

**PURCHASE ORDER  
STANDARD TERMS AND CONDITIONS**

**1. DEFINITIONS:** "BUYER" means the entity, and its subsidiaries and affiliates, in the Purchase Order ("PO"). "SELLER" means the person or entity whose name appears on the face of the PO. "Work" as used in this PO means any and all goods, services, equipment, or materials whether tangible or intangible, specifically or by reasonable inference, required to be delivered or provided by SELLER under this PO (collectively the "Work").

**2. PRECEDENCE:** The terms, conditions and provisions of this PO are a principal consideration for BUYER to enter into this PO with SELLER and supersede and take precedence over any and all other terms, conditions or provisions of any other party, including SELLER. Each term, condition and provision of this PO is accepted by SELLER upon the earlier of: (1) the date of issuance of this PO to SELLER; (2) the date of any performance by SELLER under or in anticipation of issuance of this PO; or (3) the date that SELLER executes this PO. No other or varying term, condition or provision of SELLER related to the order, sale, performance or delivery of the Work shall be applicable, or construed as acceptable to BUYER. BUYER hereby gives notification of its objection to and rejection of any alterations, additions, limitations or other modifications to this PO or any of its terms, conditions or provisions. Receipt of such differing terms, conditions or provisions irrespective of whether signed or accepted by BUYER is immaterial and shall have no force or effect. Any technical data, specifications, drawings, designs, standards or the like attached to, referenced in, inferred by, or incorporated in this PO are an integral part of this PO. No acceptance of additional terms, modification or alteration of the terms contained herein or waiver of any right or remedy contrary to any of the above shall be effective unless executed by a duly authorized executive officer of BUYER.

**3. PAYMENT:** Payment to SELLER shall be made as indicated on this PO or, if silent, SELLER shall be entitled to payment sixty (60) days after final acceptance by BUYER of the Work.

All signed delivery documentation must be provided to BUYER's Purchasing or Receiving Departments prior to submittal of invoice(s) for payment.

**4. DELIVERY:** Time is of the essence in completing and delivering all Work under this PO. In the event SELLER fails to make delivery of any part of the Work within three (3) calendar days following the due date for such part of the Work, SELLER shall be assessed a late fee (the "Late Fee"). The Late Fee shall be an amount equivalent to three percent (3%) of the total PO value for each calendar day period following the delivery date. In the event of repeated or continual late delivery, BUYER reserves the right to terminate this PO and remove SELLER from BUYER's Approved Vendor List, at BUYER's sole discretion. In addition to the foregoing, failure to timely fulfill any aspect of the Work shall subject SELLER and entitle BUYER to any and all rights and remedies available to BUYER, at law or in equity, including, but not limited to, rescission and/or for any and all damages, including consequential damages. BUYER retains the right to mitigate potential damages by performing and/or substituting goods or services and shall be entitled to full reimbursement from SELLER for any cost or expense incurred thereby. SELLER is entirely responsible for the packing and marking of the Work, and insuring that it is delivered at the time and destination agreed by BUYER. All costs and risks of transportation of the Work are for SELLER's account, unless otherwise specified on the face of this PO.

**5. ACCEPTANCE:** Acceptance of all or any part of the goods shall not be deemed to be a waiver of BUYER's right either to cancel or to return all or any portion of the goods due to failure to conform to order, or by reason of defects, latent or patent, or other breach of warranty, or to make any claim for damages, including manufacturing costs and loss of profits or other special damages incurred by BUYER. Such rights shall be in addition to any other remedies provided by law.

**6. OBLIGATIONS OF SELLER:** If the Work, in whole or in part, does not meet any requirement of BUYER under this PO or is otherwise defective or non-conforming in any manner, delivery shall not be deemed to have occurred and SELLER shall be liable for any and all damages arising as a result of such breach.

When BUYER's drawings are furnished in connection with this PO, SELLER is responsible for furnishing whatever material is required to complete the work specified in this PO. If a Bill of Material is furnished on the drawings or together with the drawings, it is understood and agreed that BUYER is making no representations as to its accuracy or completeness and that SELLER should make its own material take-off to insure that it furnishes and allows for all materials required by this PO.

SELLER's delivery obligation(s) shall not be considered discharged unless and until any tests required by this PO or otherwise are successfully completed and the results confirmed in writing.

