

TERMS AND CONDITIONS

ALL PURCHASE ORDERS ARE SUBJECT TO THE FOLLOWING

- 1) **DEFINITIONS:** As used throughout this purchase order, the following terms shall have meaning set forth below:
 - "Contract", "Order", or "Subcontract", unless otherwise modified, means this purchase order.
 - "Supplies", "Articles", or "Items" includes services, if this order provides for the furnishing of services.
 - "Buyer" means MPM, Inc.
 - "Seller" means the person, partnership or corporation that has executed this order with MPM, Inc. and that will furnish items provided herein.
 - "Completed Work" means all items completed in accordance herewith for which Seller shall not have received payment as of the date of a termination.
 - "Terminated Work" means all items ordered hereunder upon which work had not commenced as of the date of a termination.
 - "Work In Progress" means all items upon which work had commenced but not been completed as of the date of a termination.
 - "Furnished Material (MPM/FM)" means all materials, tooling or facilities furnished to the Seller by the Buyer pursuant to this order or furnished by Seller but which is to be returned for Seller's use and later delivered to Buyer.
- 2) **ACCEPTANCE:** This order which incorporates these terms and conditions becomes a binding contract when it is accepted either by acknowledgment or commencement of performance.
ACCEPTANCE OF THIS ORDER IS EXPRESSLY LIMITED TO THE TERMS HEREOF. IN THE EVENT OF INCONSISTENCY BETWEEN THE TERMS OF THIS ORDER AND ANY PURPORTED ACCEPTANCE, THE TERMS OF THIS ORDER SHALL PREVAIL.
- 3) **GENERAL:** This Purchase Order is placed subject to these terms and conditions including those within the Purchase Order. The terms of any proposal referred to in the Purchase Order are included and made a part of the Purchase Order only to the extent of specifying the price, the nature and description of the goods or services ordered, the terms as to payment and time of delivery and then only to the extent that such terms are consistent with the terms and conditions of this Purchase Order.
 For the purpose of this Purchase Order, goods shall include but are not limited to
 - (a) raw materials
 - (b) components
 - (c) intermediate assemblies
 - (d) end products and services
- 4) **SHIPPING INSTRUCTIONS:** A packing list must accompany each shipment. Seller's name must be shown on the packing list in addition to Buyer's Purchase Order number, part number, quantity of goods shipped and date of shipment. Buyer shall audit the quantity and type of goods received for conformance to the packing list. Buyer's findings will be final and conclusive.
- 5) **OUR ORDER NUMBER MUST APPEAR ON ALL INVOICES, PACKING SLIPS & PACKAGES:** Certification of compliance to applicable documents for items on this purchase order is required, and shall list, as a minimum
 - (a) the part number
 - (b) military specification and

- (c) the MPM purchase order number

Two copies of certification bearing the signature and title of your authorized quality representative must accompany each shipment. Materials received without required certification shall be subject to withholding of payment.

This order subject to the following quality requirements: **Seller shall maintain a system of inspection meeting the requirements of MIL-I-45208A and a calibration system in accordance with MIL-STD-45662A.**
- 6) **INVOICING:** Invoices will be rendered in duplicate for each shipment and must show
 - (a) the date shipment was made
 - (b) shipping point
 - (c) packing ticket numbers
 - (d) part number and description of goods
- 7) **DISCOUNTS:** The cash discount period will be computed, either from the date of delivery, inspection and acceptance, or the date of receipt of correct and proper invoices prepared in accordance with the terms and conditions of this Purchase Order, whichever date is later.
- 8) **PRICE:** Seller agrees that
 - [A] If the price is omitted from this order or any part thereof, Seller's price will not be higher than Seller's lowest prevailing price for corresponding items as of the date hereof;
 - [B] Any reduction in price in any item covered by this order made subsequent to its receipt of Seller shall be applicable hereto;
 - [C] The price as herein stated shall include all taxes on items ordered hereby; and
 - [D] Unless otherwise provided, the price as herein stated shall include all costs for packing, crating, transporting and insuring the items ordered to Buyer's dock.

