



Standard Terms and Conditions of Purchase PUR-1006

Approvals

See PCR # 8637 for approvals.

Revision History

Revision	PCR #	Date	Pages Changed	Change Description
C	8637	2/14/23	4	<ul style="list-style-type: none">• Update the duration for Supplier Record retention.• Set headings to “Heading 4” and changed paragraph setting to “keep with next” to prevent separation from following text.• Removed document info from header on page 1.• Removed large blank space from top of page 2
B	2023	7/31/2018	-	No Changes Needed. Reviewed by MJ
B	2023	9/23/2015	1-3	No Changes Needed.
B	2023	2/1/2011	3	Updated. Refer to PCR 2023
A	2010	1/20/2011	4	New

**1) ACCEPTANCE**

Agreement by Seller to furnish the goods hereby ordered or the finishing of such goods by Seller in whole or part shall constitute acceptance by Seller of this order. Any terms and conditions proposed by Seller inconsistent with or in addition to the terms of purchase contained herein shall be void and of no effect, unless specifically agreed to by Buyer.

2) SHIPMENT

Unless otherwise specified on the face of the order, all goods must be delivered FOB Destination. Title and risk of loss or damage will pass to Buyer at Buyer's dock upon acceptance. Each case or parcel shall be accompanied by a packing list of contents and must show Buyer's Purchase Order number. If no packing list accompanies the shipment, Buyer's count will be conclusive on the Seller. Item(s) furnished in quantities other than that specified by the Buyer on the Order are subject to Buyer's rejection and will be returned at Seller's expense. All goods shall be shipped on carriers certified compliant with C-TPAT (customs-Trade Partnership Against Terrorism).

3) DELIVERY DATE

Time is of the essence of this order. Seller shall notify Buyer immediately of any delay in delivery. Seller's notice shall include the reasons for the delay and the actions being taken to overcome or minimize the delay. Such notice shall include a revised delivery schedule and shall not constitute a waiver to Buyer's rights and remedies hereunder. Buyer may cancel this order for late delivery without cancellation charge.

4) PACKAGING AND EXTRAS

No charges will be allowed for transportation, packaging, packing or returnable containers unless otherwise specified by Buyer. Fusion will not be liable for any additional charges that are not specifically stated on the Purchase Order. Any such charges will not be paid by Fusion. Damage to any item(s) resulting from improper packaging will be charged to the Seller.

5) ASSIGNMENT

The order is not assignable without prior written consent of the Buyer and any attempted assignment without consent shall be void.

6) SPECIFICATIONS

All item(s) ordered to specifications shall comply with such specifications current as of the date of the Order unless otherwise specified by Buyer. Supplier shall flow down applicable product specifications, descriptions and requirements to sub-tier suppliers including key characteristics as required.

7) TAXES

The price(s) stated on the face of the Order include all taxes and import duties.

8) INDEMNITY

Seller shall defend Buyer and hold Buyer harmless against all claims of infringement of the rights of others and against all claims of injury or damage arising out of any act or failure to act by Seller in connection with Buyer's purchase hereunder.

9) TERMS OF PAYMENT

The payment due date shall be computed from the later of the scheduled delivery date, the actual delivery date or the date of receipt of a correct invoice. Payment shall be deemed made on the date Buyer's check is mailed or payment is otherwise tendered.

10) CHANGES

Buyer shall have the right by written order to make changes in the good to be furnished by Seller hereunder. If such changes cause an

increase or decrease in the cost of performance of this order or in the time required for its performance, an equitable adjustment shall be negotiated promptly and the order shall be modified in writing accordingly. Any claim by the Seller for adjustment under this paragraph must be asserted in writing within thirty (30) days of the receipt of the notice of change and must include the amount claimed and support cost figures.

11) CANCELLATION/TERMINATION

Buyer shall have the right to cancel/terminate the Order or any part thereof at any time. Upon receipt of a notice of cancellation/termination from Buyer, Seller shall stop work and immediately take the necessary action to ensure that all work under the order shall cease and to the extent specified in the Buyer's notice of cancellation/termination, that all subcontracts and orders are forthwith cancelled/terminated immediately. Seller shall be entitled to reasonable cancellation charges unless Seller shall be in default of performance of the order. Cancellation charges shall be limited to the cost incurred in the performance of the work terminated and in the settlement of all claim arising out of such termination. The total cancellation charges shall in no event exceed the total purchase order price reduced by the purchase order price of the work not terminated. Seller will transfer to Buyer ownership of the property, the cost of which is reimbursed to the Buyer under Section 11. However, the fair value of any such property destroyed, lost, stolen or damaged shall be excluded from the cancellation charges. Nothing in this Section 11 shall affect the right of the Buyer cancel the order under the provisions of Section 3.

