



Purchasing Terms and Conditions

THIS SALE IS SUBJECT TO ALL OF THE FOLLOWING TERMS AND CONDITIONS PRINTED HEREOF WHICH INCLUDE PROVISIONS DISCLAIMING WARRANTIES AND CONDITIONS OF SALE, EACH OF WHICH THE VENDOR AGREES TO BY ACCEPTANCE OF THIS CONTRACT. ONLY SUCH TERMS AND CONDITIONS SHALL CONSTITUTE THE AGREEMENT BETWEEN THE PARTIES. THIS DOCUMENT REPLACES ANY PRIOR DOCUMENT, PURCHASE ORDER, SALES ORDER, ORDER OR AGREEMENT.

For the purposes of this contract, the "Buyer" shall be considered PROTHANE, or a representative or agent of PROTHANE

The Following terms and conditions apply to this sale:

1. **Packaging:** All goods shall be suitably packaged and marked according to the requirements specified by the Buyer, and to the extent which will prevent damage during transport to the Buyer's facilities or to the facility specified by the Buyer. No charge will be allowed for the packaging, crating, marking, cartage, or storage of goods, unless so stipulated herein. However, damage to any goods not packaged to ensure proper protection during transport, even if conditionally accepted by the Buyer, will be charged to the Vendor.

A packing list bearing the Buyer's name, address, contents and purchase order number must be placed in each packing container. In the event that a packing list does not accompany the goods, Buyer's count shall be accepted as final and conclusive.

2. **Conditional Acceptance:** All goods, when delivered to PROTHANE by the Vendor, or otherwise received by PROTHANE will be considered only to be conditionally accepted by PROTHANE. All goods, once in the possession of the Buyer, will be either accepted or rejected

by the Buyer or Buyer's customer. The Buyer will only expressly convey rejection of the goods furnished by the Vendor. Specifically, all goods will be conditionally accepted by the Buyer, and may be expressly rejected within a reasonable amount of time by the Buyer. If the Buyer does not convey express rejection of the goods within a reasonable amount of time after delivery of the goods to the Buyer, the goods will be deemed to be accepted by the Buyer. Notice of rejection of goods will be conveyed by means of letter, fax, email, Rejection Report, or any other express method considered reasonable by the Buyer. If the goods are deemed accepted by the Buyer or Buyer's customer, the Buyer will hereby accept the transfer of ownership of the goods and will assume full legal liability for the goods herein. In either case, ownership of the goods remains with the Vendor until such time that the goods have been accepted or expressly rejected by PROTHANE, though transfer of possession of the goods to the Buyer may have already occurred.

3. Conformance of Product: It is an express condition of this contract that all goods and/or work ordered which are made as a part hereof, as is fully set out herein, be made in full accordance to plans, drawings, specifications or samples furnished or approved by the Buyer thereto. And, if not so ordered by the Buyer, will be made merchantable, fit, and sufficient for the purpose ordered. Furthermore, products must meet acceptable industry standards for quality and workmanship. In any case, it is a further condition that the goods or work ordered will be free from defect in material and workmanship.

The vendor shall notify the buyer, in writing, of any product that does not meet the agreed requirements. Furthermore, the vendor shall obtain approval/disposition from the Buyer of nonconforming material before release.

All warranties and conditions shall run to the Buyer, its successors, assigns and customers, and are deemed to be exclusive. Unless otherwise specified, all goods and/or work furnished hereunder may be subject to final inspection at the Buyer's facilities, and subsequent acceptance or rejection by the Buyer thereof.

The Buyer, the Buyer's customers, Government agencies, and/or regulatory authorities, retain the right of access to the Vendor's facilities, including subvendors, to inspect materials, documents, and quality assurance systems.

The Buyer may withhold any rejected goods at the Vendor's risk, pending Vendor's instructions. If the Vendor fails to furnish the Buyer with disposition of such goods within a reasonable amount of time, the Buyer may return the goods to the Vendor at the Vendor's expense.

4. Certification of Goods: Where the Buyer has requested that the Vendor certify the goods which will be transferred to the buyer, the Certification document must include, at a minimum, each of the following three (3) elements;

- i) Identification of the certifying entity (which may include but is not limited to; the name of an individual, or the name of the PROTHANE which is certifying the product.)
- ii) Positive identification, and applicable revision issues of specifications, drawings, process requirements, inspection instructions and other relevant technical data and requirements to which the conformity is being certified.
- iii) A clear and unambiguous Statement of Quality signed with a clearly legible signature of the individual authorized by the entity stated in 4(i) to sign the Certification.

The Vendor shall retain on-file records of such Certification and make them available for audit in order to verify statements contained in the Certification document. The Vendor shall grant the right of access to the Buyer, the Buyer's Customers, and/or any regulatory authorities to all facilities involved in the contract, including to its sub-vendors, for the purpose of auditing and verifying of such Certifications.

