

TERMS AND CONDITIONS OF PURCHASE BY EMS

General Provisions

BY ACCEPTING THIS PURCHASE ORDER, AND/OR PERFORMING HEREUNDER, SELLER AGREES TO COMPLY FULLY WITH THE TERMS AND CONDITIONS OF PURCHASE SET FORTH ON BOTH THE FRONT AND REVERSE SIDES OF THIS DOCUMENT. ACCEPTANCE OF THIS PURCHASE ORDER IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS OF THIS ORDER AND NONE OF THE SELLER'S TERMS AND CONDITIONS SHALL APPLY IN ACKNOWLEDGING THIS ORDER OR IN THE ACCEPTANCE OF THIS ORDER. ACCEPTANCE BY ENGINEERED MATERIALS SOLUTIONS (HEREINAFTER CALLED "EMS"), OF THE GOODS, SERVICES OR WORK DELIVERED UNDER THIS PURCHASE ORDER SHALL NOT CONSTITUTE AGREEMENT TO SELLER'S TERMS OR CONDITIONS. SELLER MAY NOT SHIP UNDER RESERVATION.

1. **MODIFICATIONS**

Changes, modifications, waivers, additions or amendments to the terms and conditions of this order shall be binding on EMS only if such changes, modifications, waivers, additions, or amendments are in writing and signed by a duly authorized representative of EMS.

2. **APPLICABLE LAW**

The validity, interpretation, and performance of these terms and conditions and any purchase made hereunder shall be governed by the laws of the state from which this order is issued, in force at the date of this order for contracts made and to be performed in such state. Where not modified by the terms herein, the provisions of such state's enactment of Article 2 of the Uniform Commercial Code shall apply to this transaction.

3. **COMPLIANCE WITH LAW**

Seller agrees that at all times it will comply with all applicable federal, state, municipal and local laws, orders and regulations, including but not limited to those affecting or limiting prices, production, purchase, sale, and use of material. If requested by EMS, Seller agrees to timely certify compliance with such laws in such forms as EMS may request.

4. **RELEASE OF INFORMATION**

Neither party hereto shall, without the prior written consent of the other party (which shall not be unreasonably withheld), publicly announce or otherwise disclose, except to the U.S. Government, when the Purchase Order references a U.S. Government contract or subcontract number, the existence or the terms of this agreement, or release any publicity regarding this Agreement. This provision shall survive the expiration, termination, or cancellation of this Agreement.

Any knowledge or information which Seller may disclose to EMS shall not be deemed to be confidential or proprietary information and shall be acquired by EMS free from any restrictions as to use or disclosure thereof.

5. **INDEMNITY**

In the event Seller, its officers, employees and agents or any of them enter premises owned, leased, occupied by or under the control of EMS in the performance of or in connection with this order, Seller agrees to indemnify and hold EMS, its officers, agents and employees harmless from any loss, cost, damage, or bodily injury (including death) of whatsoever kind or nature arising out of, or incidental to the performance, delivery or installation of this order occasioned in whole or in part by any action or omission of Seller, its employees, officers and agents or any of them. Seller will maintain general comprehensive liability, property damage and automobile liability insurance, including contractual endorsement and products hazards coverage, in reasonable amounts covering the obligations set forth in this order and, upon request, it will provide EMS with a Certificate of insurance indicating the amount of such insurance.

Seller agrees to defend and indemnify EMS and its customers from and against all claims, Actions, liabilities, losses and costs and expenses arising out of the death or injury to any person, property damage or loss, or economic injury arising out of this order.

6. **WAIVER**

Any failure of EMS to enforce at any time, or for any period of time, any of the provisions of this purchase order shall not constitute a waiver of such provisions not of EMS's right to enforce each and every provision.

7. **ACCEPTANCE AND WARRANTY**

Final acceptance of material by EMS will not be until after arrival at the EMS facility from which this order originates, unless otherwise specified herein. Seller warrants that all articles, material and work supplied by Seller under this order conform to the requirements, specifications, drawings, samples or other descriptions furnished or adopted by EMS and that they are of good material and workmanship and free from all defects in manufacture or design, and are of merchantable quality and fit for their intended purpose. Such warranties by Seller shall run to the benefits of EMS, its employees and purchaser's from EMS. EMS's approval of

