

# Purchase Order Terms & Conditions



## 1 Offer and Acceptance

This Purchase Order is an offer by Buyer to Supplier and is not an acceptance of any prior offer made to Buyer by Supplier. Acceptance of this offer is expressly limited to its terms. DO NOT SHIP the goods herein ordered unless you intend to be bound by the terms and conditions contained herein, as shipment by Supplier of the goods ordered shall constitute acceptance of this offer to purchase. Upon acceptance by Supplier, this Purchase Order shall be the final written expression of agreement between Supplier and Buyer, constituting the entire contract between Buyer and Supplier and superseding all previous communications, either verbal or written, with respect to the subject matter contained herein. Terms and conditions of Supplier's business forms inconsistent with the terms and conditions of this offer shall not become part of any resulting contract.

## 2 Warranty

Supplier expressly warrants that all materials supplied pursuant to any resulting contract will conform to specifications, including but not limited to drawings, instructions, data, samples, standards, and regulations, and shall be of good workmanship, free from all defects, merchantable, and "fit for the purpose intended." This warranty shall be in addition to all other warranties, express, implied, or statutory. Neither inspection nor payment by Buyer shall constitute a waiver of any breach of warranty. All warranties shall inure to Buyer, its customers and subsequent owners/users of items or services covered hereunder or end products of which they are a part. Any nonconformance, in Buyer's judgment, may result in termination of any applicable purchase orders and/or contracts. Duration of this warranty will be a period of one year from date of receipt of such materials by Buyer.

## 3 Remedies; Indemnity; Damages

SUPPLIER AGREES TO DEFEND, PROTECT, INDEMNIFY, AND HOLD BUYER, ITS AFFILIATES, SUCCESSORS, ASSIGNS, CUSTOMERS, AND ALL SUBSEQUENT USERS OF MATERIAL SOLD HEREUNDER HARMLESS OF, FROM AND AGAINST ALL CLAIMS, LOSSES, EXPENSES, DAMAGES, AND LIABILITIES, DIRECT, INCIDENTAL OR CONSEQUENTIAL, ARISING FROM DAMAGE TO OR LOSS OF PROPERTY AND INJURY OR DEATH TO PERSONS, INCLUDING LOSS OF PROFITS AND REASONABLE COUNSEL FEES THAT MAY ARISE OUT OF USE OR ALLEGED USE OF SUCH MATERIAL, THIS TO INCLUDE, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, PAYMENTS UNDER ANY WORKMEN'S COMPENSATION LAW AND UNDER ANY PLAN FOR EMPLOYEES' DISABILITY AND DEATH BENEFITS. Remedies reserved to Buyer herein shall be cumulative and in addition to any other or further remedies provided by law. No waiver of any breach of these provisions shall be deemed to constitute a waiver of any other breach.

## 4 Price

Buyer shall not be billed at prices higher than stated on this Purchase Order unless authorized in writing by Buyer's authorized representative. Supplier agrees that any price reductions made in items or services covered by this Purchase Order subsequent to its placement but prior to payment thereof will be passed to Buyer. Unless otherwise provided herein, Supplier shall bear the cost of carriage, boxing or storing of items covered under this Purchase Order. Supplier agrees that it will provide to Buyer the items or services at the lowest price charged to its other customers.

## 5 Delivery

TIME IS OF THE ESSENCE –Delivery of items or rendering services covered hereunder must be at the time or times specified herein or in written releases or other written instructions issued by Buyer. Buyer may, from time to time, change or temporarily suspend delivery or service schedules. In the event of late delivery of any items or late performance of any services covered hereunder, Buyer may, at its option and without further liability hereunder, partially terminate this Purchase Order for cause, vary delivery terms hereunder or obtain items or services from other sources. Any losses sustained or incremental costs incurred by Buyer as a result of late delivery, failure to meet Buyer's specifications or failure to timely perform services shall be paid by Supplier to Buyer.

## 6 Title and Risk of Loss

Except as otherwise expressly provided, title to and risk of loss on all items shipped by Supplier to Buyer shall pass to Buyer upon delivery to Buyer. Cost of all returned shipments, for whatever reason returned, shall be borne by Supplier with title and risk of loss passing at Buyer's location, unless otherwise specified by Buyer at time of return.

