



DAYTON PROGRESS CORPORATION, DAYTON, OH 45449 TERMS AND CONDITIONS OF PURCHASE (pg. 1 of 3)

1. **AGREEMENT.** This agreement (the "Purchase Agreement") between Buyer and Seller with respect to the purchase of goods (the "Goods") or performance of work or services (the "Services") shown on the face of this order shall consist of the terms appearing thereon and herein, together with all specifications, drawings and data submitted to Seller herewith or identified on the face of the order. Buyer shall not be bound by any additional or different terms appearing in Seller's quotation, proposal, acknowledgment or any other forms or communications from seller, and no reference thereto shall be deemed to incorporate any term thereof except as expressly provided on the face hereof. Acceptance of this order will occur upon Seller executing and returning to Buyer the acknowledgment copy hereof or, in lieu thereof, by Seller delivering any of the Goods or performing any of the Services herein ordered, whichever shall first occur.
2. **PRICE.** Prices shown on the face hereof shall not be subject to increase without the written consent of Buyer. If prices are not shown for any of the Goods or Services then prices to be charged by Seller shall not be higher than prices last quoted or charged to Buyer for the same or commercially similar Goods or Services, or those currently extended to any other customer, whichever is lower. Any cash discount shall include the wrapping, and packaging and all other expenses invoiced by Seller.
3. **TAXES.** Unless taxes are expressly shown with prices on the face hereof, Seller shall indemnify and hold harmless Buyer against the assessment or imposition of any excise, use or other tax (however designated) upon the production, sale or delivery of Goods shipped hereunder or upon the performance of Services rendered hereunder, to the extent such assessments or impositions are required or not forbidden by law to be borne by Seller.
4. **TIME OF DELIVERY OR PERFORMANCE.** Time is of the essence of this Purchase Agreement. Seller shall not deliver any of the Goods or perform any of the Services except at the time or dates indicated on the face hereof. In the absence of designated times for delivery or performance Seller shall deliver or perform in accordance with such subsequent directions given by Buyer or otherwise as expeditiously as possible. Failure of Seller to deliver or perform in accordance with the times required therefor, as herein provided, shall constitute a breach of the Purchase Agreement between Seller and Buyer.
5. **BREACH.** In the event that Seller shall breach any of its obligations hereunder, Buyer may purchase substitute Goods or Services, and Seller shall pay to Buyer the excess of the cost of such Goods or Services over the purchase price herein provided plus expenses incurred by Buyer. The remedy stated in this paragraph shall be in addition to, and not in lieu of, other remedies which Buyer may have under this Purchase Agreement or under applicable law and acceptance by Buyer of any payment by Seller of amounts herein provided shall not be a waiver of Seller's right to recover against Buyer any other amounts, damages, or losses occasioned by Seller's breach. Buyer may not be required to accept replacements or substitutes or permit cure of defects in any Goods or Services rightfully rejected.
6. **QUANTITIES.** Unless otherwise agreed in writing by Buyer, deliveries of Goods must be in the exact quantities stated on the face hereof. If Seller ships or delivers a quantity of Goods greater than or less than the quantity prescribed for each shipment; Buyer shall have the right at its election to reject the shipment in its entirety or to accept any part thereof and reject the remainder or to accept entire shipment. In no event shall Buyer be responsible for any additional shipping or transportation charges resulting from shipments by Seller in less than specified quantities or from partial shipments.
7. **REJECTION.** Rejected goods may at the election of Buyer be returned to Seller at Seller's expense and risk or held at Seller's risk for Seller's instructions. Buyer may charge all expenses of inspecting, repacking and reshipping rejected Goods. Rejection of a portion of the Goods shall not preclude subsequent rejection of the remainder, in whole or in part. Any inspection of the Goods or Services by Buyer shall not constitute a waiver or acceptance as to any defects therein or breaches by Seller not actually discovered by buyer pursuant to such inspection.
8. **WARRANTIES.** In addition to Seller's customary warranties and any other warranties implied in fact or by law, Seller warrants, unless otherwise agreed in writing, that the Goods delivered and Services performed pursuant to this Purchase Agreement shall conform to all descriptions and specifications and to samples furnished by Buyer and shall be of high quality, free of defects, latent or patent, in design, material and workmanship, and fit for the intended purposes.
9. **COMPLIANCE WITH LAW.** Seller warrants that all applicable laws, rules and regulations of any government authority including any applicable Executive Order mandating use of certain materials in the production, sale and delivery of Goods and the performance of Services under this Purchase Agreement shall be complied with.
10. **CHANGES.** Buyer may at any time cancel this Purchase Agreement with respect to any Goods not then delivered or Services not then performed. If such cancellation shall be for other than breach of the Purchase Agreement by Seller, Buyer shall pay to Seller cancellation charges as may be agreed between Buyer and Seller but in no event to exceed the lesser of the purchase price applicable to such canceled Goods or Services or the labor, material and manufacturing overhead costs actually incurred by Seller through the date of cancellation in the production of the Goods or performance of the Services, in each case, however, less the reasonable resale or salvage value of materials and work in process. Notwithstanding the foregoing, Buyer shall not be liable for cancellation changes if the Goods are standard or stock items of the Seller. Buyer may also issue additional instructions and make changes in connection with



