

# Purchase Order Agreement

## GENERAL TERMS AND CONDITIONS OF PURCHASE

# Purchase Order Agreement

By accepting a purchase order from Buyer (as defined below) and/or performing hereunder, Seller (as defined below) agrees to comply fully with the General Terms and Conditions of Purchase set forth herein. Acceptance of a purchase order (including these General Terms and Conditions) is expressly limited to the terms and conditions of the purchase order as issued by Buyer, and none of the Seller's terms and conditions shall apply in acknowledging an order or in the acceptance of a purchase order. To the extent of any inconsistency between these General Terms and Conditions and any special terms and conditions of a particular purchase order, these General Terms and Conditions shall control unless superseded by Buyer via express reference in the special terms to the superseded provision(s) of these General Terms and Conditions. Buyer's acceptance of the goods, services or work delivered under a purchase order shall not constitute agreement to any of Seller's terms or conditions. Seller may not ship under reservation.

## General Terms and Conditions of Purchase

### 1. Definitions

The terms "Company" and "Buyer" refer to the entity named as Buyer on the first page of the purchase order. The terms "Seller," "Contractor" and "Supplier" refer to the person or entity to which the purchase order is addressed. "Order" means the issued purchase order, including any later mutually agreed amendments or additions to it.

### 2. Order and Acceptance

This Order shall become binding upon Seller signing and transmitting a copy of the signed Order, upon Seller otherwise acknowledging acceptance of the Order, or upon Seller's commencement of performance of the Order, whichever occurs first. Unless specifically incorporated herein by reference within the body of this Order, reference to Seller's quotation, bid, or proposal does not imply and shall not constitute acceptance of any terms, conditions, or instruction contained in such document. Any invoice, acknowledgment or other communication issued by Seller in connection with this Order shall be construed to be for record and accounting purposes only, and no terms and conditions stated in such communication shall be applicable to this Order and they shall not be considered to be Seller's exceptions to the provisions of this Order.

### 3. Compliance with Laws, Regulations and Rules

The laws of the United States, the regulations of the United States Coast Guard as representatives of the vessel's flag state and the rules of the vessel's classification society shall govern the satisfactory completion of this Order.

The Order shall not be considered fully complied with until all required reports, approvals, certificates or any other regulatory requirements have been met and/or complied with and copies of same have been provided to Buyer.

Seller shall fully comply with all federal, state or local laws, codes, rules, regulations or ordinances applicable to its responsibilities under this Order. Should Seller become aware of any violations of any laws, codes, rules, regulations or ordinances, it shall promptly notify Buyer in writing. If Seller violates any such laws, codes, rules, regulations or ordinances, it shall be responsible for all penalties and costs incurred by itself or by Buyer if resulting therefrom and shall hold Buyer harmless from any

liability resulting from failure of such compliance. Seller shall not rely on Buyer or this Order for any information regarding the substance, existence, applicability, requirements or interpretation of any laws, codes, rules, regulations or ordinances.

The equal employment opportunity clauses in Section 202 of Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, Section 4212 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended, Executive Order 13201 (29 CFR Part 470), where applicable, and the implementing rules and regulations of the Office of Federal Contract Compliance Programs (41 CFR, Chapter 60) are incorporated herein.

Seller represents and warrants that all goods and work covered under this Order meet or exceed the safety standards established and promulgated under the United States Coast Guard regulations and the Federal Occupational Safety and Health Act (PL 91-596) and any regulations promulgated thereunder, and all other applicable federal, state and local laws and regulations. Seller shall be solely responsible for its compliance with such laws and regulations and shall indemnify Buyer for any fine or penalty assessed against Buyer due to Seller's violation of the foregoing. Seller shall comply with the Immigration Reform and Control Act of 1986 and any amendments thereto and/or subsequent immigration legislation.

### 4. Sales and Use Taxes

In the event Buyer furnishes Seller its "tax exempt certificate" together with this Order, or has otherwise provided it, Buyer is responsible for the collection and payment of any applicable state sales/use taxes, including any applicable special projects and local option sales/use taxes applicable to this Order. Seller's prices shall be exclusive of any such state sales/use taxes.