## 7 Inspection and Rejection

Buyer shall have the right to inspect any goods purchased or services rendered prior to its acceptance. Upon inspection, Buyer may give Supplier notice of rejection or revocation of acceptance, notwithstanding any payment, passage of title, approval, prior test, or inspection. No inspection, approval, test, delay, or failure to inspect or test, or failure to discover any defect or other nonconformance shall relieve Supplier of any obligations under this Purchase Order or impair or waive any right or remedy of Buyer with respect to Supplier's performance hereunder. If, in Buyer's judgment, items do not conform with Buyer's requirements, Buyer shall have the right to reject items and, in addition to any other rights and remedies it may have, Buyer may, in its sole discretion: (1) return any or all nonconforming items to Supplier for reimbursement, credit, replacement, or repair as Buyer may direct; (2) correct, rework and/or repair items with all costs associated therewith to be charged to and paid by Supplier; or (3) hold any or all nonconforming items, at Supplier's risk and expense, for disposal or correction according to Supplier's instructions. Any items rejected by Buyer and returned to Supplier shall be returned, at Supplier's risk and expense, with cost of packaging, handling, inspection, examination, transportation, and any other costs incidental thereto to be charged to and paid by Supplier. Such items shall not thereafter be tendered to Buyer for acceptance unless the previous rejection and requirement of correction are disclosed to Buyer in writing.

## 8 Payment Date

Unless otherwise agreed to by Buyer in writing, invoices will be paid within ninety (90) days after receipt. Discount terms are 2% 60. Payment for any items covered by this order shall not constitute Buyer's acceptance of said items, Buyer shall have the right to inspect as provided for herein.

## 9 Changes

SUPPLIER MAY NOT MODIFY THE DESIGN OR CONTENT OF A PRODUCT SOLD UNDER THIS PURCHASE ORDER WITHOUT THE APPROVAL OF A BUYER. ALL PRODUCT CHANGES MUST BE CLEARLY IDENTIFIED BY MARKING THE PRODUCT AND MODIFYING THE PRODUCT NUMBER. ANY COSTS INCURRED BY BUYER ASSOCIATED WITH AN UNAPPROVED MODIFICATION WILL BE THE FULL RESPONSIBILITY OF THE SELLER.

Buyer shall have the right at any time to make changes in drawings, design, specifications, quantities, delivery schedules, methods of shipment or packaging in place of inspection, acceptance and/or point of delivery of any item to be furnished or service to be rendered under this Purchase Order. No change shall be effective unless authorized in writing by Buyer. Any acknowledgment by Supplier that contains terms in addition to or inconsistent with terms of this Purchase Order, or rejection of any term of this Purchase Order, shall be deemed a counteroffer to Buyer and shall not be binding upon Buyer unless accepted in writing by Buyer's authorized representative. Performance by Supplier, in absence of any such acceptance of a counteroffer, shall constitute Supplier's acceptance of terms and conditions of this Purchase Order.

## 10 Termination

Buyer shall have the right to cancel this Purchase Order or any part thereof at any time by written notice or verbal notice confirmed in writing. For this reason, and for the avoidance of doubt, Supplier shall not enter into any non-cancelable and nonreturnable purchases with its own suppliers without Buyer's prior written consent.

A. Without Cause—Upon receipt of notice of termination, Supplier shall, unless notified otherwise, immediately discontinue work, cease delivery and ordering of materials and make reasonable efforts to cancel existing orders, contracts and subcontracts upon terms satisfactory to Buyer. Supplier, shall, after notice of termination, continue to perform such work as instructed by Buyer to preserve and protect work in progress, including material, equipment and facilities constructed, delivered or in transit, until relinquishing possession and control of same as provided in notice of termination. Upon compliance with notice of termination, Supplier shall be entitled to receive as compensation such sum as may be necessary to compensate Supplier for its actual costs, expenditures, and work theretofore performed in conjunction with this Purchase Order (each, a "Termination Cost"), as proven to Buyer in documented evidence, less any Termination Cost that reasonably could have been mitigated by Supplier. Any claim for Termination Costs must be submitted to Buyer within thirty (30) days after effective date of termination. Provisions of this subparagraph shall not limit or affect the right of Buyer to terminate this Purchase Order for cause and shall not apply to termination with cause. In no event shall Supplier's claim for Termination Costs exceed the total purchase order amount.