designs furnished by Seller shall not relieve Seller of its obligation under this warranty. Seller's warranty shall be effective for a period of time as set forth on the face of this purchase order. If no such schedule is set forth on the face of this purchase order, the warranty shall be effective for a period of one year from the date of acceptance of goods by EMS, or for such longer period specified by Seller. All articles and material returned to Seller for breach of warranty hereunder shall be at Seller's expense, including expenses and penalties incurred by EMS in recalling such articles and materials which have been delivered to EMS's customers and expense of redelivery. Seller agrees that shipment of materials against this P.O. constitutes certification that all articles or goods included in this shipment conform in all respect to the applicable requirements, specifications, and drawings. Seller will make process control data, inspection, and test reports covering the articles or goods and their parts available for review and subject to examination by EMS or its authorized representative to verify conformance to such applicable specifications and drawings. However, a certificate of conformance must accompany individual shipments when so specified on applicable drawings, or on the front of this purchase order. Any articles or materials not accepted by EMS may be returned to Seller at Seller's expense for full credit of the purchase price. Inspection may be performed at EMS's option on a statistical sampling basis. The entire lot may be rejected based on defeats revealed by such sampling. At EMS's option, the rejected lot will be either returned to the Seller for replacement or credit or 100% screened by EMS with cost of screening paid by Seller. The initial inspection performed at EMS on receipt of material is a conditional acceptance, and shall not waive the right of EMS to return material to Seller which exhibits or develops defects due to latent causes during or after installation or testing of the end product.

Seller shall preserve all special drawings, dies, patterns, tooling or other items supplied or paid for by EMS in good condition; and they are the property of EMS unless otherwise specified, and the same such items shall be returned in good condition when the work on the order has been completed or terminated, or at any other time as requested by EMS. No special drawing, die, pattern, tool or other item supplied by EMS or made by Seller for the use of or delivery to EMS, or for use by Seller in supplying EMS, shall be used by Seller for any purpose other than supplying EMS, without Seller's first obtaining the written consent of EMS thereto, provided, however, that if the U.S. Government has rights in such items under a prime contract with EMS, noninterfering use of the items for direct sales to the Government is authorized if written notice is provided to EMS prior to such use. If material, equipment, special drawings, dies, patterns, or other items are furnished by EMS for performance of this purchase order, all risk of loss thereof or damage thereto shall be upon Seller from the time of shipment to Seller until redelivery to and receipt by EMS.

8. PATENTS AND COPYRIGHTS

Seller agrees to indemnify and to save EMS, its officers, agents, employees, and vendees (mediate and immediate) harmless from any and all loss, expense, damage, liability, claims or demands either at law or in equity for actual or alleged infringement of any patent invention, design, trademark, or copyright arising from the purchase, use or sale of materials or articles required by this purchase order, except where such infringement or alleged infringement arises by reason of designs for such materials or articles originally furnished to Seller by EMS.

9. CHANGES

EMS may change from time to time any of the drawings, specifications or instructions for work covered by this purchase order and Seller shall comply with such change notices. If such changes result in a decrease or increase in Seller's cost or in the time for performance, and adjustment in the price and time for performance may be made by the parties in writing, provided, however, that Seller notifies EMS of the request for such adjustments within thirty (30) days after receipt by it of the change notice.

10. ASSIGNMENTS

Performance obligations shall not be assigned or transferred by Seller without prior written approval by EMS, and any attempted assignment or transfer without such consent shall be void. Seller shall not subcontract any substantial portion of the work to be performed by it under this order without the prior written consent of EMS.

11. TERMINATION

EMS may terminate the work to be performed hereunder in whole or in part at any time without cause by written notice to seller. Such notice shall state the extent and effective date of such termination and, upon the receipt of such notice, Seller will comply with the directions pertaining to work stoppage hereunder and the placement of further orders or subcontracts hereunder. The parties shall thereupon employ their best efforts to agree by negotiation, within three (3) months upon the amount of reimbursement, if any, to be paid to Seller for such termination. Termination under this provision shall not be deemed a breach of contract. The provisions of this paragraph shall not limit or affect the right of EMS to terminate this order for cause and shall not apply to a termination with cause. Seller shall mitigate its claim to the maximum extent, and in any event no claims shall exceed the lesser of fair market value or actual cost of raw materials and work in

progress material which Seller shows cannot be diverted to other uses. No claim shall be asserted or honored for loss of expected profits, or for any consequential or incidental damages, due to cancellation.

12. PRICE ADJUSTMENT

EMS will not accept shipment at any increase in price above that indicated on this order. Any general price decrease announced by Seller in classification of equipment and/or materials similar to the items described on this order shall automatically reduce the price thereof by a comparable percentage.

