



ERC, Incorporated Terms & Conditions
Revision 1, January 2018

SHIPPING AND BILLING INSTRUCTIONS:

1. **PACKING.** All items shall be packed in suitable containers for protection in shipment and storage and in accordance with any specifications of Purchaser.
2. **MARKING.** Supplier shall indicate plainly the number of this order on all packages shipped pursuant hereto and on all packing slips and bills of lading relating to this order.
3. **SHIPPING.** Unless otherwise provided on the face hereof, all items shall be delivered at Supplier's expense F.O.B. Purchaser's receiving document. If Purchaser agrees to pay shipping posts, Supplier shall nevertheless pay shipping costs to the extent that they exceed the costs of the mode of shipment specified on the face of this order, or, if no mode of shipment is specified, any such costs in excess of normal shipping costs, including additional costs necessitated by reason of any delay by Supplier in making deliveries hereunder.
4. **VALUE.** If Purchaser agrees that the delivery point shall be F.O.B. origin, Supplier shall make no declaration of value above \$100.00 on a bill of lading.
5. **INVOICE.** Supplier shall tender, to Purchaser's Accounts Payable Department on the date of shipment a separate invoice in duplicate for each shipment made pursuant to this order and shall indicate thereon the number of this order. Any discount period shall be calculated from the date an acceptable invoice is received or the date items are received by Purchaser; whichever is later.

TERMS AND CONDITIONS OF PURCHASE:

1. **ACCEPTANCE.** (a) The order incorporating these Terms and Conditions of Purchase becomes a binding contract when Supplier accepts it. Either an acknowledgment by Supplier or the commencement of performance by Supplier shall constitute acceptance. Acceptance may be only on the exact terms herein set forth. No condition stated by Supplier in accepting this order shall be binding on Purchaser if different from or in addition to the conditions set forth herein, unless agreed to in writing by Purchaser. (b) If this order follows an offer by Supplier setting forth Supplier's conditions of sale, Purchaser's acceptance of Supplier's offer is expressly conditioned on Supplier's assent to the additional or different conditions set forth herein. Prior to or in the absence of Supplier's assent to Purchaser's conditions, there shall be no agreement in effect between Supplier and Purchaser.
2. **SPECIFICATIONS.** Supplier shall comply with any specifications stated on the face of this order or incorporated herein, and with any applicable United States Government specifications. Upon request, Supplier shall furnish Purchaser with a certificate executed by an authorized representative of Supplier confirming Supplier's compliance with all applicable specifications.
3. **PRICES.** Unless otherwise specified, the prices set forth in this order include all applicable federal, state and local taxes and all shipping costs, duties and other charges.
4. **EXCUSABLE DELAYS.** Supplier shall not be charged with any liability for failure or delay in performance when such failure or delay is due to any cause beyond the control and without the fault or negligence of Supplier; provided that Supplier shall give Purchaser prompt notice in writing when it appears that such cause will delay performance under this order.
5. **WARRANTIES.** Supplier warrants that all items delivered and serviced hereunder shall be free from defects in workmanship, material and manufacture; shall comply with requirements of this order, including any drawings or specifications incorporated herein or samples furnished by Supplier; shall be non-surplus goods of new manufacture; and, if of Supplier's design, shall be free from defects in design.
6. **INSPECTION.** Purchaser and Purchaser's customer each reserve the right to inspect and/or test all work under this order at the Supplier's facility at all reasonable times including during manufacture. Supplier shall furnish without additional charge all reasonable facilities, assistance and applicable documentation for safe and convenient inspections or tests of Purchaser and Purchaser's customer.
7. **DEFECTIVE OR NONCONFORMING ITEMS.** (a) If any items are found to be defective or otherwise not in conformity with the requirements of this order, Purchaser, in addition to its other rights and remedies, may reject all or some of such items and require their correction or their replacement at Supplier's expense, including inspection, shipping and packing charges. Alternatively, Purchaser may at its option repair, replace all, or some of such nonconforming items at Supplier's expense. (b) All risk of loss or damage to the items to be delivered hereunder shall be upon Supplier until such items are delivered at the F.O.B. point specified in this order.
8. **TERMINATION FOR DEFAULT.** Purchaser may terminate this order in whole or in part for default, without further cost or liability to it, if Supplier fails to comply with any of the order's provisions.
9. **TERMINATION FOR CONVENIENCE.** (a) Purchaser may terminate this order in whole or in part whenever Purchaser determines for any reason that such termination is in its best interests. Termination hereunder shall be affected by delivery to Supplier of a notice of termination specifying the extent to which performance of work under this order is terminated and the date upon which such termination becomes effective. (b) Supplier shall stop work under this order and terminate all orders and subcontracts for materials, services or facilities in accordance with and as appropriate under the notice of termination. Supplier shall settle outstanding liabilities and claims only with the approval of Purchaser, except to the extent that such approval is waived by Purchaser.
10. **CHANGES.** (a) Purchaser may at any time by written order to Supplier and without notice to sureties, if any, make changes within the general scope of this order in any one or more of the following: (1) quantity of items or services ordered; (2) drawings, designs or



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specifications; (3) delivery or performance schedules; (4) shipping and billing instructions; and (5) place of delivery. (b) Supplier shall proceed promptly to make such changes in accordance with the terms of Purchaser's written change order.

11. COMPLIANCE WITH STATUTES AND REGULATIONS. Supplier warrants and certifies that in the performance of this order it will comply with all applicable statutes, rules, regulations and orders, now in effect or hereafter enacted of the United States and of any state or political subdivision of any state, including statutes, rules, regulations, and orders pertaining to labor, wages, hours, and other conditions of employment such as wage and price ceilings, if applicable, and the Fair Labor Standards Act, as amended.

12. PRIORITY. Any inconsistency in any documents relating to this order shall be resolved by giving precedence in the following order: (1) the terms incorporated by reference on the face of this order to include the links for the prime contract FAR and DFARS clauses and these Purchase Order terms and conditions (2) other documents, exhibits and attachments referenced or attached.

13. INSPECTION OF RECORDS AND PLANT. If the face of this order bears a Government prime contract number, Supplier agrees that its books, records and its plant or such parts of its plant as may be engaged in the performance of this order, shall at all reasonable times be subject to inspection and audit by any authorized representative of any Department of the United States Government.

14. CUMULATIVE RIGHTS AND REMEDIES. The rights and remedies herein provided to Purchaser shall be cumulative, as to one another and shall be in addition to any other rights and remedies provided in law or equity.

15. GRATUITIES. Seller warrants that neither it nor any of its employees, agents or representatives has offered or given any gratuities, gifts and/or kickbacks to Purchaser's employees, agents or representatives with a view toward securing this Purchase order or Agreement or securing favorable treatment with respect thereto. By accepting this Contract, Seller certifies and represents that it has not made or solicited and will not make or solicit kickbacks in violation of FAR 52.203-7 or the Anti-Kickback Act of 1986 (41 U.S.C. Sec. 51-58), incorporated herein by this specific reference if this Contract exceeds \$150,000, except that paragraph (c)(1) of FAR 52.203-7 shall not apply.

16. APPLICABLE LAW. This order shall be governed by and construed according to the laws of the State of Alabama, and the parties hereto hereby submit to the jurisdiction of the courts of the said state. If this order is issued pursuant to a Government prime contracts, the terms and conditions shall be governed by federal law, FAR and DFARS clauses. Except as may be expressly set forth in this Terms and Conditions document with the Government Contracting Officer's express consent, the Supplier shall not acquire any direct claim or direct course of action against the U.S. Government.