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## PURCHASING TERMS AND CONDITIONS

### 1. ACCEPTANCE

Agreement by Seller to furnish the materials or services hereby ordered or its furnishing such materials or services in whole or in part, or the commencement of work by the Seller with reference therein shall constitute acceptance by Seller of the order subject to these terms and conditions. In the event that this order does not state price or delivery, ICI will not be bound to any prices or delivery to which it has not specifically agreed in writing. Any terms or conditions proposed by Seller inconsistent with or in addition to the terms and conditions of purchase herein contained shall be void and of no effect, unless specifically agreed to by ICI. Modifications hereof or additions hereto, to be effective, must be made in writing and be signed by ICI. These terms and conditions, together with such modifications and with such data relating to price and delivery as are accepted in writing by ICI, constitute the entire agreement between the parties. The rights of both parties hereunder shall be in addition to the rights and remedies at law or equity. Failure of ICI to enforce any of its rights shall not constitute a waiver of such rights or of any other rights.

### 2. F.O.B.

All shipments must be made in the manner specified, unless the Purchaser authorizes a change. On all shipments made F.O.B. origin when Seller elects to ship in a manner other than that specified or authorized by the Purchaser. Purchaser will pay estimated charges for shipment in the specified manner only. All defective material being returned for rework due to a failure on the part of the Seller will be shipped F.O.B. Purchaser's plant. When defective material is being replaced or returned after correction, Seller must ship F.O.B. destination.

### 3. PACKAGING AND SHIPMENT

Unless other specified, price is to cover net weight of material ordered hereunder and no charges will be allowed for boxing, crating, carting, or storage, without the Purchaser's prior written consent. Deliveries against this order shall not be made in whole or in part prior to the date or dates shown hereon, nor shall they exceed the quantities specified.

### 4. INSPECTION

The articles and all parts, material and workmanship entering in the performance of this order shall be subject to inspection, test and count by ICI at all times and places whether during or after manufacture. If any of the articles shall be defective in material or workmanship or otherwise not in conformity with the requirements of this order, ICI, in addition to its other rights, may reject the same for full credit or may rework same at Seller's expense or require prompt correction or replacement thereof at Seller's expense, including transportation charges.

### 5. WARRANTY

Seller warrants that all material ordered hereunder will conform in all respects with the specifications, drawings, sample or other description furnished or specified by ICI and will be merchantable and free from any defects in material and workmanship; and Seller further warrants that all material purchased hereunder that is manufactured in accordance with the Seller's specifications shall be fit and sufficient for the purposes for which it was designed. Seller agrees that the foregoing warranty shall survive acceptance of and payment for the material and shall save ICI harmless from any loss, damage or expense, whatsoever, including attorney's fees that ICI may incur as a result of any breach of such warranties.

### 6. PAYMENT

- (a) For the articles called for under this Purchase Order, ICI makes all payments conditional upon acceptance.
- (b) No invoice will be passed for payment unless it bears this Purchase Order Number and contains the following certification. The Supplier herein represents that the goods and/or services covered hereby were produced in compliance with the requirements of the Fair Labor Standards Act of 1938 as amended:
- (c) Invoices for tools will be honored until production pieces are approved by the ICI's Inspection Department.

### 7. CHANGES

ICI may at any time, by written order make changes, within the general scope of this order, in any one or more of the following:

- (a) applicable drawings, designs or specifications
- (b) method of shipment or packing
- (c) place of delivery

if any such change causes an increase or decrease in the cost of, or the time required for performance of this order, an equitable adjustment shall be made in the order price or delivery schedule or both, and the order shall be modified in writing accordingly. Any claim by the Seller for adjustment hereunder must be asserted within 30 days from the date of receipt by the Seller of the notification of change provided; however, that such period may be extended upon the written approval of ICI. However, nothing in this clause shall excuse the Seller from proceeding with the order as changed or modified.

### 8. TERMINATION FOR DEFAULT

- (a) ICI may terminate all or any part of this order, without liability to the Seller, by written notice of default if Seller fails to perform its obligations under this order as specified, or so fails to make progress as to endanger performance under this order and in accordance with its terms. ICI is the sole judge under such circumstances.
- (b) In the event of Seller's default or potential inability to perform this order, Seller agrees upon demand by ICI to deliver to ICI the raw materials and work in process acquired in order to perform under this order, and ICI may then complete the work deducting the cost of such completion from the price, or in the alternative pay to Seller the cost of such raw materials and work in process.

### 9. TERMINATION FOR CONVENIENCE BREACH OF CONTRACT, DAMAGES

ICI may, by notice in writing, direct Seller to terminate this order or work under this order in whole or in part at any time and such termination shall not constitute a default. The insolvency or adjudication of bankruptcy of, or the filing of a voluntary petition in bankruptcy, or the making of an assignment for the benefit of creditors by either party, shall be a material breach hereof. In any event shall Seller be entitled to anticipatory profits or to special or consequential damages.



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#### **10. PATENTS ROYALTIES AND INCUMBRANCES**

All materials supplied must be free from liability or royalties, patent rights and mechanics, liens or other encumbrances, and vendor agrees to indemnify their purchaser against all claims, demands, costs and actions for actual or alleged infringements of patent rights in the use, sale or resale of said material or merchandise.

