

# GENERAL TERMS AND CONDITIONS FOR PURCHASE CONTRACTS (GCPC NO. 04-01-13)

- 1. GENERAL:** This Contract of Purchase ("Contract") consists of this document and any documents attached hereto and/or referred to therein. In the event of any ambiguity or conflict among the terms and conditions of this Contract, the priority thereof shall be in accordance with the following sequence: (a) the face of this document; (b) the documents attached hereto and/or referred to therein; and (c) these General Terms and Conditions for Purchase Contracts. Any proposal or document provided by Seller for additional or different terms or attempt by Seller to vary any of the terms of this Contract shall not apply or become part of this Contract. Any effective modification to these General Terms and Conditions for Purchase Contracts shall be applicable to and valid for this Contract only.
- 2. DELIVERY:** The obligations of Seller to provide Goods or Services in conformity with the delivery dates, specifications, quantities and any other terms specified on the face of this document or set forth or referred to herein is of the essence of this Contract. Seller shall properly pack, protect, label, mark and ship the Goods in accordance with the requirements and instructions of Buyer. If, under the terms of this Contract, Seller is to secure or arrange the transportation, Seller shall deliver the Goods on first class transportation vehicle owned and/or operated by carrier(s) of financial standing and of a type normally used for the transport of goods of the same type as the Goods. If Seller is obligated to procure and maintain insurance coverage with carriers under this Contract, it shall, at its sole expense, obtain and maintain insurance as agreed in this Contract and furnish to Buyer with the certified copies of all insurance policies or other evidence showing compliance with those insurance requirements within five (5) days of Buyer's request. Immediately after the completion of the loading of the Goods, Seller shall provide Buyer with the original bill of lading or other carrier receipt for each shipment or delivery in accordance with the Buyer's instruction and with a written notice of shipment or delivery, showing the number of this Contract, the name of the transportation vehicle, the port of shipment or destination of delivery, a description of the Goods and packing, the quantity loaded, the invoice amount and other essential particulars. Where quantities and/or delivery schedules are not specified, Seller shall deliver the Goods in such quantities and times as Buyer may direct in subsequent releases. Title to the Goods shall pass to Buyer at the time of delivery; provided, however, that if the Buyer is required to make one or more payments to Seller prior to delivery, title to the Goods shall pass to Buyer on payment of the first installment by Buyer. Buyer reserves the right, upon written notice to Seller at any time, (a) to terminate this Contract or cancel the purchase order therefor, in whole or in part, for Buyer's convenience and/or (b) to make changes in any or all of the following: (i) specifications, descriptions, samples, drawings, and other data furnished or designated by Buyer to Seller (collectively "Specifications") with respect to the manufacture, procurement or supply of any Goods or performance of any Services; (ii) method of shipment or packing of any Goods or performance of any Services; (iii) place of delivery of any Goods or performance of any Services. If delivery of Goods or performance of Services is not made in whole or in part within the time specified in this Contract or, if no time is so specified, within a reasonable time after the date of this Contract, Buyer reserves the right to reject such Goods and/or Services, without prejudice and in addition to any other rights and remedies that Buyer may have. Any provisions for delivery of Goods by installments shall not be construed as making the obligations of Seller severable.
- 3. PRICE; TAXES; AND PAYMENT:** The price specified on the face of this Contract shall be firm and final and shall not be subject to any adjustment for increases in Seller's costs, including, but not limited to, increases in the costs of labor, material or overhead, or any reason whatsoever. Buyer shall not be required to make payment for any Goods delivered to Buyer that are in excess of quantities specified in Buyer's delivery schedules. All taxes, export duties, fees, banking charges and/or other charges attributable to the Goods or Services, containers and/or documents (including but not limited to certificates of origin in the country of shipment or delivery) shall be borne and paid by Seller. Buyer may withhold payment pending receipt of evidence, in such form and detail as Buyer may direct, of the absence of any liens, encumbrance and claims on the Goods and Services under this Contract.
- 4. INSPECTION AND ACCEPTANCE:** Goods and Services are subject to inspection and approval by Buyer. Buyer reserves the right to reject or revoke its acceptance of all or part of any Goods or Services which are not in conformity with the Specifications, quantities or any of Seller's express or implied warranties, conditions or representations required or applicable hereunder, or otherwise not in conformity with any terms and conditions of this Contract. Seller shall promptly reimburse Buyer for any costs incurred by Buyer in inspecting Goods or Services which are rejected or revoked. Goods not accepted will be returned to Seller at Seller's risk and expense. Seller shall not have the right to replace or repair any Goods or Services not accepted except upon receipt of Buyer's written replacement or repair order. Payment for any Goods or Services shall not be deemed as acceptance thereof. Notwithstanding the inspection or acceptance of the Goods and Services hereunder, Seller shall be liable for any latent defects of the Goods and Services.
