

PURCHASE ORDER TERMS AND CONDITIONS (TC1001)

1. **Sole Agreement.** This Purchase Order, together with the face sheet(s) and any other documents incorporated herein (this "Order"), constitutes the sole agreement between Company and Supplier for the goods to be purchased hereunder, superseding all prior agreements and understandings, oral or written, not expressly incorporated herein. No additions to or variations from the terms herein shall be binding unless agreed to, in writing, by Company. If Supplier's quotation is incorporated herein, it is made a part hereof only to the extent of specifying the nature and description of the goods ordered, and then only to the extent such terms are consistent with the other terms herein. **ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS WHICH MAY APPEAR IN ANY QUOTE OR COMMUNICATION FROM SUPPLIER OR IN SUPPLIER'S ACKNOWLEDGEMENT OR SIGNED RETURN OF THIS ORDER ARE HEREBY EXPRESSLY OBJECTED TO, SHALL NOT BECOME PART OF THIS ORDER DESPITE COMPANY'S ACCEPTANCE OF GOODS AND SHALL NOT BE EFFECTIVE OR BINDING UNLESS SPECIFICALLY RECOGNIZED, ASSENTED TO AND AGREED TO IN WRITING BY COMPANY.**
2. **Acceptance.** Delivery of goods called for by this Order in the absence of Supplier's written acknowledgment shall be deemed acceptance of this Order. By acceptance of this Order, Supplier agrees to be bound by and to comply with all the terms and conditions of this Order, including any supplements, and all specifications and other documents referred to in this Order.
3. **Prices.** All prices are firm unless otherwise stated in this Order. No payment in excess of any monetary limitation appearing on the face of the Order shall be permitted without the prior written approval of the Company. Pricing shall not be adjusted except with prior written approval of the Company.
4. **Extra Charges.** No charges of any kind, including, but not limited to charges for boxing, packing, loading, bracing or cartage will be allowed unless specifically agreed to by Company in this Order.
5. **Transportation.** Transportation requirements, if any, will be as set forth in this Order.
6. **Authorized Representative.** Unless notified otherwise, in writing, by Company, Company's Buyer is the only representative of Company authorized to act in matters relating to this Order.
7. **Non-Assignment/Subcontracting.** Any assignment by Supplier of its rights (other than an assignment of the right to receive payment hereunder) under this Order in any manner, in whole or in part, by operation of law or otherwise, without the prior written consent of Company shall be void. Supplier shall not subcontract or delegate performance of all or any part of the work called for by this Order without the prior written consent of Company.
8. **Force Majeure.** Neither party shall be liable to the other for default, failure or delay in providing or accepting goods hereunder if such failure is caused by an extraordinary event or occurrence beyond that party's control such as fire, accident, strike, civil disturbance, war, act of terrorism, act of God, embargo, governmental order or regulation, flood, windstorm, explosion, riots, natural disaster, sabotage or any other similar or different contingency beyond the reasonable control of the Company or Supplier, as applicable. Written notice of such delay, including the anticipated duration of the delay, must be given by the nonperforming party within ten (10) days of the event. During the period of any delay or failure to perform by Seller, Company, at its option, may purchase goods from other sources and reduce its purchase obligations hereunder by such quantities. If requested by Company, Supplier shall, within five (5) days of such request, provide adequate assurance that the delay will not exceed such period of time as Company deems appropriate. If the delay lasts more than the time period specified by Company, or Supplier does not provide adequate assurance that the delay will cease within such time period, Company may, among its other remedies, immediately cancel this Order without liability.
9. **Damage in Transit.** Notwithstanding the stated F.O.B. point, Supplier shall be responsible for any loss or damage occurring during transit when such loss or damage is attributable either to an act or omission of Supplier or its contractors, or to a failure of either Supplier or its contractors to adhere to the express shipping instructions of Company.
10. **Reservation of Rights.** Supplier agrees to the following rights of Company: (a) to accept, but without prejudice, any acceptable part of any shipment, and at Company's option, and at Supplier's expense, to return or hold and store, any nonconforming part of any shipment. On demand, Supplier shall replace, at no cost to Company, any nonconforming item rejected and shall pay all transportation charges for all replacements; (b) to examine or audit such of Supplier's books and records of incurred costs and invoices as may be pertinent to verify or supplement information supplied by Supplier or requested by Company relating: (i) to payment for goods furnished other than on a firm price basis; (ii) to progress payments or (iii) to the negotiation of any applicable price adjustments. The purpose of this audit will be for verification and evaluation of proposed payments or adjustments; (c) Company or its representatives shall have the right to visit observe and inspect Supplier's or its contractor(s) facility(s) related to its work

