

# TERMS AND CONDITIONS OF PURCHASE ORDER

1. **ACCEPTANCE.** This Purchase Order (the "Order") is Weldmac's offer to Vendor for the purchase and sale of the goods and/or services described on the front side of this Order (the "Articles"). Vendor must accept this Order by executing and returning to Weldmac the acknowledgement copy of this Order. Weldmac is not obligated under this Order until it receives such acknowledgement copy. If Vendor fails to return the executed acknowledgement copy of this Order but completes and delivers to Weldmac the Articles, Weldmac's acceptance of the Articles will constitute a contract on the terms and conditions of this Order. In such event, the terms and conditions of any other acknowledgement of this Order will not alter or add to the terms and conditions of this Order, and will not bind Weldmac.
2. **PACKING.** Vendor must pack and ship the Articles according to Weldmac's instructions and good commercial practice, and in a manner to ensure that no damage occurs to the Articles. The cost of packing is included in the price of the Articles.
3. **DELIVERIES AND TAXES.** Unless otherwise stated in this Order, all deliveries and prices are f.o.b. Vendor's facility. Unless authorized in writing by Weldmac, Vendor may not deliver the Articles in advance of the scheduled delivery date or otherwise anticipate Weldmac's requirements. Sales, excise or similar taxes imposed by government authorities on the sale of the Articles and payable by Weldmac must be separately stated on the invoice.
4. **INSPECTION.** Weldmac and/or its customers may, at any time, inspect and/or test the Articles, the materials, supplies, components, work in process, and intermediate assemblies to be used in the Articles, and the plants, facilities, and premises of Vendor and its subcontractors. If an inspection or test is made at the plant, facilities or premises of Vendor or a subcontractor, Vendor, at Vendor's expense, will provide or cause to be provided all necessary facilities and assistance for the safety and convenience of the inspectors, without additional charge to Weldmac or its customers. Weldmac may charge Vendor for Weldmac's inspection or testing costs if the Articles, materials, supplies, components, work in process, assemblies, plants, facilities or premises are not ready or available for inspection or testing as represented by Vendor or its subcontractor, or if such inspection or testing is necessitated by prior rejections of the Articles or such items. Vendor will provide and maintain an inspection system acceptable to Weldmac. Complete records of all inspection work will be maintained by Vendor and made available to Weldmac and its customers during the period beginning on Vendor's period specified in paragraph 5 below. The Articles are subject to final inspection and acceptance at Weldmac's plant, notwithstanding any other inspection, unless otherwise specifically stated in this Order. Vendor will make and provide all necessary certifications concerning the Articles.

Without limiting any other rights Weldmac may have under this Order or by law, Weldmac may reject any defective Articles delivered pursuant to this Order. In such event, the invoice for the shipment in which the defective Articles were included will be reduced by the unit price, shipping costs, and other charges applicable to such Articles. Articles rejected will be held at Vendor's risk and subject to Vendor's disposal for a reasonable time, and if not promptly removed or disposed of by Vendor may be sold or otherwise disposed of by Weldmac for Vendor's account and at Vendor's expense. Weldmac's payment of Vendor's invoice for any Articles prior to final inspection may not be deemed an acceptance of the Articles, a waiver of the right of inspection, or any other right of Weldmac, or relieve Vendor of any obligation or liability under this Order.

5. **WARRANTY-PRODUCT.** In addition to all warranties prescribed by law or provided by Vendor, the Articles, and will be free from defects in material and workmanship. Vendor warrants that the Articles, to the extent not manufactured pursuant to detailed designs furnished by Weldmac, are and will be free from defects in design. Such warranties, including warranties prescribed by law or provided by Vendor, will inure to Weldmac, its successors, assigns, and customers, and to users of the Articles, for a period of at least one (1) year after delivery, unless otherwise stated.
6. **WARRANTY-PRICE.** Vendor represents and warrants that the prices for the Articles set forth on the front side of this Order do not exceed the prices charged by Vendor on orders placed by other customers for similar quantities of the Articles during the sixty (60) day period immediately preceding the date of this Order. If Vendor breaches this warranty, the prices for the Articles will be reduced to the highest price charged during such period.
7. **INDEMNITY.** Vendor will indemnify, defend, and hold harmless Weldmac, and Weldmac's successors, assigns, agents, officers, directors, shareholders, employees, customers, and users (the "Indemnitees"), from and against any and all losses, fines, liabilities, damages, penalties, claims, judgements, demands, proceedings, costs, obligations, actions, suits, and expenses, including reasonable attorneys' fees and costs, imposed on, incurred by, or asserted against Weldmac and/or the Indemnitees which arise from or are in any way connected with (a) the Articles' infringement or violation of any patent, trade mark or copyright, except those Articles manufactured to Weldmac's detailed designs and

