

## **PURCHASE ORDER Terms and Conditions**

### **Offer to purchase**

ACCEPTANCE AND COMPLETE AGREEMENT. A purchase order is an offer by Miltec Corporation ("Buyer") for the purchase of the goods or services specified on the face of purchase order from the party to whom the purchase order is addressed ("Seller"). This order is a Buyer's offer to Seller and is not an acceptance by Buyer of any offer to sell by Seller or of any terms and conditions contained in any such offer. Acceptance of this offer by the Seller should be made by (a) executing and returning the acknowledgement copy, or (b) delivering any of the goods ordered herein or (c) rendering any of the services ordered herein. Any additional or different terms proposed by Seller are objected to and rejected unless expressly assented to in writing by Buyer. This order is a complete and exclusive statement of the terms and conditions of the agreement between Seller and Buyer. Buyer may revoke this purchase order ("Order") at any time prior to buyer's receipt of acceptance by Seller.

### **Changes by Buyer**

Buyer shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery or performance and method of transportation. If any such changes cause an increase or decrease in the cost, or the time required for the performance, an equitable adjustment shall be made, and the Order shall be modified in writing accordingly. Seller agrees to accept any such changes subject to this paragraph.

Any claim by Seller for adjustment hereunder must be asserted within 5 days from Seller's receipt of the change notice, but such period may be extended upon Buyer's written approval. However, nothing in this clause will excuse Seller from proceeding with this Order as changed or modified.

### **Changes by Seller**

The seller shall notify buyer 365 days in advance of obsolescence or discontinuation of any materials, processes or products. Changes by Seller to the goods, manufacturing processes, location of manufacturing facility, sub-suppliers and raw materials or construction thereof, will not be made without prior written approval from Buyer.

### **Changes and Discrepancies**

Any discrepancies, omissions or lack of clarity in drawings, specifications, or purchase orders, must be referred to the Buyer for written interpretation before this order is processed. Buyer shall have the right at any time before completion of the order, to make changes in quantities, in drawings and specifications, in delivery schedules, and in methods of shipment and packaging. If such changes cause an increase or decrease in price or in the time required for performance, Seller shall promptly notify Buyer thereof in writing and equitable adjustment shall be made. Changes shall not be binding upon Buyer unless evidenced in writing by a purchase order change notice.

### **Cancellation/Termination**

Buyer shall have the right to terminate this Order or any part hereof for cause in the event of any default by the Seller or if the Seller fails to comply with any of the terms and conditions of this Order. Late deliveries, deliveries of Goods or Services which are defective, or which do not conform to this Order, or if Seller becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors. If Buyer terminates this Order pursuant hereto, Seller's sole and exclusive remedy is payment for the goods or services

received and accepted by Buyer prior to termination. Failure to provide Buyer, upon request, of reasonable assurances of future performance shall be considered defaults, allowing Buyer to terminate this Order for cause.

Buyer shall have no liability to Seller, and Seller shall be liable to Buyer for any and all damages sustained by reason of the default which gave rise to the termination for cause.

Buyer reserves the right to terminate this Order or any part hereof, at any time, without cause. Upon receipt of any notice of termination, Seller shall immediately stop all work hereunder and cause all its suppliers or subcontractors to cease work. In the event of any termination without cause, Seller shall be entitled to the percentage of the order price reflecting the percentage of the work performed prior to the notice of termination, plus actual additional direct costs resulting from termination. In no event, shall Seller be entitled to payment for any work done after receipt of notice of termination.

### **Packaging**

Goods must be packed for shipment according to Buyer's instructions or, if none, the goods shall be packed, rated and braced to prevent damage or deterioration in accordance with Uniform Freight Classification Rules and Regulations and Carrier Tariffs. No charges will be paid by Buyer of preparation, packing, crating or cartage unless separately stated in the order. All shipments to be forwarded on one day via one route shall be consolidated and shipped to protect the lowest transportation charge. Each container shall be marked with order number and Buyer's warehouse location. Container and order numbers shall be indicated on Bill of Lading. Packing list or sheets, showing order number shall be attached to No. 1 container of each shipment.