hereunder. If as a result of Supplier failing to fulfill the above access and inspection requirements, Company is not able to inspect the goods prior to shipment, Company may, until the above access and inspection requirements are satisfied, refuse to pay, refuse delivery or return, at Supplier's cost, goods already delivered or accepted. The making or failure to make any inspection of, or payment for or acceptance of the goods, shall not impair Company's right to reject nonconforming goods, or to avail itself of any other remedies to which Company may be entitled.

11. **Delivery; Time is of the Essence.** Timely delivery is of the essence of this Order. If any goods are not delivered or services not performed within the time specified in this Order or within a reasonable time if no time is so specified, Company may refuse to accept such goods and cancel this Order and shall be relieved of all liability for any undelivered goods. Any additional transportation charges incurred to comply with the time specified in the Order in excess of those which would apply for the usual means of transportation shall be for the account of Supplier. In the event Supplier delivers the goods prior to their scheduled delivery date, Company may, at its option, (i) refuse to accept the goods and return them at Supplier's expense, or (ii) accept the goods but defer payment until the time when payment would have been due had the goods been shipped according to schedule.

12. **Payment Terms.** The time for payment of invoices shall be in accordance with the Payment Terms specified in this Order or if Payment Terms are not specified, payment shall be made within thirty (30) days after receipt of the conforming goods and receipt of a complete, correct and conforming invoice therefore.

13. **Changes.** Company may, at any time, and from time to time, by written change order direct or order any changes, additions or deletions in the goods to be supplied hereunder. If such changes, additions or deletions affect the Supplier's time for performance or price, Supplier shall promptly notify Company and, if appropriate, an adjustment in this Order will be negotiated. Failure to notify Company in writing within fifteen (15) days of receipt of the change order requesting such change, addition or deletion will result in a waiver by Supplier of such adjustment.

14. **Patents.** Supplier shall, at its own expense, indemnify, defend and hold harmless Company against any claim, suit or proceeding brought against Company which is based upon a claim, whether rightful or otherwise, that use of the goods furnished under this Order constitutes any infringement of any patent of the United States. Supplier shall pay all damages and costs, including legal fees, awarded against Company. In case the goods are held to constitute an infringement and the use of the goods is enjoined, Supplier shall, at its expense, after obtaining the concurrence of Company, either procure for Company the right to continue using the goods, replace the goods with substantially equal but non-infringing goods, modify the goods so they become non-infringing, or remove the goods and refund the purchase price and the transportation, installation and removal costs. This paragraph shall not apply to any goods manufactured to Company's detailed design. As to such goods Supplier assumes no liability whatsoever for patent infringement. The last two sentences shall not apply where Company merely issues a rating, duty, or performance specification.

15. **Warranty.** Supplier warrants that the goods furnished hereunder shall be free from defects in design, material, workmanship and title, shall conform in strict accordance with the specifications, samples, drawings, designs and other requirements (including performance specifications) of this Order, and shall be, unless otherwise specified, new and of the best quality. If at any time prior to one (1) year from the date that the goods are first used for the purposes intended by Company or four (4) years from the date of final acceptance by Company, whichever occurs first, it appears that the goods or any part thereof do not conform to these warranties and Company so notifies Supplier within a reasonable time after such discovery, Supplier, at its sole expense and after obtaining Company's concurrence, shall promptly correct such nonconformity or replace the nonconforming goods. The warranty period for such corrected or replaced goods shall be of an equal duration as the original warranty period and shall commence upon acceptance of such corrected or replaced goods. If Supplier fails to fulfill its obligations under this paragraph, Company may reject or revoke acceptance and cover by purchasing substitute goods or may proceed to make corrections or accomplish Supplier's work by the most expeditious means available. The cost of cover or correction performed by Company shall be for Supplier's account. Supplier's liability hereunder shall extend to all damages proximately caused by the breach of the foregoing warranties, including incidental damages such as removal and reinstallation costs, inspections costs and all shipping costs.

16. **Consequential Damages.** Company shall not be liable to Supplier for consequential damages of any kind, including, but not limited to, loss of anticipated profits or loss of use of or under utilization of Supplier's labor, facilities or equipment resulting from Company's performance or nonperformance of its obligations under this Order or in the event of Suspension or Termination of this Order pursuant to Paragraphs 22 and 23 respectively.

