

PURCHASE ORDER TERMS & CONDITIONS

Acceptance and Entire Agreement

In addition to by operation of law, acknowledgment, performance or shipment of any part of this Purchase Order will constitute acceptance by Seller of all terms and conditions hereof without reservation, provided that the material will not be considered as received and accepted until all required tests and all necessary and reasonable inspections have been approved by Buyer.

Unless otherwise stated on the face hereof, the terms, conditions, specifications, and drawings included in this purchase order (this "Purchase Order"), including all addenda, exhibits, and attachments hereto, upon acceptance (by operation of law or otherwise) by Seller as herein provided, shall constitute the entire agreement between Seller and Buyer regarding the subject matter hereof. The provisions contained herein shall in no way affect the enforceability of the Access Agreement (as defined below). No modification or waiver of any terms or provisions of this Purchase Order shall be binding on Buyer unless in writing, signed by Buyer. No terms or provisions proposed by Seller orally or in any order acknowledgement or confirmation or other writing shall modify or amend any of the terms or provisions of this Purchase Order or form the basis of any contract between Seller and Buyer, and Buyer hereby specifically objects to and rejects all such terms and provisions proposed by Seller.

Inspection

Materials, goods and services shall be received subject to Buyer's right to inspect, test, and approve all such materials, goods and services at destination before acceptance or payment. Buyer has the right to reject any materials, goods or services which in Buyer's opinion are defective or do not conform to this Purchase Order. Seller shall pay transportation costs and the cost of inspecting, testing, and returning all materials and goods that are rejected. Buyer's inspection or failure to inspect any materials, goods or services shall not constitute approval by Buyer and inspection or approval by Buyer shall not relieve Seller of its obligations under this Purchase Order.

Invoices

After each shipment of materials or goods and or performance of services under this Purchase Order, Seller shall send to Buyer an invoice, accompanied by a bill of lading, express receipt, delivery ticket or timesheets to Buyer's office designated on the face of this Purchase Order. Invoices shall contain the following information as applicable: The Order Number set forth on the face of this Purchase Order, item number, descriptions of all materials and goods, sizes, weights, quantities, unit prices, destination, any consignees, any routing and freight information, and any other information required by other provisions of this Purchase Order. Invoices should indicate whether it is a "Partial Billing" or "Final Billing". Buyer reserves the right to return invoice or invoices not in compliance with this section and withhold payment and pay only those invoices in compliance with said section.

Packing and Shipment

Delivery shall be made in accordance with Incoterms on the face of the Purchase Order.

All materials and goods shall be packed, packaged, marked, and otherwise prepared in a manner which is (i) in accordance with good commercial practice, (ii) acceptable to common carriers for shipment at the lowest rate for materials or goods of such type, and (iii) adequate to ensure safe arrival of such materials and goods at the named destination. All extra charges of any kind, including without limitation insurance, packing, crating, etc., will be borne by Seller unless otherwise expressly provided in this Purchase Order or unless otherwise agreed in writing by Buyer.

Packing Lists

Each shipment shall be accompanied by a packing list showing the Order Number set forth on the face of this Purchase Order and the exact quantity and description of all materials and goods shipped. Seller shall mark all containers with necessary lifting, handling, and shipping information.

Delivery Errors

If Seller delivers goods in error or in excess of quantities shown on this Purchase Order, Buyer may return such goods to Seller at Seller's expense and risk. Seller agrees to hold Buyer harmless for any damage, destruction or other loss of such goods during such return.

Delivery date

Seller shall deliver the goods in the quantities and on the date(s) specified in this Purchase Order or as otherwise agreed in writing by the parties (the "Delivery Date"). Timely delivery of the goods or performance of services is of the essence. If Seller fails to deliver the goods or services in full on the Delivery Date, Buyer may terminate the Purchase Order immediately by providing written notice to Seller and Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller's failure to deliver the goods or services on the Delivery Date.

Title and Risk of Loss

Unless otherwise specified on the face of this Purchase Order, delivery of materials and goods hereunder shall be made F.O.B. Buyer's destination, and Seller shall bear all risk of damage to or loss of such materials and goods, and title thereto shall not pass to Buyer until delivery of such materials and goods to Buyer at Buyer's destination.