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the Purchase Agreement in any one or more of the following: (i) designs or specifications; (ii) method of shipment or packing; and (iii) time and destination of deliveries. If any such change results in an increase or decrease in the cost of performance by Seller, the parties shall agree in writing upon an equitable adjustment in the purchase price. Any claim by Seller for adjustment under the preceding sentence shall be asserted in writing within 15 days after receipt by Seller of notice of change. Seller shall perform in accordance with the change pending the assertion of any such claim and pending agreement upon any equitable adjustment.

11. **PROPERTY FURNISHED TO SELLER BY BUYER.** All dies, molds, patterns, jigs, fixtures, materials, supplies and any other property furnished to Seller by Buyer, or paid for by Buyer, for use in the performance of the Purchase Agreement, shall be and remain the property of Buyer, shall be marked or clearly identified as property of Buyer, shall be subject to removal upon Buyer's instructions, shall be used only in filling orders from Buyer, shall be held at Seller's risk, and upon recall by Buyer shall be packaged at Seller's expense for shipment to Buyer in accordance with Buyer's instructions, and shall be kept insured by Seller at Seller's expense to the extent of their full insurable value. Evidence of insurance shall be furnished to Buyer on request comparable to the total value of material received. All descriptions, specifications and samples furnished to Seller by Buyer, or paid for by Buyer, shall be and remain the property of Buyer, shall not be disclosed to third parties except to the extent necessary in connection with the performance of this Purchase Agreement, shall be used only in filling orders from Buyer and shall be returned upon request at Seller's expense. Where disclosures to Seller's suppliers are required, this provision shall become a substantive part of its orders and agreements.
12. **INTELLECTUAL PROPERTY.** Seller warrants that the Goods shall be free of the rightful claim of any third person by way of infringement of any US. or foreign letters patent or of any other proprietary information or knowhow. Seller shall indemnify and hold harmless Buyer and its customers and users of the Goods against all losses, liabilities, damages, costs and expenses (including attorneys' fees) incurred or arising in connection with any such infringement or claim thereof, and after notice, Seller shall appear and defend, at its own expense by counsel acceptable to Buyer, any suits based on any infringement or claim thereof. Seller shall not sell, transfer or loan to any entity (except Buyer) or otherwise make use of (i) Goods manufactured from specifications or other information originating from or furnished by Buyer; or (ii) Goods identified with Buyer's trademarks or trade names or contained in containers or wrappings so identified. In addition, without Buyer's prior written consent, Seller shall not advertise or publish in any manner that Seller has contracted with or has furnished Goods to Buyer. Seller agrees that if it or any of its representatives (including affiliated companies and subcontractors) (i) makes a discovery or invention pertaining to any research, development or design work called for hereunder, (ii) adapts the Goods to satisfy Buyer's purposes, (iii) first conceives any of the same or (iv) first reduces any of the same to practice, Seller promptly shall notify Buyer of such discovery or invention, and at the expense and direction of Buyer, shall cause the applicable inventor(s) or discoverer(s) to apply for patents or other intellectual property protection in jurisdictions designated by Buyer. Seller agrees to assign, or cause to be assigned, to Buyer such applications and all domestic and foreign patent and other rights to such discovery or invention. Seller further agrees that all information, knowledge or skill pertaining to any such research, development or design work shall be the sole property of Buyer.
