

INTERTEK USA, INC. AND ITS AFFILIATES - PURCHASE TERMS AND CONDITIONS

1. This Purchase Order constitutes an offer by Intertek USA, Inc. on behalf of itself and its affiliates, referred herein as "Purchaser", to Seller for the goods subject to this Purchase order upon the terms and conditions stated herein, and does not constitute an acceptance by Purchaser of any offer to sell, quotation, bid or proposal. Any reference to such offer to sell, quotation or proposal is solely for the purpose of incorporating the description and specifications of the goods therein to the extent that such description of specification does not conflict with Purchaser's description and specifications.
2. This Purchase Order and the terms and conditions herein are accepted, agreed to by Seller and effective upon (i) acknowledging receipt of this Purchase Order; (ii) beginning of performance of work under this Purchase Order; (iii) beginning of fabrication of any goods ordered under this Purchase Order; (iv) shipping any of the goods ordered under this Purchase Order; or (v) the receipt of any payment under this Purchase Order, whichever occurs first. Any references to the Seller's offer to sell, quotation, bid or proposal expressly excludes any term, condition, or instruction contained in such document, invoice, acknowledgement or other communication issued by Seller in connection with this Purchase Order. Additional terms in the Seller's acceptance are deemed objected to, are hereby rejected and are not binding on the Purchaser. The Purchaser may insist upon strict compliance with any or all parts hereof, notwithstanding any custom, practice or course of dealing to the contrary.
3. This Purchase Order and any documents referred to in it or attached hereto are the entire agreement between the parties relating to the goods subject to this Purchase Order and supersede all prior negotiations, proposals and writings. This Purchase Order shall not be modified or supplemented by trade custom and/or usage of trade, either within the industry or between the parties and no agreement or understanding modifying the conditions or terms of this Purchase Order shall be binding upon the parties nor will extra compensation be paid by Purchaser unless the agreement or understanding is made in writing and signed by the parties. The parties agree that Purchaser, or its designee, shall have the benefit, and the right to enforce directly, all provisions arising in favor of Purchaser by reason of this Purchase Order, including but not limited to any warranty or guarantee obligations assumed or imposed on Seller and that Seller's rights and remedies are exclusively those set forth in this Purchase Order and are in lieu of any which may be provided in law or at equity. In the event of any ambiguities, conflicts or discrepancies in the specifications, drawings or other documents which are a part of this Purchase Order, Seller shall immediately submit the matter to the Purchaser for Purchaser's determination and shall comply with the determination.
4. Purchaser's count on shipments will be accepted as conclusive. Partial shipments must be accompanied by the specified identifying documents, but such shipments shall not make the obligations of Seller severable. The purchase price includes packing, palletizing, handling and surcharges. Seller shall pay for damaged goods resulting from improper packing or marking and all goods received in excess of Purchase Order requirements may be returned, at Seller's expense, for full credit. To the maximum extent possible shipments shall be palletized. If it becomes necessary for Seller to ship by a more expensive means than originally specified to meet the delivery date, any increased transportation costs shall be borne by Seller. Prior to shipment, Seller shall notify Purchaser in writing of the shipping date, shipping weight, dimensions and name of carrier. Failure to notify Purchaser may result in return of goods. Seller shall promptly notify Purchaser of any actual or anticipated delay in delivery and take all reasonable steps to avoid or end delays without additional costs to Purchaser. Where the delay is caused by acts of God, acts of civil or military authority, epidemics, war, riot, strikes or other similar causes beyond a party's reasonable control and which could not have been reasonably foreseen or provided against by that party, Purchaser shall have the right to either: (i) terminate by written notice to Seller all or part of this Purchase Order in accordance with its terms or (ii) equitably extend the date of delivery or performance, but in no event will Seller be entitled to any extra compensation for such delay. Seller's performance shall not be excused where the alternate source of supply are available.
5. The Purchaser shall have the right to inspect the goods at the time and place of delivery before acceptance thereof or payment therefore. The Seller agrees to replace any and all material or merchandise which may be defective in workmanship, or quality, or which is not in accordance with specifications and order, and agrees to pay all transportation charges on such rejected or incorrect material. Such material held by the Purchaser pending the Seller's disposition, will be at the Seller's risk.
6. Inspecting or failing to inspect the goods covered by this Purchase Order shall in no way affect Purchaser's right to reject nonconforming or defective goods, nor constitute Purchaser's acceptance of the goods nor affect in any way Seller's obligations under this Purchase Order notwithstanding Purchaser's opportunity to inspect the goods Purchaser's knowledge of the non-conformity or defect, its substantiality or the ease of its discovery, or Purchaser's failure to earlier reject the goods. Either party's failure to insist on performance of any term, condition, or instruction, or failure to exercise any right or privilege or its waiver of any breach, shall not subsequently waive any such term, condition, instruction, right or privilege.
7. No substitutions shall be made in this Purchase Order without prior written authority of Purchaser. Purchaser shall have the right to make written changes in the goods covered by this Purchase Order. Any exceptions to a Change Order, including the price or delivery date for such goods, must be stated by the Seller in writing (with adequate supporting documentation) within five (5) working days after receipt of the Change Order and Seller will not perform the change unless specifically directed to in writing by Purchaser. Purchaser and Seller shall mutually agree in writing upon an equitable adjustment in the price and/or delivery date to reflect the effect of such change. Failure to submit such exception to a Change Order or sign and return the acceptance copy of the Change Order within ten (10) working days will be deemed to be an acceptance of the Change Order and Seller will not be entitled to any additional consideration. Seller shall continue to perform the unaffected portion of this Purchase Order unless so instructed in writing by Purchaser. If released in writing by Purchaser, Seller shall comply with and perform such change in accordance with the terms of the