### 5. All Other Taxes and Business Licenses

Except for sales/use taxes as set forth in Section 4, Seller shall be fully responsible and Buyer shall have no liability for the payment of any payroll or employment compensation tax, social security tax, franchise tax, income tax,

business license, or other federal, state or local tax, fee, charge or assessment for Seller or any employee of Seller. Seller agrees that it shall pay, as required by law, all such taxes that are applicable to it and its employees and it shall hold Buyer harmless against any claim or liability therefor.

## 6. Operation of Vessel's Equipment

Seller's employees shall not operate or attempt to operate any valve, switch, or other control device on any portion of Buyer's existing plant unless expressly made a part of the work as defined in the Order or directed by Buyer. Furthermore, the vessel's safety management regulations shall be complied with by all Seller's employees, agents or servants. Failure to abide by this requirement shall be considered sufficient cause for the immediate removal of the employee or employees involved without penalty or cost to Buyer.

## 7. Intellectual Property

Seller shall assume at its sole expense the defense of and shall indemnify and hold harmless Buyer, its affiliates and their respective officers, directors, employees, agents, customers, and other vendors from and against any and all claims, demands, costs, suits, actions, proceedings, fines, penalties and attorneys' fees (and interest thereon) resulting from the alleged infringement by Seller of any patent, trademark, service mark, copyright or other intellectual property right in connection with any tasks hereunder, except to the extent the claim resulted from following written directions, specifications, drawings, plans or procedures prepared by Buyer or by third parties selected solely by Buyer.

Buyer shall keep confidential any proprietary information or intellectual property which Seller has revealed to Buyer in the course of doing business and where Seller has obtained written agreement of Buyer prior to commencement of supply of goods and/or works.

Buyer may be represented by and actively participate through its own counsel in any such infringement-related suit or proceeding if it so desires, and the costs of such representation shall be paid by Seller. In the event work and/or goods so defended are held to constitute infringement or their use is enjoined, Seller shall, at its own expense, either (i) procure for Buyer the right to continue to use such work and/or goods; (ii) reperform the work or replace the goods with substantially equivalent non-infringing work or goods; or (iii) modify the work and/or goods so that they become non-infringing; provided, however, that such work re-performed and goods replaced or modified conform to the requirements of this Order.

## 8. Indemnification

Seller, on behalf of itself, its affiliates, successors, assigns, officers, directors, employees and agents (collectively the "Indemnitor") hereby agrees to defend, indemnify and hold harmless Buyer, its affiliates and their respective officers, directors, employees, agents, customers and other vendors (collectively the "Indemnitee") from and against any and all liabilities, demands, claims, suits, actions, proceedings, fines, penalties, awards, forfeitures, losses, damages and the costs and expenses incident thereto (including, but not limited to, costs of investigation, defense,

settlement and attorney's fees) arising out of or resulting in any way from any defect in the goods or services purchased hereunder, any breach of these terms and conditions, or any negligent or willful act or failure to act on the part of the Indemnitor, or the part of any agent, servant, or subcontractor of the Indemnitor, whether independent or otherwise.

## 9. Liens

To the extent permitted by law, Seller agrees that it shall neither cause nor allow to be filed any lien with respect to the goods or services furnished hereunder and hereby waives any right to file or cause such a lien to be filed. If a claim is made against Seller or Buyer or any lien is filed with respect to the work, further payment under the Order shall not become due until all such claims or liens have been satisfied, released and/or discharged of record without cost to Buyer.

Upon request by Buyer, Seller shall discharge any lien filed with respect to the work by posting a bond as provided in applicable law, at Seller's expense. If Seller fails to do so, Buyer may procure the release, satisfaction and/or discharge of any such claim or lien and deduct all costs and expenses of Buyer associated therewith from any money due or to become due to the Seller under this Order or any other purchase order or contract with Seller. If any lien is filed or remains unsatisfied after all payments are made, Seller shall refund to Buyer all monies that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorney's fees associated therewith. Seller warrants that Buyer shall have clear title to any goods purchased hereunder, free of any liens, claims and encumbrances.