EXTRA CHARGES: Except as otherwise provided in this Purchase Order, no payment for extras shall be made unless such extras and the price therefore have been authorized in writing by the Buyer. Prices shown on Purchase Order shall not increase during the period of delivery under this Purchase Order unless agreed to in writing.
- 9) **DELIVERY: [TIME IS OF THE ESSENCE OF THIS ORDER]** If delivery is not completed within the time specified herein or if Seller endangers the performance of this order because it has failed to make sufficient progress
 - [A] Buyer reserves the right without liability, in addition to its other rights and remedies to terminate this order for default of performance by notice effective when received by Seller as to started items of yet shipped and to purchase substitute items elsewhere and change the Seller with any loss incurred.
 - [B] Items shipped to Buyer in advance of the schedule as herein set forth may, in Buyer's sole discretion, be returned to the Seller at Seller's expense and if seller is late with delivery, buyer reserves the right to demand next day delivery service at sellers expense.
 - [C] Any provision herein for delivery of items by installment shall not be construed as rendering the obligations of the Seller severable.
 - [D] No over-shipments will be accepted except those resulting in good faith from conditions of loading, shipping, packing or allowances in manufacturing processes and in no case exceeding 5% of the quantity called for or \$25.00 whichever is less.
- 10) **GOODS RETURNED TO SELLER:** Time and rate of deliveries are the essence of this Purchase Order. Buyer reserves the right to cancel this Purchase Order and reject goods upon default by Seller in time, rate, or

- manner of delivery. Buyer reserves the right to return, shipping charges collect, all goods received at Buyer's plant more than one week ahead of schedule of deliveries on the face of this Purchase Order and all goods shipped to Buyer in excess of the amount called for in this Purchase Order. All amounts paid by Buyer in connection with goods returned pursuant to this Section 10 shall be, at Buyer's exclusive option, either refunded by Seller to Buyer or credited by Seller to Buyer against amounts due from Buyer to Seller.
- Seller shall bear all risks of loss, damage or destruction of any such goods so returned. Buyer reserves the right to defer the time and rate of delivery specified in this Purchase Order by written notice to Seller, such change to be without additional cost.
- 11) **RESPONSIBILITY FOR SUPPLIES:** Except where otherwise provided
 - [A] Seller shall be responsible for the articles to be provided under this order until they are delivered to the designated delivery point regardless of the point of inspection;
 - [B] the Buyer shall be responsible for the loss or destruction of, or damage to the articles after delivery to the Buyer but prior to the acceptance or rejection, on if such loss, destruction or damages arises from the willful negligence of its officers, agents, or employees acting within the scope of the employment; and
 - [C] Seller shall bear all risks as to the rejected supplies after notice of rejection, except that the Buyer shall be responsible for the loss, destruction, or damage of the articles only if such loss, destruction or damage results from the willful negligence of its officers, agents, or employees acting within the scope of their employment.
 - 12) **TAXES FEDERAL, STATE AND LOCAL:** The parties agree that the price or prices stated herein include all applicable taxes and that the price or prices will not be changed hereafter as the result of failure to include any applicable tax or as the result of any change in Seller's tax liabilities. Upon request of Seller, Buyer will furnish tax exemption certificates or other evidence of exemption when such certificates or other evidence of exemption are authorized and will be accepted by the appropriate taxing authorities.
 - 13) **CHANGES:** Buyer may, at any time, by a written notice to Seller, and without notice to sureties, if any make changes within the general scope of this Purchase Order, in any one or more of the following:
 - (a) drawings, designs, or specifications, where the goods to be furnished are to be specifically manufactured for Buyer in accordance therewith
 - (b) method of shipment or packing
 - (c) time and place of delivery
 - (d) the articles and materials, including the quality thereof, to be furnished by Seller and
 - (e) the amount of Buyer furnished property

If any such change under item (a) above causes an increase or decrease in the cost of the goods or services required by this Purchase Order, Seller shall notify Buyer in writing and an equitable adjustment shall be made in the Purchase Order price. Any claim for adjustment hereunder by the Seller shall be deemed waived unless asserted in writing within (30) days from the receipt by Seller of the change. Nothing contained in this clause shall relieve Seller from proceeding without delay in the performance of the order as changed.