Purchase Order during the time Seller and Purchaser require to mutually agree upon an equitable adjustment. All such work shall be executed under the terms and conditions (including warranties) of original Purchase Order. No claims shall be valid unless made in strict accordance with this Section and within the time period allowed and no claim will be allowed if asserted after final payment under this Purchase Order.

8. Upon the earlier of delivery to Purchaser's designated site or payment, Seller warrants full and unrestricted title to Purchaser for all goods supplied under this Purchase Order, free and clear of any and all liens, restrictions, reservations, security interests, and encumbrances. All tools, plans, drawings, information equipment or materials of every description furnished to Seller by Purchaser or specifically paid for by Purchaser, and any replacements thereof, shall be and remain the personal property of Purchaser. Such property while in Seller's custody or control shall be held at Seller's risk, shall be adequately marked, shall be kept insured by Seller at Seller's expense in the amount equal to the replacement cost with loss payable to Purchaser and shall be subject to removal at Purchaser's written request, in which event Seller shall redeliver to Purchaser in the same condition as originally received by Seller. Seller shall be responsible for, and shall bear all losses resulting from any loss of or damage to, including complete destruction of the goods subject to this Purchase Order prior to delivery to Purchaser's designated site.
9. No charges will be allowed for packing or drayage or for express shipments unless authorized at time of purchase.
10. Purchaser shall have the right to cancel for its convenience all or any unperformed part of this Purchase Order at any time by written notice to Seller.
11. Seller warrants to Purchaser that the goods will conform with the specifications, drawings, and other descriptions of the Purchase Order and will be new and in all respects meet the requirements of the Purchase Order, of good materials, design and workmanship, free from defects, fit for its intended use (as evidenced by the specifications of this Purchase Order), and will fulfill satisfactorily all operating conditions specified in this Purchase Order. Seller, at its expense, shall promptly correct or remove and replace any defects in goods not conforming to the foregoing warranty, when notified of such nonconformity by Purchaser. Except for consumables which Seller shall warrant for the length of time of the manufacturer's warranty period, Seller's warranties shall be in effect for a period of eighteen (18) months from the date of delivery to the construction site or twelve (12) months from the date on initial operation of the equipment, whichever comes first. If corrective work is performed on an item under this warranty, the warranty shall also apply to discrepancies and defects in the corrective work discovered within the shorter of twelve (12) months after the corrected item is placed in operation or eighteen (18) months after corrective work is complete. These warranty terms shall be extended for any period that an item cannot be operated as a result of such discrepancies or defects. In the event Seller or its suppliers provide a longer warranty period than specified herein, the longer warranty period shall apply. All alterations, repairs or replacements shall be performed at a mutually agreed to time and by a method satisfactory to Purchaser. Seller will be chargeable for repairs made to correct such failure to meet this warranty when the Seller has been given notice of such failure and subsequently fails to take prompt and effective action to correct the failure in accordance with the foregoing. These warranties are in addition to and not in lieu of any other warranties, expressed or implied, at law or in equity.
12. All rights and remedies of Purchaser set forth in this Purchase Order or existing at law or in equity shall be cumulative and may be exercised concurrently. In addition to any other remedy and without limitation, Purchaser's remedies under this Purchase Order shall include the following:
 - a. If Purchaser elects to accept defective or nonconforming goods. All costs and expenses incurred by Purchaser in connection with such election, including those incurred as a result of the modification or alteration of the goods necessary to make the goods conforming, shall be to the Seller's account. If the Purchaser elects to utilize defective or nonconforming goods without such modification or repair, Seller agrees to reimburse Purchaser an equitable, mutually agreed upon amount to account for the defects or nonconformance in the goods.
 - b. If the Purchaser rejects any or all of the goods, the goods may at Purchaser's option, be returned to Seller, at Seller's risk, for repair, replacement, or credit as directed by the Purchaser. All costs and expenses incurred in such return shall be to the Seller's account.
 - c. If the Purchaser determines that Seller's performance will cause a substantial delay in delivery of the goods, Purchaser shall be entitled to remove the goods or any part thereof from Seller's premises and complete the manufacture of the goods so removed, after providing written notice to Seller of Purchaser's intent to do so. All direct costs and expenses incurred by Purchaser in such removal and manufacture, including delay costs, shall be to Seller's account.
13. All claims for money due or to become due from Purchaser to Seller pursuant to this Purchase Order shall be subject to deduction or set-off by Purchaser against any monies owed by Seller to Purchaser as a result of this Purchase Order or any other transaction between Purchaser and Seller.
14. From the acceptance of this Purchase Order until three (3) years from transfer of title of the materials, merchandise or goods, Seller shall maintain and preserve documentation and data pertaining this Purchase Order and shall permit Purchaser to examine same as necessary for Purchaser to perform an audit and/or verify the accuracy and propriety of the prices and Seller's compliance with the terms and conditions of this Purchase Order.