### **Shipping**

Goods sold F.O.B. place of destination, shall be forwarded prepaid, unless otherwise specified on face of order. Quantity of goods delivered shall not exceed quantity ordered by Buyer unless otherwise noted on the face of the Purchase Order. Wire and cable orders shall not exceed 10% over or under the quantity stated on face of purchase order. Seller shall provide Buyer all shipping documents, including the commercial invoice, packing list, air waybill/bill of lading and any other documents necessary to release the goods to Buyer promptly after Seller delivers the goods to the transportation carrier. Unless otherwise stated on face of purchase order, Title passes to Buyer upon delivery of the goods to the Delivery Location. Seller bears all risk of loss or damage to the goods until delivery of the goods to the Delivery Location.

### **Delivery Date**

Seller shall deliver the goods in the ordered quantities or perform the services, each on the date(s) specified in this agreement. Buyer may order expedited routing in place of scheduled routing, if necessary to meet schedule or recover time lost by any delay, in which event any excess transportation costs shall be paid by Seller. Buyer may postpone delivery of any Products covered hereby. If Seller fails to deliver the goods or perform the services in full on the Delivery Date, Buyer may terminate this Order immediately by written notice to Seller and Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses attributable to Seller's failure to deliver the goods or perform the services on the Delivery Date. Over shipments may be returned by Buyer at Seller's expense. Buyer may return any goods delivered seven days prior to the Delivery Date at Seller's expense and Seller shall redeliver such goods on the Delivery Date.

### **Price and Payment**

The price of the goods or services shall not be higher than that appearing on the face of this agreement or if no price appears, then the price shall not be higher than the last price quoted by Seller. Seller warrants that the price for the goods or services is the lowest price charged by Seller to any of its customers for similar

volumes of similar goods or services. If Seller charges any other customer a lower price, Seller must apply that price to all goods or services under this agreement. If Seller fails to meet the lower price, Buyer, at its option, may terminate this Order for default. Unless otherwise specified in this Order, the price includes all packaging, transportation costs to the Delivery Location, insurance, customs duties and fees and applicable taxes, including, but not limited to, all value-added taxes, sales, use or excise taxes. No increase in the price is effective without Buyer's prior written consent.

The Supplier will notify, by written notice to buyer, 90 days prior to the effective date of any proposed price increases, or changes which will affect lead-time, or quantity discounts from quoted prices.

Unless otherwise specified on this agreement, no invoice shall be issued prior to shipment of the goods and no payment shall be made prior to receipt of both the goods and a correct invoice. Seller shall issue an invoice to Buyer on or after the delivery and only in accordance with these terms. A separate invoice shall be issued for each shipment. Except as otherwise set forth on the face of the Order, Buyer shall pay all properly invoiced amounts due to Seller NET 60 days after Buyer's receipt of such invoice, except for any amounts disputed by Buyer in good faith. Buyer shall have the right to delay payment to Seller, without loss of discount, if any and without breach of any other payment term herein, for the same number of days as delivery by Seller fails to conform to the terms herein; this clause shall not constitute any waiver of Buyer's rights or remedies against the Seller for late delivery. Applicable discount periods shall be computed from the date of receipt of the goods and a correct invoice to the date Buyer's check is mailed. Unless freight and other charges are itemized, discount shall be taken on the full amount of invoice. In the event of a payment dispute, Buyer shall deliver a written notice to Seller reasonably describing each disputed item. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under this agreement notwithstanding any such dispute.

#### **Failure or delay with cause**

Neither Buyer nor Seller shall be held responsible for the failure or delay in delivery or acceptance of products or services where such failure or delay is attributable to any act of God or of the public enemy, war, compliance with laws, governmental acts or regulations, in any case, not in effect as of the date of this agreement, including fire, flood, quarantine, embargo, epidemic, unusually severe weather or other causes similar to the foregoing beyond the reasonable control of the party so affected. The party seeking to avail itself of any of the foregoing excuses must promptly notify the other party of the reasons for the failure or delay in delivery or acceptance and shall exert its best efforts to avoid further delay.

