

Precise Fabrication PRODUCTS

TERMS AND CONDITIONS OF PURCHASE

1. Definitions. "Buyer" means Precise Fabrication Products entity or affiliate listed as the "Purchaser" or "Buyer" on the applicable Purchase Order. "Seller" means the business entity to which this purchase order is addressed, including Seller's principal if Seller is acting as a broker or agent. "Order" means this purchase order, including all terms and conditions on the face and reverse side and all specifications, quality requirements and drawings referenced herein or issued hereunder. "Goods" means those parts, materials, data, or other property or services that are the subject of this Order.
2. Contract Formation. If this Order is deemed to constitute acceptance of an offer, such acceptance is expressly made conditional on Seller's assent to the terms of this Order, and shipment of any part of the Goods or other commencement of performance will be deemed to constitute such assent. Any additional or different terms in any offer or acknowledgement by Seller are expressly rejected by Buyer and will not be deemed accepted by Buyer unless Buyer's acceptance thereof is in writing and specifically refers to each such additional or conflicting term. Seller's commencement of performance, acceptance of the purchase order in any manner, or the absence of a signed acknowledgment within 7 (seven) manufacturing days upon receipt of purchase order shall conclusively evidence Seller's acceptance of the purchase order as written.
3. Invoicing; Payment; Price Warranty. A separate original invoice is required for each shipment under this Order. Buyer will pay for the Goods after the later of the date of Buyer's receipt of the applicable invoice or the date acceptable Goods are received by Buyer (but not earlier than the specified delivery date). Seller warrants that the prices charged to Buyer are no higher than the lowest prices charged to any other customer of Seller or any of Seller's affiliates during the past twelve months for the same or comparable Goods.
4. Order Changes. Buyer may at any time, by written notice to Seller, make changes in the drawings, specifications, quantities, delivery schedules and shipping instructions under this Order. If any such change increases or decreases the cost of performing or the time required for performance of this Order, an equitable adjustment in prices and/or schedules will be considered by Buyer provided that any claim by Seller for such adjustment is presented in writing with supporting documentation to Buyer within 10 business days from the date of Buyer's notice to Seller. No changes whatsoever will be initiated by Seller without Buyer's written approval.
5. Taxes. Prices stated include all taxes directly applicable to the Goods unless otherwise specified. Notwithstanding the foregoing, Buyer will only be liable for such federal, state and local taxes that Seller is required by law to collect from Buyer.
6. Packing and Crating Goods for Delivery. Goods will be suitably prepared for shipment to secure the lowest transportation rates (unless a premium method is specified on the face hereof) and comply with all carrier regulations. No charges are allowed for packing, crating, freight express, or cartage unless authorized by Buyer.
7. Routing, Risk of Loss, Excess Shipments and Delays. (a) Time is of the essence in the performance of this Order by Seller and Seller will take all necessary action, both normal and extraordinary, to ensure timely deliveries. (b) Buyer may select mode of transportation, routing of, and carrier for the Goods. Seller will be liable for excess transportation costs resulting from deviation from Buyer's instructions or promised delivery dates. (c) Seller will bear the risk of loss until the delivery point specified in the Order or, if not so specified, until delivery at destination. (d) Buyer's weight and count are conclusive, and Buyer will have no liability for payment for Goods delivered in excess of the quantity ordered. Excess Goods may be returned to Seller at Seller's expense. (e) If, prior to time for delivery of the Goods, Seller has reason to believe that it will be unable to meet its delivery schedule, Seller will immediately notify Buyer in writing, will indicate the cause of delay and will use its best efforts to cure the anticipated delay. Upon receipt of notice of the anticipated delay or upon occurrence of an actual delay, Buyer may (I) direct expedited routing of Goods, with excess costs paid by Seller, or (II) cancel the Order and purchase substitute Goods elsewhere, with excess costs and expenses paid by Seller.
8. Inspection of Goods; Rejection of Goods and Revocation of Acceptance. All Goods and related facilities will be subject to test and inspection by Buyer, Buyer's customers, and any applicable government agencies at all places and all times, including during the period of manufacture. Seller will provide at no cost all reasonable facilities and assistance required for any such inspections or tests conducted at Seller's premises. Buyer's action in paying for or accepting any Goods will not constitute a waiver of any rights or remedies of Buyer, including Buyer's right to revoke acceptance and return any part of the Goods or the right to make a claim for damages because of the failure of the Goods to conform to this Order. For all non-conforming Goods, Seller will provide Buyer, at Buyer's election, a full refund or replacement of the Goods, at Seller's risk and expense, including transportation costs both ways. Buyer may, at its option, purchase substitute Goods in lieu of non-conforming Goods, and Seller will be liable for the difference in costs, less expenses saved by Buyer. Buyer's rights herein will be in addition to all other rights of Buyer under applicable law.
