

# PURCHASE ORDER TERMS AND CONDITIONS

## 1. Entire Agreement.

A. The Purchase Order (“PO”) consisting of these terms, Purchaser’s supplemental terms, if applicable, the face of the PO and any specifications or other documents expressly incorporated into the PO, constitutes the entire agreement of the parties. The vendor identified on the face of the PO (“Seller”), who, by submitting its offer to Purchaser or shipping the goods identified on the face of the PO (“Goods”) to Purchaser, agrees to the terms contained in the PO. If Seller’s offer is referred to or attached to the PO, it is made a part of the PO only to the extent that such offer describes the Goods and the price and does not conflict with any part of the PO. “Purchaser” means the entity identified on the face of the PO procuring the Goods for itself and/or on behalf of its subsidiaries.

B. The PO prevails over any additional, conflicting, or inconsistent terms which may appear on any agreement, invoice, purchase order, or other document furnished by Seller to Purchaser. Such terms provided by Seller shall be deemed objected to by Purchaser without need of further notice of objection and are not binding upon Purchaser, unless expressly accepted by Purchaser in writing and only to the extent accepted in such writing.

**2. Delivery; Risk of Loss; Inspection.** Seller shall supply the Goods to Purchaser at the delivery point identified on face of the PO (“Delivery Point”) and by the date specified therein. Time is of the essence in delivery of the Goods. Unless otherwise specified in the supplemental terms, risk of loss and title to the Goods pass to Purchaser upon delivery and acceptance by Purchaser at the Delivery Point. All Goods are subject to Purchaser’s inspection and approval. Goods that are damaged, defective, and/or nonconforming to the PO shall, at Purchaser’s option, be (i) returned to Seller, at Seller’s risk and expense, for immediate replacement by Seller, (ii) returned to Seller, at Seller’s risk and expense, for a credit, or (iii) accepted with an equitable reduction in price. Seller shall not replace the Goods without Purchaser’s written authorization.

## 3. Price.

A. The price for the Goods is set forth on the face of the PO. All prices are firm unless expressly accepted by Purchaser in writing. No additional charges of any kind are allowed including any form of service charges, any charges for boxing, packing, loading, bracing or cartage or any invoicing charge, unless expressly accepted by Purchaser in writing. All prices are in US dollars, unless otherwise expressly stated on the face of the PO.

B. Seller’s prices are exclusive of any federal, state or local sales, use or excise taxes. Seller shall list separately on its invoice any such tax lawfully applicable to the Goods, and payable by Purchaser.

## 4. Invoice and Payment.

A. Unless otherwise specified in the PO, Seller shall remit a separate invoice for each shipment and not issue an invoice prior to shipment of the Goods. Unless otherwise specified in the PO, Purchaser shall not pay for the Goods prior to receipt of both the Goods and a deficiency-free invoice. All invoices must show Purchaser’s PO number.

B. Payment due dates, including discount periods, will be computed from the date of receipt of the Goods, or the date of receipt of a deficiency-free invoice, whichever is later. Payment will be made in accordance with the payment terms as stated on the face of the PO or the supplement terms. Until Seller has provided the information required by Purchaser and completed any forms required by Purchaser to allow payment by electronic means, all payments will be made to Seller by check. If Seller’s payment address or method of payment changes, Seller must contact Purchaser’s Accounts Payable Department at least thirty (30) days prior to the effective date of such change. Purchaser reserves the right to set off any amount due Seller under the PO against any other amounts due to Seller under the PO or any other agreement between the parties. Payment for the Goods will not be construed as acceptance of the Goods.

## 5. Representations and Warranties.

A. Seller represents that it, to the best of its knowledge, is not owned by, controlled by, or subject to the jurisdiction or direction of a “foreign adversary” and none of the Goods or components within the Goods were designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of a “foreign adversary,” where the term “foreign adversary” has the meaning set forth in the Executive Order on Securing the United States Bulk-Power System, issued on May 1, 2020 (“Bulk Electric Executive Order”) and any rules or regulations issued pursuant to the Bulk Electric Executive Order.

