



A&M Engineering, Inc.

TERMS & CONDITIONS

1. **Contract:**

a. This order becomes a binding contract on the terms herein when accepted by Seller (1) giving Buyer formal written acknowledgment hereof or (2) Seller commencing the work called for herein. It is a condition of this order that any provisions, printed or otherwise, contained in any acknowledgment hereof which are inconsistent with or in addition to the terms and conditions herein contained and any attempted alterations in this order resulting from Seller's acceptance of this order without written approval of Buyer shall not constitute part of the contract. A prevailing party shall be entitled to recovery of attorney's fees and costs associated with resolution of a dispute. This contract is governed and interpreted under California law. This contract contains the entire agreement of the parties and failure of Buyer to enforce any of its rights hereunder shall not constitute waiver of such rights or any other rights or constitute a course of dealings between the parties.
2. **Packing and Shipping; Invoices:**
 - a. All material shall be: packed consistent with provided specifications or prevailing industry practice for the product shipped, marked and shipped as designated by Buyer or in accordance with requirements of common carriers in a manner to secure lowest transportation cost and no additional charges shall be imposed on Buyer therefor unless otherwise stated herein.
 - b. F.O.B. point and cash discount terms must be shown on all invoices; taxes must be itemized.
 - c. Delivery terms, acceptance, rejection, nonconformity and related interpretations and terms unaddressed shall be per California Uniform Commercial Code, Article 2, which is incorporated herein.
 - d. Transportation must be prepaid on all shipments to which a delivered price applies. Prepaid transportation charges must be substantiated by attaching original transportation bills, receipted by the carrier, to invoices.
 - e. This order may not be filled at prices higher than those last charged or quoted for the same material without notification and prior acceptance by Buyer of the price increase.
 - f. No charges for packing, package or drayage will be accepted except on express written agreement to such charges.
 - g. Drafts against Buyer will not be honored nor C.O.D. shipments accepted except by express written agreement to that effect.
 - h. Shipments by parcel post or commercial steamship lines must be insured at full value and full value plus 1% respectively. Seller shall not insure rail express, air express or air freight for more than \$50.00 or 50 cents per pound, whichever is greater.
3. **Delivery Schedules:**

Time is of the essence on this order and deliveries are to be made in quantities and at times specified by Buyer. Buyer will have no liability for payment for material or items delivered to Buyer which are in excess of quantities specified in the delivery schedules. Buyer may from time to time and without cost impact change delivery schedules or direct temporary suspension of scheduled shipments.
4. **Excusable Delays:**

Strikes, fires, accidents, government action, or other causes beyond the control of Buyer which affect its ability to receive and use the material ordered hereunder shall constitute valid ground for suspension of shipment under this order. Buyer shall give Seller reasonable notice of such cause by electronic media or letter, and any such suspension of shipment shall be without penalty or cost to Buyer. Except for delays of Seller's subcontractors, Seller shall not be liable for damages to Buyer or its customers for delays or defaults in deliveries caused by unforeseeable events or actions beyond Seller's control and without Seller's fault or negligence. Seller's delays or defaults in deliveries shall be grounds for cancellation of this order regardless of the cause thereof. Seller shall within five (5) days of the occurrence of any cause which will give rise to a delay in delivery give notice thereof. Failure to give such notice shall render Seller liable for all damages to Buyer and its customer occasioned by such delay.
5. **Warranty:**

Seller expressly warrants that goods material and services for this order will conform to the specifications, drawings, samples or other description furnished or specified by Buyer and the latest applicable codes and standards. Goods will be merchantable and compliant with industry standards and the specifications for material and workmanship, fit and sufficient for the purposes intended. Goods and materials shall be new and free from defects (including design defects). This warranty of all materials, equipment and workmanship shall be for a period of one (1) year after placement of the furnished goods or equipment in continuous operation unless a longer warranty period is provided by Seller.
6. **Extension of Warranty and Patent Indemnity:**

Seller agrees that with respect to the goods and material ordered hereunder, the provisions of Warranty and Patent Indemnity hereof shall extend to the affiliates and customer of Buyer and to any user thereof.
7. **Inspection:**

