



## Terms of Sale

### 1. ACCEPTANCE

By accepting this order, Seller agrees to all the terms hereof without any modifications or additions, unless such modifications or additions are specifically agreed to in writing by the Purchasing Department of the Buyer.

### 2. GOVERNING LAW

This order and any contract resulting therefrom is governed by Massachusetts law (excluding its conflicts of law provisions).

### 3. CONSTRUCTION

These Terms of Purchase, combined with any terms listed on the face of this order and any attachments thereto, constitute the entire agreement between Buyer and Seller regarding this order. In the event of any conflict or ambiguities between or among the same, the following order of priority shall apply: (1) terms on the face of the order, (2) attachments to the order, and (3) these Terms of Purchase.

### 4. PROPERTY

As used in these Terms of Purchase, the word "Property" shall mean all tangible property and all intangibles and services indicated on the face hereof.

### 5. DELIVERY

Time is of the essence of this order. If, for any reason, Seller fails to deliver Property at the time required by Buyer's order, Buyer may, at its option and without any liability to Seller, cancel the portion or portions of the order so affected or set a new delivery date. Buyer may also pursue any other remedies provided in law or in equity. All orders shall be packaged, marked and otherwise prepared in accordance with the law and good commercial practices, capable of safe delivery to Buyer at the lowest lawful transportation and insurance rates.

### 6. WARRANTY

Seller warrants that it has good title, free of encumbrances, to the Property delivered hereunder. Seller further warrants that all Property delivered hereunder will be free from defects in design, materials and workmanship and will conform to its specifications and all other requirements of this order. These warranties shall survive any inspection, delivery and/or acceptance of the Property, or payment therefor by Buyer.

### 7. PRICE WARRANTY

Seller warrants that the prices of the Property do not exceed those charged by Seller to any other customer purchasing similar property in like or smaller quantities under like circumstances.

### 8. BUYER'S PROPERTY

All tools, dies, molds, patterns, jigs and any other property furnished to Seller by Buyer, or specifically paid for by Buyer, for use in the performance of this order, shall be and remain the property of Buyer, shall be subject to removal at any time, upon Buyer's demand, shall be used only in filling orders from Buyer or its nominee, and shall be clearly identified as the Buyer's property. Seller assumes all liability for loss or damage of such property, other than normal wear and tear.

### 9. INSPECTION

Final inspection shall be at Buyer's premises unless otherwise agreed in writing. Items rejected as not conforming to this order shall be returned at Seller's expense, including transportation and handling charges, if any.

### 10. PATENT AND COPYRIGHT INDEMNITY

Seller agrees to indemnify Buyer, its successors, assigns and customers against any liability, including costs and expenses, for or by reason of any actual or alleged infringement of any patent

or copyright relating to the Property, except where such Property would be normally noninfringing, but is rendered infringing solely by reason of Seller's compliance with Buyer's detailed design.

#### **11. LIABILITY FOR INJURY**

Seller shall indemnify Buyer against any and all claims or liabilities resulting from any injury, death, damage, loss or other cause to persons or property, caused by the Property; Seller shall carry and maintain insurance coverages satisfactory to cover the above, and, upon Buyer's request, shall furnish to Buyer appropriate evidence of such insurance.

#### **12. TITLE, RISK OF LOSS, INSURANCE**

Seller shall bear any risk of loss of the Property while in transit until received by Buyer's Receiving Department. No charges will be allowed for insurance premiums unless specified on the face of this order.

#### **13. WAIVER**

Failure of Buyer to enforce any right hereunder shall in no way be construed as a waiver of such right or any other right hereunder.

#### **14. ASSIGNMENT**

Seller may not assign, transfer, or subcontract any of its rights or duties hereunder without the prior written consent of Buyer.

#### **15. SPECIFICATIONS**

In the event Seller is producing the Property according to specifications furnished or approved by Buyer: (a) Buyer shall have the right at reasonable times to inspect the progress and quality of the work and to witness testing of the Property and (b) except as stated to the contrary on the face of this order, all confidential information, patent rights and inventions, and all drawings, designs, information, tools, patterns, equipment and other items relating to or arising out of the work performed by Seller, or supplied by Buyer, shall be and remain the property of the Buyer, and the same shall not be used, reproduced or disclosed to others for any purpose whatsoever except in the performance of work under this order. The items shall be subject to removal at any time, without additional cost, upon demand by Buyer.