17. **For Work on Company's or its Customer's Premises.** If Supplier's performance under this Order involves work by Supplier on the premises of Company or one of its customers, Supplier shall take all necessary precautions to prevent the occurrence of any injury to person or damage to property during the progress of such work and shall comply with all applicable safety requirements, policies or

procedures required by Company. Supplier shall obtain and maintain for the duration of any work hereunder insurance in forms and amounts satisfactory to Company which may include, but not necessarily be limited to: Comprehensive General Liability (including Contractual Liability coverage insuring the liabilities assumed herein) with minimum limits of liability of not less than \$1,000,000 each per occurrence for bodily injury (including death) and property damage; Automobile Liability and Employers' Liability insurance with minimum limits of liability of not less than \$1,000,000 per occurrence on a single limit basis; statutorily required Worker's Compensation and Employers' Liability (\$100,000) insurance; Excess Liability insurance covering loss in excess of the limits of other insurance policies required herein with minimum limits of liability of \$5,000,000. At Company's sole option and cost, Supplier shall procure Contractor Pollution Coverage insurance covering loss or damage associated with environmental hazards arising out of or in connection with the Services with minimum limits of liability of \$1,000,000.

18. **Publicity.** Information concerning Company matters, including press releases announcing the award of Company work, shall not be released publicly without the prior written consent of Company which may be withheld at its sole discretion.

19. **Compliance.** Supplier, in performing its work hereunder, shall ascertain and comply with all applicable Federal, State, and local laws, regulations, and ordinances, including, but not limited to, the Foreign Corrupt Practices Act of 1977, as amended, especially as it relates to payments or gifts to officials, employees, or representatives of foreign governments and Supplier agrees that it and all who act on their behalf shall fully and faithfully comply with that Act, and with all applicable trade or industry codes, regulations and standards. Where applicable the following provisions are hereby incorporated by reference in this Order: (a) Executive Order 11246, and 41 CFR Part 60, as well as 41 CFR Subpart 1-12.8, relating to Equal Employment Opportunity (b) Executive Order 11701, as amended, and 41 CFR Part 50-250, 41 CFR Part 60-250, relating to Disabled Veterans and Veterans of the Vietnam Era; (c) the Americans With Disabilities Act of 1990, Titles I and V.

20. **Indemnification.** Supplier assumes full responsibility for and agrees to save, indemnify, defend and hold harmless Company and its affiliates from any and all claims, losses, liabilities, damages to property, injuries (including, but not limited to, death) to persons (including, but not limited to, employees of Supplier and Company), fines, penalties, fees (including, but not limited to, legal fees), and all other costs and expenses of whatsoever kind or nature caused by, arising out of, or in any way resulting from, acts or omissions or misconduct or failure of Supplier, its directors, officers, employees, agents, subcontractors and/or subvendors at any tier, unless resulting from Company's sole negligence.

21. **Non-Waiver.** Failure or delay of Company to insist upon strict performance of any of the terms and conditions hereof, or to exercise any rights or remedies provided herein or by law, or to properly notify Supplier in the event of breach, or Company acceptance of or payment for any goods hereunder or approval of any design, shall not release Supplier from any of the warranties or obligations of this Order and shall not be deemed a waiver of any right of Company to insist upon strict performance hereof, or of any rights or remedies of Company as to any such goods (including the right to reject nonconforming goods or to revoke acceptance of such goods) regardless of when shipped, received or accepted, or of any right or remedy of Company as to any prior or subsequent default hereunder.

22. **Suspension.** Company may at its option, by written notice, direct Supplier to suspend all or any part of its work or to suspend deliveries upon ten (10) days notice. Supplier agrees to resume any suspended work or deliveries as soon as practicable after receipt of written instructions to do so from Company. Upon suspension of the work or deliveries hereunder, Supplier agrees to waive all claims for damages, including claims associated with the loss of use of or under utilization of Supplier's labor and facilities and the associated overheads thereon. If as a result of suspension, Supplier's costs for completing performance hereunder are increased over the costs Supplier would have incurred had the work or deliveries not been suspended, Supplier agrees to accept as its sole remedy for the suspension of the work or deliveries the amount of such increase. Supplier will include language identical to the preceding paragraph in all agreements entered into with third parties, including, but not limited to, vendors, sub-suppliers and contactors in furtherance of the work required under this Order.

