

## STANDARD TERMS AND CONDITIONS – Rev 1, October 9, 2018

### CONTRACT

This purchase order shall be accepted by Seller by any commencement of Seller's performance hereunder.

It is understood that this order is an offer to purchase the goods or services described on purchase order hereof, unless the order states that it is in confirmation of a prior agreement.

Buyer OBJECTS in advance to the inclusion of any additional or different terms proposed by Seller in his acceptance or acknowledgment of this order. The inclusion of such terms by the Seller will be of no significance and such terms will not be conditions or additional terms to this contract, and buyer's acceptance of Seller's goods shall not be deemed an acceptance of such terms.

Unless otherwise stated on the face of this order, the following terms and conditions shall apply:

### INTEGRATION

1. This purchase order is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement.

In the event of conflicts in the terms and conditions of this order and the specifications, drawings and documents incorporated herein, the former shall take precedence.

### CORRESPONDENCE

2. If any of the provisions of Seller's proposal or other correspondence are in conflict or in addition to the terms of this order, the terms of this order shall govern.

### SUPERSEDED MODIFICATIONS

3. This order may be modified or rescinded only in writing signed by both parties or their duly authorized agents or a change order issued by Buyer and accepted by Seller pursuant to the terms stated herein.

All Goods are to be packaged and processed by Seller according to the provided purchase specifications. In the event that Seller intends to deliver any new or changed Goods, Seller shall, at our request, provide samples of such Goods to Buyer prior to the Delivery. After approval of samples or purchase specifications, further alterations of the Goods themselves (e.g. material, function, appearance, etc.), their production methods or changes in process (e.g. manufacturing location, subcontractors, material suppliers etc.) are not allowed without our express written approval. Our final approval of samples does in no way affect our rights under these Terms and Conditions or statutory law, as applicable. A deletion of or modification to standard terms and conditions of this order does not imply that the parties intend to modify their rights and duties under the Uniform Commercial Code except as particularly specified in this order.

### WAIVER

4. Waiver by either Seller or Buyer of a breach by the other of any provision of this order shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect.

### ASSIGNMENT

5. Either party may assign its rights under this order, in whole or in part, providing that written permission is obtained from the other party, except that no special notice to the Seller is required to assign warranties to the ultimate user.

### IDENTIFICATION

6. Identification of the goods under the Uniform Commercial Code will occur when this order is acknowledged by the Seller or otherwise accepted or as soon as practicable thereafter.

### BUYER'S COMMENTS

7. Seller shall not be relieved of its obligations under this order, including but not limited to its warranty obligations stated herein, by incorporating Buyer's design and fabrication comments into the goods ordered hereunder.

**RIGHT TO ASSURANCES**

8. Whenever one party to this order in good faith has reason to question the other party's intent to perform, he may demand in writing that the other party give a written assurance of his intent to perform. In the event that the demand is made and no assurance is given within a reasonable period of time not exceeding ONE WEEK the demanding party may treat this failure as an anticipatory repudiation of this order.

**COVER**

9. In the event that Seller unjustifiably repudiates this order or, for reasons other than as provided in the Force Majeure Clause, fails to ship all or part of the goods purchased hereunder as promised herein, Buyer shall have the right to cancel its order for such goods and make substitute purchases from other sources, or if the goods are in partial state of fabrication completed by other means, in which event Seller shall be liable to Buyer for the additional expenses incurred thereby.

**SHIPMENT**

10. The goods shall be shipped on or before the date specified in this order. The shipping date shall be extended by delays caused by Buyer and Force Majeure. 100% on time delivery is expected and demanded. Buyer may accept a plus or minus 10% of indicated quantity per item if prior approval is secured from the buyer prior to shipment.

**INSTALLMENTS**

11. Seller, if reasonable and practicable, shall ship the goods specified herein in separate installments. Notwithstanding that the goods are shipped in installments, this order shall be considered a whole contract rather than an installment contract.

