supplier shall provide evidence of such insurance.

**15. Buyer's Protection For Work Performed At Its Site:** Supplier shall take all steps as may be reasonably necessary to prevent personal injury or property damage during any work hereunder that may be performed by any employees, agents or subcontractors of Supplier at Buyer's site (including, without limitation, installation of equipment), and Supplier shall indemnify and hold harmless Buyer from and against Claims from any such employee, agent or subcontractor, and Supplier shall maintain such insurance against public liability and property damage, and such employees liability and compensation insurance as will protect Buyer against the aforementioned risks and against any claims under any Workers Compensation and Occupational Safety and Health Acts and any other applicable labor, health and safety Laws. Supplier's employees, agents, and subcontractors shall at all times conduct themselves in full compliance with Buyer's safety and security regulations and shall immediately report to Buyer any accidents.

**16. Patent License:** Supplier, as consideration for this Order and without further cost to Buyer, hereby grants to Buyer (and, to the extent requested by Buyer, to the Government) an irrevocable, non-exclusive, royalty-free license to use, have used, sell, have sold, manufacture, and cause to be manufactured products embodying any inventions and discoveries made, conceived, or actually reduced to practice in connection with the performance of this Order. All intellectual property contained in any services performed for Buyer shall belong to the Buyer, and (at Buyer's request and expense), Supplier agrees to carry out all formalities to legally vest ownership of all such intellectual property rights in Buyers name.

**17. Miscellaneous:**

(a) Waiver. No waiver of any breach of this Order or the terms and conditions thereof by Buyer shall be held to be a waiver of any other or a subsequent breach. All rights and remedies afforded Buyer in this Order shall be taken and construed as cumulative, that is, in addition to every other right and remedy provided under the Order or by law.

(b) Assignments. No right or obligation under this Order may be assigned by Supplier without the prior written consent of Buyer, and any purported assignment without such consent will be void. Buyer may assign this Order at any time upon notice to Supplier.

(c) Independent Contractor. The relationship of Buyer and Supplier established by this Order is that of independent contractors and nothing herein shall constitute the parties as partner, joint venturers, co-owners or otherwise as participants in a common undertaking or allow either party to create any obligation on behalf of the other party.

(d) Entire Agreement. These Terms set forth the entire agreement between parties with respect to the subject matter hereof and supersedes all prior agreements and discussions between them. No modification or amendment hereof will be effective unless in writing and signed by a duly authorized representative of each party. Any terms and conditions set forth in any order confirmation or acknowledgment or any other documents shall be of no force or effect whatsoever.

(e) Applicable Law. The Parties acknowledge and agree that the state courts in Springfield, Virginia, and the federal courts located in the 19th Judicial District of Virginia shall have exclusive jurisdiction and venue to adjudicate any and all disputes arising out of or in connection with this Order. The Parties consent to the exercise by such courts of personal jurisdiction over them and each Party waives any objection it might otherwise have to venue, personal jurisdiction, inconvenience of forum, and any similar or related doctrine. This Order shall be construed in accordance with the substantive laws of the State of Virginia (excluding its conflicts of laws principles). **THE PROVISIONS OF THE UNITED NATIONS CONVENTIONS ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS SHALL NOT APPLY TO THIS ORDER.**

(f) Attorney's Fees. The prevailing party shall be entitled to recover its costs and reasonable attorney's fees from the non-prevailing party in any action brought to enforce this Order.