

**PURCHASE ORDER TERMS AND CONDITIONS**TMD-8300-SC-0001

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In consideration of the covenants and conditions set forth herein, the parties agree as follows:

1. **Acceptance.** This order is deemed accepted by Seller if not rejected via electronic mail, facsimile, or any other form of writing within five (5) days of the order's date. Acceptance is limited to the terms and conditions of this order. This order, with any attachments, constitutes the entire agreement of the parties. No waiver, modification or additions to the terms of this order shall be valid unless in writing and signed by the parties.
2. **Mandatory Safety Rules.** At all times when providing services for Buyer, Seller must comply with Buyer's *Mandatory Safety Rules*, and other relevant safety policies. Copies of the *Mandatory Safety Rules* and other policies are available from Buyer on request.
3. **Prices and Payment.** Buyer shall not be billed at prices higher than those stated on Buyer's order. Unless otherwise specified, the price includes all charges for packing, hauling, storage and transportation to point of delivery. Seller will pay all delivery charges in excess of any delivery charge Buyer has agreed to pay. The price stated includes all taxes except state or local sales or use tax or similar taxes, which Seller is required by law to collect from Buyer. Such taxes, if any, shall be separately stated in Seller's invoice and paid by Buyer unless an exemption is available. Seller agrees that any price reduction made with respect to the items covered by this order subsequent to its placement but prior to payment will be applicable to this order. Payment terms are specified on the Purchase Order. However, in the absence of such payment terms, payment shall be due forty-five days from the date of Buyer's receipt of Seller's invoice. Payment may be offset, withheld, or delayed if there is any nonconformance by Seller with either the Purchase Order or these terms and conditions, or any failure by Seller to include the proper purchase order number on the invoice.
4. **Delivery.** Substitutions will not be accepted. The order must be shipped complete by the date requested but must not be shipped more than one week in advance of the time or times specified herein, without Buyer's prior approval. When more than one shipment is made against any order, indicate "Final Shipping" on shipping papers and invoice accompanying the last shipment in the order. Seller shall not ship excess quantities without Buyer's prior approval. Except as otherwise provided herein, Buyer shall not be obligated to accept untimely, excess or under shipments and such shipments in whole or in part may, at Buyer's option, be returned to Seller, or held for disposition at Seller's expense and risk. Seller's invoice shall describe the items, state the purchase order number and be attached to the original bill of lading or other shipping receipt.
5. **Changes.** Buyer may make changes in drawings, specifications, quantities, delivery schedules, or methods of shipment or packaging on any goods at any time. If such changes result in an increase or decrease in cost, an equitable adjustment of price and delivery schedules may be made, or Buyer may, at its option, terminate the order if agreement on an adjustment cannot be reached. Claims for adjustment must be asserted by Seller within ten days of the change order.
6. **Warranties.** Seller warrants that the items and services covered hereunder will conform to applicable specifications, instructions, drawings and data, and that samples will be merchantable, of good material and workmanship, and free from defects and will be fit and sufficient for the purpose intended. These warranties shall be in addition to all other warranties, express, implied or statutory. Payment for, inspection of, or receipt of articles or services shall not constitute a waiver of any breach of warranty.
7. **Inspection and Tests.** All goods ordered hereunder will be subject to inspection and test by Buyer to the extent practicable at all times and places, including the period of manufacture and in any event prior to acceptance. Seller agrees to permit access to Seller's facilities at all reasonable times for inspection of goods by Buyer's agents or employees and will provide all tools, facilities and assistance reasonably necessary for such inspection at no additional cost to Buyer. Such goods will be subject to final inspection and acceptance by Buyer after delivery to

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Buyer. It is expressly agreed that inspections and/or payments prior to delivery will not constitute final acceptance. If the goods delivered do not meet the specifications, or otherwise do not conform with the requirements of this order, Buyer shall have the right to reject such goods. Goods which have been delivered and rejected in whole or in part may, at Buyer's option, be returned to Seller or held for disposition at Seller's risk and expense. Buyer will have the right, but not the obligation to examine Seller's records for the purpose of determining compliance with this order. Should a compliance review be performed, Buyer or its duly designated representatives will provide reasonable notice to Seller and the records may be examined only during the normal business hours. Buyer will bear all costs of audit. The right to audit shall expire 18 months after the expiration or termination of this order.