SELLER commits to immediately notify BUYER, in writing, if SELLER knows or has reasonable cause to believe that SELLER cannot discharge any obligation of SELLER under this PO. Such notice shall state with specificity the reasons for SELLER's inability to perform and SELLER agrees to cooperate with BUYER to mitigate any loss, cost or expense as a result of SELLER's inability to perform, including providing BUYER with any and all information or material, in SELLER's possession or control, related to this PO and to assist BUYER in mitigating any such loss, cost or expense.

SELLER must provide a Safety Data Sheet ("SDS") for any product shipped under this PO which may produce hazardous gases, liquids or solids. SELLER shall indicate on the SDS the BUYER PO for reference and mail the SDS to the attention of the Purchasing Dept., P.O. Box 2007, Mobile, AL 36652.

If ABS steel is specified in this PO, the steel furnished must be produced by an ABS approved mill, or if the mill is not ABS approved the mechanical tests must be witnessed by an ABS surveyor. An ABS stamped mill certificate must be provided at time of delivery.

SELLER shall adhere to the Environmental, Health and Safety regulations, procedures and standards of WMA while on BUYER's property and/or any vessel(s) located at BUYER's facility, including, but not limited to, BUYER's strict policy of no open containers allowed in its facility at any time, except during the transfer of contents. SELLER will notify BUYER within two (2) hours of an accident/incident involving SELLER personnel in connection with or during the performance of this PO.

All SELLER furnished coatings and thinners shall comply with federal, state and local VOC regulations, including but not limited to, 40 CFR Part 63. A list of all coatings and thinners to be used by SELLER in the performance of the Work shall be provided to BUYER prior to the commencement of SELLER's Work. Thinners are to be used for cleaning coatings application equipment only. The applicable Air Quality Data Sheets (air emissions as applied) for all coatings and thinners identified on the list provided to BUYER shall be provided to BUYER prior to the commencement of SELLER's Work. All coatings and thinners must be approved by BUYER prior to their use at BUYER's facility.

SELLER shall provide a written report identifying the quantities and types of coatings and thinners used by SELLER at BUYER's facilities. The report must be provided to BUYER within five (5) calendar days after completion of the Work for projects that begin and complete in the same month or prior to the 8<sup>th</sup> day of each month (report covers the previous month) for projects that are performed in multiple months.

**7. TITLE/RISK OF LOSS:** Title to Work furnished hereunder shall pass to BUYER upon payment therefore, or upon delivery, whichever is sooner; provided, however, that risk of loss shall remain with SELLER until final acceptance.

**8. CHANGES:** The terms, conditions and provisions of this PO set forth all amounts due or to become due to SELLER and SELLER specifically waives any right to receive any additional amount from BUYER for any cause or reason, except as provided herein. This PO is not subject to any change or modification, including, but not limited to, any increase in the amount due SELLER, unless agreed in writing by a duly authorized purchasing agent or subcontract administrator of BUYER. BUYER may require, at its sole discretion, changes in the general scope of this PO by written notice, including, but not limited to, any technical aspects, material quantity, method of shipping and/or packing, inspections, standards or place of delivery. If

such a change affects the cost of the Work or the timing of SELLER's performance, SELLER shall undertake such change promptly and in a manner designed to eliminate or minimize any increased cost to BUYER.

**9. SELLER'S WARRANTIES AND REPRESENTATIONS:** SELLER warrants and represents that:

Title to all Work is free of any lien, encumbrance or security interest of any kind or character, choate or inchoate. The Work conforms to this PO, all BUYER's requirements and SELLER's specifications and is of the highest quality of material and workmanship, is free of any defects, is merchantable and fit for the purpose or use intended by BUYER.

The Work conforms to any sample or specification provided by SELLER and accepted, in writing, by BUYER. All supervision, labor, tools, materials and equipment necessary to perform the Work shall be provided by SELLER.

All representations and warranties, including any service or installation warranties of SELLER hereunder, shall survive inspection, test, acceptance of, and payment for the Work and shall accrue to the BUYER, its successors and assigns.

SELLER's warranties of the Work shall extend for a period of the longer of: one year from the date of written acceptance of the Work by BUYER; the warranty period (as defined) offered by SELLER to SELLER's customers for the goods or services sold by SELLER; the longest warranty period which SELLER offers to any buyer of any goods or service included in the Work, or any similar goods or service; or as otherwise specified in this PO.

Any rights and remedies of BUYER as a result of the foregoing representations and warranties of SELLER, or the breach thereof, are not exclusive and shall not limit any other right or remedy of BUYER, its successors or assigns.