12) TERMINATION FOR CAUSE

Buyer may, with written notice to Seller, without prejudice to any other rights or remedies provided under this Order, by law or in equity, terminate the Order in whole or part in any of the following circumstances:

- a) If Seller has been declared bankrupt, makes assignment for the benefit of creditors, or is in receivership; or
- b) If the Seller fails to perform the work or deliver item(s) in accordance with the performance requirements or delivery schedules; or
- c) Fails to perform any of the other terms of the Order.

In the event Buyer terminates the Order in whole or part thereof as provided in Section 12 above, Buyer may procure, upon such terms and in such a manner as it may deem appropriate, supplies or services similar to those so terminated, and Seller shall be liable to Buyer for any excess costs, reasonably incurred for such similar supplies and services; provided that the Seller shall continue the performance of the Order to the extent not terminated under the terms of Section 12.

13) LIMITATION OF LIABILITY

Buyer's maximum aggregate liability for its acts or omissions hereunder shall be limited to a sum no greater than the aggregate value of the Item(s) scheduled for delivery per the Order issued. Further, in no event shall buyer be liable for punitive, indirect, special, incidental or consequential damages for its acts or omissions hereunder.

14) WAIVER

Buyer's failure to assert its rights under any provision of these terms shall not be deemed a waiver of such rights, nor shall any waiver be implied from the acceptance of or payment for any goods ordered hereunder. No waiver by Buyer shall be valid unless made in writing and signed by an authorized officer of the Buyer.

15) DISPUTE RESOLUTION

If a dispute arises out of or relates to the Order, and cannot be resolved through good faith

negotiations either Party may refer such claim, dispute or controversy to final, binding resolution by arbitration by the American Arbitration Association in accordance with its Commercial Arbitration Rules.

16) QUALITY

Seller shall establish and maintain a quality control system acceptable to Buyer for the Goods purchased. Seller shall permit Buyer to review procedures, practices, processes and related documents to determine such acceptability. Seller shall have a continuing obligation to promptly notify Buyer of any violation of or deviation from Seller's approved inspection/quality control systems and to advise Buyer of the quantity and specific identity of any Goods delivered to Buyer during the period of any such quality violation or deviation. The Seller's Quality System shall be compliant to the requirements of ISO9001 unless otherwise specified in this purchase order.

17) RIGHT TO INSPECT

Buyer has the right to inspect the Item(s) upon delivery to the Buyer's place of business and, in to any other rights it may have, the right to reject any defective Item(s), which fail to conform to the descriptions and specifications set forth in the Order. The Buyer will promptly notify the Seller in writing of all claimed defects and nonconformities, and such defective or nonconforming Item(s) will be held for Seller's instruction and, if the Seller so directs, will be returned at the Seller's expense. The failure to inspect, either prior to shipment or upon delivery to the Buyer's business location, shall not be deemed a waiver to any of the rights of the Buyer under any provision of the Order.

18) COUNTERFEIT PARTS

Seller is hereby notified that the delivery of suspect/counterfeit parts is of special concern to Buyer. If suspect/counterfeit parts are furnished under this order or are found in any of the goods delivered hereunder, buyer will impound such items. The Seller shall promptly replace such suspect/counterfeit parts with parts acceptable to the Buyer and the Seller shall be liable for all costs, including but not limited to Buyer's internal and external costs, relating to the removal and replacement of said parts. To further mitigate the possibility of the inadvertent use of counterfeit parts, the Seller shall only purchase components and parts procured directly from the Original Equipment Manufacturer (OEMs) or through the OEM's authorized distributor chain. Seller must make available to Buyer (if Buyer requests) OEM documentation that authenticates traceability of the components to the applicable OEM. Buyer reserves all contractual rights and remedies to address grievances and detrimental impacts caused by suspect/counterfeit parts.