8. **Buyer's Property.** Title to and right of immediate possession of any property furnished or paid for by the Buyer shall remain in Buyer. No articles made therefrom shall be furnished by Seller to any other party without Buyer's prior written consent. Seller shall keep adequate records of such property, which shall be made available to Buyer upon request, and shall store, protect, preserve, repair and maintain such property in accordance with sound industrial practice, all at Seller's expense. Unless otherwise agreed to by Buyer, Seller shall insure Buyer's interest in such property against all risks of theft, loss or damage (including extended coverage). Copies of certificates of insurance evidencing this coverage will be furnished to Buyer on demand. In the event that Buyer's property becomes lost or damaged to any extent from any cause while in Seller's possession, Seller agrees to indemnify Buyer or replace such property, at Seller's expense, in accordance with Buyer's request. At the completion of the goods requested by Buyer in this order for which Buyer's property was required, Seller shall request disposition instructions for all such property, or the remainder thereof, whether in its original form or in semi-processed form. Seller agrees to make such property available to Buyer at Buyer's request, in the manner requested by Buyer including preparation, packing and shipping as directed. Expenses for preparation for shipment will be for Seller's account and shipment shall be made F.O.B. Buyer's facility.
9. **Drawings and Specification Review.** If, during the term of this order, Buyer's representatives review drawings, specifications, or other data developed by Seller in connection with the order and make suggestions or comments or approve such documents and data, such action is only an expression of opinion by Buyer and shall not serve to relieve Seller of any responsibility for the reliability, quality, rate of output, cost, delivery, performance or any other requirements of this order.
10. **Drawings and Data.** Seller shall keep confidential all information, drawings, specifications, or data furnished by Buyer, or prepared by Seller specifically in connection with the performance of this order, and shall not divulge or use such information, drawings, specifications or data for the benefit of any other party. Except as required for the efficient performance of this order, Seller shall not make copies or permit copies to be made without the prior written consent of Buyer. Seller shall not use, either directly or indirectly, any such data or any information derived therefrom for any purpose other than to perform this order without obtaining Buyer's written consent. Seller shall return all information, drawings, specifications, or data of Buyer upon termination of this agreement or upon Buyer's demand.
11. **Use of Information.** Seller agrees that all information heretofore or hereafter furnished or disclosed to Buyer by Seller in connection with the placing or filling of this order is furnished or disclosed as a part of the consideration for this order, that such information is not, unless otherwise agreed to by Buyer in writing, to be treated as confidential or proprietary and that Seller shall assert no claims by reason of the use or disclosure of such information by Buyer, its assigns or its customers.
12. **Advertisements.** Seller shall not in any manner advertise or publish the fact that it has furnished Buyer, or contracted to furnish Buyer, the goods or services herein mentioned without prior written consent of Buyer.

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Seller shall not disclose any details in connection with this order to any party except as may be otherwise provided.