23. **Termination.** Company may, at its option, by written notice, terminate this Order or any part thereof upon ten (10) days notice. Upon such termination, Supplier agrees to waive all claims for damages, including claims for loss of anticipated profits and claims for the loss of use or under utilization of Supplier's labor, facilities and equipment and the associated overheads thereon, and to accept as its sole remedy for termination the payment for goods delivered and accepted by Company prior to the date of termination and reasonable costs incurred by Supplier in terminating the work. Company shall have no liability whatsoever for goods which are Supplier's standard stock. Termination shall not relieve Supplier of any of its obligations for goods delivered hereunder, including but not limited to complying with all applicable warranties associated with such goods. Supplier will include language identical to the preceding paragraph in all agreements entered into with third parties, including, but not limited to, vendors, sub-suppliers and contractors in furtherance of the work required under this Order.

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24. **Technical Data.** All materials and documents prepared or developed by Supplier in connection with the performance of this Order, including all manuals, data, designs, drawings, plans, specifications, reports, calculations and summaries, shall become the property of Company when prepared, whether delivered to Company or not, and shall, together with any materials and documents furnished to Supplier by Company, be delivered to Company upon request and, in any event, upon termination or completion of this Order.
25. **Set-Off.** Company shall be entitled at all times to set-off any amount owed at any time by Supplier, or its affiliate(s) to Company or its affiliate(s) against any amount owed by Company or its affiliate(s) to Supplier.
26. **Records.** Unless this Order is totally priced on a firm fixed price basis, Supplier shall maintain time records, supplier invoices, expense receipts/costs and supporting data and other evidence related to this Order in accordance with generally accepted accounting procedures and practices. All materials shall be preserved until the expiration of two years from the completion of performance by Supplier. Company shall have the right at any time during normal business hours to examine such records which may involve performance under or transactions related to the work statement appearing on the face hereof, or which will permit adequate evaluation of the costs and fee data related thereto. Adjustments in favor of Company arising from any audit performed by Company shall be recognized as an adjustment of any future payment due Supplier or, if no future payment is due Supplier, Supplier shall pay the amount of any such adjustment to Company within thirty (30) days after completion of the audit.
27. **Disclosure of Knowledge or Information.** Any knowledge or information which Supplier shall have disclosed or may hereafter disclose to Company in connection with a request for a quotation or the purchase of goods covered by this Order, shall not, unless otherwise specifically agreed upon in writing by Company, be deemed to be confidential or proprietary information, and shall be acquired free from any restrictions other than a claim for patent infringement as part of the consideration for this Order.
28. **Notices.** Unless notified otherwise, in writing, by Company, all notices required under this Order shall be sent to Company's Buyer.
29. **Applicable Law.** This Order shall be governed by and construed in accordance with the applicable laws of the State of Michigan, except for those laws governing conflict and choice of law.
30. **Independent Contractor.** Supplier is and shall remain for all purposes an independent contractor, and it shall have no power, nor shall it represent that it has any power, to bind Company or to assume or create any obligation, expressed or implied, on behalf of Company.
31. **Information.** Supplier shall keep confidential any technical, process or economic information derived from drawings, specifications and prototype articles, and other data furnished by Company in connection with this Order and shall not divulge, export, or use, directly or indirectly, such information for the benefit of any other party without obtaining Company's prior written consent. Except as required for the efficient performance of this Order, Supplier shall not use such information or make copies or permit copies to be made of such drawings specifications, or other data without the prior written consent of Company. Upon completion or termination of this Order, Supplier shall promptly return to Company all materials and any copies thereof; such request may be made at any time during or after completion of Supplier's performance. The obligations under this clause shall survive the cancellation, termination or completion of this Order.
32. **Drawings.** Unless otherwise specifically agreed in writing by Company any check or approval of drawings by Company will be for Supplier's convenience and will not relieve Supplier of its responsibility to meet all requirements of this Order.
33. **Survival of Terms.** Those provisions of the Order which by their very nature are incapable of being performed or enforced prior to expiration or termination of the Order or which suggest at least partial performance or enforcement following such expiration or termination shall survive any such expiration or termination of the Order.
34. **Company's Remedies.** All rights and remedies provided for herein are not exclusive and all rights and remedies of Company hereunder, at law or in equity, shall be cumulative and may be exercised singly or concurrently.