

Purchase Order Terms & Conditions

1. **Acceptance** – Acceptance is limited to the express terms contained herein (reference herein to “Purchase Order” shall be a reference to all such terms). Any additional or different terms proposed by Seller to vary in any degree to any of the terms in this Purchase Order are hereby objected to and rejected. The terms of the Purchase Order shall describe the quantity, price, or delivery schedule of the labor, supervision, administration, and other services (the “Services”) or material, equipment, apparatus, products, supplies, goods and documentation (the “Material”) to be provided by Seller (collectively, the Material and Services shall hereinafter be referred to as the “Work”). If Seller has made a prior offer, Buyer’s acceptance of Seller’s offer is expressly conditioned on Seller’s assent to all of the terms contained in the Purchase Order. Seller’s commencement of performance of the Work shall be deemed an effective mode of acceptance of Buyer’s offer or counteroffer, as the case may be, and the terms and conditions contained in this Purchase Order. Time is of the essence under this Purchase Order.
2. **Prices** – In consideration for the performance of the Work, Buyer shall pay to the Seller the prices set forth in this Purchase Order, and this Purchase Order shall not be invoiced at higher prices than shown herein.
3. **Delivery** – Delivery of Material shall be “DAP Buyer’s delivery dock, with freight paid by Seller; unless otherwise specified in the Purchase Order. Buyer may expedite deliveries. Seller shall notify Buyer promptly of any conditions affecting the date the Material is to be received at the “ship to” address specified in the Purchase Order (the “Delivery Date”). This notice shall be required for conditions affecting both late and early delivery. Buyer may, at its sole option, accept or return deliveries, which vary from the specified Delivery Date or quantities except for authorized partial shipments.
4. **Packaging** – Material shall be packaged and shipped in accordance with good shipping practices. In all cases Material shipped shall be adequately protected to prevent damage in transit. Seller shall comply with and be responsible for following: Buyers shipping and packaging instructions in accordance with ANSI N-45.2.2 Level B, C, or D. All items or their containers shall be piece marked with material code or description and Purchase Order number. Items disassembled for shipment shall be match marked. Unpainted surfaces and openings shall be protected from impact and weather damage. All shipments shall be made in a closed truck or flatbed truck. Material shipped on a flatbed truck shall be tarped.
5. **Title and Risk of Loss** – (a) **Material**. The risk of loss or damage to the Material shall pass from Seller to Buyer at shipment destination as determined by the shipping terms set forth in the Purchase Order. Title shall be free and clear of any and all liens and encumbrances. If Material is received at its destination in a damaged condition and a claim for such damage was attributable to Seller, Seller shall repair or replace such damaged Material at no cost to Buyer. In any event, Seller shall assist Buyer without charge in establishing carrier liability for Material damaged by supplying evidence that the Material was properly manufactured, packaged, and secured to withstand normal transportation conditions.
(b) **Services**. Risk of loss or damage to the Services of any property of Buyer in the custody of Seller shall remain with Seller until Buyer issues final payment in accordance with the Purchase Order. If any loss or damage to the Services occurs prior to the date Buyer issues final payment, Seller shall, at its sole expense, promptly repair or re-perform the portion of the Services affected.