13. **Termination.** Buyer may terminate the performance of the work under this order in whole at any time, or from time to time in part, by written notice to Seller. Upon receipt of such notice, Seller shall, unless the notice directs otherwise, immediately discontinue all work and the placing of all orders for materials, facilities and supplies in connection with the performance of this order and shall proceed to cancel promptly all existing orders and terminate all subcontracts insofar as such orders or subcontracts are chargeable to this order. Upon the termination of work under this order, full and complete settlement of all claims of Seller with respect to the terminated work shall be made as follows:
  - a. As compensation to Seller for such termination, unless such termination is for the default of Seller, Buyer shall pay Seller the percentage of the total order price corresponding to the proportion of the amount of work completed on the date of termination to the total work to be done, that are not recoverable in the normal course of Seller's business, as Seller's full compensation for the work completed under this order; and
  - b. Upon Buyer's payment to Seller in accordance with this paragraph, title to all equipment, materials, work-in-progress, finished products, plans, drawings, specifications, information, special tooling and other things for which Seller has paid such vest in Buyer. Nothing contained in this paragraph shall be construed to limit or affect any remedies, which Buyer may have as a result of default, by Seller.
14. **Default - Cancellation.** Buyer reserves the right, by written notice of default, to cancel this order, without liability to Buyer, in the event of the happening of any of the following: insolvency of Seller, the filing of a voluntary petition in bankruptcy by Seller, the filing of an involuntary petition to have Seller declared bankrupt, the appointment of a Receiver or Trustee for Seller, or the execution by Seller of an assignment for the benefit of creditors. If Seller fails to perform as specified herein, or if Seller breaches any of the terms hereof, Buyer reserves the right, without any liability to Buyer, upon giving Seller written notice, to (i) cancel this order in whole or in part, by written notice to Seller and Seller shall be liable to Buyer for all damages, losses and liability incurred by Buyer directly or indirectly resulting from Seller's breach, or (ii) obtain the goods ordered herein from another source with any excess cost resulting therefrom, chargeable to Seller, if such deficiencies are not remedied. The remedies herein provided shall be cumulative in addition to any other remedies provided at law or in equity.
15. **Force Majeure.** Neither party shall be liable for defaults or delays due to Acts of God or the public enemy, acts or demands of any Government or any Governmental agency, strikes, fires, floods, accidents, or other unforeseeable causes beyond its control and not due to its fault or negligence. Each party shall notify the other in writing of the cause of such delay within five (5) days after the beginning thereof.
16. **Compliance with Laws.** Seller shall, at all times during the term of this agreement, comply with all applicable laws and regulations and Buyer's Prime Contract terms and conditions, and shall refrain from engaging in any illegal, unethical, or deceptive practices. Without limiting the foregoing, Seller agrees to comply with all federal and state laws and regulations regarding fair labor practices, occupational health and safety, environmental compliance, fraud and corruption, and fair competition.
17. **Indemnification.** Seller will defend, hold harmless and indemnify Buyer from and against any liability and expenses (including, without limitation, attorney and other professional fees and disbursements) arising from or in connection with any damages, injuries or third party claims or demands to recover for personal injury, death, or property damage caused by or arising out of any of the goods or services supplied by Seller (regardless of whether such claim or demand arises under tort, negligence, contract, warranty, strict liability or other legal

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theories), except to the extent such injury, damage or loss results from Buyer's negligent actions or alteration or misuse of the goods provided by Seller.

18. **Insurance.** During the performance of the agreement period, Seller shall maintain and keep in force at its own expense, Commercial General Liability Insurance, including products and contractual liability, with a combined single limit of \$1 million per occurrence, and Workers' Compensation insurance as required by the state(s) where Seller operates. Seller shall provide a Certificate of Insurance to Buyer upon request to verify above listed coverage.
19. **Intellectual Property Indemnification.** Seller shall indemnify and save harmless Buyer, its successors, assigns, customers or users of its products, from and against all loss, liability and damage, including costs and expenses, resulting from any claim that the manufacture, use, sale or resale of any goods supplied under this order infringe any patent or patent rights, trademark, copyright or other intellectual property right of a third party and Seller shall when notified, defend any action or claim of such infringement at its own expense.
20. **Assignment.** Neither this order nor any rights or obligations herein may be assigned by Seller nor may Seller delegate the performance of any of its duties hereunder without Buyer's prior written consent.
21. **Applicable Law and Jurisdiction.** The validity, interpretation and performance of these terms and conditions shall be governed by the laws of the State of Texas without reference to conflict of laws principles. The parties agree that any action related to this agreement shall be venued in the Federal District Court for the Southern District of Texas or the Harris County District Court, and the parties hereby irrevocably commit to the jurisdiction of these courts.
22. **Attorneys' Fees.** In the event there is any dispute concerning the terms of this agreement or the performance of any party, and any party retains counsel for the purpose of enforcing any of the provisions of this agreement or asserting the terms of this agreement in defense of any suit filed against said party, each party shall be solely responsible for its own costs and attorneys' fees incurred in connection with the dispute irrespective of whether or not a lawsuit is actually commenced or prosecuted to conclusion.
23. **Invoices and Notices.** All invoices covering this order must be submitted in the manner specified on the purchase order. Any other correspondence should be sent to the address specified on the purchase order. The parties agree that for any transactions subject to this purchase order, facsimile signatures shall be accepted as original signatures, orders may be transmitted electronically as specified on the purchase order and any document created pursuant to this order may be maintained in an electronic document storage and retrieval system, a copy of which shall be considered an original. Neither party shall raise any objection to the authenticity of this purchase order or any document created hereunder, based on the use of a facsimile signature, electronic order or the use of a copy retrieved from an electronic storage system.
24. **Severability.** In case any one or more provisions contained in this purchase order shall be invalid, illegal, or unenforceable in any respect, the validity, legality, or enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.