#### **11. ICI'S PROTECTION IN CONNECTION WITH WORK DONE AT ITS PLANT**

The Seller shall take such steps as may be reasonably necessary to prevent personal injury or property damage during any work hereunder that may be performed by any employees or agents or subcontractors of the Seller at ICI's plant, and the Seller shall indemnify and hold harmless ICI from and against all loss, liability, and damages arising from or caused solely by any act or omission of such agents, employees or subcontractors of the Seller and Seller shall maintain such insurance against public liability and property damage and such Employee's Liability and Compensation Insurance as will protect ICI against the aforementioned risks and against any claims under any Workmen's Compensation and Occupational Disease Acts

#### **12. NON-DISCLOSURE OF CONFIDENTIAL MATTER**

Materials purchased hereunder with ICI's specifications or drawings shall not be quoted for sale to others without ICI's written authorization. Such specifications, drawings, samples or other data furnished by ICI shall be treated as confidential information by the Seller, shall remain ICI's property and shall be returned to it on request.

#### **13. ASSIGNMENT**

No right or obligation under this order including the right to receive moneys due and to become due hereunder, shall be assigned by Seller without the prior written consent of ICI and any purported assignment without such consent shall be void.

#### **14. ICI FURNISHED PROPERTY**

All tools or other materials furnished by ICI for use in the performance of this order shall remain the property of ICI (or of the Government, as the case may be), shall be used by the Seller in the performance of this order only in accordance with the requirements of the order relating to such use, and shall be returned to ICI when requested upon the completion or termination of the order to the extent not previously delivered to ICI.

#### **15. SECURITY REQUIREMENTS & EXPORT CONTROLS**

Seller agrees to be responsible in all matters within its control for the safeguarding of all information or material classified "Top Secret", "Secret", or "Confidential" in accordance with the provisions currently set forth in paragraph 7.104-12 of Armed Services Procurement Regulations as the same may be renumbered or amended from time to time. For purposes of such clause, Seller shall be deemed the Contractor and the Contracting Officer shall be defined as the Contracting Officer administering the Government contract under which this order is issued. Seller will comply with the security clearance requirements and with the Espionage and Security laws of the United States. Seller agrees to insert this Article in its Purchase Orders to sub-vendors, which involve access to classified material.

Each Party shall adhere to any applicable U.S. and foreign export control laws and regulations. In recognition of U.S. and non-U.S. export control laws (including, but not limited to the U.S. International Traffic in Arms Regulations ("ITAR") and the Export Administration Regulations ("EAR")), the Parties agree that they will not knowingly export or re-export, directly or indirectly, (i) any technical data (as defined in the (ITAR and EAR)) received under this Purchase Order, (ii) any immediate product, process or service directly produced by the use of such technical data, to any destination to which such export or re-export is restricted or prohibited by U.S. or non-U.S. law, without obtaining prior authorization from the competent government authorities as required by those laws. The Parties further agree to obtain, at their own expense, any required export license or other documentation prior to its export or re-export of any product or technical data acquired or to be acquired under this Agreement. Accordingly, the Parties shall not sell, export, re-export, transfer, divert or otherwise dispose of any such product or technical data directly or indirectly to any person, firm or entity, or country or countries, prohibited by the laws or regulations of the United States ITAR and EAR or other applicable non-United States laws.

Each Party further acknowledges that the Proprietary Information disclosed hereunder may be subject to export control, and that compliance with appropriate Government regulations and may be necessary to obtain required approvals before disclosing Proprietary Information to foreign nationals, businesses or governments. Seller shall obtain the written consent of ICI prior to submitting any request for authority to export any such Proprietary Information. Seller shall indemnify and hold ICI harmless from all claims, demands, damages, costs, fines, penalties, attorneys' fees, and all other expenses arising from failure of Seller to comply with this clause or the International Traffic Arms Regulations or the Export Administration Regulations.

United States law prohibits the disclosure or transfer of technical data relating to Munitions List Articles (22 CFR 120.21) to foreign persons, whether in the United States or abroad. No person, who is not a United States Citizen or who has not been lawfully admitted into the United States under the Immigration and Naturalization Act (8 USC 1101), shall be given access to such technical data without the prior approval of Innovative Concepts. Any request for such approval must state the person's citizenship, status under the Immigration and Naturalization Act, and such other information as Innovative Concepts may reasonably request.

#### **16. NONDISCRIMINATION IN EMPLOYMENT**

The provisions of Executive Order 11246, as amended; section 503 of the Rehabilitation Act of 1973, as amended; and the Vietnam Era Veterans Readjustment Assistance Act of 1974 (38 U.S.C. 2012) and implementing regulations are hereby incorporated herein by reference and the term CONTRACTOR wherever appearing therein shall be deemed to ref to the SELLER under this purchase order.

#### **17. NOTICE OF LABOR DISPUTES**

Whenever an actual or potential labor dispute is delaying or threatens to delay the timely performance of this order, Seller will immediately notify ICI of such dispute and furnish all relevant details. Seller will include a provision identical to the above in each subcontract hereunder and immediately upon receipt of any such notice pass it on to ICI.

#### **18. SPECIAL TOOLING**

If all of the costs of special tooling used in the performance of this order have been charged to this order, or to this order and other orders placed by ICI, title to such special tooling shall vest in ICI, at the option of ICI. Such tooling is to be used only in the performance of such Purchase Orders unless otherwise approved by ICI. The Seller agrees that it will follow normal industrial practice in the identification and maintenance of property control records on all such tooling, and will make such records available for inspection by ICI or the Government at all reasonable times. After the termination of completion of such order(s) and upon the request of ICI, the Seller shall furnish a list of such tooling in the form requested and shall make such tooling available for disposition by ICI.

#### **19. ADVERTISING**

Seller shall not in any manner advertise, publish or release any information concerning this purchase order or any portion thereof, without prior written consent of ICI.