B. For Cause— If Supplier fails to make any delivery in accordance with agreed delivery date or scheduled or otherwise fails to observe or comply with any other instructions, terms, conditions, or warranties applicable to this Purchase Order, or fails to make progress so as to endanger performance of this Purchase Order or in the event of proceedings by or against Supplier in bankruptcy or insolvency or appointment of a receiver or trustee or an assignment for the benefit of creditors, Buyer may, in addition to any other right or remedy provided by this Purchase Order or by law, terminate all or any part of this Purchase Order by written notice to Supplier without any liability by Buyer to Supplier. In the event of termination for cause, Buyer may produce or purchase or otherwise acquire items or services elsewhere on such terms or in such manner as Buyer may deem appropriate and Supplier shall be liable to Buyer for any excess cost or other expenses incurred by Buyer.

## **11 Buyer-furnished Property**

Where property such as, but not limited to, tools, equipment and raw materials used in the manufacture of goods for Buyer are supplied by Buyer to Supplier or are specifically paid for by Buyer, title thereto shall at all times be and remain with Buyer. Such property shall be inspected and maintained by Supplier at its own expense and returned as directed by Buyer, f.o.b. Supplier's plant, to destinations designated by Buyer. Risk of loss or damage to such property shall be assumed by Supplier while the same is in its possession. SUPPLIER AGREES TO DEFEND, PROTECT, INDEMNIFY, AND HOLD BUYER, ITS SUCCESSOR AND ASSIGNS HARMLESS OF, FROM AND AGAINST ALL CLAIMS, LOSSES, EXPENSES, DAMAGES, AND LIABILITIES, DIRECT, INCIDENTAL OR CONSEQUENTIAL, ARISING FROM DAMAGE TO OR LOSS OF PROPERTY OR INJURY TO OR DEATH OF PERSONS, ARISING FROM OR INCIDENTAL TO THE PRESENCE OR USE OF SUCH PROPERTY, AND WILL, AT BUYER'S REQUEST, FURNISH CERTIFICATES INDICATING THAT SUCH RISKS ARE PROPERLY COVERED BY INSURANCE POLICIES IN AMOUNTS NO LESS THAN \$5M USD PER OCCURRENCE AND SATISFACTORY TO BUYER, IN WHICH BUYER IS NAMED AS AN INSURED PARTY.

## **12 Contracts Involving Performance of Labor on Buyer's Premises**

Where Supplier is required to enter premises occupied by or under Buyer's control to perform services or otherwise, Supplier will inspect the premises involved, will provide all necessary safeguards for persons it brings onto the premises, WILL DEFEND, PROTECT, INDEMNIFY, AND HOLD BUYER AND ITS SUCCESSORS, ASSIGNS AND EMPLOYEES HARMLESS OF, FROM AND AGAINST ALL CLAIMS, LOSSES, EXPENSES, DAMAGES, AND LIABILITIES, DIRECT, INCIDENTAL OR CONSEQUENTIAL, ARISING FROM DAMAGE TO OR LOSS OF PROPERTY BY SUPPLIER, ITS EMPLOYEES OR OTHERS, OR FROM PERSONAL INJURIES OR DEATH TO SUPPLIER, ITS EMPLOYEES OR OTHERS, RESULTING FROM OR INCIDENTAL TO THE PRESENCE OF SUCH PERSONS ON THE PREMISES INVOLVED, WHETHER THE SAME RESULTS IN WHOLE OR IN PART FROM BUYER'S NEGLIGENCE OR OTHER FAULT, BY ACT OR OMISSION, OR THAT OF BUYER'S EMPLOYEES, OR OTHERWISE, IT BEING THE INTENT OF THIS PROVISION TO ABSOLVE AND PROTECT BUYER AND ITS SUCCESSORS, ASSIGNS AND EMPLOYEES FROM ANY AND ALL LOSS BY REASON OF THE PREMISES; and Supplier agrees that it will maintain public liability and property damage insurance in reasonable amounts specified by Buyer, but in no event less than \$5M USD per occurrence, and naming Buyer as an insured party, if so requested, covering the obligations set forth above and will at Buyer's request furnish to Buyer certificates indicating such coverage and will maintain workmen's compensation insurance covering all employees performing services related to this order on premises occupied by or under Buyer's control.

