

Terms and Conditions

1. Offer and Contract. The following terms, together with such terms as are set forth on the face of this purchase order, with such plans, specifications, or other documents as are incorporated by reference on the face of this order, and with such additional terms as are approved in writing by Buyer in a Change Notice issued by it to this order, constitute the offer of Buyer to Seller.
2. Assignment: Subcontracting. Neither party shall have any right to assign this order or any benefits arising from this order without the prior written consent of the other, and, unless otherwise agreed in writing, the rights of any assignee shall be subject to all set-offs, counterclaims, and other comparable rights arising hereunder. Seller shall not, except in the case of raw materials (including castings, forgings, and rough welded structures) or standard commercial items or except as otherwise agreed in writing by Buyer, delegate or subcontract all or substantially all of the work on any item or material to be furnished under this order.
3. Substitutions: Extras. No substitutions of materials or accessories may be made without Buyer's written consent. No charges for extras will be allowed unless such extras have been ordered in writing by Buyer and the price agreed upon.
4. Compliance with Laws. Seller's performance of work hereunder and all products to be delivered hereunder shall be in accordance with any and all applicable executive orders. Federal, state, municipal, and local laws and ordinances, and rules, orders, requirements, and regulations thereunder. Such Federal laws shall include, but not be limited to, the Fair Labor Standards Act of 1938 as amended.
5. Title and Risk of Loss. Title to, and risk of loss of, each product or part to be delivered hereunder shall, unless otherwise provided herein, pass from Seller to Buyer upon delivery of such product at the F.O.B. point designated on the face of this order.
6. Inspection and Testing. (a) Seller shall work within, and inspect to, tolerances and limitations specified on drawings and specifications covering the work and shall make such tests as are specified in the drawings or test specifications, unless deviation therefrom is authorized in writing by Buyer. (b) All shipments shall be subject to final inspection by Buyer after receipt by Buyer at destination. If material supplied or work performed by Seller is found to be defective, Buyer shall have the right to require the prompt correction thereof either by Seller, at Seller's risk and expense, or, upon authorization from Seller, by Buyer in its own plant. Buyer may backcharge Seller for the cost of any corrections made by it. If correction of such work is impracticable, Seller shall bear all risk after notice of refection and shall, if so requested by Buyer and at its own expense, promptly make all necessary replacements. If Seller fails to make such replacements promptly, Buyer may, by contract or otherwise, make the same and backcharge to Seller the excess costs occasioned to Buyer thereby. (c) Final inspection and acceptance by Buyer shall be conclusive except for latent defects, fraud, or such gross mistakes as amount to fraud or for any rights provided by any warranty of the product.
7. Changes. Buyer shall have the right, from time to time, by its written Change Notices, and without notice to Seller's surety or sureties, if any, to make changes or additions, within the scope of this order, in or to (I) the drawings, specifications, or instructions for the work, (II) the quantity, or (III) the time or method of delivery or shipment. Should any change so ordered cause a material increase or decrease in the cost of, or the time required for, the performance of any part of the work under this order, an equitable adjustment shall be made in the order price or time of performance or both. Seller shall, however, as a condition precedent to any right to such adjustment, submit its written claim for such adjustment to Buyer within thirty (30) days after its receipt of Buyer's Change Notice or after any other action of Buyer which Seller considers to constitute a change. Seller shall, unless written instructions to the contrary have been received from Buyer, proceed with the work as changed without interruption and without awaiting settlement of any such claim.
8. Delivery: Delays. The time or times of delivery specified in this order are of the essence of this order. Any delay will be excused only if (1) such delay is due to strike, fire, windstorm, riot, act of God, act of the public enemy, or other unforeseeable cause beyond the control and without the fault or negligence of Seller and if (II) Seller shall have notified Buyer in writing of the existence of such cause within five (5) days after the commencement of the delay, giving all pertinent information concerning such cause. Unless otherwise provided in this order, no delivery required hereunder shall be made more than seven (7) days prior to the applicable delivery date, and Buyer shall have the right to return earlier deliveries at Seller's risk and expense or to charge to Seller any additional costs sustained because of the same.
9. Warranty. Seller expressly warrants that the products or services to be delivered or performed hereunder will comply with the descriptions set forth or incorporated by reference herein, will be free of defects in workmanship or material, will be merchantable, and will be fit for such purposes as are expressed in, or reasonably inferable from, the specifications, drawings, or other descriptions which are a part of this order.
10. Liens. Seller shall deliver the products which are the subject-matter of this order to Buyer free and clear of all liens, claims, and encumbrances.
11. Occupational Safety and Health Act of 1970. Seller warrants that any and all equipment and material delivered for or to Buyer or its designee and/or any and all work performed for Buyer on its premises or the premises of its customer under the order shall comply with all requirements of the Occupational Safety and Health Act of 1970, as the same may be amended from time to time and including all regulations adopted pursuant to such Act, and shall comply with all requirements of any applicable health or safety statute or regulation of any state or local government agency having jurisdiction in the location to which such equipment is to be shipped, or such work is to be performed, pursuant to this order. The foregoing provision shall not be deemed to limit any other duty of the Seller to comply with statutes, orders, or regulations.
12. Insurance. If the Seller is furnishing on-site labor, he will provide and maintain the following insurance:
 - Workmen's Compensation Insurance
 - Employers Liability Insurance
 - New York State Disability Insurance
 - Completed Operations Insurance
 - Contractual Insurance
 - Liability and Property Damage InsuranceHe must also furnish a Certificate of Insurance to the Buyer as evidence that the above insurance is in force. The Seller and Buyer waive all rights against each other and against the Owner and all other Subcontractors for damages caused by fire or other perils to the extent covered by property insurance provided under the General Conditions, except such rights as they may have to the proceeds of such insurance.
13. Indemnification. The Seller shall indemnify and hold harmless the Buyer and all of his agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the Seller's Work under this Contract, provided that any such claim, damage, loss, or expense (a) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (b) is caused in whole or in part by any negligent act or omission of the Seller or anyone directly or indirectly employed by him or anyone for whose acts he may be liable, regardless of whether it is caused in part by a party indemnified hereunder. In any and all claims against the Buyer or any of his agents or employees by any employee of the Seller, anyone directly or indirectly employed by him or anyone for whose acts he may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Seller under workmen's compensation acts, disability benefit acts or other employee benefit acts.