Force Majeure this Purchase

Neither Seller nor Buyer shall be liable for any delay or failure to keep or perform any of its obligations under this Purchase Order to the extent that such delay or failure is caused by fire, explosions, floods, storms, earthquakes, tidal waves, acts of God, national emergency, terrorism, strikes, lock-outs, governmental laws, regulations, rules, or orders, or any other cause beyond such party's reasonable control. If either party shall rely on the occurrence of such an event or condition as a basis for being excused from performance of its obligations under this Purchase Order, then the party relying on such event or condition shall: (a) provide prompt written notice to the other party of the occurrence of such event or condition, giving an estimation of the expected duration thereof and the probable impact thereof on the performance of its obligations hereunder; (b) exercise all reasonable efforts to continue to perform its obligations hereunder; (c) expeditiously take action to correct or cure the event or condition excusing performance; (d) exercise all reasonable efforts to mitigate or limit damages to the other party to the extent that such action will not adversely affect its own interests; and (e) provide prompt notice to the other party of the cessation of the event or condition giving rise to its excusal from performance. If Seller's performance is or will be delayed by any such event or condition for more than five days, then Buyer may cancel this Purchase Order without liability to Seller.

Compliance

Seller warrants that Seller has complied with, and will comply with, all applicable federal, state, local, and foreign laws, statutes, ordinances, regulations, rules, and orders of any governmental authority covering the production, sale, performance, and delivery of all materials, goods, and services specified herein, including without limitation those pertaining to working conditions, payment of labor, and manufacturing, branding, labeling, registration, and shipment of materials and goods, and Seller shall indemnify and hold Buyer harmless from and against any liability or loss resulting from Seller's failure to do so.

Seller warrants that the goods or services furnished hereunder when used in their customary or recommended manner shall comply with the applicable requirements of the current Federal Occupational Safety & Health laws and regulations in effect at the time of shipment or performance of service.

Patents

Seller shall protect and indemnify Buyer against all claims, suits, proceedings, losses, judgments, costs, and expenses (including without limitation reasonable fees and disbursements of counsel) or other liability arising from infringement or alleged infringement of any patent, copyright, trademark, or other proprietary rights, or claim of unfair trade or unfair competition, resulting from or relating to Buyer's use, possession, sale, or delivery of any materials or goods delivered hereunder. Seller shall defend or settle at its own expense any proceeding brought against Buyer for such infringement or unfair trade or competition provided Seller is notified promptly of the commencement of such proceeding and is given reasonable authority, information, and assistance by Buyer for the defense or settlement thereof. Seller's warranties against patent infringement shall not extend to the use made by Buyer of the purchased materials or goods in combination with other materials or goods or in the operation of any process.

Warranties and Product Information

In addition to all warranties provided by statute or common law or set forth elsewhere in this Purchase Order, Seller expressly warrants that Seller shall deliver to Buyer good title to all materials, goods, and services covered hereby and that such materials, goods, and services shall conform to all specifications, drawings, samples, and descriptions furnished or adopted by Buyer, and shall be of the best quality and fit and sufficient for the purpose for which purchased if specified herein, new, merchantable, of good material and workmanship, free from any liens and encumbrances, and free from all latent, patent, and other defects in design, materials, and workmanship. Seller shall give notice to Buyer of any product recalls, product warnings, product updates, and product service bulletins relating to materials or goods purchased hereunder and received by Seller before or after such purchase. Without limiting the generality of the foregoing, Seller agrees to supply Buyer with copies of operating manuals, drawings, schematics, diagrams, product notices and bulletins, and other information reasonably necessary for proper use, maintenance, or repair of materials and goods purchased hereunder. Seller further agrees to be responsible for all defects in design, workmanship, and materials which may become apparent within twelve (12) months of beneficial occupancy and/or use by Buyer. Buyer shall be entitled to the benefit of any manufacturer and other third party warranties received by Seller, which are applicable to any labor, material, equipment, parts, property and/or services furnished as part of work under this Purchase Order. Such warranties are assigned by Seller to Buyer and Seller shall take all reasonable action to enforce such warranties. These warranties shall run to Buyer, its successors, assigns, and customers and the users of Buyer's products. Buyer's normal maintenance and repair of applicable purchased materials or goods after receipt from Seller shall not affect Seller's warranties set forth above. Neither payment for nor acceptance of any materials or goods delivered to Buyer under this Purchase Order shall constitute a waiver of any of Seller's warranties, express or implied, or otherwise affect or alter the rights of Buyer or the obligations of Seller in respect of such warranties.

On-Site Services

When entering, leaving, or upon any premises of Buyer, Seller and its personnel shall comply with all rules and regulations of Buyer pertaining to access to facilities, health, safety, security, order, prevention of fire or explosion, or emergency conditions, including without limitation those prohibiting smoking, lighting of matches, maintaining of open fires, intoxication, speeding, or other inappropriate conduct. Seller agrees that its personnel shall not be or be deemed to be the agents or employees of Buyer, and Seller accepts exclusive liability for payroll and other taxes imposed upon an employer by law. Prior to performing any services under this Purchase Order at any premises of Buyer: (i) Seller and its personnel (and any Seller subcontractors) who will perform any of such services shall schedule and attend all applicable safety orientation classes (ii) Seller shall execute and fulfill all requirements of the Martin Facility Access and Indemnity Agreement (the "Access Agreement").