## 10. Confidential and Proprietary Information

The term "Confidential Information" as used in this Order shall include but not be limited to all marketing, operational, technical, economic or financial knowledge, information or data of any nature whatsoever relating to the Order which has been or may hereafter be provided or disclosed by Buyer in connection with the Order. Confidential Information shall also include all engineering data, plans, maps, drawings, computer programs, specifications and related information which are produced by Seller specifically for Buyer in connection with the Order which the parties hereby agree are considered work made for hire.

Confidential Information shall not include the following: (i) information which at the time of disclosure by Buyer is publicly available, or information which later becomes publicly available through no act or omission of Seller; (ii) information which Seller can demonstrate was in its possession prior to disclosure by Buyer; (iii) information received by Seller from a third party who, to the best of Seller's knowledge, did not acquire such information on a confidential basis either directly or indirectly from Buyer; and (iv) information which Seller can demonstrate was independently developed by it or for it and which was not obtained, in whole or in part, from Buyer.

Seller agrees to keep confidential all Confidential Information and shall not, without Buyer's prior written consent, disclose to any third party, person, firm, corporation or entity, such Confidential Information. Seller shall limit the disclosure of the Confidential Information to

only those employees of Seller, and only to the extent, as is reasonably necessary for Seller's performance under the Order. Seller shall not make any other use, in whole or in part, of any such Confidential Information without the prior written consent of Buyer. Seller agrees that, in complying with its confidentiality obligations under this Order, Seller shall use the same means it uses to protect its own confidential proprietary information, but in any event not less than reasonable means, to prevent the disclosure and to protect the confidentiality of the Confidential Information. Seller agrees to be responsible for any breach of this Section by its representatives acting within the scope of their employment. Seller shall not publicize the existence or scope of this Order without Buyer's written consent. Seller acknowledges that nothing in this Order shall give it the right to use any trademark, service mark, name, design, character, or symbol owned, registered or copyrighted by Buyer or its affiliated companies in any advertising, promotion, or publicity, to endorse, expressly or impliedly, Seller's goods or services, or for any purpose or in any manner other than as specifically provided in this Order. Seller shall require these same agreements on the part of any subcontractor or supplier of Seller to which the Confidential Information is disclosed. Seller shall return all Confidential Information and copies thereof to Buyer upon written request. Unless otherwise agreed in writing, no commercial, financial or technical information disclosed in any manner or at any time by Seller to Buyer shall be deemed secret or confidential and Seller shall have no rights against Buyer with respect thereto except such rights as may exist under patent laws.

#### **11. Warranty**

Seller expressly warrants that for a period of one (1) year from date of acceptance or use of goods and/or services or eighteen (18) months from date of shipment of goods or performance of services, whichever occurs first ("Warranty Period"), all goods or services furnished under this Order shall conform to all specifications and appropriate standards, shall be fit and sufficient for the purposes intended by Buyer, and shall be free from defects in material or workmanship. Seller warrants that all such goods or services will conform to any statements made on the containers or labels or advertisements for such goods or services, and that any goods will be adequately contained, packaged, marked, and labeled. Seller warrants that goods or services furnished will conform in all respects to samples. Seller further warrants that all goods furnished under this Order shall be new and that any parts furnished by Seller hereunder shall be genuine original equipment manufacturer (OEM) parts. Inspection, test, acceptance or use of the goods or services furnished hereunder shall not affect the Seller's obligation under this warranty, and such warranties shall survive inspection, test, acceptance and use. Seller's warranty shall run to Buyer, its successors, assigns and customers, and users of products sold by Buyer. Upon request by Buyer, and without affecting any of Buyer's other rights and remedies, Seller agrees to replace or correct defects of any goods or services not conforming to the foregoing warranty promptly, without expense to Buyer, when notified of such nonconformity by Buyer within the above-specified Warranty Period. In the event of failure of Seller to correct defects in or replace nonconforming goods or services promptly, Buyer, after reasonable notice to Seller, may make such corrections

or replace such goods and services and charge Seller for the cost incurred by Buyer in doing so. In the event of a remedial action to correct defective goods or services as provided herein, the Warranty Period for that portion of the goods or services affected by such remedial action shall be one (1) year after completion and acceptance of the remedy by Buyer or the duration of the original Warranty Period, whichever is longer.