**10. RELEASE AND INDEMNITY:** SELLER HEREBY WAIVES AND RELEASES ANY CLAIM AGAINST BUYER, ITS AFFILIATES AND THEIR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES AND CUSTOMERS (COLLECTIVELY THE "BUYER GROUP") FOR ANY LOSS OF ANY NATURE OR KIND ARISING OUT OF, DIRECTLY OR INDIRECTLY, THE TERMS, CONDITIONS OR PROVISIONS OF THIS PO (EXCEPT AS CAUSED BY THE WILLFUL MISCONDUCT OF BUYER), INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUE, PROFIT, CAPITAL OR THE USE THEREOF, PRODUCTION DELAYS, LOSS OF PRODUCT, LOSSES RESULTING FROM FAILURE TO MEET ANY OTHER CONTRACTUAL COMMITMENTS OR DEADLINES, DOWNTIME OF FACILITIES OR PERSONNEL, AND/OR ANY OTHER DIRECT, INDIRECT, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND OR TYPE.

SELLER HEREBY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS BUYER GROUP AND ANY OF BUYER'S INDEMNITEES AND ASSIGNEES FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, JUDGMENTS, DEFENSE COSTS, OR SUITS (INCLUDING, BUT NOT LIMITED TO, THOSE FOR PROPERTY DAMAGE, BODILY INJURY, ILLNESS, DISEASE, DEATH OR FOR LOSS OF SOCIETY, CONSORTIUM, SERVICES, WAGES AND FOR PUNITIVE DAMAGES AND FURTHER, FOR LOSS OF REVENUES, USE, PROFIT OR PRODUCTION OR CONSEQUENTIAL DAMAGES OR ANY OTHER ECONOMIC LOSS) BROUGHT BY OR ON BEHALF OF ANY PERSON, FIRM, ENTITY, VESSEL, OR ANY OF THEIR INSURERS, ARISING OUT OF, OR IN ANY MANNER RELATED TO, DIRECTLY OR INDIRECTLY, SELLER'S OBLIGATIONS, OR SELLER'S PERFORMANCE OR ATTEMPTED PERFORMANCE, UNDER THIS PO. SELLER WAIVES ANY RIGHT IT MAY HAVE NOW OR IN FUTURE TO SEEK RETRIBUTION AGAINST BUYER GROUP, ITS INSURERS, INDEMNITEES, OR ASSIGNS AND AGREES TO ASSUME ANY AND ALL INDEMNITY OBLIGATIONS, ARISING FROM CONTRACT OR LAW, OF BUYER GROUP TO ANY THIRD PARTY ARISING OUT OF OR IN ANY WAY CONNECTED WITH SELLER'S PERFORMANCE OF, OR FAILURE TO PERFORM, ANY TERM, CONDITION OR PROVISION OF THIS PO.

NEITHER SELLER NOR ANY OF ITS SUBCONTRACTORS SHALL BE ENTITLED TO A MARITIME LIEN, WATERCRAFT LIEN, OR ANY OTHER LIEN OR CLAIM UPON THE VESSEL (OR WATERCRAFT) WHICH IS THE SUBJECT OF THIS PO. SELLER AGREES THAT NOTHING IN OR CONTEMPLATED BY THIS PO CREATES OR SHALL BE CONSTRUED TO CREATE ANY RIGHT TO ASSERT A MARITIME LIEN, WATERCRAFT LIEN OR ANY OTHER LIEN OR CLAIM ON THE VESSEL (OR WATERCRAFT) WHICH IS THE SUBJECT OF THIS PO. SELLER SHALL INCLUDE A COPY OF THIS PROVISION IN ANY PO OR OTHER AGREEMENT MADE BY IT AS A RESULT OF THIS PO.

SELLER SHALL INDEMNIFY, DEFEND AND HOLD BUYER AND ITS CUSTOMER HARMLESS FROM MARITIME, WATERCRAFT, LABORERS', MECHANICS', MATERIALMEN'S LIENS AND ALL OTHER LIENS AND CHARGES OF ANY NATURE WHATSOEVER UPON THE WORK PROVIDED BY THE SELLER ARISING OUT OF THE PERFORMANCE OF THIS PO.

SELLER, at its sole cost and expense, shall provide such insurance coverages as may be required by law or requested by BUYER, including insurance coverage for any indemnity obligation undertaken by SELLER hereunder.