No charge shall be made under this clause unless it is set forth in a written change order by Buyer's Procurement Department. The Buyer's engineering and technical personnel may from time to time render

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assistance or give technical advice to Seller concerning the articles hereunder. Such assistance or advice shall not be deemed a change under this clause. Seller shall immediately notify Buyer's Procurement Department in writing whenever any change received from any representative of the Buyer affects specifications, quantities, delivery, prices, or other conditions of this order

14) INSPECTION AND CONFORMANCE TO SPECIFICATIONS:

- [A] All goods shall be subject to inspection and test by Buyer to the extent practicable at all times and places during engineering, manufacturing or testing. Seller shall furnish equipment, applicable data and assistance during source inspection at no additional cost to Buyer. If any articles are not ready for inspection, after being so scheduled by Seller, the Buyer may charge Seller for any additional costs incurred by the Buyer as a result of the failure of Seller to be ready for inspection. Any articles furnished by the Seller which do not conform in all aspects to any instructions contained herein and to Buyer's specifications, drawings, blueprints and data may be rejected by Buyer.
- [B] Goods rejected because of defects or inferior quality will be returned to Seller or Buyer may, at its exclusive option and at the expense of Seller, correct the defective or nonconforming goods to conform to the specification requirements. Upon the return of goods, Seller shall, at Buyer's exclusive option, either replace the rejected goods or refund to Buyer all amounts paid by Buyer in connection with the rejected goods. Seller shall be responsible for all expenses related to rejected goods, including, without limitation, expenses related to rework, transportation, repackaging and re-inspection. Seller shall bear all risks of loss, damage or destruction of any such goods so returned.
- [C] If it is impractical for Buyer to inspect the goods at time of their receipt, this Section 14 will apply whenever the goods are inspected.
- [D] The Seller shall notify organization in writing of nonconforming product and make arrangements for organization approval of supplier nonconforming material prior to shipment. The supplier shall notify the organization of changes in product and/or process definition and, where required, obtain organization approval. The supplier shall provide right of access by the organization, their customer, and regulatory authorities to all facilities involved in the Order and to all applicable records.
 - (i) The supplier shall flow down to sub-tier suppliers the applicable requirements in the purchasing documents, including key characteristics where required.
 - (ii) Supplier will provide evidence of flow down upon request.
 - (iii) Supplier shall provide training records for employees upon request.

15) TERMINATION WITHOUT CAUSE:

- [A] Buyer may request termination of work under this Purchase Order in whole or in part at any time by written or telegraphic notice to Seller. Seller will thereupon immediately stop work on this Purchase Order or the termination portion thereof and notify its subcontractors to do likewise.
- [B] Unless such termination is caused by a default or delay of Seller, Seller shall be entitled to reimbursement for its actual costs incurred up to the point of termination applicable to the termination and in accordance with recognized accounting practices applied on consistent basis. Seller shall also be entitled

to a reasonable profit on the work done prior to the termination at a rate that does not exceed the rate used in establishing the original purchase price.

- [C] In the event of cancellation under this Section 15, deduction shall be made in any cancellation settlement for the value of any cancellation inventory retained by Seller or disposed of to any party other than Buyer, and Buyer shall not become liable to Seller for loss of anticipatory profits.
- [D] The provisions of this Section shall not limit or affect the right of the Buyer to terminate this Purchase Order under Section 16 below.

16) TERMINATION WITH CAUSE: Buyer may terminate this Purchase Order, or any part thereof, by written or telegraphic notice of default to Seller signed by Buyer under any of the following conditions:

- [A] if Seller refuses or fails to make deliveries or perform services within the time specified or extensions thereof agreed to in writing by Buyer;
- [B] if Seller fails to comply with any of the other provisions of this Purchase Order, or so fails to make progress as to endanger performance of this Purchase Order in accordance with its terms, and does not cure any such failure within ten days after receipt of notice by Buyer specifying such failure; or
- [C] if Seller becomes insolvent or is subject to proceedings under any law relating to bankruptcy, insolvency, or the relief of debtors

Notwithstanding the provisions of Section 15, a termination of this Purchase Order pursuant to this Section 16 shall absolve Buyer of any further obligation to Seller. In the event of such termination, Buyer may purchase similar goods elsewhere or secure the manufacture and delivery of the ordered goods by contract or otherwise and Seller shall be liable to Buyer or any excess costs to Buyer.