6. **Invoices and Payment** – Except as otherwise provided in the Purchase Order, invoices shall be paid within (30) thirty days after acceptance of the Work or receipt of the invoice and documentation, whichever is later. For any portion of the Work that does not conform to the requirements of the Purchase Order, a corresponding portion of the price may be withheld until such nonconformance is corrected. Payment shall not forfeit Buyer’s right to inspect and accept the Work and its documentation, nor shall the withholding of any payment, or prorated portion thereof, preclude Buyer from pursuing any other rights or remedies it may have under the Purchase Order, in law, or in equity. All invoices shall include Buyer’s Purchase Order number. Invoices shall separately identify sales/use taxes where applicable, and any authorized prepaid freight charges for parcel post, UPS, or other courier, of any shipments designated “DAP point of shipment, freight allowed”. All freight charges shall be supported by a copy of the original freight bill. Buyer may decline to pay an invoice, in whole or in part, due to the extent Buyer decides it is necessary to protect it from loss due to: (i) breach by Seller of any of its obligations under this Purchase Order, (ii) third-party claims or reasonable evidence of probable filing of such claims; (iii) damage to Buyer or another Seller where such damage arises out of the actual or alleged willful misconduct or negligent acts or omissions of Seller, any subcontractor or their agents, employees or any other person for whom, directly or indirectly, any one of them may be liable; (iv) reasonable evidence that the Work will not be completed within the time requirements specified in the Purchase Order; (v) unsubstantiated or unsupported amounts invoiced by the seller; or, (vi) Seller’s failure to properly pay Subcontractors. In the event that Buyer so requests, final waivers of lien by all subcontractors and material suppliers and affidavits that all bills for material and labor have been paid by Seller and each subcontractor shall be furnished with Seller’s final invoice with respect to the Work. Acceptance by Seller of final payment under this Purchase Order shall constitute a waiver of all claims against Buyer under this Purchase Order. Buyer may set off against any amount payable under this Purchase Order any and all present and future indebtedness of Seller to Buyer under any other Purchase Order.
7. **Warranties** – (a) **Material**. Seller warrants that the Material furnished to Buyer hereunder (i) will be of new manufacture and will be free from defects in design, workmanship, and materials. (ii) will be suitable for its intended purpose as specified in this Purchase Order or as otherwise known by Seller, (iii) will be fit for the particular purpose intended therefore to the extent such purpose is set forth in the Purchase Order or Seller otherwise has reason to know of such purpose., (iv) will be in compliance, and will have been manufactured and sold in accordance, with all applicable laws, and (v) will have been fully tested to meet the requirements of this Purchase Order. Seller further warrants that the Material will comply with (1) the specifications provided to Seller, and (2) all performance requirements, tolerances and representations provided to Seller. Seller agrees that it will obtain and assign or otherwise provide to Buyer the benefits of any warranties provided by manufacturers or suppliers of material or equipment incorporated into the Material, and will perform its responsibilities so that such warranties remain in full force and effect.
(b) **Services**. Seller warrants that qualified personnel shall perform all Services in a competent manner in conformance with the warranties herein, and that the Services will comply with the specification

