

CONDITIONS OF PURCHASE (Revision March, 2019)

1. **ACCEPTANCE-** Acceptance of this order by Seller (either contractor, subcontractor, vendor or service provider) from Purchaser for the Work product to be delivered is expressly limited to the terms and conditions specified hereon and take precedence over all prior communications, proposals or terms of sale, except for possible modification of the price, quantity, and delivery terms pursuant to paragraphs 2, 3, and 4. Acknowledgment of different price, quantity or delivery terms shall be deemed acceptable if Purchaser does not cancel within ten days after receipt of acknowledgment. However, in no event is this order to be filled if the total acknowledged modification price is \$250.00 more than the last previously quoted or charged price, unless a written approval of the increase is obtained from Purchaser.
2. **PRICE MODIFICATION-** If price is omitted or incorrectly stated on order, Seller shall notify Purchaser immediately and insert its current market price on the acknowledgment. It is agreed that Seller's price shall be competitive to the lowest prevailing market price, and that any price reduction made in the merchandise covered by this purchase order, subsequent to the placement of this order, shall be applicable to this order. Purchaser will not accept any increases to the prices indicated on the purchase order.
3. **QUANTITY MODIFICATION-** If Seller is unable to meet quantity requirements listed on order, Seller shall advise Purchaser of different quantities on acknowledgment, and Purchaser may accept changed quantities pursuant to paragraph 1. In either case, however, Purchaser has the option of rejecting the total shipment or any part thereof, if said shipment is either under or over quantity specified on the purchase order or acknowledgment, and Purchaser may charge Seller the return shipment costs plus any other loss or expense sustained as a result of Seller's shipping the wrong quantity requirement.
4. **DELIVERY MODIFICATION-** If Seller is unable to meet the delivery requirements listed on purchase order, Seller shall advise Purchaser of different delivery dates on acknowledgment, and Purchaser may accept changed delivery dates pursuant to paragraph 1. Purchaser will not accept any additional freight charges for partial shipments and/or delayed shipments.
5. **REVISED ORDERS-** Purchaser reserves the right to revise the required quantities and dates listed on the purchase order prior to the Seller's shipment date; such revision to be issued in writing by Purchaser.
6. **EARLY DELIVERY-** Shipments will be rejected at Purchaser's option if received prior to the scheduled docking date. If rejected, shipments shall be returned to Seller at Seller's expense. Advanced notice of all shipments is required to ensure adequate off loading resources. Purchaser shall not accept any additional charges for standby or redelivery unless proper notification has been received.
7. **LATE DELIVERY-** Time is of the essence in this contract, and in the event Seller fails to deliver as and when specified, Purchaser reserves the right to cancel this order, or any part thereof, without prejudice to its other rights; and Seller agrees that Purchaser may return part or all of any shipment so made, and if order calls for partial shipments, balance may be canceled or suspended upon notice, and Purchaser may charge Seller with any loss or expense sustained as a result of such failure to deliver. Deliveries delayed by more than seven calendar days will be subject to liquidated damages to the extent any such charges are applicable to the Purchaser.
8. **ADDITIONAL CHARGES-** No additional charges whatsoever shall be accepted other than those quoted and listed on the purchase order or acknowledgment.
9. **SHIPMENT IDENTIFICATION-** All shipments shall contain easily located packing lists describing the shipped material and shall clearly indicate the purchase order number on the outside of all packages, boxes, kegs, bails or bundles, to expedite the receiving of said shipments.
10. **INVOICING-** Seller shall send all invoices addressed to Wunderlich-Malec Engineering, Inc. or its Affiliate (Purchaser) at the email address stated on front of the purchase order. All invoices shall include (1) the purchase order number (2) Purchaser's specification number or Purchaser's parts number and (3) a brief description of each item as it appears on the order and/or Seller's catalog number. The invoice shall also include an itemized list of all applicable sales and/or use taxes, and any freight charges invoiced shall be listed separately and accompanied by a copy of the freight bills. Failure to invoice according to the terms of this purchase order may cause delays in payment; any such delay in payment shall be free of carrying costs and or finance charges.
11. **DISCOUNTS-** All discount periods shall extend from date of receipt of the invoice or the date of receipt of the material, whichever is later.
12. **AMENDMENTS-** No agreement or understanding to modify this contract shall be binding upon the Purchaser unless in writing and signed by Purchaser's authorized agent except as allowed by paragraph 1. All specifications, drawings, and data submitted to Seller with this order are hereby incorporated herein and made a part hereof.
13. **INSPECTION-** All items purchased hereunder are subject to inspection and approval at the Purchaser's destination. Purchaser reserves the right to reject and refuse acceptance of items which are not in accordance with the instructions, specification, drawings, data or Seller's express or implied warranties, and any payment by Purchaser shall not be deemed an acceptance thereof. Purchaser shall charge Seller for any excess inspection expense, sorting expense or rework necessary because of defective merchandise. All merchandise not accepted because of its defective nature shall be returned to Seller at Seller's expense. The returned merchandise shall not be replaced by Seller, except upon receipt of a replacement purchase order from Purchaser.
14. **WARRANTY-** Seller expressly warrants for a period of two years after Purchaser's acceptance that any articles sold or delivered hereunder shall be free from defects in workmanship materials or fabrication; shall where design is Seller's responsibility be free from defects in design, shall comply with the requirements of this purchase order and any drawings, design or specifications referred to herein regardless of any prior course of dealing and shall be fit and sufficient for the purpose intended.
15. **SAVE HARMLESS-** In the event any article sold and delivered hereunder shall be defective in any respect whatsoever, Seller shall indemnify and save harmless Purchaser from all loss or the payment of all sums of money by reason of any accidents, injuries or damages to persons or property that may happen or occur in connection with the use or sale of said article and are contributed to by said defective condition.
