



ERC, Inc. Purchase Order Terms & Conditions
Revision 3, 08/13/2020

Prior to accepting this Purchase Order, ERC urges the Supplier to read and fully understand the Purchase Order Terms and Conditions below:

DEFINITIONS. As used herein, the following terms have the meanings so indicated: a) "Items" means supplies, products and/or services ordered by Purchaser from the Supplier pursuant to a Purchase Order. b) "Purchase Order" means a transmission by Purchaser to the Supplier, electronically through a computer network or otherwise, by mail of hard copy, or by such other means as may be agreed (each a "transmission"), containing a Purchase Order number, an item, identification or specification description, number or items requested, and/or such other information evidencing an offer to the Supplier by Purchaser relating to the purchase of goods and services. c) "Purchase Order Change" means a transmission revising the information contained in a Purchase Order. d) "Goods" and "Services", the terms "goods" as used herein means any and all supplies, products, chemicals, parts, machines, tooling, test equipment, computer software, components, assets and other tangible items or documentary information furnished or required to be furnished by the Supplier under this Purchase Order other than labor. The term "services" means any and all technical assistance, consultations, engineering, program management, and other effort furnished or required to be furnished by the Supplier under this Purchase Order other than labor furnished in connection with the production of goods.

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 Purchase Order on all packages shipped pursuant hereto and on all packing slips and bills of lading relating to this Purchase Order.
- 3. SHIPPING.** Unless otherwise provided on the face hereof, all items shall be delivered at Supplier's expense F.O.B. Destination. Title and risk of loss of all Goods shall pass to Purchaser upon final acceptance. If Purchaser agrees to pay shipping costs, 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 Purchase 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 Purchase Order and shall indicate thereon (i) the number of this Purchase Order; (ii) invoice number and date; (iii) payment due date; (iv) quantity invoiced, unit price and extended price for each line item on the invoice. 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) This Purchase Order incorporating these Terms and Conditions of Purchase becomes a binding contract when Supplier accepts it. Supplier's acceptance is expressly limited to the written terms of this Purchase Order. No additional or different terms shall be binding unless mutually agreed to in writing and as signed by both parties. Any of the following acts by the Supplier shall constitute acceptance: a) Signing, dating and returning a copy of this Purchase Order – this action is required if this Purchase Order is \$30,000 or greater; b) Commencing performance of any effort required to complete this Purchase Order; c) Informing Purchaser in writing (electronically or in hard copy) of the initiation of any effort required to complete this Purchase Order; or d) Shipping of any goods in performance of this Purchase Order. Acceptance may be only on the exact terms herein set forth. No condition stated by Supplier in accepting this Purchase 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. If this Purchase 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 Purchase 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. DRAWINGS.** Unless otherwise agreed to in writing, any drawings, plans, specifications, tools, and other goods supplied by Purchaser in connection with the production of the goods being purchased shall remain the property of Purchaser and shall be returned upon demand or completion of this Purchase Order. Supplier shall keep such property safe and in good condition, and shall not use it except in connection with sales to Purchaser.
- 4. PRICES.** Unless otherwise specified, the prices set forth in this Purchase Order include all applicable federal, state and local taxes and all shipping costs, duties and other charges.
- 5. FORCE MAJEURE.** Neither party shall be liable for failure or delay in performance under this Purchase Order due in whole or in part to an act of God, strike, lockout or other labor dispute, civil commotion, sabotage, fire, flood, explosion, act of any Government, unforeseen shortages or unavailability of fuel, power, transportation, raw goods, or supplies, inability to obtain or delay in obtaining Government approval, permits, licenses or allocations and any other causes which are not within such party's reasonable control, whether or not of the kind specifically enumerated above.
- 6. NON-COMPLYING PRODUCTS.** Purchaser shall have the right (but not the obligation) to review work progress and test all supplies, special tooling, goods and workmanship to the extent practicable at all times and places during the period of manufacture. In case any goods delivered or services rendered hereunder is defective in material or workmanship or otherwise not in conformity with the requirements of this Purchase Order, Purchaser shall have the right either to reject it or to require its correction by and/or at the expense of the Supplier promptly after notice.



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7. QUALITY and WARRANTY.

- a) the Supplier warrants that all goods and services shall:
 - (i) conform strictly to the design criteria, specifications (including general specification and quality requirements), descriptions, drawings, samples, and other requirements referred to in this Purchase Order or provided by the Supplier,
 - (ii) be free from defects in design, material, and workmanship, and
 - (iii) be free of all liens, encumbrances, and other claims against title.
- b) All warranties specified in paragraph (a) above shall:
 - (i) survive any inspection, delivery, acceptance, or payment by Purchaser, and
 - (ii) be in effect for the longer of the Supplier's normal warranty period or the Purchase Order's specified warranty period following the date of acceptance of the goods and services by Purchaser.