17) NOTICE OF LABOR DISPUTES: Whenever an actual or potential labor dispute is delaying or threatens to delay the performance of the work, Seller shall immediately notify Buyer in writing. Such notice shall include any relevant information concerning the dispute and its background.

18) WARRANTIES:

- [A] By accepting this order, Seller warrants that all articles to be delivered hereunder shall be
 - (i) in full compliance with Buyer's specifications, blueprints, drawings and data or Seller samples, if any
 - (ii) fit to the use intended by the Buyer
 - (iii) free from any actual or claimed patent, copyright or trademark infringement
 - (iv) free from defects in workmanship
 - (v) merchantable
- [B] Seller warrants title to the items
- [C] Seller agrees that the warranties herein contained shall be in addition to any warranties
 - (i) implied in law
 - (ii) expressly made by Seller other than hereunder and
 - (iii) survive acceptance and payment to Buyer
- [D] The warranty period is for one (1) year after delivery unless otherwise stated on the face of this order.
- [E] In the event of conflict, the specifications shall govern over drawings, drawings over samples, whether or not approved by

Buyer and samples over designated type part number or catalogue description. If the Buyer shall give the Seller notice of any defect or nonconformity within one year from the date of delivery of any article affected thereby, the Seller, shall save Buyer and its customers harmless from any and all expenses, liabilities and losses of any kind resulting from the sale or use of any defective or non-conforming goods or services provided by Seller under this Purchase Order.

- [F] Warranties shall survive Buyer's inspection, delivery acceptance or payment by Buyer. Seller further warrants that the prices set forth herein are as low as any net price now given by the Seller to any other customer for like materials and similar quantity, and agrees that if during the pendency of this order lower net prices are quoted to anyone for similar materials, such lower net prices shall be from that time substituted for the prices contained herein.

The above warranties shall be in addition to any other rights and warranties available to Buyer.

19) CONFIDENTIAL REALTIONSHIP: Seller shall treat as strictly confidential this Purchase Order, all specifications, drawings, models, Buyer's customers, and any other items or information supplied by the Buyer. Materials made in accordance with Buyer's specifications and drawing shall not be disclosed, furnished or quoted to any person or concern without Buyer's written consent.

20) INFRINGEMENT: Seller shall save Buyer and its customers harmless from any and all expenses, liabilities and losses of any kind resulting from claims, suits or actions alleging infringement from the sale or use of any and all goods or services furnished hereunder by the Seller.

21) BUYER PROPERTY:

- [A] Unless otherwise expressly agreed in writing, all material, tooling, designs and any other property furnished to the Seller by the Buyer or paid for by the Buyer in connection with this Purchase Order
 - (i) shall remain the property of the Buyer, and be delivered to Buyer upon request
 - (ii) shall not without Buyer's written permission be used or disclosed to anyone other than the Buyer
 - (iii) shall be held at the Seller's risk and
 - (iv) shall be insured by the Seller
- [B] Seller shall not substitute other property for furnished property and assumes all risk of and shall be responsible for any and all loss of or damage to furnished property except for reasonable wear and tear, unless the furnished property is consumed in the performance of this order, or incorporated into the articles to be delivered hereunder. The Buyer shall at all reasonable times have access to any premises upon which furnished property is located for the purpose of inspecting that property.

22) PATENTS: Seller agrees to defend at Seller's own expense, all suits, actions or proceedings in which Buyer, any of Buyer's distributors or dealers, or the user's lessees or customers of any of Buyer's products are made defendants for actual or alleged infringements of any copyright, trademark, or U.S. foreign patent resulting from the use or sale of the items purchased hereunder.

23) INFORMATION FURNISHED BY SELLER: Unless otherwise agreed to in writing by the Buyer, any information disclosed to the Buyer by Seller in connection with this order shall not be deemed confidential or proprietary and shall be acquired without restrictions.