Liability and Indemnity

Seller (including its subcontractors) shall indemnify, defend, and hold harmless Buyer, its affiliates, subsidiaries and related entities and their contractors, agents, officers, directors, managers, servants and employees ("Buyer Group") from and against all claims, losses, damages (including without limitation damages to property or the environment), injuries (including without limitation injuries to or illnesses or deaths of persons), liabilities, fines, penalties, costs, and expenses (including without limitation all reasonable fees and disbursements of counsel) (collectively, "Claims") arising from, in connection with, or otherwise with respect to Seller's negligence, gross negligence, willful misconduct, fraud, or strict liability in relation to or in connection with furnishing any materials, goods, or services to Buyer under this Purchase Order; provided, however, that Seller shall not be liable to Buyer Group under this provision in respect of any Claim that is caused by the sole negligence, gross negligence, or willful misconduct of Buyer Group. Seller agrees to furnish to Buyer, at its request, a certificate from Seller's insurance carrier showing that Seller carries workers' compensation, general liability, and property damage insurance coverage acceptable to Buyer. If Seller elects to use a subcontractor, (A) subcontractor shall be bound to all contract requirements including insurance coverage for liabilities to third parties for bodily injury and damage to property in amounts sufficient to protect Buyer Group in the event of such injury or damage, and will be in compliance with any and all laws, regulations or orders addressing the liabilities of an employer to its employees for injuries and disease suffered in connection with employment; (B) Seller will guarantee and remain liable for the performance of all subcontracted obligations; (C) Seller will indemnify Buyer for all damages and cost of any kind incurred by Buyer or any third party and caused by the acts and omissions of Seller's subcontractors; and (D) Seller will make all payments to its subcontractors. If Seller fails to timely pay a subcontractor for work performed Buyer will have the right, but not obligation to pay the subcontractor and offset any amount due to Seller by any amount paid to subcontractor. Seller shall defend, indemnify and hold Buyer harmless for all damages and cost of any kind, without limitation incurred by Buyer and caused by Seller's failure to pay a subcontractor. THIS PROVISION MAY REQUIRE SELLER TO INDEMNIFY AND DEFEND BUYER GROUP FOR CLAIMS CAUSED BY BUYER OR THIRD PARTIES WHEN SUCH CLAIMS ARISE OUT OF THE JOINT OR CONCURRENT NEGLIGENCE OF SELLER, BUYER, AND/OR ANY THIRD PARTY. IN NO EVENT SHALL BUYER BE RESPONSIBLE TO SELLER FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES. The indemnity provisions contained in this section apply to the extent the indemnity provisions in the Access Agreement do not provide indemnification in favor of Buyer Group for the Claims.

Approval Documents

Approval of documents by Buyer, its Client, or any of their designees does not relieve Seller of their responsibility for providing goods or services that are fully functional and which fully comply with the specifications issued with this Purchase Order.

Confidentiality

Any information (whether in written or any other tangible form, including magnetic or electronic media, or in any intangible form, including oral or visual) furnished by Buyer to Seller under or in connection with this Purchase Order ("Confidential Information") shall be and remain the property of Buyer. Seller agrees that, except to the extent reasonably necessary to perform its obligations hereunder: (i) Seller and its personnel shall keep this Purchase Order and its contents and the Confidential Information strictly confidential, (ii) neither Seller nor its personnel will disclose this Purchase Order or its contents or the Confidential Information to any third person in any manner whatsoever, and (iii) neither Seller nor its personnel will use this Purchase Order or any Confidential Information for any purpose whatsoever. All Confidential Information in tangible form shall be returned to Buyer promptly at its request.

Changes/Cancellation

Buyer shall have the right, at any time and from time to time without fault or default by Seller or other cause, to cancel all or any part of the undelivered portion of this Purchase Order by giving notice of such cancellation to Seller. In the event of such cancellation and as Buyer's sole liability for such cancellation, Buyer shall reimburse Seller for its actual cost of labor and materials used by Buyer in respect of the cancelled order, and the materials so paid for shall be shipped to Buyer. No substitution of materials or extra charges of any kind, or change in or cancellations of this Purchase Order will be recognized unless authorized in writing by a duly authorized representative of Buyer's Corporate Procurement Department.

A "change" means a change Buyer directs or caused within the general scope of this agreement. If Seller asserts that Buyer had directed or caused a change to the cost of or time for performance for which Buyer has not issued a change order, Seller shall promptly notify Buyer in writing of the change providing (i) a description of the action or inaction asserted to have caused the change; (ii) an estimate of the equitable adjustment that would be required for Seller to perform the changed work and; (iii) a date no less than 30 days from the date of notice which Buyer must respond to Seller's notice so that Seller may proceed with the Work unchanged. Buyer will evaluate Seller's notice in good faith, and if Buyer agrees that a constructive change has been made, Buyer will issue a Change Order to Seller.