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B. Unless otherwise specified in the PO, Seller warrants all Goods shall be new, of recent manufacture, and best quality when delivered. Seller further warrants that all Goods (i) are free from all defects in design, material, and workmanship, (ii) conform and comply with the requirements of the PO, (iii) are fit for the purpose intended, and (iv) comply with all federal, state, and local laws, regulations, and rules.

C. If a Good or any component within the Good was designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of a “foreign adversary” or a Good does not conform to the standards forth in Section 5(B) and a breach occurs or is discovered or observed within (i) the earlier of one year from the date such Good is placed in use or eighteen months from the date of receipt of the shipment at the Delivery Point or (ii) a longer period as stated on the face of the PO, the supplemental terms, or provided by Seller’s suppliers, Seller shall, at Purchaser’s option, promptly credit, replace or repair (without any cost to Purchaser including freight charges) the non-conforming Good. If Seller fails to promptly replace or repair the non-conforming Good to Purchaser’s satisfaction, Purchaser may replace or repair the Goods and Seller shall promptly pay the expense thereof.

D. Unless otherwise provided in the supplemental terms, the replaced or repaired Good are re-warranted for a period of time equal to the original warranty as listed in Section 5(C).

**6. Changes.** Purchaser may at any time change drawings, designs, specifications, methods of shipment and packaging, schedules and/or the Delivery Point. Any difference in price or schedule resulting from such changes shall be equitably adjusted and Purchaser will issue a written revision to the PO. Seller shall not suspend work while Purchaser and Seller are in the process of changing the PO.

**7. Substitution.** No substitution of Goods or extra charges is permitted unless expressly accepted by Purchaser in writing. Goods delivered in error or in excess of the quantity ordered may be returned by Purchaser at Seller’s risk and expense.

**8. Assignment.** Seller may not subcontract or assign all or part of the PO voluntarily, by operation of law, or otherwise, nor may Seller assign any of the receivables payable under the PO, unless expressly accepted by Purchaser in writing. Any assignment of the PO in violation of the foregoing is voidable at the option of Purchaser.

### **9. Suspension.**

A. Purchaser may suspend shipment of the Goods upon written notice to Seller and without penalty or cost to Purchaser due to any strikes, fires, accidents, acts of God, or other causes beyond the control of Purchaser, which affect its ability to receive or use the Goods.

B. Purchaser may suspend shipment of the Goods for any other reason upon written notice to Seller. Upon receipt of an invoice, Purchaser will pay Seller’s reasonable and verifiable costs directly associated with the suspension.

**10. Termination for Convenience.** Purchaser may terminate all or any part of the PO at any time upon written notice to Seller. Upon receipt of an invoice, Purchaser will pay Seller’s reasonable and verifiable costs properly allocable to work performed on the terminated portion of the PO prior to effective date of the termination notice.

**11. Termination for Default.** Purchaser may terminate all or part of the PO for default if Seller (i) breaches any obligation under the PO or (ii) if Seller becomes insolvent or the subject of any bankruptcy proceedings. Purchaser shall be entitled to all remedies available at law or equity in the event of termination for default including cost of cover.

### **12. Compliance with Laws.**

A. Seller shall comply with all applicable federal, state and local laws, regulations, and rules applicable to its performance under the PO.

B. Any Goods that constitute hazardous materials under federal, state or local laws, regulations, or rules or agency order will be packaged, labeled, marked and shipped by Seller to comply with all federal, state, and local laws, regulations, and rules then in effect including the Hazardous Materials Transportation Act and its regulations, and will further comply with all special requirements, policies, and procedures of Purchaser relating to the purchase of hazardous materials as might be noted on the face of the PO or otherwise communicated to Seller in writing.