# TERMS AND CONDITIONS OF PURCHASE ORDER

which are rendered infringing by Weldmac's requirements for such design, (b) the manufacture, sale or use of the Articles, including, without limitation, strict liability in tort, products liability, personal injury, property damage, and breach of warrant, (c) Vendor's and/or its subcontractors' work or performance under this order, or (d) Vendor's breach of this Order or failure to perform its duties or obligations under this Order. Vendor will purchase and maintain insurance against all of such risks as Weldmac reasonably requests. Vendor will defend Weldmac and the Indemnitees at Vendor's sole cost and expense with counsel acceptable to Weldmac, or at Weldmac's and/or the indemnitees election, they may engage their own counsel and Vendor will reimburse them for the reasonable attorney's fees and costs they incur.

8. **WELDMAC-FURNISHED PROPERTY.** Vendor will not use, reproduce or appropriate for, or disclose to any person or entity other than Weldmac, any material, tooling, dies, plans, specifications, drawings, designs, or other property or data owned or furnished by Weldmac, nor may Vendor use such property to produce or manufacture articles other than the Articles under this Order, except in fulfillment of contracts for the government of the United States of America (the "U.S. Government"), provided (a) the U.S. Government has clearly demonstrated its right to use or have others use such property in the performance of U.S. Government contracts, and (b) Vendor has notified Weldmac immediately upon receipt of an inquiry, an Invitation for Bid, or a Request for Proposal from the U.S. Government involving such use. Title to such property will be and remain with Weldmac at all times. Vendor bears the risk of loss or damage to such property furnished by Weldmac, unless such loss or damage is solely, directly and proximately caused by Weldmac's negligence. All such property furnished by Weldmac, together with spoiled and surplus materials, will be returned to Vendor at termination or completion of this Order, unless Weldmac otherwise directs in writing.

## 9. TERMINATION.

(A) For Default. Weldmac may, by delivery or notice to Vendor, terminate or cancel all or any part of this Order upon the occurrence of any of the following events:

- (1) Vendor refuses or fails to make deliveries of the Articles or to perform the services within the time specified.
- (2) Vendor fails to comply with any other term or condition of this Order, or so fails to make progress as to endanger performance of this Order in accordance with its terms and does not cure such failure within (10) days (or such longer period as Weldmac may authorize by written notice) after receipt of notice from Weldmac specifying such failure; or
- (3) Vendor becomes insolvent, makes a general assignment for the benefit of creditors, files or has filed against it a petition of bankruptcy or for reorganization, or pursues any other remedy under any other law relating to the relief for debtors or a receiver is appointed for Vendor's property or business.

In such event, Vendor will transfer title and deliver to Weldmac any and all Articles and other property produced or procured by Vendor under this Order. Weldmac shall pay to Vendor the amounts due for Articles delivered and accepted in accordance with this order prior to the effective date of termination. However, Vendor will be liable and will pay to Weldmac, and Weldmac may offset against any amounts due to Vendor, any excess costs incurred by Weldmac to complete this Order.

