

TRAC-WORK, INC. TERMS AND CONDITIONS OF PURCHASE

THESE TERMS AND CONDITIONS, TOGETHER WITH THE PURCHASE ORDER, STATEMENT OF WORK AND ANY OTHER DOCUMENTS SPECIFICALLY ADOPTED BY REFERENCE IN ANY SUCH DOCUMENTS, CONSTITUTE THE ENTIRE AGREEMENT BETWEEN TRAC-WORK, INC. ("BUYER") AND SELLER. ALL TRANSACTIONS MUST FOLLOW BUYER'S TERMS AND CONDITIONS OF PURCHASE. IF THE SELLER INCLUDES ANY DIFFERENT OR ADDITIONAL TERMS IN THEIR PROPOSALS, DOCUMENTS, OR COMMUNICATIONS, THOSE TERMS ARE AUTOMATICALLY REJECTED AND WILL NOT APPLY. HOWEVER, SUCH A REJECTION DOES NOT CANCEL THE PURCHASE CONTRACT ITSELF. THE PURCHASE WILL STILL MOVE FORWARD, BUT ONLY UNDER THE BUYER'S ORIGINAL TERMS AND CONDITIONS.

- 1. WARRANTY.** Seller represents that with respect to all materials, supplies and equipment (herein collectively referred to as "materials") delivered and services furnished hereunder: (i) title shall be good, merchantable, rightful and the materials free of any security interest, lien or encumbrance; (ii) that materials will be new, free from defects in material and workmanship, be of quality, size, description and dimension required by Buyer, be fit for the purpose for which they are purchased and will meet the specifications, if any, and that Seller's services will be performed in a skillful and workmanlike manner; and (iii) the materials, the process by which they are made, the use for which they are designed by Seller and Buyer's use of the materials will not infringe any patent, trademark, copyright or other rights of any third parties ("Intellectual Property Rights"). This express warranty shall not be deemed waived by reason of either or both the receipt of the materials and payment therefore by Buyer. The foregoing is in addition to any and all other express or implied warranties applicable to the materials purchased hereunder.
- 2. COMPLIANCE WITH LAWS; STANDARDS AND TESTING.** Seller represents and warrants that all materials furnished hereunder, and Seller's manufacturing thereof, complies with all applicable laws, ordinances, rules and regulations ("Laws"). Seller shall treat materials prior to shipment to Buyer in accordance with testing standards requested by Buyer, and shall furnish Buyer certifications in support thereof.
- 3. INDEMNITY. SELLER WILL DEFEND, INDEMNIFY AND HOLD HARMLESS BUYER, ITS AFFILIATES, VENDORS, AND THEIR OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ANY AND ALL LOSS, LIABILITY AND EXPENSE BY REASON OF (I) ANY ACTUAL OR ALLEGED VIOLATION OF LAWS, (II) ANY ACTUAL OR ALLEGED INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, (III) INJURY, DEATH OR PROPERTY DAMAGE RESULTING, IN WHOLE OR IN PART, FROM ANY NEGLIGENT ACT OR OMISSION ON THE PART OF THE SELLER OR WHICH MAY RESULT FROM THE INSTALLATION, OPERATION OR USE OF THE MATERIALS FURNISHED HEREUNDER, (IV) A DEFECT IN THE MANUFACTURE OR DESIGN OF THE MATERIALS SUPPLIED HEREUNDER, OR (V) ANY BREACH OR ALLEGED BREACH BY SELLER OF ANY REPRESENTATION, WARRANTY, OR OTHER PROVISION OF THESE TERMS AND CONDITIONS OF PURCHASE. UPON NOTIFICATION, SELLER SHALL PROMPTLY ASSUME FULL RESPONSIBILITY FOR THE DEFENSE OF ANY SUIT OR PROCEEDING WHICH MAY BE BROUGHT AGAINST BUYER OR ANY OF ITS SUBSIDIARIES, AFFILIATED COMPANIES, AGENTS AND VENDORS IN CONNECTION WITH THE ABOVE, OF FOR ALLEGED UNFAIR COMPETITION RESULTING FROM SIMILARITY IN DESIGN, TRADEMARKS, OR APPEARANCE OF THE MATERIALS OR EQUIPMENT. SELLER SHALL FURTHER INDEMNIFY AND HOLD BUYER, ITS SUBSIDIARIES, AFFILIATED COMPANIES, AGENTS AND VENDORS HARMLESS FROM ANY AND ALL EXPENSES, LOSSES, CLAIMS, ROYALTIES, PROFITS, AND DAMAGES, INCLUDING COURT COSTS AND ATTORNEYS' FEES, RESULTING FROM THE BRINGING OF SUCH SUITS OR PROCEEDINGS OR THE THREAT THEREOF AND FROM ANY SETTLEMENT, DECREE OR JUDGMENT THEREIN. BUYER RESERVES THE RIGHT TO CONTROL ANY SUCH SUIT OR PROCEEDING.**