**SUB-ORDERS**

12. Seller shall be responsible for transmitting pertinent data of all standard terms and conditions to Sub-Suppliers. Seller shall furnish Buyer four copies of all sub-orders (un-priced) showing: promised shipping date, shipping point, and originating carrier.

**INVOICE AND  
B/L DATA**

13. Failure to comply with instructions of this order will result in delay in payment of invoices. Such delay will be taken into account in computing cash discount. Cash discount period, if any, shall commence on receipt of the invoice or goods, whichever is later.

Where freight is prepaid, such freight charge shall be supported by copy of the paid freight bill at the time the invoice is submitted for payment.

**INSPECTION**

14. If Buyer is to witness inspection as shown on the face side of this order:

- a) The goods shall not be shipped without an inspector's release or a written waiver of inspection; however, Buyer shall not be permitted to unreasonably delay shipment.
- b) Seller shall notify Buyer's Chief Expediter in writing at least ten days prior to Seller's scheduled final, or if applicable, preliminary or intermediate inspection dates.
- c) Buyer reserves the right to inspect goods prior to shipment along with Buyer's customer.

The type of inspection shall be prescribed or agreed upon by Buyer, and shall include, if applicable, the inspection procedures prescribed by codes and regulations recognized by the governmental authority or political subdivision having jurisdiction over the installed goods.

Upon timely notice to the Seller, Buyer shall be permitted to specify the type of inspection or additional inspection procedures for its protection.

**REJECTION**

15. Buyer shall have a reasonable time after delivery to Jobsite to ascertain defects in the goods and notify Seller of the same. In the event that the goods are materially defective or nonconforming, Buyer shall be permitted to exercise its right of rejection and charge Seller for all expensed incurred thereby.

Buyer shall be permitted to accept any conforming goods under this order without relinquishing its right to reject other nonconforming goods purchased under this order.

## **PRICE**

### **16. Price:**

a) The total price of the goods purchased under this order shall not be subject to escalation and shall not include State, Sales, and/or Use Taxes. This price includes all other taxes of any kind levied by any federal, state, municipal, or other governmental authority, which the Seller is required to pay with respect to production, sale or shipment of the goods covered by this order. This price also includes all other governmental charges, including tariff and duty that shall be or are now assessed, levied or imposed on this transaction, sale, delivery or other action taken hereunder or upon the export or import of such goods.

b) All invoices need to be submitted within 90 days of receipt of goods and/or services for payment. No payments will be made for untimely invoicing, unless agreed upon under the terms of the purchase order.

## **WARRANTY**

17. With respect to the goods furnished hereunder, Seller shall provide to Buyer and the ultimate user Warranties:

a) Of Title, Seller warrants that the goods are not subject to any security interest, lien or other encumbrance.

b) Against Patent infringements, except when Buyer furnishes design specifications to Seller. Seller shall, at its own expense, defend and save Buyer harmless from the expenses and consequences of any suit or procedure brought against Buyer so far as said suit or procedure is based on claim that the goods furnished hereunder constitutes an infringement of any patent in existence on the date of this order, if notified promptly in writing and given the necessary authorization, information and assistance by Buyer for the defense of the same.

In addition, Seller shall secure at its own expense a fully paid up license or licenses that will permit Buyer to continue operation of the goods furnished hereunder free of further claim or infringement.

c) Of Merchantability, Seller warrants that the goods purchased hereunder are suitable for the ordinary purposes for which such goods are used, are adequately packaged and labeled, conform to promises or affirmations made by the Seller and conform to the specifications stipulated in this order.

d) Of Fitness, Seller warrants that the goods purchased hereunder are suitable for the particular purpose mentioned in this order. Buyer affirms that he has relied on Seller's skill and judgment to select or furnish goods for a particular purpose, useful life of product or service has been clearly communicated.

