

## **TERMS AND CONDITIONS**

**ACCEPTANCE:** This Order is for the purchase and sale of the goods described and is Buyer's offer to Seller. It is subject to Seller's acceptance only by Seller's execution and return of the acknowledgement copy; Conditions stated by Seller in acknowledgement receipt of this Order shall not be binding on Buyer if in conflict with, or in addition to, any of the provisions of this Order (including delivery schedule, price, quantity specifications and terms and conditions) unless expressly agreed to in writing by Buyer. **Terms & Conditions stated in this Order shall supersede and replace any Seller issued document.**

**DELIVERY AND DELAY:** Time is of the essence in performing the Order. Should Seller experience or anticipate any delay in performing this Order, whether or not such delay is excusable under the DEFAULT clause below. Seller shall immediately notify Buyer of such delay, its expected duration and the reason thereof. The delivery schedule shall not be modified unless the parties do so in writing, however this does not constitute a waiver of the Order's delivery requirement. Seller shall be liable for any direct or consequential damages resulting from a delay unless the delay is in writing and is excusable by Esco's Agent. **SELLER SHALL FORWARD TO BUYER WITH THE INVOICE, THE EXPRESS RECEIPT OR BILL OF LADING SIGNED BY THE CARRIER EVIDENCING THE FACT THAT SHIPMENT HAS BEEN MADE.**

**QUANTITIES:** Shipments must equal exact amounts ordered unless otherwise agreed by Buyer. Overages or shortages are not allowed without the prior written authorization of Buyer.

**PRICES:** Seller's price shall not be higher than quoted to Buyer unless otherwise agreed upon in writing. Invoices must be rendered for each shipment under this Order on date of shipment. If date of invoice is prior to shipment date, invoices may be returned for re-dating.

**TAXES:** Except as may be otherwise provided in this Order, the price includes all applicable Federal, State and local taxes.

**DISCOUNTS:** Unless indicated hereon, it shall be understood that the discount period will date from receipt of invoice or material acceptance whichever is later.

### **CHANGES:**

(a) Buyer may at any time by a written order and without notice to the sureties, make changes within the general scope of this Order in any one or more of the following: (i) drawings, designs or specifications; (ii) method of shipment or packing; (iii) quantities of articles to be furnished; (iv) place of delivery; and (v) delivery schedules. If any such change causes any increase or decrease in the cost of, or the item required for the performance of any part of the work under this Order, whether changed or not changed by any such order, an(d) equitable adjustment shall be made in the price or delivery schedule, or both, and the (Order shall be modified in writing accordingly.) Any claim by Seller for adjustment under this clause must be asserted in writing within thirty (30) days from the date of receipt by Seller of the notification of change provided, however, that Buyer, if it decides that the facts justify such action may receive and act upon any such claim asserted at any time prior to final payment under this Order. However, nothing in this clause shall excuse Seller from proceeding with this Order as changed.

(b) Buyer's engineering technical and other personnel may from time to time render assistance or give technical advice to or exchange information with Seller's personnel concerning this Order of the articles or services to be furnished hereunder. However, such assistance, advice, statements or exchange of information shall not constitute a waiver with respect to any of Seller's obligations or Buyer's rights hereunder, to be authority for any change in the articles or services called for hereunder. Any such waiver or change to be valid and binding upon Buyer must be in writing and signed by an authorized representative of Buyer's Purchasing Department. In case of any doubt, Seller should promptly consult Buyer's Purchasing Department for further instructions.

(c) In connection with any claim for adjustment under this clause, Seller shall submit cost data in such form and detail as may reasonably be required by Buyer; if this Order relates to a prime contract with the United States Government Seller shall upon Buyer's request, submit a certificate of Current Cost or Pricing Data, as prescribed by FAR 15.804-8(b) and in the form set forth by FAR 15.215-23 [in substantially the form set forth in 3-807 4 of the Defense Acquisition Regulations (DAR/ASPR)], with respect to such data.