All materials delivered shall be subject to Buyer's inspection and shall be subject to rejection. In the event any of the goods or material delivered is found to be defective or otherwise not in conformity with the requirements of this order, Buyer shall have the right to reject the same or require that such material be corrected or replaced promptly with conforming goods or material. If Buyer rejects the material or if Seller, when requested by Buyer, fails to proceed promptly with the replacement or correction thereof, Buyer either may terminate this order for default or may replace or correct such goods or material ("cover") and in such event may charge Seller the cost of damages occasioned Buyer thereby. Rejected nonconforming goods or material not in accordance with specifications or goods or material that does not conform with Seller's warranty will be held for Seller's instructions and at Seller's risk and if Seller so directs, will be returned at Seller's expense. Unless Buyer, at its option, notifies Seller to the contrary, no goods or material returned as nonconforming shall be replaced without a new order. Payment for goods or material on this order prior to inspection shall not constitute acceptance thereof.
8. **Inspection at Source:**

Seller agrees to allow Buyer or its nominated agents access to all areas to determine if goods or materials are being made in accordance with specifications and schedules. Seller, without additional cost, shall provide all reasonable facilities and assistance for the safety and convenience of such inspectors. At the time of such source inspections, Seller shall make available to the inspectors copies of all drawings, specifications and packaging data, test samples, internal test results and similar information and access for observation applicable to the goods or material ordered hereunder. Such inspection shall be deemed as preliminary only and all goods or material ordered hereunder shall be subject to final inspection and acceptance in Buyer's plant or delivery point.
9. **Records:**

Seller agrees to maintain on its premises and make available for inspection by Buyer at all reasonable times during business hours, records pertaining to inspection, certification of processes, certification of materials, test reports and qualification data applying to this order, and shall, where requested by Buyer, to furnish Buyer with copies thereof.
10. **Changes:**

Buyer reserves the right at any time to make changes in drawings and specifications, in methods of shipment and packaging, in schedules and place of delivery as to any goods, material or work covered by this order. Any change in price or time for performance as a result of such changes shall result in an equitable adjustment of price or time and the contract shall be modified in writing accordingly, but any claim by Seller for an adjustment must be made within thirty (30) days of the receipt of such changes.
11. **Buyer Owned or Furnished Material:**

Seller assumes complete liability for any tooling, articles, or materials owned or furnished by Buyer in connection with this order and Seller agrees to pay for all such tooling, articles or materials spotted by it or otherwise not satisfactorily accounted for. Tooling, articles and material of Buyer are provided "as is" and Seller shall be skilled in safe use and operation thereof. Title to such tooling, articles and materials shall at all times remain in Buyer and shall be returned to it at any time upon its request.
12. **Subcontracting:**

No contract shall be made by Seller with any other party for furnishing any of the completed or substantially completed goods, materials or work covered by this order without the prior written approval of Buyer.
13. **Facilities:**

Unless otherwise specified herein, Seller represents that it now has or can readily procure without assistance of Buyer or the government, if goods are for the government, all facilities necessary for the performance of this order.
14. **Dies, Jigs, Tools and Patterns:**

If the price to be paid includes the cost of special dies, jigs, tools and patterns used in the manufacture of articles ordered hereunder, then such special dies, jigs, tools and patterns shall be and become the property of Buyer. They shall be kept in good condition by Seller without expense to Buyer, except that the actual cost of changes requested by Buyer and due to its changes of design or specifications shall be paid for by Buyer if such changes are made prior to the exhaustion of the useful life of the dies, jigs, tools or patterns changed. All designs, drawings, special dies, jigs, tools or patterns, and any other information or equipment supplied by Buyer to Seller relating to or for use in, the manufacture of the goods, materials or work ordered hereunder shall be the sole property of Buyer. By accepting this order, Seller expressly agrees that it will not use any of them in the production, manufacture, or design of any other goods, articles or work for any other person, nor for the production or manufacture of larger quantities than those specified herein without first obtaining the express consent and license in writing of Buyer. At the termination of this contract, all such drawings and all such special dies, jigs, tools and patterns shall be delivered to Buyer, together with all spoiled and surplus materials, unless Buyer shall otherwise direct. The Buyer shall approve invoices for such items after the first lot of articles produced from such special equipment has been received at Buyer's facility and has passed Buyer's receiving inspection.
15. **Remedies:**