16. **PATENTS-** In the event any article sold and delivered hereunder shall be covered by any patent, copyright or application therefore, Seller shall indemnify and save harmless Purchaser from any and all loss, costs or expense because of any and all claims, suits or judgments on account of the use or sale of such article in violation of rights under such patent, copyright or application.
17. **INSURANCE-** If this purchase order relates to a service agreement, Seller shall during the progress of the work, maintain: (1) Workmen's Compensation Insurance in accordance with the laws of the state in which the work is being done, (2) adequate Public Liability and Property Damage Insurance, (3) adequate Automobile Liability and Property Damage Insurance and (4) as may be specified in contract documents.
18. **INDEMNITY-** Seller, to the extent of Seller's negligence, shall defend, indemnify and hold Purchaser, its affiliates and subsidiaries, harmless from any and all claims, suits, losses, damages or costs (including attorney's fees) relating to, resulting from, arising out of, or occurring in connection with the performance of the Work by Seller, its officers, directors, agents or employees, as well as its subcontractors and suppliers, materialman, or their agents, servants or employees.
19. **CHANGE ORDERS-** If this purchase order relates to a service agreement, Seller, during the progress of the work, shall not proceed with any changes in this order, except upon a written notification from Purchaser. Such change order shall be based on a negotiated lump sum, unit prices which may be included in the purchase order, or upon written directive to proceed on time and material, consistent with the terms of the directive. If Purchaser disagrees that a change has occurred, it may issue a directive to Seller, and Seller shall comply with said written directive, subject to the disputes procedure below.
20. **ATTORNEY FEES-** In case suit shall be brought because of the breach of any covenants herein contained on the part of the Seller, Seller shall pay to Purchaser reasonable attorneys fees and other legal costs incurred in the enforcement of the purchase order.
21. **EQUAL EMPLOYMENT OPPORTUNITIES-** During the performance of this contract the Seller agrees as follows:
 - a) The Seller will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Seller will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The Seller agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of the nondiscrimination clause.
 - b) The Seller will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
 - c) The Seller will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers representative of the Seller's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - d) When applicable, the Seller shall abide by the requirements of any and all federal, state, or local laws, rules, regulations, or legally binding requirements regarding non-discrimination and equal opportunity, including, without limitation, 41 CFR 60-1.4 as amended by Executive Order 13665, 60-300.5(a), 60-741.5(a) and Appendix A of Subpart A of 29 CFR 471. Such laws, rules, regulations, or requirements prohibit discrimination against qualified individuals or companies based on his or her status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, national origin, sexual orientation and gender identity. Moreover, these laws, rules, or regulations require that covered prime contractors, subcontractors, vendors and service providers take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.
 - e) The Seller will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
 - f) In the event of the Seller's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, if as otherwise provided by law.
 - g) The contract will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor or service provider. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interest of the United States.
 - h) The Vendor will comply with all provisions of Executive Order 11701 and with the provisions of the Affirmative Action Clause Section 50-250-2 of 41CFR 60-250-4 concerning Affirmative Action obligations of federal contractors and subcontractors for Disabled Veterans and Vietnam Era Veterans.
 - i) The Vendor will comply with all provisions of Executive Order 11758 and with the provisions of the Affirmative Action Clause Section 60-7414 of 41CFR concerning Affirmative Action obligations of Federal contractors for handicapped workers.
22. **OCCUPATIONAL SAFETY AND HEALTH-** Seller agrees to comply with the provisions of the Occupational Safety and Health Act of 1970 and the standards and regulations issued thereunder and certifies that all items furnished under this order will conform to a minimum to and comply with said standards and regulations. In addition to those minimum standards, Seller shall in addition comply with the detailed requirements of the plans and specifications governing this Order. Seller further agrees to indemnify and hold harmless Purchaser for all damages assessed against Purchaser as a result of Seller's failure to comply with the Act and the standards issued thereunder and for the failure of the items furnished under this order to so comply with said Act and with the other terms and conditions of this order.
23. **ARBITRATION AND GOVERNING LAW:**

Any controversy or claim arising out of or relating to this Subcontract or the breach thereof shall be resolved by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association and any award rendered shall be final and binding upon the parties hereto, and judgment on the award rendered by the arbitrator or arbitrators may be entered in and enforceable in any court having jurisdiction thereof. The right to arbitrate shall be enforceable under the Federal Arbitration Act. The location of arbitration shall be in Hennepin County, Minnesota. Seller shall not stop,

hinder or delay the Work in any way during the pendency of arbitration. The law of the State of Minnesota, without regard to its choice of law rules, shall govern the validity of this Subcontract, its interpretation and performance, and any other claims related to it.

If for any reason the governing law and venue provisions set forth in this Article are deemed to be in violation of law or against public policy, then in such event the terms and conditions of this purchase order shall be construed and interpreted under, and all respective rights and duties of the parties shall be governed by the laws of the State where the Work is performed, and the site of the arbitration shall be determined by Purchaser in its sole discretion, in accordance with the prevailing state law or policy.