**CANCELLATION: Cancellation of contract - BUYER RESERVES THE RIGHT TO CANCEL ORDER WITHIN 30 DAYS NOTICE PRIOR TO SHIPMENT VIA WRITTEN COMMUNICATION. BUYER WILL COMPENSATE SELLER FOR WORK PERFORMED AND OR MATERIALS PURCHASED FOR THIS ORDER, UP TO AND INCLUDING THE DATE OF BUYERS NOTICE. SELLER MUST PROVIDE DOCUMENTATION TO SUPPORT ANY CLAIM FOR COMPENSATION.**

**SOURCE APPROVAL:** No contract, regardless of amount shall be entered into between Seller and a third party for furnishing any of the completed or substantially completed articles, spare parts or services specified herein without prior written approval by the Buyer. This will not apply to any contract for the delivery of standard or commercial articles or raw material.

**MACHINING OF PARTS:** If this Order requires machining of parts, all burrs, sharp edges and corners shall be removed and broken .015 unless otherwise agreed to in writing.

**CERTIFICATIONS:** Plating, heat treating and non-destructive testing shall be by U.S. Government approved sources if this Order, or the drawings and/or specification(s) related thereto, specify certain affidavits, test reports, or certifications attesting to the type, quality or processing as a requirement of the work to be performed. Heat treating samples must be furnished when heat treating is performed. All such certifications must accompany parts when shipped. Payment of invoices will not be made without certifications when required.

**WARRANTY:** Seller warrants all materials or services delivered hereunder to be free from defective- materials or workmanship, and to conform strictly to the specifications, drawings or sample specified or furnished. This warranty shall survive any inspection, delivery or acceptance of the materials or services, and payments therefore, and shall not be deemed to be exclusive.

**INSPECTION:** All materials and workmanship entering into the performance of this Order may be inspected and tested at all times and places either during or after manufacture by inspectors designated by the Buyer at the Buyer's discretion. The exercise of this right shall in no way relieve the Seller of its obligation to furnish all articles or materials in strict accordance with the terms and provisions of this order. In the event, that any of the articles or materials are found to be defective in material or workmanship, or otherwise not in conformity with the requirements of this order, the Buyer shall have the right to reject and require the deficiency (ies) documented to be corrected or that the articles or materials be replaced promptly with satisfactory materials or workmanship.

If the Buyer so rejects the goods and the Seller when requested fails to proceed promptly with the replacement or correction of the defective goods, the Buyer may either terminate this order for default or replace or correct such goods and in either case may charge the Seller the costs and damages incurred. Cost, including transportation costs, of such repair or replacement shall be borne by Seller. If inspection is furnished on the premises of the Seller or its supplier, the Seller shall furnish without additional charge all reasonable facilities and assistance for the convenience and safety of the inspectors in the performance of their duties. All inspections and tests shall be performed during the normal work day. Items furnished in lots are subject to rejection of the basis of sample rejection. Materials rejected as not conforming to this Order shall be returned to the Seller freight collect, and the Seller will be debited for the inbound transportation cost plus handling expense. Such rejected material shall be deemed to be the property of the Seller. Final inspection and acceptance shall be conclusive except if the following occurs defective workmanship or material rejected within one (1) year after receipt of the goods but the Buyer, and (2) latent defects, fraud, or such gross errors as amount to fraud.

**PACKAGING:** No charges will be allowed for boxing, crating, or carting unless previously agreed upon in writing. The Buyer's weight or count shall be final and conclusive on shipments not accompanied by or not in agreement with a packing list. The Seller is cautioned to package finished goods in such a manner as to preclude damage in transit regardless of means of transportation. Metal parts should not come into contact with each other; threaded parts should be protected; ferrous metals not otherwise treated to drawing specifications should be coated with a coat of light oil, cautionary labels should be utilized to the fullest possible extent whenever appropriate. Each packing slip must indicate blueprint or drawing number and revision letter.

**GENERAL SHIPPING INSTRUCTIONS:** For shipments made FOB shipping point (a) All shipments moving in one day to the same location via the same carrier should be consolidated on one bill of lading. (b) Unless otherwise specifically instructed by the Buyer all ground and air transports are to be routed through our Logistics partner, Straight Line Transportation, Inc. (c) Any losses resulting from deviation from Buyer's routing instructions will be credited against Seller's invoice. (d) Seller shall receive and retain a mailing receipt for uninsured parcel posts.

**ASSIGNMENT:** Neither this Order nor any interest under it shall be assigned by Seller without the prior written consent of Buyer, except the claims for monies due or to become due under this Order may be assigned by Seller without such consent, and subject to the provisions of this paragraph. Buyer shall promptly be furnished with two signed copies of any such assignment. Payment to an assignee of any such claim shall be subject to set off or recoupment for any present or future claim or claims which Buyer may have against Seller, except to the extent that any such claims may be expressly waived in writing by Buyer. Buyer reserves the right to make direct settlements and/or adjustments in price(s) with Seller notwithstanding any assignment of claims for monies due or to become due hereunder and without notice to the assignee.