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24) DISPUTES: Any dispute concerning conformity with Buyer's specifications or the quality of goods furnished by the Seller shall be decided by the Buyer who shall set forth its decision in writing and mail or otherwise furnish a copy thereof to Seller. Buyer's decision shall be final conclusive, unless within thirty (30) days from the date of receipt of the decision by the Seller, the Seller submits the controversy or claims of arbitration in Santa Clara, California, or such other location to be designated by the Buyer, in accordance with the rules then obtaining of the American Arbitration Association. A copy of such submission shall be simultaneously furnished to Buyer. Submission of a dispute to arbitration shall not authorize the arbitrators to vary any terms of this agreement or add or delete any provisions. Any judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

Pending final resolution or arbitration of any dispute hereunder, the Seller shall proceed diligently with performance of this Purchase Order and in accordance with Buyer's decision.

25) ATTORNEY'S FEES: Notwithstanding any provision in this order to the contrary, in the event Seller and Buyer are unable to resolve any dispute arising under this order and any suit or other judicial proceeding is instituted or had with reference thereto, the Buyer in any such suit or other judicial proceedings shall be paid promptly by the Seller an additional amount equal to the Buyer's reasonable attorney's fees and cost incurred.

26) INDEMNIFICATION: Seller shall indemnify and hold Buyer harmless from any claim, demand, cause of action, or damage for which Buyer might become liable arising from Seller's performance hereunder, in addition to any indemnification as provided hereunder, if by virtue of a patent infringement suit, an injunction shall issue against Buyer which prohibits or limits the use of any items purchased hereunder, Seller, at Buyer's request, shall supply Buyer with non-infringing replacement items of similar kind and quality.

27) ASSIGNMENT: This Purchase Order or any part thereof shall not be assigned or sublet by Seller without first obtaining Buyer's written consent.

28) SETOFFS AND COUNTERCLAIMS: All claims for money due or to become due from the Buyer shall be subject to deduction by Buyer for any setoff or counterclaim arising out of this or any other of Buyer's Purchase Orders with Seller.

29) NOTICE: All notices given pursuant to this Purchase Order shall be sent by certified mail, return receipt required, to the addresses of the Buyer shown on the Purchase Order.

30) APPLICABLE LAW: This Purchase Order and the acceptance of it shall be deemed to be a contract made in the State of California and governed by the laws thereof, in accordance with the law of the State of California.

31) COMPLIANCE WITH LAW:

[A] Upon acceptance of this order, Seller warrants and represents that it has and will continue during the performance hereunder to comply with all relevant provisions of Federal, State, and local laws and regulations. Without limiting the generality of the foregoing, Seller in accepting this order represents that the items to be furnished hereunder were or will be produced in compliance with all applicable requirements of Sections 6, 7 and 12 of the Fair Labor Standards Act, as amended and all valid and applicable regulations and orders of the Administrator of the Wage and Hour Division issued under §14 thereof.

[B] Seller also warrants and represents that every chemical substance delivered hereunder shall be on the list of chemical substances, or have been submitted for inclusion on such list, as compiled by the Administrator, Environmental Protection Agency pursuant to the Toxic Substances Control Act. Seller further warrants and represents that the prices charged Buyer are also available to any other customer of Seller who may desire to contract Seller for the same or similar quantity of items.

[C] Seller agrees to comply with all provisions of Executive Order No. 11246 of September 24, 1985, §503 of the Rehabilitation Act of 1974, as amended, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 USC 2012) and all rules, regulations and relevant orders of the Secretary of Labor related to equality of employment opportunity which Executive Order regulations and orders are incorporated herein by reference. Seller further agrees upon request by Buyer to promptly comply with all requests by Buyer to execute all certifications required under Executive order 11246, §503 of the Rehabilitation Act of the Vietnam Era Veterans' Readjustment Assistance Act. Obtain Workman's Compensation insurance coverage when any labor is expended in the State of California. Seller shall comply with, and upon request of Buyer, furnish certificates of compliance with all Federal, State and local laws, rules and regulations that may be applicable to this Purchase Order. Seller agrees to indemnify and save harmless Buyer for and from any and all liabilities, expenses, costs and damages which Buyer may incur or suffer as a result of Seller's failure or omission to comply with said rules and regulations.