13. NOTICE OF LABOR DISPUTES

Whenever any actual or potential labor dispute delays or threatens to delay the timely performance of this order, Seller shall immediately give notice thereof to EMS and, if the order relates to a military contract, Seller will also give notice to the nearest military representative.

14. TERMS

The following terms with respect to payment are applicable to this order:

A. NET INVOICES

Net invoices dated within a seven-day week ending on a Saturday will be paid on the first Friday after 45 days of receipt of the invoice.

B. DISCOUNTED INVOICES

Discounted invoices dated within a seven day week ending on a Saturday will be paid the second following Friday. Invoices that specify a discount for tenth prox payment will be paid on the second Friday of the month following the date of the invoices. The acceptance of minimal discount offers will be at the discretion of EMS.

C. All schedules of payments above stated are based upon receipt by EMS or Shipment f.o.b. source, whichever is applicable as indicated on the face hereof, of the goods or services prior to scheduled payment date. If EMS receives the invoice prior to such shipment or receipt of goods or services, the foregoing terms on this order shall be measured from date of such receipt of shipment of goods rather than date of receipt of invoice.

D. Invoices must be imprinted, where applicable, with the nine digit D-U-N-S Number where available, corresponding to the address where payment should be mailed and payment shall be sent to such address.

15. EXTRA CHARGES

No charges of any kind, including charges for boxing or cartage, will be allowed unless specifically agreed to by EMS in writing. Pricing by weight, where applicable, covers net weight of material, unless otherwise agreed.

16. TIME OF DELIVERY

The delivery dates indicated by EMS for the articles, material or work to be supplied under this purchase order are of the essence. Failure to meet agreed upon delivery shall be considered a breach of the contract; furthermore, Seller agrees to pay to EMS any penalty and damages imposed upon or incurred by EMS for failure of Seller to deliver articles, materials, or work on such delivery dates.

Unless otherwise agreed in writing, Seller shall not make commitments for material or production in excess of the amount or in advance of the time necessary to meet EMS's delivery schedule. It is the Seller's responsibility to comply with this schedule, but not to anticipate EMS's requirements. Goods shipped to EMS in advance of schedule may be returned to Seller at Seller's expense. EMS may reschedule the delivery of any unshipped product for later delivery within ninety (90) days of the originally scheduled delivery date.

17. SETOFF

EMS shall be entitled at all times to setoff any amount owing, for any reason, at any time, from Seller to EMS of any of its affiliated companies against any amount payable at any time by EMS in connection with this order.

18. SALES AND USE TAX EXEMPTION

It is hereby certified that the above described property is exempt from the sales and use tax, unless otherwise noted for the reason that such property is purchased for resale or will become an ingredient or component part of, or be incorporated into, or used or consumed in, a manufactured product produced for ultimate sale at retail. If the property described on this purchase order is purchased tax exempt and subsequent use makes this property taxable, EMS will access and pay tax to the appropriate state.

19. RESERVATION OF RIGHTS

EMS expressly reserves all rights and remedies which are available to it at law or equity, including but not limited to rights and remedies set forth in the Uniform Commercial Code.

20. ATTACHMENTS

Any attachments referenced on the front side of this order shall be deemed for all purposes to be an integral part of this order. In the event of irreconcilable conflict between such referenced attachments and the terms stated herein, the terms of such contracts shall control.

21. OVERSHIPMENTS

Seller is instructed to ship only the quantity(ies) specified in this order. However, any deviation caused by conditions of loading, shipping, packing, or allowances in manufacturing processes may be accepted by EMS according to the overshipment allowance indicated on the face of this order. If no allowance is shown, it shall be 0% (zero percent). EMS reserves the right to return any overshipment in excess of the allowance at the Seller's expense.