The remedies herein reserved shall be cumulative and in addition to any other or further remedies provided in law or equity. No waiver of a breach of any provision of this contract shall constitute a waiver of any other breach, or of such provision.
16. **Patents:**

Seller warrants that the goods or material ordered and the sale or use of it will not infringe any United States or foreign letter patent. Seller agrees to defend, indemnify and hold harmless Buyer, its successors, assigns, customers, and users of its products against all suits at law or in equity for all damages including attorneys' fees, claims and demands for actual or alleged infringement of any patent by reason of the sale or use of the goods or material hereby furnished.
17. **Indemnification: Insurance:**

Seller agrees that it will indemnify defend and hold harmless Buyer, its customers and their officers and employees from any loss, cost, damage, claim or liability, of whatsoever nature or kind, in whole or in part, and direct or consequential, arising out of or as a result of actions or omissions of Seller, its employees, agents or subcontractors in supplying goods, materials or services or otherwise performing this order or caused by the goods, materials or services provided, including the nonconformity thereof. Seller further agrees that it and its subcontractors will maintain public liability and property damage insurance in reasonable amounts covering the obligation set forth above, and will maintain proper worker's compensation insurance covering all employees performing this order. Seller shall provide written evidence of insurance upon request of Buyer.
18. **Advertising:**

Seller shall not without first obtaining the written consent of Buyer, in any manner, advertise or publish the fact that Seller has contracted to furnish Buyer the goods, material or services herein ordered. For failure to observe this provision, Buyer shall have the right to terminate the contract resulting from the acceptance of this order without any obligation to accept deliveries after the date of termination or make further payment except for completed goods or materials delivered prior to termination.
19. **Insolvency:**

Buyer may forthwith cancel the contract or placement of this order in the event of the happening of any of the following insolvency of Seller: The filing of a voluntary petition in bankruptcy, the filing of an involuntary petition to have Seller declared bankrupt provided it is not vacated within thirty (30) days from the date of filing, the appointment of a receiver or Trustee for Seller provided such appointment not vacated within thirty (30) days from the date of such appointment, the execution by Seller of an assignment for the benefit of creditors.
20. **Compliance with Laws:**

Seller agrees, in connection with the production of the goods or materials specified herein and services performed hereunder, to comply with all applicable local state, and federal laws, regulations, and executive orders issued pursuant thereto; and agrees to indemnify Buyer against any loss, cost, liability, or damage, including attorney's fees and costs, by reason of Seller's violation of this paragraph. Without limiting the generality of the foregoing, Seller agrees to comply with the applicable provisions of the following for government contracts: any and all of which provisions are incorporated herein by reference: (a) The Wage Hour Act (40 U.S.C. 324-326), (b) The Fair Labor Standards Act (29 U.S.C. 201-219), (c) The Federal Occupational Safety and Health Act (PL 91-596) (d) Non-discrimination in Employment, paragraphs 1 through 76, section 201 [and to file the compliance reports referred to in Section 203, of Executive Order 11246 or any amendments or extension thereof] and (e) The Walsh-Healy Public Contracts Act (41 U.S.C. 35-45).
21. **Independent Contractor:**

Seller agrees that it is an independent contractor, that no tax assessment or legal liability of Seller, or of his agents or employees becomes, by reason of this order, an obligation of Buyer, and that no rights or benefits of employment by Buyer are provided or accrue to Seller's employees.

22. **Buyer's Design:**

Seller shall keep confidential the feature of any equipment, tools, gauges, patterns, designs, drawings, engineered data or other technical or proprietary information furnished by Buyer and will use such items only in the production of items under this order or other orders from Buyer and not otherwise, unless Buyer's written consent is first obtained. Upon completion or termination of this order, Seller shall return all such items and copies thereof made by Seller to Buyer or make such other disposition thereof as may be directed or approved by Buyer.