(B) Without Cause. Weldmac may terminate or cancel all or any part of this Order at any time without cause by delivery of notice to Vendor. On Vendor's receipt of such notice, Vendor will, to the extent specified, stop work under this Order and any related subcontracts, and take any necessary action to protect property in Vendor's possession in which Weldmac has or may acquire an interest. In such event, Weldmac shall pay to Vendor, without duplication, (1) the amounts due for Articles delivered and accepted in accordance with this order prior to the effective date of termination, (2) the actual costs incurred by Vendor if properly allocable or apportionable under recognized commercial accounting practices to the terminated portion of this Order, including liabilities to subcontractors which are so allocable, and excluding any charges or interest or material or parts which may be delivered to or used for other orders, and (3) a reasonable profit on work in process on uncompleted Articles. Vendor's claim for such payment must be submitted to Weldmac, together with supporting documents, within sixty (60) days after the effective date of termination. Weldmac may audit all elements of any such claim for payment by Vendor. Vendor will make available to Weldmac on request all books, records, and papers relating to or supporting such claim.

# TERMS AND CONDITIONS OF PURCHASE ORDER

- (C) If, after delivery of notice of termination of this Order under paragraph 9(A) above, it is determined the Vendor was not in default under the provisions of that paragraph, at Weldmac's election the rights and obligations of Weldmac and Vendor will be the same as if the notice of termination had been issued by Weldmac pursuant to paragraph 9(B) above.
- (D) Termination or cancellation of this Order by Weldmac, whether for default or without cause, shall be without prejudice to any claims for damages or other rights of Weldmac against Vendor. Vendor will diligently continue performance of this Order to the extent not terminated or cancelled. Any provisions for delivery or acceptance of the Articles in installments will not make severable the obligations of Vendor.
10. **STOP-WORK.** Weldmac may require Vendor to stop work for a period of up to ninety (90) days in accordance with the terms of a written notice delivered by Weldmac. Vendor will take all Reasonable steps to minimize the incurrence of costs allocable to the work covered by this Order during the period of work stoppage. Within such ninety (90) day period, Weldmac may either terminate or continue the work by delivery of written notice to Vendor. If the work is continued, equitable adjustment shall be made to the price, delivery schedule, or other provisions affected by the work stoppage, provided a written claim for equitable adjustment is delivered by Vendor to Weldmac within thirty (30) days after delivery of Weldmac's notice to continue the work.
11. **CHANGES.** Weldmac may at any time, by delivery of notice to Vendor, and without notice to sureties, if any, make changes in the quantities, specifications, drawings, or delivery schedule of the Articles. Vendor will promptly make changes in accordance with such notice. An equitable adjustment shall be made to any price, time of performance, or other provisions of the Order as reasonably required by such changes, and this Order will be amended in writing accordingly. Vendor must make any claim for such adjustment to Weldmac in writing within thirty (30) days after delivery of Weldmac's notice of such changes. In the absence of such written claim, Weldmac is not obligated to make any such equitable adjustment resulting from a change. Nothing in this paragraph will excuse Vendor from proceeding with the Order as changed. Except as may be directed or agreed to in writing by Weldmac. Vendor may not make any changes in any aspect of the work to be performed under this order, including, but not limited to, drawings, specifications, quantities, or delivery schedule of or for the Articles.
12. **COMPLIANCE WITH LAWS.** In performing the work, Vendor will comply with all applicable federal, state, and local laws, executive regulations, and orders. Vendor certifies that the Articles will be and were produced in compliance with all applicable requirements of the Fair Labor Standards Act and the regulations and orders of the U.S. Department of Labor.
13. **TIME.** In all respects, time is of the essence in this Order.
14. **SETOFF.** Weldmac may set off any amount due from Vendor to Weldmac, whether or not under this Order, against any amount due by Weldmac to Vendor under this Order.
15. **NON-ASSIGNMENT.** Vendor may not assign this Order, or any interest in this order, including any payment due or to become due, without Weldmac's prior written consent.
16. **SUBCONTRACTING.** All subcontracting by Vendor with respect to this Order is subject to Weldmac's prior written approval.
17. **ADVERTISING.** Vendor may not advertise or publish Weldmac's placement of this Order without Weldmac's prior written consent, except as is necessary to comply with a proper request for information from an authorized representative of the U.S. Government.
18. **CONTROLLING LAW.** This Order and the performance of Vendor and Weldmac under this Order will be governed and controlled by and enforced in accordance with the laws of the State of California. The sole forum for any action arising out of or related to this Order will be a court of competent jurisdiction or arbitration forum in San Diego County, California.
19. **NOTICE OF LABOR DISPUTES.** If an actual or potential labor dispute delays or threatens to delay the timely performance of this order, Vendor must immediately give notice of the dispute, including all relevant information with respect to the dispute, to Weldmac. Each subcontract under or with respect to this Order must provide that if an actual or potential labor dispute delays or threatens to delay the timely performance of this Order, the subcontractor must

# TERMS AND CONDITIONS OF PURCHASE ORDER

immediately give notice of the dispute, including all relevant information with respect to the dispute, to Vendor and Weldmac.