contained in the Purchase Order. Seller further warrants that the Services will be properly performed in accordance with the applicable industry standards and practices then prevailing at the time of this Purchase Order, or, if higher at the time such services are performed.

8. Remedies- For a period of one year after acceptance of the Work by Buyer, or such other period stated in the Purchase Order, Seller shall correct or replace any nonconforming Work, at Seller's expense, promptly after notification by Buyer. The decision whether to correct or replace shall be made with the concurrence of Buyer and the correction or replacement shall be scheduled consistent with Buyer's requirements. All costs and expenses associated with access to, correction, or replacement of Work shall be paid by Seller, and Buyer may charge Seller all expenses of unpacking, examining, repacking, and reshipping of any rejected material. All warranties for any corrected or replaced Work shall be extended to one year from the date of Buyer's acceptance of the corrected or replaced Work. Inspection, testing, acceptance, payment, or use of any Work shall not affect the warranties and obligation of Seller hereunder and such warranties and obligation shall survive any such inspection, testing, acceptance, payment, or use. In the event of Seller's failure or refusal to correct or replace the Work, in accordance with the terms hereof, Buyer, after notice to Seller, may correct any deficiencies in, or replace, the Work at Seller's expense. Each of Buyer's rights and remedies under this Purchase Order shall be cumulative and additional to any other or further rights or remedies provided in law or equity under the Uniform Commercial Code or otherwise.
9. Inspection and Testing. Buyer may at all reasonable times inspect and test the Work. Buyer may reject any part of the Work found to be defective or nonconforming, regardless of the state of its completion or the time of place of discovery of such errors, and regardless of whether Buyer's inspector has previously accepted it without objection through oversight or otherwise. Any rejected Material may be returned at Seller's sole expense.
10. Changes in the Purchase Order. Buyer shall have the right at any time to make changes in the Purchase Order, including, but not limited to, changes in drawings, designs, specifications, materials, packaging, time and place of delivery, and method of transportation by issuance of a Change Order or other writing. If any such changes cause an increase or decrease in the cost, of the time required for the performance, an equitable adjustment shall be made and this Purchase Order shall be modified in writing accordingly. Any such equitable adjustment requested by Seller shall be asserted in writing to Buyer within fifteen days after Seller's receipt of notification of such charge.
11. Subcontracting. Seller may not, without prior written consent of Buyer, subcontract any of its obligations under this Purchase Order. In the event that Buyer consents to the subcontracting of any portion of the Work, (i) such consent shall not relieve Seller of its obligations under this Purchase Order with respect to such Work, and (ii) Seller agrees to bring the provision of this Purchase Order to the attention of and to bind every subcontractor (regardless of tier) to whom it subcontracts any of the Work by the provisions of this Purchase Order as far as applicable to that portion of Work to be performed by the subcontractor.
12. Indemnification. (a) Sellers Indemnification. TO THE FULLEST EXTENT PERMITTED BY LAW, SELLER AGREES TO INDEMNIFY, HOLD HARMLESS, AND UPON REQUEST DEFEND BUYER, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUBSIDIARIES, SUCCESSORS, AND ASSIGNEES, FROM ANY CLAIM LIABILITY, DAMAGE, EXPENSE SUIT, OR DEMAND (INCLUDING WITHOUT

LIMITATION, REASONABLE ATTORNEYS' FEES AND COURT COSTS) FOR ANY LOSSES, DAMAGES, INJURIES, OR DEATH TO ANY PERSONS INCLUDING SELLER'S EMPLOYEES OR ANY OF SELLER'S SUPPLIER'S AND SUBCONTRACTORS EMPLOYEES, OR FOR DAMAGE OR LOSS TO ANY PROPERTY, ARISING OUT OF OR IN ANY MANNER RELATED TO, BASED UPON, OR IN CONNECTION WITH ANY OPERATIONS, PERFORMANCE, BREACH, COURSE OR SCOPE OF WORK, ACT, OMISSION, CONTRACTOR'S WILLFUL MISCONDUCT OR PRESENCE UPON, USE OR OTHER ENCOUNTERING OF ANY PROPERTY, FACILITIES, PERSONNEL, VEHICLES, MATERIAL, OR OPERATION OF BUYER OR OTHERS BY OR INVOLVING SELLER OR ANY OF ITS EMPLOYEES, AGENTS, REPRESENTATIVES, FACILITIES, VEHICLES, MATERIALS, OR ANY OF SELLER'S SUPPLIERS AND SUBCONTRACTORS, REGARDLESS OF WHETHER THE SELLER IS A PARTY TO ANY LAWSUIT, EVEN IF THE CLAIM ARISES TO THE NEGLIGENCE, FAULT, OR OTHER LIABILITY OF BUYER OR ANY PARTY TO BE INDEMNIFIED, EXCEPT FOR THE SOLE NEGLIGENCE OF BUYER.

(b) Limitations of Liability. To the extent any state or other applicable law may prohibit any application of all or part of this indemnity obligation, it is the intent of the parties that this clause is severable, and that the clause be construed to impose the indemnity obligation in all circumstances, applications, and situations to the fullest extent permitted by law.

(c) Survivability. The provisions of this Section shall survive termination of the Purchase Order.

13. Termination and Suspension. (a) Termination With Cause. If the (i) Work is not performed in the time specified, or (ii) Seller breaches any other provision of this Purchase Order and the breach is not cured within 10 days of receipt by Seller of notice of such breach, or (iii) Seller is a debtor in bankruptcy or generally not paying its debts as such debts become due, then Seller shall be in default hereunder and Buyer may elect to terminate this Purchase Order, or to continue this Purchase Order subject to receiving adequate assurances of performance from Seller. In the event of termination, Buyer shall not be required to make any payment to Seller with respect to Work that has not been performed as of the date of termination.