- 5. WARRANTY AND PRODUCT LIABILITY:** By accepting this order, Seller represents and warrants to Buyer that: (i) all Goods and Services will conform fully to the Specifications, will be merchantable, and will be free from any defects in design, material and workmanship; (ii) all Goods and Services will be fit and sufficient for the purposes intended by Buyer and/or end users; and (iii) all Goods and Services will be free and clear of all claims, liens and other encumbrances of any kind. Seller further agrees that this warranty shall survive acceptance of any Goods and Services and shall be in addition to any other express or implied warranties, conditions or representations of Seller, statutory or otherwise. Seller shall defend, indemnify and hold harmless Buyer, Buyer's customers, users of Goods or Services and its or their respective officers and employees (collectively the "Indemnitees") from and against any and all liabilities, losses, damages, penalties, claims, suits, actions, costs and expenses (including, without limitation, attorney's fees on a full indemnity basis and disbursements) which may be incurred by, imposed on, brought against or suffered by any one or more of the Indemnitees in relation to or in connection with, in any way, the Goods or Services or any defect or malfunction thereof, including without limitation any claim or dispute with regard to personal injury, death or property damage. The warranty and indemnity set forth in this Section shall survive the termination of this Contract.
- 6. INTELLECTUAL PROPERTY:** Seller represents and warrants that neither sale, lease, use, importation, exportation or other disposition of Goods by Buyer or any other Indemnitee nor performance of Services shall infringe on any patent, trademark, design, copyright or other intellectual property right (each an "Intellectual Property Right") of any third party in the United States or any other country. Seller shall defend, indemnify, and hold harmless the Indemnitees from and against any and all liabilities, losses, damages, penalties, claims, suits, actions, costs, and expenses (including, without limitation, attorney's fees on a full indemnity basis and disbursements) based upon, arising out of or otherwise in respect of any actual or alleged infringement of any Intellectual Property Right of any third party resulting from the sale, lease, use, importation, exportation or other disposition of Goods or the performance of Services.
- 7. FUTURE TRADE RESTRICTIONS:** If, following the date of this Contract, (i) there shall be imposed any import, export or other restrictions on interstate or international trade or commerce or there shall be enacted or otherwise issued any law, regulation or order regulating or purporting to regulate any import, export or other restriction on interstate or international trade or commerce in any way, including, without limitation, any creation or increase (whether retaliatory or otherwise) of tariffs, import surcharges, antidumping or countervailing duties, fees or any other form of charges whatsoever, or the imposition of any import or export quota or embargo, or, in Buyer's opinion any of the preceding is likely to occur and (ii) Buyer's ability to perform this Contract is adversely affected thereby, or its underlying economic assumptions with respect to this Contract become inaccurate in any respect, Buyer shall have the option either (a) to terminate this Contract in whole or in part by written notice to Seller, without incurring any liability to Seller thereby, or (b) to require Seller to renegotiate, in good faith, for the purpose of adjusting equitably any of the terms and conditions hereof, in which event Seller shall promptly commence such renegotiations with Buyer.
- 8. TRADE RESTRICTIONS AND SANCTIONS:** Upon the Buyer's request at any time, Seller shall provide Buyer with a certificate of Information with respect to the Goods or Services, the shipment thereof and other matters related to the transaction, in the form satisfactory to Buyer. Seller further represents and warrants to Buyer that the Goods or Services purchased under this Contract do not originate from a country subject to a U.S. trade sanction, according to the list published by the U.S. Office of Foreign Assets Control ("OFAC"), Department of the Treasury, at Internet address: [www.treas.gov/ofac](http://www.treas.gov/ofac). In the event that Seller learns any fact that is contrary to the foregoing representations and/or warranties or that otherwise puts Buyer in violation of a U. S. trade sanction (the "Fact"), Seller shall immediately notify Buyer. Buyer shall, within three (3) business days of receipt of such notice, or within a reasonable time after Buyer learns the Fact through another means, notify Seller whether Buyer elects to terminate this Contract for cause with respect to the shipment at issue or instead to apply to OFAC for an appropriate license. In the event that Buyer applies for a license but OFAC fails for any reason to issue a license within a reasonable time following receipt of Buyer's application, Buyer may elect to terminate this Contract, which shall be deemed a termination for cause. Seller shall reimburse Buyer for any loss resulting from market price movements calculated as the difference between the market price for the Goods or Services on the original delivery date under this Contract and that on the date of cancellation or date of delayed delivery (in the event that an OFAC license is obtained by Seller), as well as any other related costs or charges incurred by Buyer due to the cancellation or delay in performance.