Seller further warrants that the goods are new and of first quality, and that the goods will be free of defects in workmanship or materials for a period of twelve (12) months from the date of initial operation or eighteen (18) months after delivery to Jobsite of the entire order, whichever date shall first occur.

## **RESPONSIBILITY**

18. In the event of a breach of Warranty, Seller shall be required to take all necessary action at Seller's expense, to correct the breach in the most expedient manner dictated by the existing circumstances.

Upon oral or written notification of defects in or malfunctioning of the goods during normal operation, which requires corrective action, Seller shall send the necessary personnel to Jobsite to supervise and assume responsibility for repairs. If Seller does not expediently take steps to correct the breach, Buyer may do so. However, such action on Buyer's part will not relieve Seller of its responsibility. Seller agrees to reimburse Buyer for all expenses incurred by Buyer to repair or replace malfunctioning or nonconforming goods.

Buyer has no duty to discover defects, patent or otherwise, inspection and clearance for shipment by Buyers inspectors shall not relieve Seller of any of

its obligations and duties under this order.

#### **LIQUIDATED DAMAGES**

19. The Following clause shall apply if liquidated damages are specified on the face of this order; Since the goods sold under this order are to be specially manufactured by the Seller and not readily available on the open market and since the goods sold are to become part of a process plant to be constructed by the Buyer, any failure to deliver the goods are required by this order will delay Buyer's operations and result in substantial damages. For this reason and because of the difficulty of accurately proving loss and the nonfeasibility of obtaining an adequate remedy, Seller agrees to pay as liquidated damages that amounts stated in this order. Liquidated damages shall apply for this period of time specified herein. Buyer's right to cover and recover actual damages to non-delivery and repudiation by Seller after such specified period of time shall remain intact.

#### **FORCE MAJEURE**

20. Neither party shall be held responsible for any losses resulting if the fulfillment of any terms or provisions of this order are delayed or prevented by revolutions or other disorders, wars, acts of enemies, strikes, fires, floods, acts of God or without limiting the foregoing, any other cause not within the control of the party whose performance is interfered with, and which by the exercise of reasonable diligence, said party is unable to prevent, whether of the class of causes hereinbefore enumerated or not.

Where either party is excused from performing its obligations under this order by force of the preceding paragraph or as provided in the Uniform Commercial Code, said party shall give prompt notice to the other party after the event excusing his performance.

#### **COMPLIANCE WITH LAWS**

21. Compliance with Laws:

a) Seller is obliged to comply with all effective and relevant legal provisions (e.g. laws, regulations, directives, guidelines, rules, orders etc.), conventions, ordinances and standards of the country/countries of origin and destination of the Goods which govern their manufacturing, labeling, shipping, transportation, importation, exportation, licensing, approval or certification, including, but not limited to those relation to environmental matters; hazardous chemicals; data protection; hours and conditions of employment, wages; subcontractor selection; discrimination; occupational health/safety and motor vehicle safety and to provide all information necessary by such norms and/or requested by Buyer. Seller is obliged to maintain own compliance rules as to the aforesaid that satisfy local regulatory requirements.

b) Seller must not facilitate or utilize any form of forced or involuntary labor, nor engage in abusive worker treatment or corrupt business practices and provide, at our request, written certification of Seller's compliance with the foregoing to us. Seller shall indemnify and hold Buyer harmless from and against any liability, claims, demands or expenses (including attorney's or other professional fees) arising from or relating to Seller noncompliance with the obligations in the clause 21.

c) If applicable, Material Safety Data Sheets must accompany order as required by OSHA regulation. Further, Seller shall defend and save Buyer harmless from loss, cost or damage by reason of any actual or alleged violation thereof.

d) Fort Recovery Industries Inc. has a Drug Free Workplace Program in effect. We ask that any vendor or agents of our vendor base abide to this program while on the property of Fort Recovery Industries Inc.

#### **CONFLICT OF LAWS**

22. All matters relating to the validity, meaning and performance of this purchase order shall be decided in accordance with Ohio Law.