15. Seller shall be liable for and hereby releases Purchaser from all liability for, and shall protect, defend, indemnify and hold Purchaser harmless from and against, any and all claims directly or indirectly arising out of any physical illness, injury, or death of any employee of Seller or any loss, harm, infringement, destruction, or damage of Seller's property, equipment, goods or instruments, except to the extent such illness, injury, or death is caused by Purchaser's gross negligence or willful misconduct.
16. Except as otherwise provided herein; Purchaser shall be liable for and hereby releases Seller from all liability for, and shall protect, defend, indemnify and hold Seller harmless from and against, any and all claims directly or indirectly arising out of any physical illness, injury, or death of any employee of Purchaser or any loss, harm, infringement, destruction, or damage of Purchaser's property, equipment, goods or instruments, except to the extent such illness, injury, or death is caused by Seller's gross negligence or willful misconduct.
17. Notwithstanding anything to the contrary herein regardless of cause, Seller agrees to save the Purchaser harmless from and indemnify it against any and all claims which may be made against it on account of alleged infringements of patent rights and expenses of any kind in connection therewith, arising from the use of the apparatus named, or any part thereof. In case such apparatus is held to constitute infringement and its use is enjoined, the Seller, if unable within reasonable time to secure for the Purchaser the right to continue using said apparatus by suspension of the injunction by procuring for the Purchaser a license or otherwise, will at the Seller's own expense, either replace such apparatus with non-infringing apparatus, or modify it so that it becomes non-infringing, or remove the said enjoined apparatus and refund the sums paid therefore.
18. The Seller agrees to save the Purchaser harmless from and indemnify it against any and all claims which may be made against it on account of the sale by the Seller to the Purchaser of material or merchandise which at the same time of said sale in any way violates the Occupational Safety and Health Act of 1970, as amended, together with all applicable order regulations and rulings issued thereunder, or any other provision of any applicable law, statute, regulation, rule, or order.
19. The Seller agrees to save the Purchaser harmless from and indemnify it against any and all claims which may be made against it on any account arising out of this order, including those arising out of defective manufacture, assembly, workmanship or quality of the materials and merchandise, or on account of any other products liability exposure.
20. Should the Seller breach, or default under any provisions of this Agreement and should the Purchaser employ an attorney to enforce any provision hereof, or to collect damages for such breach or default, the Seller and its Surety, if any, agree to pay the Purchaser such attorney's fees and litigation expenses as the Purchaser may incur with respect thereto.
21. Seller agrees to save the Purchaser harmless and indemnify from all liens, including but not limited to laborers, materialmen's and/or mechanics' liens arising from the performance of Seller's obligations under this Purchase Order and shall keep the premises of Purchaser free from such claims, liens and encumbrances (whether asserted by Seller or others).
22. Seller shall not be entitled to indemnity from Purchaser in the event Seller has breached its warranties to Purchaser.
23. Seller waives any liability of Purchaser to the Seller for the loss of services, loss of profits, loss of product or business interruption, or for special, indirect or consequential damages or punitive or exemplary damages, regardless of cause.
24. Seller shall provide all appropriate shipping certification and instructions for shipping, safety, handling, exposure and disposal in a clear form for use by non-technical personnel, relating to hazardous or toxic substances; or to any other environmental or safety and health regulations, including but not limited to the OSHA Hazard Communication Standard 29 CFR 1910.1200, SARA Title III, 40 CFR 355 and 40 CFR 372. The following certification must be made on the bill of lading: "This is to certify that the above named articles are properly classified, described, packaged, marked and labeled and are in proper condition for transportation according to all applicable transportation, safety and health regulations." Unless a MSDS and weight percentages required for any hazardous or toxic chemical are provided to Purchaser, then Seller represents and warrants to Purchaser that the goods are not hazardous or toxic products. Goods will be subject to return at Seller's expense if required MSDS and SARA Title III information is not received with the goods.
25. In the event this order is deemed to be sub-contract within the meaning of Section 202 of Executive Order 11246, dated September 24, 1965, as amended, then such section is hereby incorporated herein by reference, to the general effect that the Seller shall not discriminate against any employee or applicant for employment under this Order because of race, color, religion, sex or national origin, and further that the Seller shall take affirmative action to ensure that applicants and employees are treated without regard to their race, color, religion, sex or national origin. Also incorporated herein by reference are the affirmative action obligations of contractors and subcontractors with respect to veterans (41 C.F.R. Part 60-250) and with respect to handicapped workers (41 C.F.R. part 60-741), to the extent that such provisions are applicable.
26. In the event that this order is deemed to be a subcontract within the meaning of 38 U.S.C. 2012 (d), then the reporting requirements contract clause set forth in 41 C.F.R. Section 61-250.10 is incorporated herein by reference, to require the completion of "Federal Contractor Veterans' Employment Report VETS-100" in accordance with 41 C.F.R. Part 61-250.
27. Any failure by the Purchaser at any time or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of this Agreement shall not constitute a waiver of such terms or conditions and shall not affect or impair such terms or conditions in any way or the right of the Purchaser at any time to avail itself of such remedies as it may have for any breach or