**NONWAIVER:** No waiver of any provision or failure to perform any provision of this order shall be effective unless consented to by Buyer in writing nor shall any such waiver constitute a waiver of any other provision.

**BUYER'S PROPERTY:** All material, including tools, furnished or specifically paid for by Buyer shall be the property of Buyer, shall be subject to removal at any time without additional cost to Buyer, shall be used only in filling orders from Buyer, shall be kept separate from other materials or tools, and shall be clearly identified as the property of Buyer. Seller assumes all liability for loss or damage, with the exception of normal wear or tear, and agrees to supply detailed statements of inventory upon request of Buyer.

**Further, it is specifically understood that the Sellers prices include an allowance for the salvage value of process scrap (chips, borings, ends, etc.) generated from material furnished by the Buyer. Buyer and Seller will mutually determine fair scrap percentage value.** The salvage value of any unreturned spoiled material shall be shown as a deduction on Seller's invoice(s). All Buyer furnished material not consumed in carrying out this Order shall be clearly identified and returned to Buyer as part of the final shipment and if not satisfactorily accounted for shall be paid for by Seller at either (1) the Buyer's cost plus handling charges or (2) replacement value at the option of the Buyer. Scrap allowance in Buyer furnished material does not constitute authorization to supply items in excess of the quantities specified in this Order. The following statement is required on Seller's final invoice under any order where material is supplied by Buyer *"All Buyer furnished material not consumed in the performance of work under this Order was returned to Buyer as part of the final shipment. The salvage value of all process scrap and/or Buyer furnished material, if any, is itemized as a separate credit on this invoice"*.

Buyer shall at all times have title to all drawings and specifications furnished by Buyer to Seller and intended for use in connection with this Purchase Order. Seller shall use such drawings and specifications only in connection with this Order, and shall not disclose such drawings and specifications to any person, firm or corporation other than Buyer's or Seller's employees, subcontractors or Government inspectors. The Seller shall, upon Buyer's request or upon completion of the Order, promptly return all drawings and specifications to Buyer.

**PATENTS:** The Seller agrees to defend, at its own expense, Buyer and distributors and dealers in, and users of the products of Buyer, and to hold them harmless, with respect to any and all claims that the products or materials furnished by the Seller under this Order infringe any United States and/or foreign Patent, and with respect to any and all suits, controversies, demands, and liabilities arising out of any such claim, provided that the foregoing shall not apply to any infringement resulting from Seller's use of a patented invention required to comply with written instructions of Buyer (s) if such patented invention is not normally utilized by the Seller.

**DISPUTES:** A) This order and the performance of the parties hereunder shall be controlled and governed by the law of federal government contracts and, where federal contract law is inapplicable by the law of the state of Pennsylvania. Pending final resolution of any dispute under this Order, Seller shall proceed diligently with performance of this Order. B) In the event that: (1) Seller's claim, or any portion thereof against Buyer is the proper subject for a claim by Buyer against a higher-tiered contractor, including the U.S. Government under the terms of the Buyer's Contract with a higher-tiered contractor ("Buyer's Contract") or (2) Buyer's claim against Seller, or any portions thereof, is based upon a corresponding claim against Buyer by a higher-tiered contractor, including the U.S. Government, under Buyer's Contract, then the dispute shall be litigated only pursuant to the Disputes clause of Buyer's Contract.

Seller will cooperate fully with Buyer in drafting and documenting any claim to be presented to the higher-tiered contractor. Seller agrees to certify that its claim or defense are accurate, current and complete, and the amount of the claim accurately reflects the amount for which Seller believes he is entitled. If a higher-tiered contractor denies such a claim and Buyer agrees to appeal such a decision on behalf of Seller, Seller agrees to indemnify and hold harmless Buyer for the cost of said appeal initiated by Buyer at Seller's request. Seller may participate in any such appeal at its own expense. Buyer may require the Seller to prosecute the appeal in Buyer's name and at Seller's expense. Buyer and Seller will assist and cooperate in the prosecution of appeals. The outcome of the appeal shall be final and binding on the parties. Buyer agrees that it will take no action to settle or prejudice Seller's claim without Seller's consent. Seller's right to interest is limited to its apportioned share of interest recovered pursuant to the appeal. C) For all other disputes, the parties agree that only courts located in

Pennsylvania have jurisdiction to decide any dispute arising under or relating to this Order.