#### **12. Prices**

The prices specified in the Order shall be the sole and exclusive compensation payable to Seller for all goods and services provided under the Order. For any work to be performed by Seller on a time and materials basis under the Order, the total price for such work shall not exceed the applicable extended price specified in the Order, and Buyer shall have no obligation to pay any charges in excess of that extended price unless such charges have been expressly agreed to by Buyer in writing. Further, Buyer and Seller acknowledge and agree that the extended prices specified in the Order for work performed on a time and materials basis are estimates, and Seller will only be entitled to payment for time actually worked and materials actually used, not to exceed the applicable extended price.

#### **13. Force Majeure**

Neither party shall be liable for any loss or damage or for any delay or failure in performance due to acts beyond the control of such party which it could not reasonably anticipate and take action to avoid or mitigate. Such acts shall include, by way of example and not be limited to, acts of god, war (including civil war), acts of any state or government, utility failures, fires, floods, explosions, the elements, epidemics, quarantine restrictions, lockouts, strikes, blackouts, plant shutdowns, material shortages due to petroleum and natural gas shortages, embargoes, delays in transportation or delays of supplies or subcontractors for like causes, or regulations, ordinances, or other regulatory, administrative or government acts or measures which hereinafter prescribe or substantially restrict the lawful performance of duties and obligations arising under this Order. In the event of any such causes, the affected party will immediately inform the other party of the circumstances creating the delay or expected to create the delay and provide a statement of impact.

#### **14. Invoicing/Payment**

Unless otherwise specified herein, payment of an undisputed amount of an invoice shall be made within thirty (30) days after receipt of correct invoice. Invoices are only considered received when they arrive at Buyer's designated accounts payable office. Seller shall make all necessary efforts to fulfill the Order without placing on "back-order" any goods or services. Every invoice issued by Seller shall bear the name of the ship for which the goods and/or services are rendered and which is stated on the Order. Every invoice issued by Seller shall bear the number of the purchase order for which the goods and/or services are rendered and which is stated on the Order. Buyer reserves the right to return any invoice which does not state the relevant ship name or purchase order number to the Seller unpaid and without penalty until the ship name and purchase order number are properly applied and re-submitted to Buyer.

Each shipment against each Order may be invoiced separately but if an invoice is issued which is not for the entire ordered amounts, it shall be clearly marked as a part invoice or a non-closing invoice. Failure to provide this marking may result in previous closing of a purchase order and delays to the payment of subsequent invoices may result. Delay in receiving invoices, or errors and omissions on invoices, including the above, shall be considered just cause for withholding payment without losing cash discount privileges. Invoices may not be submitted prior to shipment of material or equipment and/or performance of services unless stated clearly on the Order.

Seller shall include on its invoice a description of items matching the items on the Order; and, when requested by Buyer, Seller shall itemize invoices to show separate charges for material, labor, freight or other billable costs. If goods are delivered by multiple shipments, Seller shall show each shipment separately on invoices.

#### **15. Inspection/Testing**

Payment for the goods delivered hereunder shall not constitute acceptance thereof. Buyer shall have the right to inspect such goods and to reject any or all of said goods that are in Buyer's judgment defective or nonconforming. Buyer may utilize the services of authorized inspection and quality assurance bodies to determine criteria for acceptance or rejection of goods and services. These inspection bodies may include but are not limited to representatives of vessel's flag state inspectors (United States Coast Guard) and classification society surveyors.

Goods rejected and goods supplied in excess of quantities called for herein may be returned to Seller at its expense and, in addition to Buyer's other rights, Buyer may charge Seller all expenses of unpacking, examining, repackaging and reshipping such goods. In the event Buyer receives goods whose defects or nonconformity are not apparent on examination, Buyer reserves the right to require correction or replacement within the Warranty Period specified in Section 11 above, as well as payment of damages. Nothing contained in this Order shall relieve in any way the Seller from the obligation of testing, inspection and quality control.