BUYER may terminate this PO, in whole or in part, in the event of any default by the SELLER of any of SELLER's obligations hereunder, or under any other agreement that SELLER may have with BUYER. If SELLER becomes the subject of any proceeding under state or federal law for relief from its creditors or shall be deemed by BUYER to be insolvent or unable to pay its debts as they become due, or if SELLER makes an assignment for the benefit of creditors, BUYER shall have the right immediately to declare SELLER in default and to exercise any right or remedy which BUYER may have in law or in equity. In the event BUYER terminates this PO for default, SELLER shall be responsible for any and all costs incurred by BUYER to complete the terminated Work in accordance with this PO.

**11. TERMINATION FOR CONVENIENCE:** BUYER reserves the right to terminate this PO, in whole or in part, at BUYER's sole convenience. In the event of such termination for convenience, SELLER shall immediately stop all Work hereunder, and shall immediately cause any of SELLER's suppliers, vendors and subcontractors to cease all Work. SELLER shall include in any PO or other agreement made by it as a result of this PO, the right to terminate for the convenience of BUYER.

If this PO is terminated for convenience, SELLER shall be entitled to the lesser of: that amount that shall be allocated by BUYER or BUYER's customer to the Work completed by SELLER, or a termination charge based on those costs and expenses of SELLER reasonably and necessarily incurred and established by SELLER as a direct result of such termination, after reasonable and prudent mitigation of any such cost or expense by SELLER and approved by BUYER. BUYER reserves the right to audit any and all relevant books and records of SELLER in connection with any claim for payment. SELLER shall not be entitled to recover for any Work, cost or expense done or incurred by SELLER after the date of BUYER's notice of termination, or for any cost or expenses incurred by SELLER's suppliers, vendors or subcontractors. BUYER shall not unreasonably accelerate the performance of any portion of the Work required under this PO.

**12. INSPECTION:** BUYER and its customer shall have the right, but not the obligation, to inspect and/or test the Work, to witness SELLER's inspections and/or tests of the Work and to otherwise inspect or review SELLER's performance of this PO at SELLER's facilities or otherwise at such reasonable times and in such manner which does not unreasonably interfere with SELLER's operations. All Work is subject to final inspection and acceptance by BUYER notwithstanding any prior payments or inspections.

**13. RETURNS:** Any Work rejected and/or in excess of quantities called for in this PO may be returned to SELLER at its expense, in addition to any of BUYER's other rights or remedies.

**14. TAXES:** All applicable federal, state and local sales and excise, import or export taxes, shall be paid promptly by the Seller and SELLER agrees to defend, indemnify and hold harmless BUYER in connection therewith.

**15. PACKAGING:** Shipments hereunder shall be made in accordance with shipping instructions and/or any and all U.S. or other regulations. Adequate protective packing at no additional charge shall be furnished. A packing memorandum shall be enclosed with each shipment; when more than one package is shipped, SELLER shall identify the one containing the memorandum. BUYER's PO Number shall appear on all separate components, packages and shipping papers. Any damage to any Work received by BUYER, as a result of improper packaging or otherwise, will be for SELLER's account.

All individual items must be legibly marked with applicable identification data. If the item is large enough, the identification data shall be clearly stamped, printed and/or stenciled with indelible marker on the item in such a manner as not to interfere with its serviceability. All markings must be durable and colorfast. If the item is too small to mark, a non-tearable tag with identification data shall be wired/attached to the item. Non-conformance may result in the return of the Work to SELLER at SELLER's expense.

**16. PRICE WARRANTY:** SELLER warrants that the price for the Work is not less favorable than that currently extended to any other customer for the same or like Work in equal or less quantities. In the event SELLER reduces its price for any goods or service included in the Work, SELLER agrees to reduce the price hereof correspondingly.

**17. INVOICING:** SELLER shall render invoices in duplicate, or as otherwise specified, showing this PO Number, addressed to "Accounts Payable", within twenty-four hours after shipment. SELLER shall render separate invoices for each shipment or PO.

Invoices shall be received not later than thirty (30) days of material/service delivery acceptance and accompanied by evidence satisfactory to BUYER that the material/services provided are free and clear of all liens, charges or encumbrances of any nature. Invoices not received within thirty (30) days of material/service delivery acceptance shall be invalid. BUYER shall have no obligation to pay any invoices received more than thirty (30) days after material/service delivery acceptance.