**PRODUCT IMPOUNDMENT AND FINANCIAL RESPONSIBILITY:** If counterfeit parts are furnished under this purchase Agreement, such items shall be impounded. The seller shall promptly replace such items with items acceptable to Buyer and Seller shall be liable for all costs relating to impoundment, removal, and replacement. Buyer may turn such items over to US Governmental authorities (Office of Inspector General, Defense Criminal Investigative Service, Federal Bureau of investigation, etc.) for investigation and reserves the right to withhold payment for the items pending the results of the investigation.

**BANKRUPTCY:** In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Seller, including any proceedings, under the Chandler Act, or in the event of the appointment with or without Seller's consent of an assignee for the benefit of creditors or of a receiver, then Buyer may cancel this Order for default and hold Seller accountable for any additional costs or damages incurred.

**SUPPLEMENTARY INFORMATION:** Any specifications, drawings, notes instructions, engineering notices, or technical data referred to in this Order shall be deemed to be incorporated herein by reference as if fully set forth. In case of any discrepancies or questions, refer to Buyer's Purchasing Department for decision or instructions or for interpretation.

**CONFIDENTIALITY:** The Terms and Conditions of this Purchase Order, including but not limited to pricing, quantities, products, materials, services, frequency of orders or delivering and shall be considered Buyer's confidential information and shall not be disclosed without prior written approval from Buyer.

**PUBLICITY:** Unless specifically authorized in writing by Buyer Seller may not use Buyer's name, labels, logo, marks, part numbers, drawings or any other ESCO related materials for any purpose other than the intention of this order.

**INDEMNIFICATION:** To the extent that Seller's agents, employees or subcontractors enter upon premises occupied by or under control of Buyer, or any of its customers or suppliers, in the course of the performance of this Order. Seller shall take all reasonable and necessary precautions to prevent occurrence of any injury to any person, or any damage to any property arising out of any acts or omissions of such agents, employees or subcontractors, and except to the extent that any such injury or damage is due solely and directly to Buyer's negligence, shall indemnify Buyer against any loss, claims, damages, liability, expense (including reasonable attorney fees) and cause of action whatsoever, arising out of any act or omission of the Seller, its agents, employees or subcontractors, and Seller shall maintain Public Liability. Property Damage and Employee's Liability and Compensation insurance as will protect Buyer from any of said risks and from any claims under any applicable (Workmen's) Worker's Compensation and Occupational Disease acts.

**CLAUSES INCORPORATED BY REFERENCE:** The following clauses from the Federal Acquisition Regulation 48 C.F.R. § 1 et seq. are incorporated by reference into this Order with the same effect as if printed in full. The version of the clauses in effect on the date of this Order shall be used. For the following clauses change "Contractor" to "Seller," "subcontractor" to "Seller's subcontractor," and "Contract" to "Order.": Competition in Subcontracting (52.244-5); Suspension of Work (52.212-12); Termination for Convenience of the Government (Fixed-Price) (52.249-2); Default Fixed-Price Supply (52.249-8), but add at the end of (c), "Seller shall notify Buyer within 10 days of any excuse for nonperformance or default"; Gratuities (52.203-3); Covenant Against Contingent Fees (52.203-5); Restrictions on Subcontractor Sales to Government (52.203-6); Utilization of Small Business Concerns and Small Disadvantaged Business Concern (52.219-8); Small and Disadvantaged Business Subcontracting Plan (52.219-9); Utilization of Women-Owned Small Business (52.219-13); Utilization of Labor Surplus Area Concerns (52.220-3); Labor Surplus Area Subcontracting Program (52.220-4); Subcontracting Cost or Pricing Data Submission (52.215-24); Buy American Act (52.225-3); Price Reduction for Defection Cost or Pricing Data (52.215-22)(but add, "if Buyer is subject to any liability or expense, including Government withholding of payments, as the result of Seller's submission and certification of alleged or actual defective cost or pricing data as set forth in this clause, then Seller agrees to indemnify and hold Buyer harmless to the full extent of any damage or expense, including lost profit, attorney's fees ad court costs, resulting from such action).