

## Purchase Order Terms & Conditions

**THIS ORDER IS PLACED SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS, WHICH MAY NOT BE VARIED EXCEPT BY WRITING SIGNED BY BUYER'S DULY AUTHORIZED REPRESENTATIVE. IT IS THE RESPONSIBILITY OF THE SELLER TO FLOW DOWN TO SUB-TIERS ALL THE REQUIREMENTS OF THE ORGANIZATIONS PURCHASING TERMS AND CONDITIONS.**

**It is the seller's responsibility to notify the buyer of any objection to the terms & conditions specified herein prior to acceptance of the order, otherwise full compliance is expected.**

1. **DELIVERY.** Time of delivery is of the essence of this contract. Buyer reserves the right to refuse any goods and to cancel all or any part of the goods in accordance with the terms of this order. Shipments must arrive at the buyer's facility designated in this order no later than the date required by said order. Delay in delivery beyond this date required by this order shall be a default and cause for termination of the order. Should buyer accept supplies, which are beyond promised delivery date, the seller shall be liable for additional or premium transportation charges as requested by buyer to expedite late order sent to buyers.

2. **RISK OF LOSS.** Delivery shall not be deemed to be complete until goods have been actually received and accepted by Buyer, notwithstanding any agreement to pay freight, express or other transportation charges and the risk of loss or damage in transit shall be upon the Seller.

3. **INSPECTION AND ACCEPTANCE.** All goods shall be received subject to Buyer's right of inspection and rejection. Defective goods or goods not in accordance with the Buyer's specifications will be held for Seller's instruction at Seller's risk and if Seller so directs, will be returned at Seller's expense. The buyer reserves the right to inspect all raw materials, materials in process of manufacture and completed materials at plant of Seller, final inspection and acceptance or rejection of the materials to be at place of destination unless, otherwise specified. Inspection, failure to inspect, or acceptance of goods and the payment of the price will not affect any warranty in respect to the goods or any right of the Buyer there under. Acceptance of any part of the order shall not bind Buyer to accept future shipments, nor deprive it, of the right to return goods already accepted.

**Right of access:** Seller and/or its sub-tiers shall grant the buyer, its representative or customer access to their facility, when requested, for the purpose of product inspection, manufacturing process or procedural audit.

**Qualified personnel:** Seller agrees that it will employ qualified personnel where necessary to satisfy the requirements of this order.

**Quality Management System:** Seller will maintain a Quality Management System sufficient to fulfill the requirements of this order. The QMS will contain the following elements at a minimum: a) Inspection, test and acceptance criteria, b) Control of Nonconforming product, c) Determination of requirements related to the product, d) Control of production process changes, e) Calibration control, f) Customer satisfaction, g) Monitoring and measurement of process, h) Monitoring and measurement of product, I) Inspection documentation, J) First article inspection, k) Corrective action.

4. **PAYMENT.** Payments shall not be due until the Buyer has had a reasonable opportunity to inspect the goods. Payment, for goods on this order prior to inspection shall not constitute acceptance thereof, and is without prejudice to any and all claims that, Buyer may have against Seller.

5. Payment of all or any part of the purchase price shall not be construed as a waiver of any claims of the buyer for defects or delay in delivery or other breach of the contract.

6. **REMEDIES FOR DEFECTIVE GOODS.** Acceptance of all or any part of the goods shall not be deemed a waiver of Buyer's right, either to cancel or to return all or any portion of the goods because of failure to conform to order, or by reason of defects, latent or patent, or other breach of warranty, or to make any claim for damages, including manufacturing costs and loss of profits or other special damages occasioned the Buyer, where any portion of the nonconforming goods is returned to the Seller. Buyer may insist upon Seller's repair or replacing of said portion of goods. Seller will refund the price for all defective goods kept in Buyer's possession within one year after delivery, when such defects appear through service or otherwise. Buyer may repair defective goods, if Buyer's possession within one year after delivery, when such defects appear through seller service or otherwise. Buyer may repair defective goods, if Buyer's delivery schedule requires such action, and charge the cost to the Seller. Such rights shall be in addition to any other remedies provided by law.