#### **16. GOVERNMENT CONTRACTS**

If this order indicates that it is issued under a U.S. Government prime contract or subcontract, Seller agrees to comply with all the terms and conditions of said contract set forth in attachments to this order.

#### **17. COMPLIANCE**

Seller warrants that the Property purchased by Buyer hereunder has been or will be produced in compliance with all applicable federal, state and local laws, statutes, acts and orders relating to labor relations, minimum wages, hours of employment, equal employment opportunity, nonsegregated facilities and health and safety, now in effect or hereafter enacted, and with any and all rules and regulations issued thereunder. This includes, without limitation, the following:

- a) If this order is subject to Executive Order 11701 and the rules, regulations or orders of the Secretary of Labor issued thereunder, the contract clause as set forth at 41 CFR 60-250.5 is hereby included as part of this order.
- b) If this order is subject to Section 503 of the Rehabilitation Act of 1973, as amended, and the rules, regulations or orders of the Secretary of Labor issued thereunder, the contract clause at 41 CFR 60-741.5 is hereby included as part of this order.
- c) If this order is subject to the provisions of Executive Order 11246, as amended, and the rules, regulations or orders of the Secretary of Labor issued thereunder, the contract clauses set forth at 41 CFR 60-1.4(a) and 60-1.4(b) are hereby included as part of this order and Seller agrees to comply with the reporting requirements set forth in 41 CFR 60-1.7 and the affirmative action compliance program requirements set forth at 41 CFR 60-1.40.

d) If this order is subject to the Service Contract Act of 1965, as amended, and the rules, regulations or orders of the Secretary of Labor issued thereunder, this order shall comply therewith.

e) If this order is subject to Executive Order 13201 of February 17, 2001, and related implementing regulations at 29 CFR part 470, and orders of the Secretary of Labor issued hereunder, this order shall comply herewith.

#### **18. SETOFF**

Buyer may setoff any amount due from Seller to Buyer, whether or not under this order, from any amounts due to Seller under this order.

#### **19. CHANGES**

Buyer may, at any time, by a written change order, without notice to any sureties, make changes in any one of the following: (i) drawings, designs, specifications, where the items to be furnished are to be specially manufactured for the Buyer in accordance therewith; (ii) method of shipment or packing; (iii) place or time of inspection, delivery, or acceptance; (iv) the quantity and/or type of Property ordered; (v) the work or service schedules; and (vi) the amount of any Buyer furnished property. If any such change causes an increase or decrease in the cost of or time required for performance of this order, whether or not changed by the order, an equitable adjustment shall be made in the price or delivery schedule or both and this order shall be modified accordingly. No claim by Seller for adjustment hereunder shall be allowed unless made in writing for a specified amount within twenty (20) days from the date notice of any such change is received by Seller. If Seller considers that the conduct, statement or direction of any Buyer employee constitutes a change order hereunder, Seller shall notify Buyer and take no action on the perceived change pending written approval of Buyer. Only Buyer has authority to approve a change. Any change made by Seller without such written approval shall be deemed voluntary by Seller and not compensable in the cost of or time required for performance. Nothing in this Article shall excuse Seller from proceeding with performance of this order as changed.

Notwithstanding the above or any other provision of this order, the Seller hereby agrees that no changes to the items that may be required in order to meet the specified performance requirements of this order shall entitle the Seller to any adjustment in either price or delivery.

#### **20. STOP WORK ORDERS**

Buyer may, at any time by written order, require Seller to stop all or any part of the work under this order for a period of up to ninety (90) days after delivery of such stop work order, and for any further period as the parties may agree. Immediately upon receipt of such stop work order, Seller shall comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work stoppage. At any time during such period, Buyer may, in whole or in part, either cancel the stop work order or terminate the work in accordance with the "Termination" Article of this order. To the extent the stop work order is canceled or expires, Seller shall resume work. If a stop work order is the sole and exclusive cause of a material change in cost or delivery, an adjustment shall be made in price (excluding profit) or the delivery schedule, or both and this order modified accordingly; provided, however, that no adjustment in price or delivery shall be made under this Article if, (i) the work would have been otherwise interrupted or delayed, or (ii) such adjustment is available or expressly excluded under any other provision of this order. No claim for adjustment shall be allowed unless submitted to Buyer in writing in a specified amount within twenty (20) days after the work is terminated or the stop work order expires or is canceled, whichever first occurs.