23. **Patent Rights:**

Where payment is made for experimental developmental or research work to be performed or such work is actually performed under this order, Seller agrees promptly to disclose and, on request, to assign to Buyer each improvement and invention resulting therefrom and for this purpose Seller will procure the execution and inventions in Buyer and where Buyer decides to file foreign or domestic patent applications on such inventions, Seller will procure the execution of all oaths and other documents necessary or required to file such patent applications and vest full title therein in Buyer. Any copyrightable material developed hereunder by Seller shall be a "work made for hire" for Buyer.
24. **Termination Clause:**

- a. Buyer may terminate work under this order in whole or in part at any time by written or electronic notice to Seller. Such notice shall state the extent and effective date of such termination and, upon receipt thereof, Seller will, as and to the extent directed by Buyer, stop work under this order and the placement of further orders or subcontractors hereunder, terminate work under orders and subcontracts outstanding hereunder, and take any necessary action to protect property in Seller's and its subcontractors' possession in which Buyer has or may acquire an interest.
- b. If the parties cannot by negotiation agree within a reasonable time upon the amount of fair compensation to Seller for such termination, Buyer, in addition to making prompt payment of amount due for goods or material delivered or services rendered prior to the effective date of termination, will pay to Seller the following amounts without duplication,

- 1) The contract price for all goods, material or services which have been completed in accordance with this order and not previously paid for;
- 2) The actual costs incurred by Seller which are property allocable or apportionable under recognized commercial accounting practices to the terminated portion of this order, including the cost of discharging liabilities which are so allocated and apportionable; and
- 3) The reasonable costs of Seller in making settlement hereunder and in protecting the property in which Buyer has or may acquire an interest. Payments made under this paragraph (b) exclusive or payments under this subparagraph (3), shall not exceed the aggregate price specified in this order less payments otherwise made or to be made,

- c. With the consent of Buyer, Seller may retain at an agreed price or sell at an approved price, any completed articles, materials, work in process or other things, the cost of which is allocable or apportionable to this order under subparagraph (b)(2) above and will credit or pay the amounts so agreed or received as Buyer directs. As directed by Buyer, Seller will transfer title to and make delivery of any such articles, materials or work.

25. **Cancellation:**

Buyer reserves the right to cancel all or any part of the undelivered portion of this order if Seller does not make deliveries as specified in the schedules as promised or if Seller breaches any of the terms hereof, including the warranties of Seller. These rights to cancellation shall be exercisable by Buyer without penalty.

26. **Design Changes for Military Use:**

All changes to items of Buyer's design must be authorized in writing by Buyer. For items of Seller's design the provisions of MIL-STD-480 in effect as of the date of this order are hereby incorporated in this order. All changes designated Class 1 in accordance with MIL-STD-480 must be submitted to Buyer for approval prior to incorporation on drawings and/or placed into production.

27. **Seller's Drawings:**

One reproducible copy of the engineering drawing and every revision thereof for each item of Seller's design ordered hereunder shall be furnished upon receipt of this order of Drawing Release by Seller to Buyer for receiving inspection and creation of such control drawing as may be required by Buyer's contract. Additional data will be as specified.

28. **AS9100 8.4.3 Requirements**
 - A. Their contribution to product or service conformity
 - B. Their contribution to product safety
 - C. The importance of ethical behavior

IF THIS ORDER IS ISSUED UNDER A UNITED STATES GOVERNMENT CONTRACT OR SUBCONTRACT, THE TERMS AND CONDITIONS PRINTED ABOVE ARE NOT APPLICABLE AND ARE SUPERSEDED IN THEIR ENTIRETY BY THE PROVISIONS OF APPENDIX A TO THIS ORDER ENTITLED "CONDITIONS APPLICABLE TO ALL PURCHASE ORDERS ISSUED UNDER GOVERNMENT CONTRACTS AND BY ANY OTHER APPENDICES REFERENCED ON THE FACE OF THIS ORDER."



A&M Engineering, Inc.

TERMS & CONDITIONS

Revision Block

| REV | DESCRIPTION | OWNER | DATE |
|-----|----------------------------------|-----------------------|------------|
| NC | ORIGINAL RELEASE | PURCHASING MANAGER | 01/01/2017 |
| A | ADDED SECTION AS9100.8.4.3 | PURCHASING MANAGER | 11/19/19 |