5. Process Changes: The Vendor shall notify and obtain approval from the Buyer for changes in product and /or process definitions where required by contract.

6. Flow Down of Requirements: The Vendor shall ensure that applicable requirements, including key characteristics and specifications with applicable revision issues, have been flown down and communicated to sub-tier suppliers in purchasing instruments Vendor issues to its sub-vendors. Furthermore, the vendor shall duly flow down any requirements granting right of access to the Buyer, the Buyer's customers, and/or any regulatory authorities to its subvendor's facilities.

7. Conditional Requirements: when required by contract and as requested independently by the buyer the following clauses will apply:

- a) Approval of product, procedures, processes and equipment
- b) Requirements for qualification of personnel
- c) Quality management system requirements
- d) The name or other positive identification, and applicable issuers of specifications, drawings, process requirements, inspection instructions and other relevant technical data.

e) Requirements for design, test, examination, inspection and related instructions for acceptance by the buyer

f) Requirements for test specimens (e.g., production method, number, storage conditions) for design approval, inspection, investigation or auditing.

8. **Deliveries:** The failure of the Vendor to make any delivery in the quantity, to the location, or within the time specified, or to comply with any other terms and conditions hereof, shall at the Buyer's option, relieve the Buyer of any obligation to accept and pay for such goods and/or work.

9. **Records Retention:** The Vendor shall retain quality records on file for a minimum of ten (10) years (unless otherwise specified) and assure that they are readily retrievable upon request.

10. **Termination:** The Buyer may terminate the work under this order in whole or in part at any time by written notice to the Vendor, stating the extent and effective date of such termination. Upon such termination, the Vendor shall forthwith halt work under this order and discontinue the placement of further orders or subcontracts hereunder, terminate the work under orders or subcontracts outstanding hereunder. Further, the Vendor shall take any necessary precautions or actions to protect property in the Vendor's possession in which the Buyer and/or Buyer's customer has or may acquire an interest.

Both parties are under a duty to negotiate a fair amount of compensation for the Vendor in the event that the contract is terminated. Any termination settlement hereunder at the election of the Buyer, shall be subject to prior audit by the Buyer, and if this order is placed pursuant to a prime contract with the

Government, or to a sub-contract therein, regardless of whether notice thereof has been given, the Vendor shall be subject to prior audit approval thereof by the Government or the Contractor pursuant to whose contract with the Buyer this order has been placed. If the parties cannot negotiate fair compensation within a reasonable amount of time upon termination of the contract, the Buyer will pay the Vendor the actual costs incurred by the Vendor which are properly allocated or apportionable under recognized commercial accounting practices to the terminated portion of this order. This amount, together with any payment previously made, or to be made under his order, may not exceed the aggregate price specified in this order.

The Vendor will transfer title and deliver on Buyer's instructions, any property, the price of which has been paid or the cost of which is reimbursed, in accordance with the aforementioned negotiation settlement. However, with the Buyer's approval, the Vendor may retain the goods at

an agreed price, or sell the goods at an approved price, in which case, the Buyer is expressly under no obligation to negotiate a fair compensatory settlement to the Vendor. The provision of this paragraph shall not limit or affect the rights of the Buyer to terminate this order on account of default of the Vendor, as provided in Paragraph 4 hereof captioned "Deliveries".

11. **Laws & Regulations:** The Vendor shall comply with, and upon the request of the Buyer, furnish certificates of compliance with all applicable Federal, Provincial and Municipal laws. The Vendor shall hereby also indemnify the Buyer against any damages by reason of violation of this paragraph.

12. **Non-Assignability:** Neither this order, nor any moneys due or to become due hereunder, may be assigned by the Vendor unless the Buyer has given its express written consent to do so.

13. **Enforcement of Terms, No Waiver:** Any forbearance or failure of the Buyer to enforce any provision of these terms and conditions, or to exercise any right arising from any default of Seller hereunder shall not affect or impair the Buyer's rights, and no such forbearance or failure shall be construed as a waiver of the Buyer's rights to act or to enforce each and every such provision.

14. **Entirety:** The terms and conditions set forth or referred to in this order constitute the entire agreement between the parties hereto and no modification hereof shall be considered binding unless mutually agreed to in writing by both parties. The receipt by the Buyer of any quotation form, sales confirmation, or other proposal shall not have the effect of altering or adding to the terms and conditions hereof, unless the Buyer has expressly agreed to the same in writing.

The Vendor, by contracting with PROTHANE, agrees to the terms and conditions expressed in this document to the exclusion of any and all provisions as to the liability on the Vendor's own invoices and other documents. If the Vendor desires his own conditions as to liability to remain in force or effect, this must be agreed to in writing by both the Vendor and Buyer, and signed by an Officer of both entities.