**Notification:** Seller shall notify the buyer in writing of the following:

- a) Nonconforming material – prior to shipment of such and with arrangements for buyer Approval or Disapproval.
- b) Changes in product/ or process definition – with arrangements for buyer approval.

7. **INDEMNIFICATION.** Seller agrees to indemnify Buyer and hold it harmless from all liability, loss damage and expense, including reasonable counsel fees resulting from any actual or claimed trademark, patent or copyright infringements, or any litigation based thereon, with respect to any part of the goods covered by this order, and such obligation shall survive acceptance of the goods and payment, therefore by the Buyer.

8. **WARRANTIES.** Seller expressly warrants that the goods covered by this order are merchantable, of best quality, fit and safe for the particular use described in paragraph 15, and in strict accordance with all drawings and specifications submitted by the Buyer. Acceptance of this order shall constitute an agreement upon Seller's part to indemnify and hold the Buyer harmless from all liability, loss, damage and expense, including reasonable counsel fees resulting from the failure of the goods to conform to such warranties. Such indemnity shall be in addition to any other remedies provided by law.

9. **SELLER'S WARRANTIES FOR DESIGN.** If the materials or any parts thereof are the Seller's design or of a design selected by the Seller, Seller warrants against defects in design, and if three or more items of the total quantity to be supplied under this order are found to be ten percent (10%) or more defective as to design, such items will be conclusively presumed to be of defective design and subject to one hundred percent (100%) correction, or replacement by suitable redesigned item, or Buyer, at its option may rescind that part of the order for items so found to be defective and all sums paid thereon shall be refunded to Buyer. Buyer will not be required to return defective material prior to replacement.

10. **STANDARDS OF MANUFACTURE.** Seller represents and warrants that the goods covered by this order have been manufactured in accordance to the requirements of the Fair Labor Standard Act and all other applicable federal, State and municipal laws, rules and regulations, including among other, those in respect to priorities, prices, wages and hours of work. Buyer and Seller represent that this agreement does not violate any Regulations or Orders under the Defense Production Act or any Regulations or Orders in respect to priorities and controls of materials, and Seller further represents that, the prices, specified herein are not in excess of those authorized by the applicable Regulations of any government agency administering price controls.

11. All goods, wrappers and containers must bear markings and labels required by the applicable federal, state and municipal laws and regulations.

12. If any of the goods covered by this order are subject to the Wool Products Labeling Act, the Fur Products Labeling Act, the Textile Fiber Products Identification Act, the Flammable Fabrics Act or any similar legislation Seller's invoice shall bear the separate guaranties provide for such acts, or shall contain an appropriate statement that a continuing guaranty has been filed in accordance with such acts and applicable rules and regulations of the Federal Trade Commission.

13. **BUYER FURNISHED OR PAID FOR ITEMS.** All drawings, specifications, tools, equipment and other items either furnished to Seller, or paid for by Buyer shall (a) not be furnished to or be used for any other person or concern without Buyer's written approval (b) remain, or upon acquisition of Seller shall become Buyer's property (c) is safely kept by Seller, and (d) be returned promptly to Buyer upon request.

14. **PATENTS.** Seller agrees that it will hold harmless Buyer, its successors, assigns associated companies and vendors, from all liability, loss, damage and expense, including reasonable counsel fees arising from the use of any goods described in this purchase order which infringe any letters patented granted by the United States, except where said claim or demand is the direct and necessary consequence of compliance with Buyer's specifications in which case Buyer extends the foregoing indemnity to Seller with respect thereto. Prompt notice in writing of any claim or demand shall be given by Buyer or Seller to the other for any infringement for which the paragraph shall apply.