9. Quality; Warranties. Seller warrants that all Goods delivered will strictly conform to the Order and all applicable specifications, quality documents and drawings, will be of good design, material, and workmanship, will be free of defects, will be merchantable and fit for their intended purpose, and will meet all applicable industrial and governmental safety standards. Seller further warrants that Seller will have title to and the right to sell such Goods at the time of delivery, and that all such Goods will be new (unless otherwise specified in this Order) at the time of delivery. Seller will also transfer to Buyer the warranties on goods and services incorporated into Goods. All warranties will survive any inspections, delivery, acceptance or payment by Buyer, and will run to Buyer, its successors, assigns, customers and users of Goods. Seller will repair or replace, without cost to Buyer, all defective or nonconforming Goods, and pay for all other resulting damage, loss or claims arising out of defective or nonconforming Goods. Seller's warranties with respect to repaired or replaced Goods will be the same as the warranties given with respect to the original Goods. No approval of Seller's designs, drawings, samples, test results, procedures, processes, schedules or other items by Buyer under this Order will in any way limit or diminish Seller's warranties hereunder.
10. Indemnification. Seller agrees to defend, indemnify and hold Buyer, including its officers, directors, employees, parent, subsidiaries, affiliates and agents (collectively, the "Indemnified Party"), harmless of and from any claim, loss, cost, damage, settlement or judgment arising out of Seller's provision of Goods to the Indemnified Party or the presence of Seller's employees, agents or subcontractors on the Indemnified Party's premises. This duty to defend, indemnify and hold harmless extends to any legal claim or proceeding, whether based on contract, warranty, infringement, strict liability in tort, negligence or other legal theory, and also extends not only to third party claims but also to any loss suffered directly by the Indemnified Party. Buyer is entitled to control Seller's defense of Buyer hereunder.
11. Insurance. Seller will furnish to Buyer a certificate of insurance showing that Seller has obtained insurance coverage in the following minimum amounts (or such higher minimum amounts as Buyer may, in its sole discretion, specify in writing): (a) Worker's Compensation - statutory limits for the state or states in which the work is to be performed; (b) Employer's Liability - \$1,000,000; (c) Commercial General Liability - \$1,000,000 combined single limit per occurrence including Premises and Operations, Independent Contractors, Contractual Liability and Products and Completed Operations coverages; and (d) Automobile Liability (including owned, hired and non-owned vehicles) - \$1,000,000, combined single limit per occurrence. Such certificate will set forth the insurance company, amount of coverage, the policy numbers, and date of expiration, and will include a thirty days notice of cancellation to Buyer clause. Buyer must be named as an additional insured party under each of these policies with the exception of the worker's compensation policy. Such insurance coverage must be maintained by Seller at all times while it is performing work under this Order. Compliance by Seller with these insurance requirements does not affect Seller's indemnification or other liabilities under this Order.
12. Tooling. Buyer will be the owner of any equipment, tooling or fixturing furnished or paid for by Buyer (collectively, "Buyer tooling"). Seller will, to the extent feasible, identify Buyer tooling as Buyer directs and will dispose of Buyer tooling only in accordance with Buyer's written instructions. Seller assumes complete liability for any Buyer tooling and Seller agrees to pay for all repair, maintenance and replacement of Buyer tooling. Unless otherwise authorized in writing by Buyer, Seller will use Buyer tooling solely in the performance of purchase orders for Buyer. Buyer reserves the right to request and receive a list of Buyer tooling in Seller's possession and to audit such list against Buyer tooling at Seller's facilities.

13. Materials. If Buyer furnishes any material for fabrication under this Order, then: (A) Seller will not substitute any other material in such fabrication without Buyer's written consent; (B) Buyer's title to such materials shall not be affected by incorporation or attachment to any other property; (C) Seller will maintain strict accountability to ensure positive individual lot integrity of finished product; and (D) all such material (except that which becomes normal industrial waste or is replaced at Seller's expense) will be returned in the form of product or unused material to Buyer. Inaccuracies, out of tolerance conditions or inadequacies in quality of materials accepted by Seller will not excuse performance in strict accordance with the applicable specifications, quality documents and drawings. Any industrial waste/scrap from Buyer-furnished material will, if requested by Buyer, be owned by Buyer and collected and segregated by Seller for pick-up by Buyer. Any industrial waste/scrap from Buyer-furnished material in excess of the allowance specified by Buyer will result in Seller being debited for the cost of the excess materials plus appropriate labor and overhead burdens.