8. WARRANTY OF AUTHENTICITY. Supplier warrants that all products delivered under this Purchase Order are new and in their original packaging. No substitutions are to be supplied without Purchaser's prior written consent. Supplier certifies that the products are genuine products authorized by the manufacturer and entitled to full manufacturer warranty and service, including any related software.

9. RIGHT TO ACCESS. Purchaser and Purchaser's customer each reserve the right of access by the organization to the applicable areas of the Supplier's facilities to inspect and/or test all work under this Purchase 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.

10. DEFECTIVE OR NONCONFORMING ITEMS. (a) If any items are found to be defective or otherwise not in conformity with the requirements of this Purchase 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 Purchase Order.

11. TERMINATION FOR DEFAULT. (a) Purchaser may terminate this Purchase Order in whole or in part for default, without further cost or liability to it, to the extent Supplier fails to comply with any of the order's provisions. (b) In the event and to the extent of any cancellation under this clause, all obligations of Purchaser and all rights and licenses of Supplier under the Purchase Order shall thereupon be canceled, and all rights and licenses of Purchaser and all accrued obligations of Supplier under the Purchase Order shall survive, but only with respect to the goods and services covered by the cancellation notice. Supplier shall continue to perform those obligations under this Purchase Order to the extent not canceled. c) Purchaser may return, and Supplier shall have no claim against Purchaser for goods and services not accepted by Purchaser or for rejected goods and services. Supplier shall submit any claims for compensation under this clause within thirty (30) days after the effective date of Termination for Default. Supplier hereby waives, releases, and renounces any claim for compensation not made within this period. d) If, after issuance of a default notice under this clause, it is determined for any reason that the Supplier was not in default, or that the default was excusable under the provisions of this order, then there will be no cancellation and the Purchase Order may be terminated for convenience in accordance with the provisions of the clause entitled "Termination for Convenience," as of the date the cancellation would have taken effect under this clause.

12. TERMINATION FOR CONVENIENCE.

(a) Purchaser may terminate this Purchase Order in whole or in part, by providing notice of such termination to Supplier, specifying the extent and effective date of such termination. On the specified termination date the Supplier shall: (i) stop performing its obligations under this Purchase Order, or any specified part thereof, as appropriate; (ii) promptly take all commercially reasonable actions to limit amounts for which Purchaser is responsible under paragraph (b) of this clause; and (iii) promptly deliver to Purchaser all completed or partially completed goods to which the termination applies.

(b) In the event of any termination pursuant to this clause, Purchaser's total liability shall be payment to Supplier for: (i) the purchase price of completed goods and services and a pro rata portion, based upon the degree of completion for partially completed goods and services if such completed or partially completed goods and services have been delivered to Purchaser and Supplier has not previously been compensated therefore; and (ii) the Supplier's direct costs and associated indirect costs for labor and products, plus a reasonable profit for work performed specifically for Purchaser and not allocable to completed or partially completed goods or services to be delivered to Purchaser pursuant to paragraph (a) of this clause. Amounts determined by Purchaser to be reasonably paid by Supplier for any termination pursuant to this clause shall not exceed the purchase price of the goods and services to which such termination applies. Supplier shall have no claim against Purchaser for work not performed, goods and services not delivered, loss of anticipated profits, or consequential damages suffered by reason of any such termination. Supplier shall submit any claims for compensation under this clause within thirty (30) days after the effective date of termination. Supplier hereby waives, releases, and renounces any claim for compensation not made within this period.

13. CHANGES. (a) Purchaser may at any time by written Change Order to Supplier and without notice to sureties, if any, make changes within the general scope of this Purchase Order in any one or more of the following: (1) quantity of items or services ordered; (2) drawings, designs or 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.

14. COMPLIANCE WITH STATUTES AND REGULATIONS. Supplier warrants and certifies that in the performance of this Purchase 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.

15. ORDER OF PRECEDENCE. Any inconsistency in any documents relating to this Purchase Order shall be resolved by giving precedence in the following order: (1) the terms incorporated by reference on the face of this Purchase 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.



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16. INSPECTION OF RECORDS AND PLANT. If the face of this Purchase 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 Purchase Order, shall at all reasonable times be subject to inspection and audit by any authorized representative of any Department of the United States Government.

17. 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.

18. GRATUITIES. Supplier 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, Supplier 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.

19. APPLICABLE LAW. This Purchase 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 Purchase Order is issued pursuant to a Government prime contract, 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.