#### **16. Cancellation/Termination**

Buyer may at any time terminate this Order in whole or in part for its convenience upon written notice to Seller. In the event of such termination, Seller shall immediately stop all work hereunder, and shall immediately cause any of its suppliers or subcontractors to cease such work. Seller shall be paid a reasonable termination charge consisting of a percentage of the Order price reflecting the percentage of the work performed prior to the notice of termination, plus actual direct costs resulting from termination. Seller shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided.

#### **17. Cancellation/Termination for Cause**

Buyer may also terminate this Order or any part hereof for cause in the event of any default by Seller or if Seller fails to comply with any of the terms and conditions of this Order or if Seller becomes insolvent or commits any act of

bankruptcy. Late deliveries, deliveries of products which are defective or which do not conform to this Order, failure to provide Buyer, upon request, of reasonable assurances of future performance, or Seller's insolvency or committing of any act of bankruptcy shall all be causes allowing Buyer to terminate this Order for cause. In the event of termination for cause, Buyer shall not be liable to Seller for any amount, and Seller shall be liable to Buyer for any and all damages, including attorney's fees, sustained by reason of the default or circumstances that gave rise to the termination.

#### **18. Changes**

Buyer shall have the right at any time to make changes in drawings, designs, specifications, packaging, time and place of delivery and method of transportation. If any such changes cause an increase or decrease in the cost, or the time required for the performance, or otherwise affect any other provision of this agreement, an equitable adjustment shall be made and agreed to and this agreement shall be modified in writing accordingly. Seller agrees to accept any such changes subject to this paragraph. Agreement to accept such changes shall not be unreasonably withheld.

#### **19. Delivery/Shipment**

Seller shall deliver the goods or complete the services hereunder by the date(s) or within the timeframe(s) specified in the Order. If no specific dates or timeframes are set out in the Order, Seller shall commence performance of this Order promptly following its receipt of this Order and shall diligently proceed with such performance until completion. Seller shall keep Buyer regularly informed as to any delays in the performance of this Order and Seller shall take all actions necessary to mitigate such delays.

Seller shall include one copy of a complete and comprehensive packing list with shipment. Buyer's count will be accepted as final and conclusive on all shipments not accompanied by packing slip. Materials delivered in error or over shipment in quantity will be returned at Seller's expense in accordance with its return shipping instructions.

If shipment moves on commercial bill of lading, Seller will attach to its invoice the original bill of lading; and if transportation is charged on the invoice, the original receipted expense bill will be attached. Shipment of goods is expected from nearest distributing point to destination unless previously agreed to by Buyer. Any additional freight charge will be deducted from the invoice when shipments are made from a greater distance.

If, in order to comply with Buyer's required delivery date, it becomes necessary for Seller to ship by a more expensive way than specified in this Order, any increased transportation costs resulting therefrom shall be paid for by Seller unless the necessity for such rerouting or expedited handling has been caused or required by the Buyer.

#### **20. Subcontracts**

Seller shall not subcontract this Order in whole or in part without the prior written consent of Buyer (not to be unreasonably withheld). Seller agrees to bind every subcontractor and every subcontractor shall be bound to terms similar to the terms of this Order. Consent by Buyer

to any such subcontracting shall not relieve Seller of its obligations. Seller shall ensure that all subcontractors perform their work and furnish materials with the same quality, skill and care required of Seller under the Order. Seller is responsible for the acts and omissions of its subcontractors, notwithstanding any consent which Buyer may have provided regarding the use of the subcontractor.

## **21. Assignment and Delegation**

No right or interest in this Order shall be assigned by Seller without the written permission of Buyer and no delegation of any obligation or of the performance of any obligation by Seller shall be made without the written permission of Buyer. Any attempted assignment or delegation by Seller shall be void and ineffective for all purposes unless made in conformity with this paragraph. No monies due or to become due may be assigned without prior written consent of Buyer.