13. **SERVICES ON BUYER'S PREMISES.** If the Services are to be performed on Buyer's premises, Seller shall indemnify and hold harmless Buyer against all losses, liabilities, damages, costs and expenses (including attorneys' fees) caused by or arising out of the performance thereof. Seller shall maintain public liability, products liability, property damage, and workmen's compensation insurance with insurers, liability limits and other terms and conditions reasonably satisfactory to Buyer and naming Buyer as an additional insured. Upon Buyer's request Seller shall furnish copies of policies or certificates evidencing such insurance. Buyer shall have no obligation to pay for any of the Services until waivers of all applicable mechanic's liens have been delivered to Buyer. The provisions of this paragraph 13 shall also apply to any other party or subcontractor engaged by Seller for the performance of the Services.
14. **INDEMNITIES/LIMITATION ON LIABILITY.** Seller shall indemnify and hold harmless Buyer and its officers, employees, agents and affiliates from and against all liabilities, losses, claims, actions, costs, expenses and disbursements (including attorney's fees and disbursements), related to any investigation, litigation or other proceeding which arises or is alleged to arise in connection with the Goods or otherwise from Seller's acts or omissions under this Purchase Agreement (the same to apply whether or not (i) Buyer is a party thereto, (ii) Buyer was negligent in connection therewith or (iii) the foregoing are based on contract, tort or strict liability). In no event shall Buyer be liable for anticipated profits or for incidental or consequential damages or penalties. Buyer's liability on any claim for loss or damage arising in connection with this Purchase Agreement shall not exceed the price allocable to the Goods which give rise to the claim. Any action resulting from any breach by Buyer must be commenced within one year after the cause of action has accrued.
15. **EQUAL EMPLOYMENT CLAUSE.** Unless exempt under the rules and regulations of the United States Secretary of Labor, the provisions of Executive Order 11246, the Vietnam Era Veterans Readjustment Assistance Act of 1974 and the Rehabilitation Act of 1973 and the implementing regulations issued thereunder shall constitute a term of this Purchase Agreement and Seller agrees to be bound thereby. At the request of the Buyer, Seller shall execute and deliver to Buyer a written agreement and certificate embodying the Equal Opportunity Clause, a Certification of Non-segregated Facilities, and, if applicable, Seller's written Affirmative Action Compliance Program and Standard Form 100(EEO-1). The provisions of this paragraph 14 shall also apply to any other party or subcontractor engaged by Seller for the production and sale of the Goods or the performance of the Services.
16. **ASSIGNMENT.** The Purchase Agreement shall be binding upon and shall inure to the benefit of Buyer and Seller and their respective successors and assigns. Seller shall not assign the Purchase Agreement, or any interest thereunder, without Buyer's prior written consent.

Note to Suppliers: Please keep this copy of our terms and conditions on file and apply it to all future purchase orders.



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17. **APPLICABLE LAW.** Wherever a term defined by Illinois Uniform Commercial Code is used in these printed provisions, the definition contained in said Code shall control. Any action resulting from a breach of this Purchase Agreement by Seller may be brought by Buyer at any time within the applicable statute of limitations. Prior course of dealing, course of performance, trade usage or verbal agreements to the extent they add, detract, modify, supplant or explain the Purchase Agreement shall not be binding on Buyer. This Purchase Agreement constitutes the entire agreement between the parties and may not be amended, discharged or waived without the written agreement of Buyer. If any provision is found to be ineffective or invalid under law, such provision shall be severed here from without affecting any other provision.
18. **I.T.A.R.** These commodities may be controlled under the International Traffic in Arms Regulations (ITAR). Controlled materials may not be viewed by, exported or transferred to any foreign person or entity without prior written approval by the Directorate of Defense Trade Controls and Dayton's Empowered Official.
19. **MISCELLANEOUS.** No failure or delay by Buyer in exercising any right under this Purchase Agreement shall constitute a waiver of any of Buyer's rights. All claims for money due or to become due from Buyer shall be subject to deduction or set off by Buyer for any counterclaim arising out of this or any other transaction with Seller. Risk of loss shall pass to Buyer upon delivery of the Products at the location specified by Buyer.

DAYTON PROGRESS CORPORATION

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