19) RIGHT OF ACCESS

Fusion, its customers, and regulatory authorities shall be granted the right of access to all supplier and sub-tier supplier facilities and records involved in fulfilling the Purchase Order requirements. All items of this purchase order are subject to in-process quality surveillance by Fusion and/or its customer. At any time, Fusion may notify the supplier of specific requests for on-site surveillance. Fusion reserves the right to request the opportunity to witness any actions in support of this order. The supplier shall provide no less than three business days advance notification to Fusion's procurement representative before items are ready for any requested Fusion source surveillance. The supplier shall not proceed without Fusion present or without Fusion QA written authorization to proceed. The supplier shall provide reasonable facilities and assistance, including all quality records and related data for contracted goods, upon request.

**20) FORCE MAJEURE**

a) **Definition.** Force Majeure shall mean any event or condition, not existing as of the date of the acknowledgement of the Order, not reasonably foreseeable as of such date and not reasonably within the control of either Party, which prevents in whole or in material part the performance of the Parties of its obligations hereunder or which renders the performance of such obligations difficult or costly as to make such performance commercially unreasonable. Without limiting the foregoing, the following shall constitute events or conditions of Force Majeure: acts of State or Governmental action, orders, legislation, regulations, restrictions, priorities or rationing, riots, disturbance, war (declared or undeclared), strikes, lockouts, slowdowns, prolonged shortage of energy supplies, interruption of transportation, embargo, prohibition of import, or export of goods covered by the Order, and epidemics, fire, flood, hurricane, typhoon, earthquake, lightning and explosion. If by any of the above-mentioned causes, an allocation of supplies must be made, the Parties hereby agree that the allocation will be fairly made. It is in particular expressly agreed that any refusal or failure of any governmental authority to grant any export license legally required for the fulfillment by the Seller of its obligations hereunder shall constitute an event of Force Majeure, provided said refusal is not due to the fault of or negligence of the Seller.

b) **Notice.** Upon giving written notice to either Party, a Party affected by an event of Force Majeure shall be released without liability on its part from the performance of its obligations under the Order, except for the obligation to pay any amounts due and owing hereunder, but only to the extent and only for the period that its performance of such obligations is prevented by the event of Force Majeure. Such notice shall include a description of the nature of the event of Force Majeure, and its cause and consequences. The Party claiming Force Majeure shall promptly notify the other Party in writing the termination of such event.

c) **Confirmation.** The Party invoking Force Majeure shall provide the other Party confirmation of the existence of the circumstances constituting Force Majeure. Such evidence may consist of a statement or certificate of an appropriate governmental department or agency where available, or a statement describing in detail the facts of claimed to constitute Force Majeure.

d) **Suspension of Performance.** During the period that the performance by one of the Parties of its obligations under the Order has been suspended by reason of an event of Force Majeure, the other Party may likewise suspend the performance of all or part of its obligation hereunder to the extent that such suspension is commercially reasonable.

e) **Termination.** Should the period of Force Majeure continue for more than ninety (90) consecutive days, either party may terminate the Order without liability to the other Party, except for payments due to such date, upon giving written notice to the other Party.

21) CONFIDENTIALITY

The Seller undertakes that it and the Seller's, personnel, agents and subcontractors will fully respect the confidentiality of Buyer's internal business affairs. The Seller hereby undertakes to treat as confidential and proprietary to Buyer, all information obtained from Buyer or communicated to the Seller pursuant to its Purchase Order (or through discussions or negotiations prior to the Purchase Order being placed) or acquired in the performance of the Purchase Order, and will not divulge such information to any person (except to its own employees and then only to employees who need to know the same) and will use such information solely in connection with performing its obligations under the Purchase Order and not for its own benefit or for the benefit of any third party, provided that this Clause shall not extend to information: a)

Which is rightfully in its possession prior to the commencement of the negotiations resulting in the Contract; or b) Which is already public knowledge or becomes so at a future date (other than as a result of breach of this Clause); or c) Which is communicated or disclosed to the Seller by a third party lawfully in possession thereof and entitled so to disclose it.