## **13 Patents and Copyrights**

SUPPLIER AGREES TO INDEMNIFY AND TO HOLD BUYER, ITS OFFICERS, AGENTS, EMPLOYEES, AND VENDEES (MEDIATE AND IMMEDIATE) HARMLESS FROM ANY AND ALL LOSS, EXPENSE, DAMAGE, LIABILITY, CLAIMS, OR DEMANDS, EITHER AT LAW OR IN EQUITY, FOR ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT, INVENTION, DESIGN, TRADEMARK, OR COPYRIGHT ARISING FROM PURCHASE, USE OR SALE OF MATERIALS OR ARTICLES REQUIRED BY THIS PURCHASE ORDER EXCEPT WHERE SUCH INFRINGEMENT OR ALLEGED INFRINGEMENT ARISES BY REASON OF BUYER'S DESIGNS FOR SUCH MATERIALS OR ARTICLES FURNISHED BY BUYER TO SUPPLIER.

## **14 Definitions**

The term "Supplier" as used herein also includes subcontractors, independent contractors, and all classes of persons performing any type of work in connection with this Purchase Order or a related, applicable contract.

## **15 Global Supplier Manuals**

Supplier acknowledges that Buyer is committed to quality management systems and ethical conduct. Accordingly, as a requirement of doing business with Buyer, Supplier shall at all times comply fully, without exception, with the Global Supplier Handbook ("Quality Manual"), MSA Global Code of Business Conduct ("Code of Conduct") and MSA Supplier Code of Conduct ("Supplier Code"), copies which are available and have been reviewed by Supplier at <http://us.msasafety.com/vendors>. Failure to strictly comply with the Quality Manual, Code of Conduct, or Supplier Code shall constitute material breach of this Purchase Order, entitling Buyer to terminate immediately and without further liability to Supplier.

## **16 Law Governing**

This Purchase Order and all exhibits, addenda, attachments, related applicable contracts, and/or amendments hereto shall be interpreted and constructed in accordance with the Laws of the Commonwealth of Pennsylvania, without regard to its principles of conflicts of laws and excluding the UN Convention on Contracts for the International Sale of Goods. Venue for any suit by Supplier shall be in and only in the Pennsylvania state court of proper jurisdiction in Allegheny County, Pennsylvania, or the United States District Court for the Western District of Pennsylvania.

## **17 Conflict Minerals**

Supplier acknowledges that Buyer is required to comply with rules and regulations promulgated by the United States Securities and Exchange Commission related to so called Conflict Minerals has the same meaning as defined in Section 1502(e)(4) of the Dodd-Frank Wall Street Reform and Consumer Protection Act and generally includes columbite-tantalite, also known as coltan (metal ore from which tantalum is extracted); cassiterite (metal ore from which tin is extracted); wolframite (metal ore from which tungsten is extracted); and gold. Supplier represents that it has in place procedures reasonably designed to determine whether Conflict Minerals contained in items covered under this Purchase Order originated in the Democratic Republic of Congo or adjoining countries, or are from recycled or scrap sources. Supplier warrants that, except for Conflict Minerals that are from recycled or scrap sources, items covered under this Purchase Order either (a) do not contain Conflict Minerals, (b) do not contain Conflict Minerals that originated in the Democratic Republic of Congo or adjoining countries; or (c) do not contain Conflict Minerals that directly or indirectly benefit or finance armed groups in the Democratic Republic of Congo or adjoining countries.

## **18 Compliance with Laws**

Supplier shall comply with all applicable laws, orders and regulations of the Federal, State or municipal government or agency thereof that apply to this Purchase Order ("Applicable Law"). On request, Supplier shall furnish Buyer certificates of compliance with all Applicable Law. Supplier agrees to indemnify and hold Buyer harmless from and against any and all costs, penalties, fines, damages, and expenses, including reasonable attorney's fees, suffered by Buyer, directly or indirectly through any failure of Supplier to comply with Applicable Law.

## **19 Employment Standards**

Supplier and Supplier's subcontractors shall comply with all applicable federal, state and local laws, rules and regulations governing labor or employee relations including Sections 6, 7, 12, and 14 of the Fair Labor Standards Act as amended. Supplier further agrees to adhere to any and all of Buyer's environmental, health, safety, and security policies and procedures.

## **20 Equal Employment; Affirmative Action; Nondiscrimination**

This contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60- 300.5(a), and 41 CFR 60-741.5(a), as applicable. These regulations prohibit discrimination against qualified protected veterans; qualified individuals on the basis of disability; and all qualified individuals on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin; and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans, qualified individuals with disabilities, and without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin. This contractor and subcontractor shall also abide by the requirements of 29 CFR 471, Appendix A to Subpart A, as applicable.