(b) Termination or Suspension Without Cause. Buyer may at any time, on written notice to Seller, extend, suspend, or delay Seller's performance or terminate this Purchase Order, in whole or in part, by Buyer's convenience. If Buyer terminates Seller's performance hereunder, Seller shall immediately stop all Work under this Purchase Order and immediately cause its suppliers and sub-contractors to cease such Work, unless Seller is directed otherwise in the notice of termination.

(c) Suspension for Force Majeure. Buyer may at any time notice to Seller extend, suspend, or delay Seller's performance hereunder if Buyer determines that the project of which the Work is a part or Buyer's intended use of that project, facility or Work is likely to be delayed, changed, or stopped due to cause beyond the reasonable control of Buyer.

(d) Termination Charges. (1) If Buyer terminates the Purchase Order in accordance with subsection (a) of this Section, Seller shall not be entitled to receive any further payments under the Purchase Order until all Work contemplated by the Purchase Order has been fully performed. Buyer shall have the right to complete the Work by means other than the use of Seller, and in doing so Buyer shall have the right to exercise its sole discretion as to the manner, method, and reasonableness of the costs of completing the Work. Seller shall bear any extra expenses incurred by Buyer in completing the Work, including all increased costs. After all Work contemplated by the

Purchase Order has been completed, Buyer shall calculate the total expense for the completed Work. If the total expenses are less than unpaid balance due Seller, the excess shall be paid by Buyer to Seller. If the total expenses exceed the unpaid balance, Seller shall be liable to Buyer and shall pay the difference to Buyer on demand; and (2) if Buyer terminates this Purchase Order in accordance with subsection (b) of this Section, Buyer shall make payment to Seller for all reasonable and unavoidable disbursements and expenses which Seller has incurred or become obligated for prior to the date of notice of termination, less the reasonable resale value of material which has been obtained or ordered that was intended to become an integral part of the Purchase Order, plus a reasonable sum as profit in the same percentage as the Work completed prior to termination bears to the Work. In no event, shall the aggregate termination charges exceed the price of the Work hereunder. Seller agrees to take reasonable steps to minimize termination charges.

(e) Resumption of Work. If Buyer extends, delays, or suspends Seller's performance under subsections (b) or (c) of this Section, Seller shall thereafter resume its performance as soon as is practical when directed to do so by Buyer. Any completion dates identified in the Purchase Order which are affected by an extension, delay, or suspension of Buyer, together with any payment schedules in this Purchase Order, shall be extended for a period not to exceed the time lost by reason of the extension, suspension, or delay.

(f) No Overhead Costs or Profits. Whether Buyer terminates Seller with or without cause or suspends Seller's Work under this Purchase Order, in no event, shall Buyer be responsible for overhead costs associated with Work not performed by Seller, or any profits Seller would have earned if it had completed the work, or for any special, consequential, incidental, or indirect damages.

14. Limitation of Liability. IN NO EVENT, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL BUYER BE LIABLE TO SELLER FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER INCLUDING WITHOUT LIMITATION, LOST OF PROFITS OR REVENUE, OR COST OF CAPITAL.