22) WARRANTY

Seller warrants that all Goods furnished under the contract shall conform to all specifications and requirements of this contract and shall be free from defects in materials and workmanship for a period of 12 months from the date of acceptance of Buyer. To the extent Goods are not manufactured pursuant to detailed designs and specifications furnished by Buyer, the Goods shall be free from design and specification defects. This warrant shall survive inspection, test and acceptance of, and payment for the Goods. This warranty shall run to Buyer and its successors, assigns and customers. Such warranty shall begin after Buyer's final acceptance. Buyer may at its sole option, either (i) return for credit or refund, or (ii) require prompt correction or replacement of the defective or non-conforming Goods. Return to Seller of defective or non-conforming Goods and redelivery to Buyer of corrected or replaced Goods shall be at Seller's sole expense.

23) INDEMNITY FOR INFRINGEMENT

The Seller shall, at its expense, hold harmless and defend Buyer, its customers, and all persons claiming under Buyer, against any claim, demand, action or suit alleging or arising from the infringement of any patent, copyright or trademark or any misappropriation of trade secrets, and shall indemnify the aforesaid parties against damages, costs, and expenses, including all legal expenses, arising there from by reason of the manufacture, sale or the normal and intended use of the articles and services covered by the Order. Seller shall be given adequate notice of such claims and will assume full and exclusive control in the defense thereof. Buyer will provide reasonable cooperation to the Seller by supplying relevant documents and making Buyer employees available for consultation and testimony. Seller will compensate Buyer for such cooperation.

24) EXPORT CONTROL

Seller agrees to notify Buyer if any deliverable under this Purchase Order is restricted by export control laws and regulations. Seller agrees to comply with all applicable U.S. export control laws and regulations, specifically including, but not limited to, the requirements of the Arms Export Control Act, 22 USC 2751-2794, including the International Traffic in Arms Regulations (ITAR), 22 CFR 120-130; and the Export Administration Act, 50 USC app.2401-2420, including the Export Administration Regulations (EAR), 15 CFR 730-774; including the requirement for obtaining any export license or agreement, if applicable. Without limiting the foregoing, Seller agrees that it will not transfer any export controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to Seller or Seller's lower-tier suppliers, without the authority of an export license, agreement, or applicable exemption or exception. Seller shall be responsible for all losses, costs, claims, causes of action, damages, liabilities and expense, including attorney's fees, all expense of litigation and/or settlement, and court costs, arising from any act or omission of Seller, its officers, employees, agents, suppliers, or subcontractors at any tier, in the performance of any of its obligations under this clause.

25) GOVERNMENT CLAUSES++

Government clauses applicable to this contract are incorporated herein either by attachment to

this document or by some other means of reference.

26) ANTI KICKBACK PROCEDURES

Federal Acquisition Regulation (FAR) Clause 52.203-7 is incorporated herein by reference

27) ETHICAL STANDARDS OF CONDUCT

Seller shall neither receive nor give any gifts or gratuities in connection with this contract. Seller's employees are required to conduct company business with integrity and maintain a high standard of conduct in all business-related activities. The Seller will indemnify Buyer against all losses liabilities, claims, costs and expenses that may result from loss of or damage to any property, or injury to or the death of any person that may arise out of any act or omission or negligence of the Seller in connection with the Purchase Order.

28) RECORDS AND AUDIT

Flow down requirements -Seller and Seller's suppliers shall retain all records and documents pertaining to the Goods for a minimum of eleven years. Such records and documents shall date back to the time the contract was issued and shall include without limitation, pricing, material certificates of conformance, component date codes, invoices, inventory records, for purposes of verification of prices or rates charged by Seller for Goods procured by Buyer. Once the retention period has been met, the seller will contact Buyer for appropriate disposition. After Buyer, their customer and authorities shall have right of access to all facilities involved in the order and all applicable records. Buyer shall have the right to examine, reproduce and audit all such record relating to pricing and performance to evaluate the accuracy; completeness and currency of cost and pricing data submitted with Seller's bid or offer to sell.

29) ENTIRE AGREEMENT

This contract contains the entire agreement of the parties and supersedes any and all prior agreements, understandings and communications between Buyer and Seller related to the subject matter of this contract. No amendment or modification of this contract shall bind either party unless it is in writing and is signed by Buyer's Authorized Procurement Representative and an authorized representative of Seller.

30) GOVERNING LAW

This contract is governed by and construed in accordance with the laws of the state of Oregon; no consideration shall be given to Oregon's conflict of laws rules.