## **21** Confidentiality; Privacy

Any drawings, data, design, specifications, and other technical information supplied by Buyer shall remain Buyer's property and shall be held in confidence by Supplier through best-in-class security protocols. Where applicable and without limiting anything else contained herein, Supplier shall comply with all international, federal, state, and local privacy laws applicable to this Purchase Order, including without limit the EU General Data Protection Regulation and the California Consumer Privacy Act, and their related regulations, as may be amended. For avoidance of doubt, and where applicable, Supplier shall be construed as a Service Provider for purposes of such laws and shall not sell, retain, use or disclose personal data or personal information disclosed by Buyer other than to provide goods or services or otherwise authorized by Buyer.

## **22** General

This offer may not be assigned or portions subcontracted by Supplier without Buyer's written approval. Supplier will hold in strict confidence all business secrets communicated to it by Buyer. Charges for packing or crating not allowed unless specifically arranged for.

## **23** Audit Rights

Supplier agrees to allow Buyer or its authorized agent or contractor to perform routine audits of Supplier to confirm that Supplier's performance is in accordance with terms of this Purchase Order. Such audits shall be at reasonable times and places to be scheduled upon prior written notice from Buyer to Supplier. Supplier's objection or refusal to participate in an audit pursuant to this provision shall constitute material breach of the terms of this Purchase Order.

## **24** Exclusion of Mercury

Items finished under this order shall not contain functional mercury nor shall items be contaminated by mercury or mercury compounds.

## **25** Entire Contract

This Purchase Order and all exhibits, addenda, attachments, and amendments here to constitute the entire agreement between Supplier and Buyer and may not be amended unless in writing signed by authorized representatives of Buyer and Supplier.

## **26** Survival

All representations, warranties and indemnity obligations contained in this Agreement shall survive termination, cancellation or expiration of this Agreement.

## **27** Federal Acquisition Regulation Flowdown Clauses

In the event that this Order is not made pursuant to a U.S. Government Contract, this clause does not apply to this Order. The Federal Acquisition Regulation (FAR) clauses are incorporated herein by reference, except disputes shall be settled according to these Terms and Conditions where possible. Acceptance of this purchase order constitutes certification of the following clauses: FAR 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements; FAR 52.203-13, Contractor Code of Business Ethics and Conduct; FAR 52.219-8, Utilization of Small Business Concerns; FAR 52.222-17, No displacement of Qualified Workers; FAR 52.222-21, Prohibition of Segregated Facilities; FAR 52.222-26 Equal Opportunity; FAR 52.222-35 Equal Opportunity for Veterans; FAR 52.222-36 Equal Opportunity for Workers with Disabilities; FAR 52.222-37, Employment Reports on Veterans; FAR 52.222-40, Notification of Employee Rights under the National Labor Relations Act; FAR 52.222-41, Service Contract Labor Standards; FAR 52.222-50, Combating Trafficking in Persons, or Alternate I thereto; FAR 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements; 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Requirements; FAR 52.222-54, Employment Eligibility Verification; FAR 52.222-55, Minimum Wages Under Executive Order 13658; FAR 52.222-62, Paid sick Leave Under Executive Order 13706; FAR 52.224-3, Privacy Training or Alternate I thereto; FAR 52.225-26, Contractors Performing Private Security Functions Outside the United States; FAR 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations; FAR 52.247-64, Preference for Privately-Owned U.S. Flag Commercial Vessels. Supplier has not been debarred or suspended per FAR 52.209-6. Supplier shall flow down these clauses in any subcontract, as required. Supplier shall defend, indemnify, and hold harmless Buyer from failure to comply with this clause.

Note: This Bulletin contains only a general description of the products shown. While product uses and performance capabilities are generally described, the products shall not, under any circumstances, be used by untrained or unqualified individuals. The products shall not be used until the product instructions/user manual, which contains detailed information concerning the proper use and care of the products, including any warnings or cautions, have been thoroughly read and understood. Specifications are subject to change without prior notice.

MSA operates in over 40 countries worldwide. To find an MSA office near you, please visit [MSAafety.com/offices](https://www.MSAafety.com/offices).