## **22. Insurance**

If Seller or its subcontractor is performing work on vessels or premises owned, managed or otherwise controlled by Buyer, its affiliates or customers, without limiting any of the other obligations or liabilities of Seller, Seller shall provide and maintain and shall require its subcontractors to provide and maintain, at all times during the course of the work hereunder, the following minimum insurance coverage:

(i) Commercial General Liability insurance (including comprehensive form coverage for bodily injury, property damage and contractual liability, with watercraft exclusion deleted where applicable) - \$1,000,000;

(ii) Automobile Liability insurance (including coverage for owned, hired and non-owned vehicles) - \$1,000,000; and

(iii) Workers' Compensation insurance, including coverage under U.S. Longshore and Harbor Workers' Compensation Act where applicable, in amounts and scope that satisfy statutory requirements, and Employers' Liability insurance with limits of not less than \$1,000,000, including alternate employer and borrowed servant endorsements.

Seller warrants and shall ensure that all Seller employees performing work under this Order are covered by Seller's worker's compensation and employer's liability coverages. If Seller is a sole proprietorship, partnership, limited liability company or similar entity and if the owner(s) will be performing work under this Order, Seller warrants and shall ensure that the owner(s) is/are covered by such coverages.

If the services by the Seller are not to be carried out in the United States, the above requirements shall be interpreted as those required by the applicable jurisdiction and the amounts shall be interpreted as the equivalent amounts in the applicable local currency unless required by local laws to be higher, in which case the locally mandated law shall be complied with.

Before commencing any work on premises owned or controlled by Buyer, its affiliates or customers, Seller shall have provided Buyer a certificate of insurance acceptable to Buyer. The certificate must show Buyer and its affiliates

as an additional insured on all policies (other than workers' compensation/employer's liability insurance), and all policies must include a waiver of subrogation in favor of Buyer and its affiliates. All such insurance shall be with insurance carriers who have an A.M. Best rating of A- or better and are authorized to do business in the state where the work is to be performed. Coverage provided by Seller must be primary and non-contributory. Neither a failure of Seller to provide the required certificate of insurance, nor Seller's submission of a certificate of insurance not in conformance with the insurance requirements stated herein will relieve Seller from the obligation to have in force the required insurance coverages. The insurance requirements stated herein may be changed only by specific written agreement by Buyer.

## **23. Independent Contractor**

In the event that Seller's obligations hereunder require or contemplate performance of work by Seller's employees, or persons under contract to Seller, to be done on Buyer's vessels or property or vessels or property of Buyer's affiliates or customers, Seller agrees that all such work shall be done as an independent contractor and that the persons doing such work shall not be considered employees of Buyer.

## **24. Hazardous Chemicals**

For any substance which is or contains a hazardous chemical as defined in 29 CFR 1910.1200, as amended from time to time, or any successor regulation thereto, Seller shall furnish to Buyer at no extra cost at the time of delivery or prior to delivery, a material safety data sheet stating, in English, the information described in 29 CFR 1910.1200(g)(2).

## **25. Governing Law and Jurisdiction.**

This Order, and any dispute or claim arising out of or relating to this Order, shall be governed, construed and enforced in accordance with the laws of the State of Florida, without giving effect to any conflicts of law principles thereof. Any dispute or claim arising out of or relating to this Order shall be resolved exclusively in the state or federal courts located in Fort Lauderdale, Florida, and each party hereby submits to the exclusive jurisdiction of those courts.

## **26. Invalidity/Waivers/Remedies**

The invalidity in whole or in part of any condition of this Order shall not affect the validity of the other conditions. The remedies herein reserved shall be cumulative and additional to any other remedies in law or in equity. No waiver of a breach of any provision of this Order shall constitute a waiver of any other breach of such provision.

## **27. Entire Agreement**

This Order, and any documents referred to herein, supersede all prior understandings, transactions and communications, whether oral or written, with respect to the matters referred to herein and form the complete contract between the Buyer and Seller. No modification, alteration, or amendment of this Order shall be binding upon Buyer unless in writing and signed by Buyer's authorized representative.