20. **NONWAIVER.** Waiver of any term or condition of this Order or of Vendor's failure to perform under this Order is not effective unless provided by Weldmac in writing. Any such waiver will not constitute a waiver of any other term or condition or failure to perform.
21. **U.S. GOVERNMENT CONTRACTS.** If this Order is placed under an U.S. Government contract, this order is also subject to the following terms and conditions of the DEFENSE ACQUISITION REGULATION in effect as of the date of this Order. Such terms and conditions are incorporated in this Order by reference and will prevail to the extent of any inconsistency with the terms and conditions of this Order:

7-103.16(a)	Contract Work Hours and Safety Standards Act – Overtime Compensation
7-103.18(a)	Equal Opportunity
7-103.23	Notice and Assistance Regarding Patent and Copyright Infringement (If this Order is for \$50,000 or more)
7-103.27	Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era
7-103.28	Employment of the Handicapped (If this Order is for \$10,000 or more)
7-104.8	Reporting and Refund Royalties (If this Order is for \$100,000 or more)
7-104.9(a)	Rights in Technical Data and Computer Software
7-104.9(b)	Technical Data – Withholding of Payment
7-104.15	Examination of Records by Comptroller General
7-104.18	Priorities, Allocations and Allotments
7-104.29(b)	Price Reduction for Defective Cost or Pricing Data – Price Adjustments
7-104.41(a)	Audit by Department of Defense (If this Order is for \$2,500 or more)
7-104.42(b)	Subcontractor Cost or Pricing Data – Price Adjustments
7-108.29	Clean Air and Water

Weldmac will furnish to Vendor, on request, copies of the Defense Acquisition Regulations listed above. If necessary to make the context of the above regulations applicable for this Order, the terms "Contractor" means Vendor, "Contracting Officer" means Weldmac, and "Contract" or "Schedule" means this Order. In paragraph 4 of this Order, the term "Weldmac" means Weldmac and the U.S. government.

22. **ENTIRE AGREEMENT.** This Order constitutes the entire agreement of Weldmac and Vendor, and supersedes any prior or contemporaneous oral or written agreements, warranties, or representations between them with respect to the subject matter of this Order. Except as otherwise provided by this Order, this Order and the terms and conditions of this Order may be altered or amended only by a supplemental written agreement signed by Weldmac and Vendor, and will alter or amend only the terms and conditions specifically modified.
23. **EQUAL EMPLOYMENT.** Vendor will comply with the provisions of Executive Order 11246, as amended by Executive Order 11375 (Equal Employment Opportunity), 38 USC 2012 (Vietnam Era Veterans Readjustment Assistance Act of 1974), Section 503 of the Rehabilitation Act of 1973 (Handicapped Regulations), and the implementing regulations found at 41 CFR 60-250 and 41 CFR 60-741, respectively, which are incorporated in and made a part of this Order by reference.
24. **INTERPRETATION.** Vendor agrees to and accepts these terms and conditions. Any question of doubtful interpretation of these terms and conditions will not be resolved by any rule providing for interpretation against the party who causes the uncertainty to exist or against the drafter of this Order.
25. **NOTICES.** Any notice pursuant to this order must be in writing and delivered either personally, by facsimile, or by United States mail, registered or certified, return receipt requested, postage fully prepaid, and sent to Vendor or Weldmac at the address or facsimile number set forth on the front side of this Order. Any notice will be deemed delivered on personal service, twenty-four (24) hours after the time of transmittal by facsimile, or if mailed on the delivery date or attempted delivery date shown on the receipt.