15. Patents and Infringements. Seller shall pay all royalties and license fees which may be payable on account of performance or use of any of the Work. If any action or proceeding brought against Buyer is based on a claim of infringement of a proprietary or intellectual right or interest arising out of Seller's performance of the Work and, if Buyer promptly notifies Seller in writing of any such action or proceeding, Seller shall at its own expense, do the following to assure continuation or use of the Work. (1) defend such action or proceeding and pay all damages, costs, losses, claims, awards, settlements, attorney's fees and expense of any of them, arising out of such action or proceeding; (2) procure for Buyer the right to continue to use any part of the Work affected by such action of proceeding, or replace or modify, with Buyer's approval, any Work determined to be infringing such that the infringement is removed; and (3) if in any such action or proceeding a temporary restraining order or preliminary injunction be granted, then Seller shall, by gaining satisfactory bond, or otherwise, endeavor to secure the suspension of such restraining order or preliminary injunction against Buyer's use of the Work. Buyer at its expense may be represented by and actively participate through its own counsel in any such suits and proceedings if Buyer so desires. The preceding paragraph shall not apply to any Work, or any part thereof, manufactured to Buyer's detailed design. As to such Work or part, the Seller assumes no liability whatsoever for infringement.

16. Non-Waiver. The failure of Buyer to insist upon strict performance by Seller or Buyer's failure to delay in exercising any rights or remedies provided in this Purchase Order or by law shall not be deemed or construed as a waiver of any claims. No waiver by Buyer of a breach of any provision of this Purchase Order shall be construed as a waiver of any breach or of that provision. No payment, or certificate, final or otherwise, nor the approval of any design, shall be construed as (i) an acceptance of defective work, (ii) relieving Seller of its obligations to make good any defects or consequences for which Seller may be responsible, or (iii) a waiver of any obligations of Seller under this Purchase Order.
17. Documentation and Proprietary Information. Seller shall provide Buyer with all reasonable information and documentation which is requested by Buyer in connection with the Work. Buyer shall not be prohibited from disclosure or use of proprietary or confidential information or documents necessary for Buyer to secure or maintain in effect any license or permit, perform maintenance on the Work, or otherwise to obtain the full benefits of the Work. If Buyer transmits any information to Seller which Buyer considers proprietary, Buyer may so designate such information. Seller shall use that information and any other information that Seller knows or has reason to know is proprietary or confidential to Buyer, exclusively in connection with the Work to be performed hereunder and shall not publish or otherwise disclose it to any third party.
18. Assignment. Seller shall not assign its interest in the Purchase Order, or delegate any obligation under the Purchase Order, without the prior written consent of Buyer. An "assignment" shall include any transfer of a majority interest in Seller by merger or otherwise. Any attempted assignment or delegation by the Seller shall be wholly void and totally ineffective for all purposes. The Purchase Order shall not be deemed an asset of the Seller. Buyer, without limitation, reserves the right to assign the Purchase Order, or any interest, to a third party to be selected by Buyer.
19. Choice of Law; Interpretation; Severability. This Purchase Order shall be construed and interpreted, without giving effect to principles of conflict of law, in accordance with the laws of the State of Michigan. The provisions of this Purchase Order shall be interpreted where possible in a manner to sustain their legality and enforceability. The unenforceability of any provision of the Purchase Order in a specific situation shall not affect the enforceability of that provision in another situation or the remaining provisions of this Purchase Order.
20. Dispute Resolution. The parties shall attempt in good faith to resolve all disputes promptly by negotiation as follows: Any party may give the other party written notice of any dispute not resolved in the normal course of business. Both parties shall meet at a mutually acceptable time and place within 10 days after delivery of such notice, and thereafter as often as the reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within 30 days from the referral of the dispute either party may initiate mediation as provided hereinafter. If a negotiator intends to be accompanied at a meeting by an attorney, the other negotiator shall be given at least three working days' notice of such intention and may be accompanied by an attorney. All negotiation pursuant to this Section is confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state the rules of evidence. Such dispute be submitted to mediation with the American Arbitration Association ("AAA") in accordance with the Commercial Mediation Rules

The award of the arbitrator shall be specifically enforceable in a court of competent jurisdiction.

Continued Prosecution of the Work. In any case of dispute, including, but not limited to, any dispute which is or may be the subject of mediation or arbitration, Seller shall continue to prosecute the Work and maintain its progress pending final determination of the dispute, and Buyer shall continue to make payments to Seller for those portions of the work completed that are not the subject to the dispute.