#### **Miltec Property/Proprietary rights, information and confidentiality**

Any tools, equipment, parts and other materials supplied by Buyer to Seller shall remain the sole property of buyer. It is understood and agreed that Seller assumes full responsibility for such property while it is in Seller's possession. Seller further agrees that said property of Buyer shall be insured by fire and extended coverage policy of a reputable insurance company, and shall, upon request, submit proof of such insurance.

All information and intellectual property furnished to Seller by Buyer, including but not limited to this agreement and its contents, drawings, specifications, and/or software and all information and intellectual property derived therefrom, regardless of the form or media in or by which it is furnished (herein collectively "Information"), constitutes the confidential and proprietary information of Buyer. Seller agrees, for itself, its legal successors and its employees, not to disclose or transfer any Information to any third party, or to any employee not directly employed in the performance of the work under this agreement. Seller agrees not to use any information except in connection with its performance of this agreement.

Seller hereby agrees that all information, data, reports, studies, charts, drawings, plans, diagrams, presentations and any other tangible or intangible information, work product to be delivered, and all inventions, discoveries, specifications, designs, methods, business processes or models, devices, writings, compilations of information, and/or materials developed or produced under this agreement that are protectable as intellectual property whether under the laws of patent, copyright, trade secret, mask works, and/or the common law or other forms of intellectual property protected by the law (collectively the "Work Product"), shall be the sole and exclusive property of buyer and shall be deemed, where applicable, "Works of Hire" of which Buyer shall be deemed the author. In furtherance thereof, Seller hereby irrevocably grants, assigns and transfers to Buyer all rights, title and interest of any kind, in and to the Work Product produced hereunder. Seller shall be entitled to make absolutely no use of the Work Product, except as may be expressly permitted in this agreement or otherwise agreed to by the parties in writing. The foregoing assignments shall include, among other things, existing or prospective intellectual property and proprietary rights in all foreign countries. In the event that any Work Product is based upon one or more pre-existing intellectual property rights (hereinafter referred to as "Pre-existing Work"), except as otherwise agreed in writing, Seller hereby grants to Buyer, its successors and assigns an irrevocable, non-exclusive, worldwide, assignable, transferrable, royalty free right and license to use, make, have made, import, have imported, sell, offer for sale, display, distribute internally and externally and to otherwise commercially exploit the Pre-existing Work in connection with such Work Product. Seller agrees to execute upon Buyer's request a signed agreement or form assigning rights to Buyer for any Work Product. Seller shall execute, verify and deliver such document or form and perform such other acts (including appearances as a witness) as buyer may reasonably request for use in applying for, obtaining, perfecting, evidencing, sustaining and enforcing all intellectual property and proprietary rights in the Work Product and the assignment thereof. Except as otherwise agreed in writing, nothing in this agreement shall affect either Party's ownership rights of any intellectual property which is pre-existing at the date of this agreement or subsequently brought into existence other than as a result of the performance of this agreement.

### **Inspection**

All products and services shall be subject to inspection and approval by Buyer after delivery. Buyer reserves the right to reject any products or services that it deems non-conforming, defective, unsafe, unfit or, unless otherwise stated, in excess of quantities stated on the Purchase Order. Buyer reserves the right to require replacement of rejected products or services as well as payment of damages sustained by Buyer as a result of failure of Products to conform to the provisions and specifications set forth in this Agreement. Seller shall, at Seller's expense, promptly repair or replace the defective goods or services, or issue a full refund (including shipping and any other expenses incurred by Buyer.) If Seller does not replace rejected goods or services within a reasonable time, Buyer may purchase substitute goods or services elsewhere or correct product deficiencies at suppliers' expense. Goods rejected, and Goods supplied in excess of quantities called for herein may be returned to Seller at its expense. Nothing contained in this Order shall relieve in any way the Seller from the obligation of testing, inspection and quality control.