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C. Purchaser may terminate all or part of the PO upon written notice to Seller if Purchaser reasonably believes such termination is necessary in order to comply with the Bulk Electric Executive Order, including any rules or regulations issued pursuant to the Bulk Electric Executive Order. In such event, Seller shall promptly refund to Purchaser any payments made by Purchaser and Purchaser shall promptly return, at the expense of Seller, any Goods already delivered by Seller. Purchaser shall have no further obligation or liability to Seller arising out of this termination.

**13. Indemnity.** To the maximum extent permitted by law, Seller shall indemnify, defend, and hold harmless Purchaser, its members, affiliates, subsidiaries, officers, directors, employees and agents from and against all claims, demands, causes of action or suits of whatever nature for losses, liability, damages, fines, penalties, awards, judgments, reasonable attorneys' fees, costs, or expenses including bodily injury or death to persons or property damage caused by or resulting from one or more of the following: (i) Seller's or its subcontractors' or suppliers' negligence or intentional misconduct (but only to the extent of such negligence or intentional misconduct) in connection with the Goods (including any defects in the Goods or related to the sale, transportation or delivery of the Goods); (ii) any violation or failure of Seller or its subcontractor or suppliers to secure or pay for permits or licenses or comply with applicable laws; and (iii) any third party claim of infringement of any patent, trademark, copyright, trade secret or other intellectual property right utilized in connection with the Goods or deliverables. If all or any part of the Goods or deliverables are held to constitute infringement and the use thereof is enjoined, Seller shall promptly, at its own expense and Purchaser's option, (a) procure for Purchaser the perpetual right to continue to use the affected portion of infringing item, (b) replace the affected item with non-infringing Goods or deliverables acceptable to Purchaser or (c) refund the purchase price applicable to such infringing item. Replacement of the Goods or deliverables does not relieve Seller of the PO requirements

**14. General Provisions.** The laws of the State of Colorado (excluding both its conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods) govern all matters arising out of or relating to the PO including its interpretation, construction, performance and enforcement. The parties submit to the exclusive jurisdiction in the courts of the State of Colorado and venue is stipulated as Adams County, Colorado. If any part of the PO is found to be illegal, unenforceable or in violation of law, then, notwithstanding such term, all other terms of the PO shall remain in full force and effect. Any waiver of a term of the PO shall be in writing, and any failure by Purchaser at any time, or from time to time, to enforce or require the strict performance by Seller of any of the terms of the PO shall not constitute a waiver by Purchaser of Seller's breach of any such term and shall not affect or impair such term in any way, or the right of Purchaser at any time to avail itself of the remedies available to it under the PO. Terms of the PO which contemplate performance or obligations subsequent to completion or termination of the PO, including warranty, representation, indemnification, and remedies will survive such completion or termination. Termination of the PO will not affect a party's rights and obligations that arose before termination. The parties agree that the PO, including these terms, if applicable, may be electronically signed. The parties agree that the electronic signatures appearing on the PO, including these terms, if applicable, are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

**15. Equal Employment Opportunity Certification.** The parties hereby incorporate the requirements of 41 C.F.R. § 60-1.4(a) and 29 C.F.R. § 471, Appendix A to Subpart A, if applicable; and the Seller and Seller's subcontractor(s) shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), if applicable. These regulations prohibit discrimination against qualified protected veterans and qualified individuals with disabilities, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities.

**16. Sanctions.** Seller shall refrain, and cause its subsidiaries to refrain, from doing business in a sanctioned country or with a sanctioned person, in each case in violation of the economic sanctions of the United States administered by the Treasury's Office of Foreign Assets Control ("Sanctions"). Seller shall not (a) directly or indirectly use the money paid by Purchaser pursuant to the PO or otherwise make available such money to any person to fund, any activities of or business with any person, or in any sanctioned country, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any person of Sanctions or (b) directly or indirectly use the money paid by Purchaser pursuant to the PO for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 or other similar legislation in other jurisdictions.