21. Nondiscrimination and Affirmative Action. Seller shall, unless exempt, comply with the federal regulations pertaining to nondiscrimination and affirmative action (generally part 60-1 of Title 41 of the Code of Federal Regulations), including, but not limited to the following, all of which are incorporated herein by reference. (1) Affirmative Action Compliance Program (41 CFR 60-1.40); (2) Affirmative Action – Disabled Veterans and Veterans of the Vietnam Era (41 CFR 60-250.4); (3) Affirmative Action – Handicapped Workers (41 CFR 60-741.4); (4) Equal Opportunity (41 CFR 60-1.4) and Clause in Section 202 of Executive Order 11246; (5) Employer Information Report SF-100, annual filing (41 CFR 60-1.7); (6) Fair Labor Standards Act of 1938, as amended; (7) Prohibition of Segregated Facilities (10 CFR 60-1.8); and, (8) Small Business Concerns, Small Disadvantaged Business Concerns, Women Owned Business Concerns (48 CFR Chapter 1, Subpart 19.7), and Section 402 of the Veterans Readjustment Act of 1974 and Section 503 of the Rehabilitation Act of 1973. The Seller shall also comply, unless exempt, with any applicable state laws pertaining to nondiscrimination and affirmative action.
22. Independent Contractor Status. Seller agrees that all Work shall be performed as an independent contractor and that the persons performing such Work shall not be considered Employees of the Buyer.
23. Notices. Any notice pertaining to the Work performed or a Purchase Order shall be in writing and sent via facsimile transmittal, E-Mail, registered or certified mail (postage paid), or by commercial overnight courier, to Buyers representative or Seller's representative as appropriate, at their respective addresses appearing in the Purchase Order. Notices shall be effective only when received.
24. Late Delivery Back charge. Time is of the essence. In the event, and for reasons directly attributable to the Seller and not excused for the Buyer, the Seller fails to ship Work or Materials in accordance with the schedule set forth in the Purchase Order, the Seller may be assessed a late delivery charge in the amount of 1% per day to be applied to the value of goods or services that are delayed. In no event shall the late charge exceed 5% of the total Purchase Order value.
25. Foreign Corrupt Practices Act. Seller represents that it is familiar with the Foreign Corrupt Practices Act (the "FCPA") and its purposes; and that, in particular, it is familiar with the prohibition against paying or giving of anything of value, either directly or indirectly, by an American company to an official of a foreign government for the purpose of influencing an act or decision in his official capacity, or inducing him to use his influence with that government, to assist a company in obtaining or retaining business for or with, or directing business to, any Person. Buyer may terminate this Agreement for default at any time, without any liability or obligation, if it believes, in good faith, that Seller has violated this Act.
26. Conflict Minerals Disclosure Rules. By delivering the parts, products, materials or services pursuant to this Purchase Order, Seller hereby warrants and represents that it has conducted a due diligence review

of its supply chain and determined that no such parts, products, materials or services contain any conflict minerals from the Democratic Republic of Congo or its adjoining countries, or that any such conflict minerals present were derived from scrap or recycled sources. For purposes of this representation, the term "Conflict Minerals" includes Columbite-Tantalite (Coltan), Cassiterite, Gold, Wolframite, and derivatives of the foregoing, limited to Tantalum, Tin and Tungsten. Further, the countries adjoining the Democratic Republic of Congo included Angola, Burundi, Central African Republic, the Republic of Congo, Rwanda, South Sudan, Tanzania, Uganda and Zambia. Moving forward, it is our policy that we will not accept any materials containing Conflict Minerals unless the Seller can certify to us that the Conflict Minerals in question did not originate in the DRC or adjoining countries. Further, we will not accept shipments from Sellers that fail to return completed Conflict Minerals Vendor Questionnaires.

27. Complete Agreement. This sets forth the entire understanding between the Seller and Buyer, and supersedes any and all prior agreements, arrangements, or understandings, relating to the subject matter hereof.