- 4. COVER; DELIVERY.** In case of default by Seller, Buyer may obtain materials and services from other sources and hold Seller responsible for any damages occasioned thereby. The dates of delivery and quantities specified herein are of the essence for this order and delivery must be effected within the specified time period. If deliveries are not made on time and in the quantities specified, Buyer reserves the right to cancel and to purchase the materials and/or services elsewhere and hold Seller accountable therefore. Seller shall cooperate with Buyer in respect to all customs formalities applicable to the import or export of the materials, shall be responsible for determining proper import or export classifications, and shall provide Buyer documentation to Buyer's satisfaction for such classifications.
- 5. PRICES.** Orders shall not be filled at prices higher than those quoted or charged to Buyer or specified herein. Unless otherwise agreed in writing, prices include packaging, labeling, crating, taxes, and duties. Unless otherwise agreed in writing, all prices include shipping and delivery (FOB)
- 6. INSPECTION AND REJECTION.** Materials are subject to inspection, test, and acceptance by Buyer and the ultimate purchaser. Buyer shall have a reasonable number of days from the date of arrival to inspect the materials and notify Seller of any non-conformity to the order specifications (including quantity and delivery dates). Such inspection may not occur until final sale of the materials to Buyer's customers. Buyer reserves the right to reject any material, even after delivery and inspection at customer's site, which does not fulfill the specifications of the order or time of delivery and (i) return rejected materials to Seller at Seller's risk and expense for full credit at the order price without prejudice to any right to other damages for such breach, (ii) to require Seller at Seller's expense to replace rejected materials at the unit price of this order, or (iii) consider this order breached as to the rejected quantity and cancelled as to any unfulfilled portion of this order, and to hold Seller liable for such breach and cancellation. Seller is not relieved of the responsibility imposed by this clause, either as to proper packaging, quantity of materials or specifications, by reason of acceptance by Buyer.
- 7. CHOICE OF LAW AND VENUE.** This Agreement between Buyer and Seller shall be construed, and the respective rights and duties of Buyer and Seller shall be determined, according to the laws of the State of Texas, without giving effect to its principles of conflicts of laws. Venue for any dispute under this Agreement shall be in a court of proper jurisdiction in Ellis County, Texas.
- 8. PAYMENT AND INVOICING.** Invoices and bills of lading showing full routing should be dated and mailed at the time of shipment and a separate invoice must be made for each destination showing point of shipment and how shipped. Invoices bearing transportation charges must be supported with attached original receipted transportation bills and, in the case of consolidated carload shipments, must show weight and rate. The discount period, if any, stated in the face of the purchase order shall be calculated from the date of receipt by Buyer of a proper invoice from Seller.
- 9. FORCE MAJEURE.** If the manufacture, transfer or receipt or use by either party of any materials covered hereby is prevented, restricted or interfered with by reason of any event beyond the reasonable control of the party so affected, such party, upon prompt notice to the other party (and in the case of Buyer, prior to actual shipment), shall be excused from making or taking deliveries hereunder to the extent of such prevention, restriction or interference but, at Buyer's option, deliveries so omitted shall be made upon notice thereof to Seller, upon cessation of such contingency.
- 10. ASSIGNMENT.** Seller may not assign this purchase order or any of Seller's obligations hereunder without Buyer's written consent.

- 11. INSURANCE.** Seller shall maintain at its own expense at all times while performing hereunder occurrence-based liability insurance and product-liability insurance with a reputable and financially responsible carrier(s) satisfactory to Buyer for coverage in amounts not less than one million (\$1,000,000.00) per occurrence, two million (\$2,000,000.00) in aggregate, and all other insurance required by applicable law. Seller shall furnish insurance certificates as directed by Buyer, satisfactory in form and substance to Buyer, showing the above coverages, and providing for at least 10 days prior written notice to Buyer by the insurance company of cancellation or material modification.
- 12. SELLER'S REPRESENTATIVES.** If Seller's employees, subcontractors, consultants, or other representatives under Seller's control perform any services at Buyer's premises or at Buyer's direction at the premises of others, (i) such persons shall comply with all rules and regulations of such premises and (ii) Seller shall keep materials and the premises on which the work is performed free and clear of all liens for material and labor incident to the performance of Seller's services hereunder.
- 13. TERMINATION.** In the event of (i) any proceeding, voluntary or involuntary, in bankruptcy or insolvency by or against Seller, or in the event of an appointment of a receiver or assignee for the benefit of creditors, with or without Seller's consent, or (ii) any change in control and/or ownership of Buyer, Buyer may cancel any unfilled part of this order without any liability whatsoever on Buyer's part.
- 14. BUYER'S PROPERTY.** All tools, dies, patterns, designs, molds, drawings, specifications, and other data or papers, and the like furnished by Buyer to Seller in connection with this order by Buyer remains the property of Buyer. In the event materials furnished by Buyer to Seller include any intellectual property of Buyer, Seller is granted a non-exclusive, non-transferable, non-sublicensable and non-assignable license required only for the production of materials under this order, and Seller shall use Buyer's intellectual property only for that purpose. Except for this license, no right, interest, ownership or privilege of use of Buyer's intellectual property shall inure to the benefit of Seller.
- 15. DISPUTE RESOLUTION.** Any dispute, controversy or claim arising out of or related in any way to this purchase order, these Terms and Conditions of Purchase, and/or any related contract, including but not limited to the validity, scope and enforceability of this clause, which cannot be amicably resolved by the parties shall be solely and finally settled by arbitration administered by the American Arbitration Association in accordance with its commercial arbitration rules. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitrators will be bound to adjudicate all disputes in accordance with the laws of the State of Texas. The decision of the arbitrators shall be in writing with written findings of fact and shall be final and binding on the parties. Each party shall bear its own costs relating to the arbitration proceedings irrespective of its outcome. This section provides the sole recourse for the settlement of any disputes arising out of, in connection with, or related to this Agreement.