

# General Terms and Conditions

Modifications or Additions to Terms and Conditions: No modification of, addition to, or waiver of any of the terms and conditions stated herein shall be binding on Seller except by written consent of Seller.

Design: Seller reserves the right to make design improvements without notice.

Compliance with regulations: Buyer shall comply with the equal employment opportunity clause in Section 202 of Executive Order 11246 and all applicable rules, regulations and relevant orders pertaining to Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, and Section 4212 of the Vietnam Era Readjustment Assistance Act of 1974, as amended.

Seller certifies that Goods covered by this order were produced in compliance with all applicable requirements of the Fair Labor Standards Act, as amended, and with regulations and orders of the United States Department of Labor.

Export: Seller reserves the right to withdraw a quotation or cancel an order at any time without the incurring of penalties or damages if, at Seller's sole discretion, the export or re-export of any item on such quotation or order would violate any US export or re-export laws or regulations.

Changes: If Buyer directs changes, which affect the drawings or specifications; quantities ordered; delivery schedule; method of shipment or packing; or place of delivery, such changes must be in writing and signed by both parties.

Seller reserves the right to an equitable adjustment in the pricing or delivery of the order, which will be agreed to by both parties before further work is performed on the order. Change order requests will be priced according to the scope of changes and the status of the current order. Seller may impose an escalation fee on projects lasting longer than one year.

Buyer must return signed approval drawings within two weeks of their date of issue. If this time frame is not met, the delivery date will be pushed back, and no damages will apply.

Payment terms: Net 30 days from invoice date unless otherwise approved in writing by Seller. If at any time the financial condition of the Buyer does not warrant shipment of product on the above terms (in the sole judgment of Seller), Seller may require full or partial payment prior to shipment.

Prices do not include any applicable Federal, State, or Local Sales tax; Customs, Duty, or Excise tax; or any other surcharges unless specifically indicated. Seller is responsible for all taxes related to employment, and for sales/use tax remitted by Buyer. All other taxes are the responsibility of Buyer.

The following items are critical and Seller may elect to tie payments to any or all of these milestones:

1. Buyer receipt of approval drawings.
2. Completion of manufacturing.
3. Delivery of major components.
4. Buyer receipt of all required documentation.

Unless otherwise stated, all stipulated amounts shall be in US dollars.

Delivery and Freight: All goods are sold FOB point of shipment. Transportation to destination is Buyer's responsibility and Buyer alone shall bear the cost of freight, special elections/options, and insurance. Seller's responsibility for the Goods shall terminate when Seller delivers such Goods to the shipper/carrier, and all risk of loss or damage shall immediately pass to Buyer. Receiving, unloading and storing Goods will be the responsibility of the Buyer.

Buyer must make any and all claims for corrections or deductions within ten days of the delivery of the Goods.

Seller has no control over the length of time shipments may be held at customs, etc. For this reason, Seller commits only to a "shipment date", not a "delivery date".

Buyer shall not hold Seller liable for claims resulting from delay in shipment except in cases where these terms are accepted in writing by Seller. Acceptance of delivery of goods by Buyer shall constitute a waiver of all claims for delay.

Title: Seller warrants good title to all the Goods furnished by it hereunder. Title to Goods shall pass to Buyer at the date such Goods are delivered to Buyer.

Warranty: Seller warrants its product against defects in material and workmanship, when used on those services/applications approved by Seller, for a period of 60 months after shipment. Seller's liability under this warranty shall be limited to repair or replacement at Seller's option of such defective products, FCA factory, upon proof of defect satisfactory to Seller.

# General Terms and Conditions (cont.)

The Seller is not responsible for damages to Seller's or other equipment or products because of improper installation or misapplication of the Goods by Buyer. Installation or startup of Seller's equipment or Goods must be performed under adherence to Seller's instruction manuals, wiring diagrams, etc., or performed under the direct supervision of Seller's field service personnel or Seller's authorized agent in order to be covered by Seller's warranty.

**Intellectual property:** Seller warrants that Buyer's use or sale of the Goods will not infringe upon any valid patents, copyrights, trademarks, or other proprietary information.

**Return:** No goods may be returned without Seller's permission and an RMA number. Seller assumes no responsibility for return shipments made without permission. In issuing credit for such shipments, Seller reserves the right to deduct a restocking charge dependent on Seller's ability to recondition and resell the returned equipment.

**Cancellation:** Buyer may cancel upon written consent of Seller, but the Seller is entitled to reasonable cancellation charges including but not limited to labor, material and overhead expenses.

#### Termination Fee Schedule:

Order entered but not released for manufacturing	10%
Order in any stage of production	50%
Order complete and ready for shipment	100%

**Cancellation for Default:** In the event Buyer is declared bankrupt, makes a general assignment for the benefit of its creditors, or is in default of any material provision or requirement of the order, Seller may, by written notice to Buyer, cancel further performance by Seller under the purchase order. Any amounts due Seller for goods and services completed by Seller in compliance with the terms of the order shall be immediately due and payable to Seller.

**Indemnification:** Buyer and Seller shall indemnify, defend and hold each other harmless from claims, demands, and causes of action asserted by any person (including, without limitation, Buyer's and Seller's employees) for personal injury, death, or loss of or damage to property resulting from the negligence, gross negligence, or willful misconduct of either party. Where personal injury, death, or loss of or damage to property is the result of joint negligence, gross negligence, or willful misconduct of Buyer and Seller, the duty of indemnification of each party shall be in proportion to its allocable share of joint negligence, gross negligence or willful misconduct.

The term "negligence" shall include active and passive negligence. "Gross negligence" is defined as any act or failure to act (whether sole, joint or concurrent) which seriously and substantially deviates from a diligent course of action or which is in reckless disregard of or indifference to the harmful consequences. "Willful misconduct" is defined as an intentional disregard of good and prudent standards of performance.

**Force Majeure:** Neither party shall be liable to the other for failure to perform or for delay in performance due to any cause or event which, in an objective view, is unforeseeable, unavoidable, and is not able to be overcome (i.e. an event of Force Majeure). Force Majeure events shall include, but not be limited to, natural disasters; acts of government authority; war, hostilities, riots, acts of terrorism and civil commotions; embargoes or other import/export restrictions; shortage of or inability to obtain energy, equipment, transportation, products or services not resulting from actions or omissions of the party claiming Force Majeure.

In the event of a delay in performance due to any such cause, the date of delivery or time for completion shall be extended by a period of time reasonably necessary to overcome the effects of such delay. The party claiming a Force Majeure event shall give written notification to the other party within 48 hours after becoming aware of a cause entitling it to an extension of time.

**Inspection:** Seller requires two weeks notice for all inspections to be conducted at Buyer's site. All inspection expenses shall be borne by Buyer.

**Expediting/Reporting:** Monthly progress reports will be provided only with prior agreement by Seller.

**Confidential Information:** All drawings, specifications, and technical information provided by either Buyer or Seller shall be treated as confidential and shall not be disclosed to anyone other than those who require it as part of fulfillment of the order.

**Storage:** All materials ready for shipment and delayed due to Buyer shall be subject to monthly storage fees of 3.0% of the value of stored materials. If the shipment cannot be made after 12 months of storage, 100% of the value of the materials will be billed and payment will be due Net 30 days. Storage fees will continue to be assessed until 18 months from storage commencement. Unless otherwise negotiated, if shipment cannot be made after 18 months of storage, the entire order will be considered canceled.

**Arbitration of Disputes:** Any controversy or claim arising out of or relating to this contract or the breach thereof shall be settled by arbitration in accordance with the commercial arbitration rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.