32) SEVERABILITY: A determination that certain sections of this Purchase Order, in whole or in part, are unenforceable, will not negate or effect in any way the application and enforcement of the remainder of this Purchase Order.

33) EEO: All subcontractors, vendors, and suppliers are hereby notified that it is the policy of Buyer to provide equal employment opportunity and to adhere to federal, state and local laws pertaining thereto. It is required that appropriate action be taken on the part of all Sellers, subcontractors, vendors and suppliers to insure adherence to such laws. Executive Order 11246/41CFR Part 60-1.

The Equal Employment Opportunity clause in section 202, paragraphs 1 through 7 of Executive Order 11246 as amended, relative to Equal Employment Opportunity and the implementing rules and regulations of the Office of Federal Contracts Compliance are incorporated herein by specific reference.

34) COUNTERFEIT PARTS PREVENTION:

[A] The Seller shall establish and maintain controls to prevent the purchase and sale of counterfeit parts.

[B] Seller shall maintain item traceability which ensures tracking of the Item(s) back to the Original Manufacturer (OEM) for all components and devices including those in assemblies and subassemblies being delivered under this PO.

[C] Should Suspect/Counterfeit Item(s) be furnished under this PO, Seller shall immediately disclose such Item(s) to Buyer and replace such Item(s) with Item(s) acceptable to Buyer at no increase in price, cost or fee. Seller shall be liable for all costs relating to quarantine, removal, rework of assembled product, and replacement of counterfeit Item(s).

[D] Samples of the lot may be returned to Seller for analysis at Seller's cost and components will be destroyed if analysis either by Seller and/or Buyer identifies them as counterfeit.

[E] All counterfeit components will be reported to GIDEP.

[F] Sub-tier suppliers are to adhere to MPM's Counterfeit Parts Prevention and if they must purchase from a non-OEM/OCM the MPM buyer must approve prior to purchase.

35) RIGHT OF ACCESS: Pursuant to the laws of the State of California and any regulatory body agency, MPM, Inc. and its customers reserve the right of access to audit and review any and all records, certifications, communications and test data by form of investigation regarding the traceability of information and data pertaining to the products purchased herein.

36) CORRECTIVE ACTION REQUIREMENTS FOR SUPPLIERS: Should an investigation reveal that you as a supplier are the root cause for any non-conformance, you will be required to complete a corrective action plan approved by MPM, Inc. In the event that you fail to complete the corrective action plan in its entirety, your company could face removal from our Approved Supplier List.

37) RETENTION OF RECORDS: Copies of records initiated and indicating the results of manufacturing process, inspection results, audits and certifications received from sub tier suppliers must be legible, identified, collected, protected, stored, easily retrievable and retained for seven (7) years (unless specific MPM clauses dictate otherwise) at Supplier's facility or off-site storage provided the records are easily retrievable.

38) Supplier Code of Conduct:

These supplier principles have been established to ensure safe working conditions throughout MPM supply chain, ensuring that workers are treated with respect and dignity, that business operations are environmentally sound, and that business is conducted in accordance with internationally recognized principles for business ethics; MPM takes a partnership approach to suppliers in an effort to pursue these principles.

MPM expects all its suppliers to comply with the following requirements in additional applicable laws as covered in prior sections:

- **Humane Treatment**

- The supplier's disciplinary policies and procedures shall be clearly defined and communicated to workers. There shall be no harsh or inhumane treatment, including sexual harassment, sexual abuse, corporal punishment, mental or physical coercion or verbal abuse of workers; nor is there to be a threat of any such treatment.

- **Business Integrity and ethical business practices**

- The highest standards of integrity are to be expected in all business interactions. Suppliers & their agents shall prohibit any and all forms of corruption, extortion & embezzlement. In addition, each are to uphold the highest standards of ethics to avoid improper advantage, conduct fair trade and competition.