14. Buyer's Property; Confidentiality. Buyer retains title and ownership of all information, materials and intellectual property furnished to Seller in connection with performance of this Order, and the same will be: (i) treated as Buyer's confidential information, segregated from Seller's property, and individually marked and identified as Buyer's property; (ii) used by Seller exclusively for the purpose of completing this Order; and (iii) returned to Buyer at Buyer's direction or upon completion, termination, or cancellation of this Order, along with all copies or reproductions, unless otherwise agreed in writing by Buyer.
15. Cancellation. This Order may be cancelled by Buyer at any time in whole or in part by oral notification followed by written confirmation to Seller. Seller will immediately cease performance under the Order upon receipt of notification of cancellation (unless otherwise specified by Buyer). Buyer agrees to consider reasonable reimbursement to Seller for finished Goods and work in process upon Seller's submission of supporting documentation within 30 days of cancellation. Any reimbursement to Seller must be mutually agreed upon. In no event will Buyer be responsible for any loss of profit or for payment for any work that is or may be rejected upon inspection or does not conform to Buyer's specifications or purchase order requirements.
16. End of Life. In the event Seller intends to replace or discontinue the manufacture of a Good, Seller will give Buyer at least 6 months prior written notice and accept additional Orders for such Good until the end of the 6-month notice period. Seller may not discontinue manufacture of a Good until all outstanding Orders for such Good have been filled.
17. Compliance with Laws; U.S. Export Controls. In performing work under this Order, Seller and its subcontractors will comply with all applicable federal, state, and local laws, and the rules and regulations of any governmental authority. This includes strict compliance with all applicable export control laws and regulations of the United States and all applicable trade regulations under U.S., foreign or other relevant jurisdictions. Buyer reserves the right to cancel any Order without penalty or liability to Buyer in the event Seller's performance under this Order does not comply with such laws, rules and regulations. Seller will defend, indemnify and hold Buyer harmless for any non-compliance by Seller or its subcontractors.
18. Mandatory Flow Downs. Seller and its subcontractors will comply with all mandatory flow down clauses, whether pursuant to a U.S. government contract or otherwise, applicable to Buyer for Goods that are the subject of this Order. The clauses that are incorporated by reference for orders under U.S. government contracts are specified in Schedule A hereto.
19. Assignment; Subcontracting. Seller may not assign its rights or obligations under this Order either voluntarily or by operation of law without the prior written consent of Buyer. Seller may not subcontract all or any substantial part of this Order without the prior written consent of Buyer. Any consent of Buyer will not relieve Seller of its contractual obligations under this Order.
20. Applicable Law; Disputes. The interpretation of this Order and the rights and obligations of the parties hereto will be construed and governed by the laws enacted in the state of Washington, except that Washington's choice of law rules will not be invoked for the purpose of applying the law of another jurisdiction. The U.N. Convention on Contracts for the International Sale of Goods will not apply to this Order. The parties agree that, in any effort to enforce the terms and obligations hereunder, the complaining party will first notify the other party in writing of the alleged dispute and the parties will attempt in good faith to resolve the dispute through prompt discussion and meeting between representatives having decision-making authority regarding the dispute. If the dispute is not resolved by the 30th day after written notice of the dispute was first made, the complaining party may seek appropriate legal action provided that either party may seek preliminary injunctive or other equitable relief at any time to prevent irreparable harm. The parties agree to personal jurisdiction in the state and federal courts in the state of Washington and that venue is proper in King County, Washington.
21. Cumulative Remedies; Set-Off. All of Buyer's rights and remedies under this Order or at law are cumulative and non-exclusive. Payment to Seller under this Order is subject to set-off or recoupment for any present or future claims that Buyer or its affiliates may have against Seller or its affiliates.
22. Limitation of Buyer's Liability. Any liability of Buyer for any breach of any term or condition imposed upon it, whether such term or condition is contained in this Order or otherwise, will not exceed the purchase price for the Goods involved in the alleged breach. Buyer will not under any circumstance be liable for consequential or incidental damages.
23. Entire Agreement. This Order (and any LTA under which this Order is issued, if any) constitutes the entire agreement between the parties with respect to the subject matter herein and therein and supersedes all previous proposals, both oral and written, negotiations, representations, commitments, writings and all other communications between the parties. No waiver, alteration, modification or addition to this Order will be binding unless expressly agreed to in writing and signed by duly authorized representatives of Buyer and Seller. A waiver of any of the terms or conditions hereof will not be deemed a continuing waiver, but will apply solely to the instance to which the waiver is directed.