breaches of such terms or conditions. No term, condition, or provision of any Work order, invoice, delivery ticket, or other document submitted by the Seller to the Purchaser shall have the effect of modifying or waiving in any manner the provisions of this Agreement unless any such document shall be accepted and executed by an officer of the Purchaser.

28. Time is of essence. Whenever there shall be any delay whatsoever in the delivery of products, Purchaser shall have the right to withdraw this Purchase Order without any liability to Seller. Seller will immediately notify Purchaser of any potential delay.
29. In the event of a conflict between the terms and conditions of this Purchase Order and the attachments, if any, which form a part of this Purchase Order, this document shall prevail. In the event of a conflict between the terms and conditions of this Purchase Order and any subsequent documents, including without limitations, confirmations, invoices, statements, published rate or price schedules, or any other documents used by either party in the normal course of business, the terms and conditions of this Purchase Order shall prevail unless express reference is made therein to amending specific provisions of this Purchase order and the same is signed by a duly authorized representative of Seller and a duly authorized representative of Purchaser.
30. The provisions of this Purchase Order which are intended to extend beyond its acceptance of the goods, including without limitation, the liability, indemnity, release, wavier, remedy, warranty, representation, applicable law and venue provisions, and the provisions applicable to the enforcement of those provisions and/or the enforcement of rights and obligations incurred hereunder which are not fully discharged prior to acceptance of the goods, shall survive to the extent necessary to give effect to those provisions and to enforce such rights and obligations.
31. Should any provision or any portion of any provision of this Purchase Order be held to be invalid, void or otherwise unenforceable, such holding shall not affect the remaining portions of that provision, or any other provision of this Purchase Order.