22. PACKING AND SHIPPING INSTRUCTIONS Seller agrees to insure that shipments are properly packed and described in accordance with EMS specifications and/or applicable carrier regulations. Shipments will be made at the lowest freight charges. EMS may assist Seller by providing freight classifications or classifying material. Seller will not insure or declare value on shipments, except on parcel post, unless EMS specifies otherwise. On shipment where value is declared, Seller will ship prepaid insured for \$50 to facilitate tracing. When shipping via small parcel, Seller will ship freight collect if available, otherwise Seller will ship freight prepaid. Seller shall consolidate air and surface shipments daily on one bill of lading per mode to avoid premium freight costs, unless instructed otherwise by EMS. In case of any shipment that does not correspond to normal past practice between EMS and Seller, or to standard practice in the industry, (e.g., requires special handling equipment or air ride suspension, or air shipment over 500 pounds, or over 120 inches long or wide, or over 56 cubic feet, etc.) Seller agrees to notify EMS's appropriate traffic department 72 hours prior to shipment for special shipping instructions. All truck shipments must be classified by Seller using the current "National Motor Freight Classification Tariff". Each box, crate or carton will show EMS's full street address (not just post office box numbers) and purchase order and item numbers regardless of how shipped. On small parcel shipments, a packing list shall accompany each container and shall describe the contents of that container. On other shipments, Seller will provide a packing list to accompany each shipment, referencing the appropriate purchase order and item number. The bill of lading also will reference the purchase order and item number. Seller is responsible for packing any shipment correctly based on the carrier/mode utilized. Charges for packing and crating shall be deemed part of the purchase price, and no additional charges will be made therefor unless specifically requested by EMS on the purchase order. Seller agrees to ship via the carrier specified by EMS. Failure to ship via EMS specified carrier will subject Seller to misroute debit.

All premium freight cost incurred by EMS or Seller beyond that specified by EMS shall be borne by Seller. Seller is responsible for all shipments which are damaged in transit due to improper packaging, improper judgment or any other act or omission of the Seller, shipper, or carrier. On all F.O.B. origin shipments, except Parcel Post, Seller will ship freight collect. (If small parcel carrier collect is unavailable, Seller will ship prepaid).

Definition of Terms (Whether F.O.B. origin or destination).

- (a) "Freight collect" Seller will ship freight collect – freight carrier will bill EMS.
- (b) "Freight prepaid charge back" – Seller will ship freight prepaid and bill EMS.
- (c) "Freight prepaid" – Seller will ship freight prepaid and bear all transportation costs.

23. RETURNS

Defective material shall be returned freight collect to Seller. Replacement material shall be sent freight prepaid from Seller, who will absorb the burden of premium transportation when defect or replacement material places critical time or delivery schedule constraints on EMS.

24. INSPECTION – QUALITY SYSTEM

A. The seller agrees to permit EMS and EMS's customer or Government representatives if this purchase order references a U.S. Government contract or subcontract number, to verify the quality of supplies and services being provided under this purchase order at any production stage in the Seller's facility. Verification may consist of a physical assessment/surveillance of the Seller's facilities and quality programs and/or a source inspection. Deficiencies identified during such verification shall be positively corrected by the supplier in the most expeditious manner possible. The Seller shall provide all reasonable facilities and assistance for the safety and convenience of personnel engaged in such verification. Seller agrees to include into each subcontract seller might make hereunder appropriate provisions to the same effect.

B. Unless modified by the Purchase Order through the use of EMS's P.O. clauses, Seller is required to ensure that the manufacturing processes used meets the technical requirements of the applicable drawings, specifications, engineering changes, and added requirements of the purchase order. An inspection system

inherent to verifying the technical requirements must be maintained and objective evidence of such will be produced on request.

C. Distributors who supply goods to be applied to a government contract or subcontract shall maintain a quality program which meets the requirements of EMS Specification 729476 (Distributor Quality Requirements) in lieu of 24(a) and 24(b), above. Proof of compliance must be produced upon request or by assessment from EMS.

25. SELLER OWNERSHIP CHANGE Seller is required to submit immediately in writing to EMS notification on the following change conditions, whether subcontract is DOD classified or not:
- (a) Acquisition by or merger with any foreign interest;
 - (b) Majority or controlling interest obtained by a foreign interest.
26. GOVERNMENT CONTRACT PROVISIONS If this Purchase Order references a U.S. Government contract or subcontract number, the dates of the following clauses of the Federal Acquisition Regulation (FAR) are the same as the dates of the corresponding clauses in the prime contract referenced on the front of this P.O. are incorporated by reference and will prevail in the event of any inconsistency with the foregoing terms and conditions. Cost Accounting Standards (CAS) requirements are those in effect on the date of the subcontract award or final agreement on price, whichever is earlier. It is understood that the term "contracting officer" or "Government" shall mean EMS and "contractor" shall mean Seller when applicable. Any reference to a "disputes" clause in any FAR clause incorporated in this purchase order is deleted. Any FAR clause which by its terms is required to be included in a subcontract is hereby incorporated in this purchase order when applicable. Seller shall be entitled to the full benefit of whatever authorization and consent clause is contained in the prime contract referenced on the front of this purchase order. Refer to form TI-288 18 for applicable FAR clauses.