All transportation charges, unless otherwise agreed by BUYER in writing, shall be for SELLER's account. When prepaid transportation charges are agreed by the BUYER in writing, SELLER shall include prepaid charges on invoices with a copy of the bill of lading and original freight bill attached. If prepaid transportation charges make it impossible for SELLER to render a complete invoice within twenty-four hours after shipment, SELLER shall render a separate, subsequent invoice to cover the transportation charges.

**18. SETOFF:** If BUYER or any of its subsidiaries or affiliates has any claim against SELLER, BUYER may set off the amount of such claim against any amount due or becoming due hereunder.

**19. BUYER'S PROPERTY:** SELLER agrees that the information, tools, jigs, dies, drawings, patterns and specifications supplied or paid for by BUYER shall be and remain BUYER's property and shall be held by SELLER for BUYER unless directed otherwise. SELLER will account for such items and keep them in good working condition and fully covered by insurance at all times without expense to BUYER.

**20. PATENT INDEMNITY/CONFIDENTIALITY:** SELLER represents and warrants that no portion of the Work infringes any patent, copyright, trademark, trade secret or other tangible or intangible property right and agrees to defend, indemnify and hold harmless BUYER in connection therewith. Any confidential or proprietary information provided, prepared or exchanged by or between BUYER and SELLER in connection with this PO shall be confidential and shall not be disclosed by SELLER or used by SELLER for any other purpose, unless SELLER obtains written permission from BUYER.

**21. COMPLIANCE WITH LAWS:** SELLER, its employees, officers, agents, vendors and subcontractors shall, while on the premises of BUYER, comply with all applicable rules and regulations of BUYER and all applicable state, federal and local authorities, including those required by the U.S. Government, OSHA and other authorities having jurisdiction over BUYER's premises.

SELLER represents and warrants that the Work complies with any and all applicable State, Federal and local laws or regulations, including, but not limited to, the Fair Labor Standards Act, OSHA, and any and all laws and regulations related to the safety of persons or the protection of the environment, and shall defend, indemnify and hold harmless BUYER for any loss, cost or expense occasioned by reason of SELLER's breach of any of the above representations and warranties. Upon BUYER's request, SELLER shall provide certificates or other evidence satisfactory to BUYER reflecting compliance with the above representations and warranties.

**22. EQUAL EMPLOYMENT OPPORTUNITY:** BUYER and SELLER shall at all times comply with applicable provisions relating to government contractors and subcontractors, which provisions, and any contract clauses required thereunder, are incorporated herein by reference as if set forth in full, including 41 CFR 60-1.4, 41 CFR 60-250.5, 41 CFR 60-300.5, and 41 CFR 60-741.5, along with the reporting, record keeping and affirmative action program requirements set forth in 41 CFR 60-1, et sq. **Specifically, BUYER and SELLER shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities. Further, BUYER and SELLER shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.**

**23. NO ASSIGNMENT:** SELLER shall not assign or subcontract this PO, in whole or in part, or the rights and obligations evidenced hereby, without the prior written consent of BUYER.

**24. MISCELLANEOUS:** This PO constitutes the entire agreement between the parties and cannot be modified, changed or rescinded, except by a writing signed by both parties.

BUYER reserves the right to search any personal property, including but not limited to, vehicles, containers, bags, suitcases, parcels, tool boxes, job boxes, conex containers, etc., entering or departing its facility.

Failure of BUYER to insist on performance of any of the terms, conditions or provisions of this PO or to exercise any right or remedy hereunder shall not be construed as a waiver of any such performance, term, condition, provision, right or remedy.

If any term, condition or provision of this PO is contrary to, prohibited by, or deemed invalid under applicable law, such invalidity or unenforceability shall not be deemed to render invalid or unenforceable any other term, condition or provision of this PO.

There are no representations or agreements by agents or others, expressed or implied, modifying or inducing the execution of this PO, other than those herein set forth.

In the even a dispute arises between SELLER and BUYER, SELLER shall not be entitled to, and shall not, refuse to ship goods and/or provide services under this or any other PO between SELLER and BUYER. This PO and each of its terms, conditions and provisions shall be governed by and interpreted in accordance with the U.S. General Maritime Law, or, if applicable, laws and regulations of the State of Alabama, without regard to any conflicts of law principles. The parties consent to the jurisdiction of and venue in any state or federal court located in Mobile, Alabama for the resolution of any dispute arising hereunder.