15. **USE OF GOODS.** Notice is hereby made that the goods are to be used by the Buyer for the following purpose(s)

16. **ARBITRATION.** Any controversy or claim arising out of or related to this contract or the breach thereof, shall be settled by arbitration in Suffolk County, New York in accordance to the rules of the American Arbitration Association, and judgment upon any award rendered in such proceedings may be entered by any court having jurisdiction thereof.

17. **NO MODIFICATION.** The contract contains the entire agreement of the parties, it may not be modified or terminated orally, and no claimed modification, termination or waiver shall be binding on Buyer unless in writing signed by a duly authorized representative of Buyer. No modification or waiver shall be deemed effected by Seller's acknowledgment or confirmation containing other or different terms.

18. **ASSIGNMENT.** This contract may not be assigned by Seller without Buyer's written consent.

19. **APPLICABLE LAW.** This contract shall be governed by the laws of the State of New York.

20. **QUALITY RECORDS FILE.** All quality records related to product shipped should be kept on file at your facility for a minimum of seven years.

## 21. DOD Flow Down Requirement:

### 225.872 Contracting with qualifying country sources.

#### 225.872-1 General.

(a) As a result of memoranda of understanding and other international agreements, DOD has determined it inconsistent with the public interest to apply restrictions of the Buy American Act or the Balance of Payments Program to the acquisition of qualifying country end products from the following qualifying countries: Australia, Belgium, Canada, Denmark, Egypt, Federal Republic of Germany, France, Greece, Israel, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland

(b) Individual acquisitions of qualifying country end products from the following qualifying countries may, on a purchase-by-purchase basis (see 225.872-4), be exempted from application of the Buy American Act and the Balance of Payments Program as inconsistent with the public interest: Austria, Finland.

(c) The determination in paragraph (a) of this subsection does not limit the authority of the Secretary concerned to restrict acquisitions to domestic sources or reject an otherwise acceptable offer from a qualifying country source when considered necessary for national defense reasons.

#### 225.872-2 Applicability.

(a) This section applies to all acquisitions of supplies except those restricted by—

(1) U.S. National Disclosure Policy, DOD 5230.11, Disclosure of Classified Military Information to Foreign Governments and International Organizations;

(2) U.S. defense mobilization base requirements purchased under the authority of FAR 6.302-3(a) (2) (i), except for quantities in excess of that required to maintain the defense mobilization base. This restriction does not apply to Canadian planned producers.

(i) Review individual solicitations to determine whether this restriction applies.

(ii) Information concerning restricted items may be obtained from the Deputy Under Secretary of Defense (Industrial Affairs);

(3) Other U.S. laws or regulations (e.g., the annual DOD appropriations act); and

(4) U.S. industrial security requirements.

(b) This section does not apply to construction contracts.

## 22. 252.225-7014 Preference for Domestic Specialty Metals.

As prescribed in 225.7002-3(b)(1), use the following clause:

PREFERENCE FOR DOMESTIC SPECIALTY METALS (JUN 2005)

(a) *Definitions.* As used in this clause—

(1) "Qualifying country" means any country listed in subsection 225.872-1 of the Defense Federal Acquisition Regulation Supplement.

(2) "Specialty metals" means—

(i) Steel—

(A) With a maximum alloy content exceeding one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or

(B) Containing more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium;

(ii) Metal alloys consisting of nickel, iron-nickel, and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 percent;

(iii) Titanium and titanium alloys; or

(iv) Zirconium and zirconium base alloys.

(b) Any specialty metals incorporated in articles delivered under this contract shall be melted in the United States or its outlying areas.

(c) This clause does not apply to specialty metals—

(1) Melted in a qualifying country or incorporated in an article manufactured in a qualifying country; or

(2) Purchased by a subcontractor at any tier.

(End of clause)

ALTERNATE I (APR 2003)

As prescribed in 225.7002-3(b)(2), substitute the following paragraph (c) for paragraph (c) of the basic clause, and add the following paragraph (d) to the basic clause:

(c) This clause does not apply to specialty metals melted in a qualifying country or incorporated in an article manufactured in a qualifying country.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts for items containing specialty metals.