### **Warranties**

Seller warrants to Buyer that all goods or services will conform to applicable specifications, drawings, designs, samples and all applicable quality requirements set forth by Buyer and will be merchantable; free from any defects in workmanship, material and design; fit for their intended purpose and operate as intended; merchantable; and free and clear of all liens, security interests or other encumbrances. Seller warrants that any Goods will be adequately contained, packaged, marked, and labeled. Goods and services provided hereunder will not infringe or misappropriate any third party's patent or other intellectual property rights.

These warranties survive any delivery, inspection, acceptance or payment of or for the goods or services by Buyer.

These warranties are cumulative and in addition to any other warranty provided by law or equity and shall survive acceptance of and payment for the goods ordered or services provided hereunder. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the goods or services with the foregoing warranties.

If Buyer gives Seller notice of noncompliance, Seller shall, at its own expense, promptly replace or repair the defective or nonconforming goods or services and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods or services to Seller and the delivery of repaired or replacement goods or services to Buyer. If equipment installation or operational difficulties arise due to defect in the Seller's design or the materials or workmanship of the equipment, Seller shall provide the services of a qualified Engineer in service of such equipment or services provided at no cost to Buyer.

Seller understands that Goods and Services subject to this Order may be used by Buyer in its products and agrees that every warranty provided by Seller with respect to any such Goods or Services will remain in effect until not less than two years after such Goods or Services is received or for one year following goods or services placed into service.

Seller warrants that Services provided hereunder shall be performed by Seller in a professional manner by qualified personnel trained and skilled in the performance of the specific services involved. Further, if the Goods or Services include software, Seller warrants that (a) software provided under this Order ("Software") conforms to the documentation accompanying the Software, (b) the Software does not contain any malicious code such as viruses, trap doors, time bombs and other intentionally destructive or disabling code, (c) any time the Software is delivered to Buyer, whether delivered via electronic media or the internet, no portion of the Software or the media upon which it is stored or delivered has any type of software routines or other element which will do or permit any of the following: unauthorized access to or intrusion upon, disabling of, erasure of or interference with any hardware, software, data or peripheral equipment, any contamination which might impact Buyer's network or data, and (d) all Software maintenance and support services will be provided in a timely, workmanlike manner, in conformity with professional industry practices

### **Setoff**

All claims for money due or to become due from Buyer shall be subject to deduction or setoff by Buyer by reason of any counterclaim arising out of this or any other transaction with Seller.

### **No Assignment**

Seller, by contract, merger, operation of law, or otherwise, shall not assign, transfer, delegate or subcontract any of its rights or obligations under this Order without Buyer's prior written consent. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve Seller of any of its obligations hereunder. Buyer may at any time assign, transfer or subcontract any or all of its rights or obligations under this Order without Seller's prior written consent.

If Seller uses subcontractors for any part of the manufacture of the goods or performance of the services hereunder, Seller shall be responsible and liable for all acts or omissions of its subcontractors. Seller must obtain prior written authorization from Buyer to use subcontractors for any activity relating to the goods or services provided hereunder occurring on Buyer's premises. These Terms shall be applicable to all subcontractors and Seller is responsible for enforcement. Seller will maintain a contractor management program to ensure that subcontractors comply with the safety requirements of these Terms and the Order. The Seller is responsible to flow down to its sub-suppliers all applicable Buyer requirements, including regulatory requirements where required.

## **Relationship of parties**

Nothing in this Agreement is intended to, or does, create any joint venture, partnership, agency or similar relationship between Buyer and Seller, other than a Buyer and Seller relationship. Seller shall not be, and is not authorized to represent itself as, an agent or representative of Buyer for any purposes. In performance of this Agreement, Seller shall not use Purchaser's name, images or designs in advertising or publicity of any kind without Purchaser's prior written consent.

## **Indemnity**

Seller specifically agrees to indemnify, defend, and save Buyer harmless from and against all demands, claims, suits, and expenses for personal injury, property damage, or otherwise arising out of or from an alleged defect in the goods and services. Seller shall, at its expense, defend, indemnify and hold harmless Indemnitees against any and all Losses arising out of or in connection with any claim that such Indemnitee's use or possession of the goods or receipt of the services infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. Seller shall not enter into any settlement without Indemnitee's prior written consent.