#### **21. STANDARDS OF CONDUCT, INTEGRITY, AND COMPLIANCE**

Seller agrees that Seller will, at all times, adhere to the highest standards of business ethics. Seller shall, at all times, carefully comply with all applicable rules, laws and regulations, including without limitation those pertaining to entertainment or providing gratuities. Seller personnel on-site at Buyer's facilities shall conform to certain rules of conduct that Buyer may have in effect.

#### **22. RELEASE OF INFORMATION TO PUBLIC**

Seller shall not, without the prior written consent of Buyer, make any release of information pertaining to this order or any other information related to the Buyer (other than to Seller's employees and subcontractors that is required for the performance of their duties), including providing copies of this order or identifying the items sold by Seller to Buyer, nor use the name of Buyer in any advertising or publicity, except as may be necessary to comply with a subpoena or other proper mandatory legal demand.

### **23. DISPUTES**

Except as otherwise specifically provided in this order, any dispute concerning a question of fact and/or law arising under this order that is not disposed of by agreement of the parties shall be decided in a U.S. court of law.

### **24. SELLER'S STATUS**

It is understood and agreed that Seller and/or its employees engaged in the performance of this order by the Seller are not employees of Buyer and are not entitled to Buyer employee benefits or privileges or any payment from Buyer (other than expressly provided for in this order) and the Seller shall pay the salaries or expenses, applicable taxes, including Social Security and unemployment of said employees. The Seller is and shall be deemed to be an Independent Contractor at all times during its performance of the work specified in this order.

### **25. FORCE MAJEURE AND U.S. GOVERNMENT PRIORITY**

If Seller asserts that any delay or failure to perform any of its obligations hereunder is caused by an act of God or any other Force Majeure event beyond its reasonable control, it shall promptly notify Buyer of such circumstance and its resulting inability to perform. Buyer shall have the right, without any liability, to cancel a particular order or any part thereof in addition to any other remedy it may choose to exercise. Notwithstanding the foregoing or anything else to the contrary contained herein, Seller acknowledges and agrees that this order may be placed by Buyer with U.S. Government funds and that in connection therewith, this order will be subject to U.S. Government Priority Ratings which require preferential treatment for the fulfillment of the order in accordance with the Defense Priorities Allocations System (DPAS). If this order is placed by Buyer with U.S. Government funds, Buyer shall notify Seller of the applicable Priority Ratings as soon as Buyer is so informed by the U.S. Government. Seller shall be bound by such Priority Ratings.

### **26. TERMINATION**

In addition to other rights hereunder, Buyer may terminate this order in whole or in part at any time prior to delivery or final acceptance by written notice stating the extent and effective date of such termination.

Buyer reserves the right to terminate this order in whole or, from time to time, in part for Seller's default (i) if Seller fails or refuses to perform in accordance with any of the requirements of this order or to make progress so as to endanger performance hereunder, or (ii) if Seller becomes insolvent or suspends any of its operations or if any petition is filed or proceeding commenced by or against Seller under any Federal law relating to bankruptcy, arrangement, reorganization, receivership or assignment for benefit of creditors. Any such termination will be without liability to Buyer except for completed items delivered and accepted by Buyer, payment for which can be set off against damages to Buyer. Buyer may require Seller to transfer title and deliver to Buyer any or all property produced or procured by Seller for performance of the work terminated and Seller shall be credited with the reasonable value thereof not to exceed Seller's cost or the order's value, whichever is less. Seller will be liable for damages caused by or resulting from its default including but not limited to excess costs of re-procurement. Buyer or its designee shall have the right to audit all elements of any termination claim and Seller shall make available to Buyer or Buyer's designee on request all books, records, and papers relating thereto. Termination of this order for default shall be without prejudice to any other rights and remedies of the Buyer under statute or common law.

To the extent this order is not terminated pursuant to the above paragraphs, Seller shall continue performance.

### **27. NO HIRE**

Seller shall not solicit Buyer employees for employment at any time during the performance of this purchase order.

03/2005