If this Purchase Order covers merchandise manufactured or fabricated to Buyer's specifications or specifications prepared by Seller for Buyer, upon receipt of notice of cancellation, Seller shall stop all performance hereunder except as otherwise directed by Buyer. If Seller is not in default, Buyer shall pay to Seller: (a) the agreed unit prices for merchandise delivered or work completed, (b) an equitable cancellation charge to cover costs incurred by Seller in connection with the part of the work which is canceled; provided however, that under no circumstances shall the total cancellation payment plus payments under (a) and (b) above exceed the total price of this Purchase Order. Upon such payment, title to any materials or uncompleted merchandise shall pass to Buyer.

Taxes

Unless otherwise expressly provided in this Purchase Order, Seller agrees to pay any and all taxes imposed by law upon or on account of any materials, goods, or services covered by this Purchase Order, except taxes required by law to be paid or borne by the Buyer. Sales and use taxes shall be omitted from invoices when Buyer has provided an exemption certificate for the involved state. Seller shall indemnify Buyer against any liability and expense by reason of Seller's failure to pay the same.

Applicable Law

THIS PURCHASE ORDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF TEXAS, WITHOUT GIVING EFFECT TO ITS CONFLICTS OF LAW RULES OR PRINCIPLES. SELLER AND BUYER HEREBY EXPRESSLY AND IRREVOCABLY WAIVE THE RIGHT TO A TRIAL BY JURY IN ANY AND ALL ACTIONS OR PROCEEDINGS BROUGHT WITH RESPECT TO ANY PROVISION OF THIS PURCHASE ORDER OR THE ENFORCEABILITY THEREOF AND/OR WITH RESPECT TO ANY CLAIMS ARISING OUT OF OR RELATED TO THIS PURCHASE ORDER.

Assignment

Seller shall not have the right to assign this Purchase Order or any rights or obligations of Seller hereunder without the prior written consent of Buyer. Any such assignment by Seller without Buyer's consent shall be void. No such assignment with Buyer's consent shall relieve Seller from any of its obligations or liabilities hereunder.

Waiver

Acceptance by Buyer of any performance less than required by this Purchase Order shall not be deemed to be a waiver of the rights of Buyer to enforce all of the terms and provisions hereof. No waiver by Buyer of any term or provision of this Purchase Order shall be deemed to be or shall constitute a waiver of any other term or provision hereof, whether or not similar, nor shall any such waiver constitute a waiver of any subsequent failure, delay, or breach by Seller.

Lien Waiver

To the extent the goods or services under this Purchase Order entitle anyone to a lien right under Tex. Prop. Code §53.001 et al, Seller agrees Buyer may retain ten percent (10%) of the contract payment under this Purchase Order in accordance with Tex. Prop. Code §53.001 et al. Seller waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for Seller. Seller warrants that Seller has already paid or will use the funds received from payment to promptly pay in full all of the Seller's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the Buyer's purchase order. Seller shall not be entitled to receive final payment from Buyer until Seller furnishes evidence satisfactory to Buyer of full payment of such indebtedness. Seller shall not permit any lien or charge to attach to the work or the premises of Buyer or its client. If any lien or charge does so attach, Seller shall promptly procure its release, and indemnify Buyer or its client against all damage and expense incident thereto.

Withholding

Buyer shall have the right to withhold any money ever payable by it hereunder and apply the same to payment of any obligations of Seller to Buyer or to any other parties arising in any way out of this Purchase Order or its performance.

Default

If Seller breaches any provision hereof, becomes insolvent, enters bankruptcy, receivership or other like proceeding (voluntary or involuntary), or makes an assignment for the benefit of creditors, Buyer shall have the right, in addition to any other rights it may have hereunder or by law, to terminate this Purchase Order by giving Seller written notice. In such case: (a) Buyer shall be relieved of all further obligation hereunder, except to pay the reasonable value of Seller's prior performance, but not more than the contract price and (b) title to any product(s) of Seller's work whether completed or partially completed, as well as all materials prepared, procured or set aside by Seller for use in the work, shall, at Buyer's option upon giving written notice to Seller, and (c) Buyer may, at its option, complete performance of the work, in which event, Seller shall be liable to Buyer for all costs incurred by Buyer completing such performance in excess of the contract price whether or not Buyer exercises its option in clause (b).

Severability

If any portion of this Purchase Order is determined to be or becomes unenforceable or illegal, such portion shall be reformed to the minimum extent necessary in order for this Purchase Order to remain in effect in accordance with its terms as modified by such reformation.