## **Insurance**

In the event that Seller's work under this order requires or contemplates the performance of services by Seller's employees or persons under contract to Seller on Buyer's property or the property of Buyer's customers, Seller agrees that all such work shall be done as an independent contractor and that the persons doing such work shall not be considered employees of Buyer. Seller shall be solely and independently responsible for the direction, supervision and control of its employees and for any other persons or firms Seller engages to assist in performance. Seller shall observe the highest safety standards in performing any such work, and shall maintain all necessary insurance coverage adequate to insure against all reasonably foreseeable injury or damage to the persons and property, including but not limited to Workers' Compensation Insurance, primary comprehensive general liability insurance to statutory limits, and in the event Seller employs a subcontractor, protective liability insurance.

## **Compliance with Law**

Seller warrants that it is in compliance with and shall comply with all applicable local, state, and federal, codes, laws, regulations and ordinances, including but not limited to, to laws and regulations related to health, safety, the environment, working conditions, and wages. Seller represents and warrants that it shall furnish only goods or materials that comply with the Occupational Safety and Health Act, the Fair Labor Standards Act, and all other applicable federal, state, municipal, or local laws, rules, regulations, orders, decisions or permits of any relevant jurisdiction relating to employment (including, to the extent applicable, Executive Orders 11246 and 41 CFR Chapter 60), The Equal Employment Opportunity Clause, Section 202, Paragraph 1 through 7 of Executive Order 11246, as amended, is incorporated herein by reference. Applicable to all nonexempt purchase orders exceeding \$2500: The Affirmative Action Clause Regarding handicapped workers, 41 CFR 60-471.4, and the Disable and Vietnam Era Veterans Affirmative Action Clause of 41 CFR 60-250.4, are incorporated herein by reference. For failure to comply, Buyer reserves the right to cancel, in whole or in part, the commitment for materials or services described in this purchased order.

Seller warrants it has, and shall maintain in effect, all licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this order. Seller shall comply with all applicable laws concerning the materials content and the manufacture and distribution of Goods and Services and shall ensure that its activities in performance of this Order shall not cause Buyer to be in violation of any laws.

By acceptance of this purchase order, Seller certifies that it does not maintain or provide for employees and facilities that are segregated on the basis of race, color, religion or national origin in violation of the Equal Opportunity Provisions of Executive Order 11246, as amended.

Seller must comply with the Fair Labor Standards Act of 1938, as amended, and orders and regulations promulgated thereunder; and Seller agrees that the furnishing of goods and services, and invoicing, shall be a certification of such compliance with respect to goods and services covered by this order.

### **Waiver**

Buyer's failure to insist in any one or more instances upon the full performance by Seller of any term, covenant, obligation, or condition imposed on it by this Agreement shall not be construed as a waiver of any right available to Buyer hereunder with respect to such nonperformance or as Buyer's condoning further nonperformance.

### **Governing Law/ Submission to Jurisdiction**

All matters arising out of or relating to this Order shall be governed by and construed in accordance with the laws of the State of Maryland without giving effect to any choice or conflict of law rule that would cause the application of the laws of any other jurisdiction. The United Nations Convention on the International Sale of Goods shall not apply to any matter arising out of or relating to this Order.

Any legal suit, action or proceeding arising out of or relating to this Order shall be instituted in the federal courts of the United States of America or the courts of the State of Maryland, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

### **Entire Agreement**

This Order, including the provisions on its face, and these Standard Terms and Conditions of Purchase contain the entire agreement between the parties concerning the purchase and sale of the Goods and Services. Except to the extent Buyer has relied upon statements and writings of Seller and Seller's agents in connection with this Order, there are no oral understandings, representations, or agreements relative to this Order which are not fully expressed herein.

### **Severability / Survival**

If any term or provision of this Order is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Order or invalidate or render unenforceable such term or provision in any other jurisdiction.

Provisions of this Order which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Order including, but not limited to, the following provisions: Set-off, Warranties, Indemnification, Intellectual Property, Indemnification, Insurance, Compliance with Laws, Confidentiality, Governing Law, Submission to Jurisdiction and Survival.