- 9. COMPLIANCE WITH LAWS:** Seller represents, warrants and covenants that it has complied and will continue at all times during the performance of this Contract to comply with, and that it has given and will continue during such period to give all stipulations and representations required by, all federal, state and local laws and regulations. Seller further agrees, in connection with the performance of this Contract, not to discriminate against any employee or applicant for employment because of race, sex, religion, color, national origin, disability, covered veteran's status or other protected classification as mandated by federal, state or local law. Unless exempted, Section 202, paragraphs 1 through 7 of Executive Order 11246, as amended, and the equal opportunity clauses as set forth in 41 C.F.R. 60-741.5 and 60-250.5, as amended, are incorporated herein by reference. Seller shall defend, indemnify and hold harmless the Indemnitees from and against any and all liabilities, losses, damages, penalties, claims, suits, actions, costs, and expenses (including, without limitation, attorney's fees and disbursements) which may be incurred by, imposed on, brought against or suffered by any one or more of the Indemnitees for or in relation to Seller's failure to comply with any legal requirement.
- 10. DEFAULT:** In the event that (i) any Goods or Services fail to conform to the warranties, conditions or representations specified in Section 5 of this Contract; (ii) Seller fails to make deliveries of the Goods or perform the Services at the time or otherwise in the manner specified in this Contract; (iii) Seller breaches any of the other terms and conditions of this Contract or any other contract with Buyer, (iv) Seller becomes insolvent, or a proceeding is instituted or commenced by or against Seller under any bankruptcy, insolvency or similar law, or a receiver, trustee or liquidator is appointed for Seller or any of its assets, or (v) Seller executes an assignment for the benefit of creditors, Buyer may, at its sole discretion, (i) terminate this Contract or any part thereof, (ii) reject the Goods or Services, (iii) dispose of the Goods or Services for the account of Seller at a time and price which Buyer deems reasonable, and/or (iv) purchase goods or services similar to Goods or Services elsewhere and charge Seller with any resulting loss or damage, without prejudice and in addition to any other rights or remedies available for Buyer under this Contract or at law, by statute or in equity. Seller shall reimburse Buyer for all losses or damages arising directly or indirectly from such events of default, including without limitation any costs and expenses such as dead freight, loss of profit obtainable from resale by Buyer of the Goods or Services and damage caused to any customer purchasing the Goods or Services from Buyer. Buyer may at any time terminate this Contract without cause, in whole or in part, by giving Seller a written notice of termination; provided that Buyer will reimburse Seller for actual costs reasonably incurred by Seller as a result of such termination, the amount of which shall be ascertained and agreed to by Seller and Buyer in writing.
- 11. REMEDIES; SET-OFF AND RECOURPMENT:** The remedies herein reserved to Buyer shall be cumulative and in addition to any other or further remedies provided at law, by statute or in equity. In addition to any right of setoff or recoupment provided by law, all amounts due to Seller shall be considered net of indebtedness of Seller and its affiliates or subsidiaries to Buyer and its affiliates or subsidiaries, and Buyer shall have the right to setoff against or recoup from any amounts due to Seller and affiliates or subsidiaries to Buyer and its affiliates or subsidiaries.
- 12. APPLICABLE LAW AND RULES; AND SUBMISSION TO JURISDICTION:** This Contract shall be governed by the laws of the State of New York, without regard to the conflicts of laws principles thereof; provided, however, that if this Contract is made for the sale or delivery from Seller the address of which shown on the face of this document is outside the United States, the trade terms provided herein such as EXW, FAS, FOB, CIF or DDU shall have the meanings set forth in the Incoterms# 2000. Seller and Buyer hereby expressly exclude the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods with respect to the sales covered by this Contract. Seller hereby irrevocably consents to the jurisdiction of the Federal and New York State courts located in the City of New York in connection with any and all suits, actions or other proceedings arising out of or in relation to this Contract. SELLER SPECIFICALLY WAIVES ANY RIGHT TO A JURY TRIAL.
- 13. CONFIDENTIALITY:** Seller shall not use any proprietary information received from Buyer hereunder (other than such information as is known to Seller or in public domain without the fault of Seller) for any purpose other than the performance of this Contract, and shall not disclose the same to any third party.
- 14. ENTIRE AGREEMENT; MODIFICATION; ASSIGNMENT; AND WAIVER:** This Contract, together with the Specifications, if any, constitutes the entire agreement between Buyer and Seller in respect of the subject matter hereof and supercedes all prior agreements, whether written or oral, with respect thereto. Any alterations or modifications hereof shall be by mutual agreement of the parties and shall not be binding on Buyer unless agreed to by Buyer in writing. Seller shall neither assign any rights nor delegate any duties under this Contract without the prior written consent of Buyer. No claim or right of Buyer arising out of a breach of this Contract shall be discharged in whole or in part by waiver or renunciation of such claim or right unless such waiver or renunciation is made by Buyer in writing. No delay on the part of Buyer in exercising any right hereunder shall operate as a waiver or renunciation thereof, nor preclude any further exercise thereof or the exercise of any other such right.