

PO TERMS AND CONDITIONS

- 1. Acceptance.** The purchase order together with the terms herein (the "Purchase Order") constitutes Buyer's offer to Seller and shall become a binding contract upon the terms and conditions stated both herein and in the Purchase Order upon acceptance by Seller by any expression of acceptance or commencement of performance, whichever occurs first. Any terms and conditions proposed by Seller in acknowledging or accepting Buyer's offer which are different from or in addition to the terms set forth in the Purchase Order shall not be binding upon Buyer and shall be void and of no effect, except to the extent expressly accepted in writing by Buyer's authorized procurement representative. This Purchase Order, together with any attachments, constitutes the entire agreement of the parties. No waiver, modification or addition to the terms of the Purchase Order shall be valid unless in writing and signed by the parties. "Deliverables" means the goods, materials, products, software, technical data, intellectual property, drawings, personal property, personnel, services or items identified and/or listed in the Purchase Order for Superior Hydraulic Services, LLC, including its wholly owned subsidiaries, (collectively "Buyer") internal use and or resale to Buyer's customers.
- 2. Payment and Prices.** Buyer shall not be billed at prices higher than those stated on the Purchase Order. Unless otherwise specified, the price includes all charges for packing, hauling, storage and transportation to point of delivery. Seller will pay all delivery charges in excess of any delivery charge Buyer has agreed to pay. The price stated includes all taxes except state or local sales or use tax or similar taxes, which Seller is required by law to collect from Buyer. Such taxes, if any, shall be separately stated in Seller's invoice and paid by Buyer unless an exemption is available. Seller agrees that any price reduction made with respect to the items covered by the Purchase Order subsequent to its placement but prior to payment will be applicable to the Purchase Order. Unless different payment terms are expressly stated on the Purchase Order, payment terms shall be sixty (60) days from Buyer's receipt of Seller's correctly presented invoice. A "correctly presented" invoice will contain the Purchase Order Number sent to the billing address on the Purchase Order. Seller represents that prices quoted to or paid by Buyer shall not exceed current prices charged to any other customer of Seller for deliverables which are the same or substantially similar to, and in the same or substantially similar quantities as the Deliverables. Seller shall refund or Buyer may set off against subsequent invoices any amounts paid by Buyer in excess of such price(s).
- 3. Delivery.** Substitutions will not be accepted. The Deliverables must be shipped complete by the date requested but not be shipped more than one week in advance of the time or times specified herein, without Buyer's prior written approval. When more than one shipment is made against any Purchase Order, indicate "Final Shipping" on shipping papers and invoice accompanying the last shipment in the Purchase Order. Seller shall not ship excess quantities without Buyer's prior approval. Except as otherwise provided herein, Buyer shall not be obligated to accept untimely, excess or under shipments and such shipments in whole or in part may, at Buyer's option, be returned to Seller, or held for disposition at Seller's expense and risk. Seller's invoice shall describe the items, state the Purchase Order Number and be attached to the original bill of lading or other shipping receipt.
- 4. Changes.** Buyer may make changes in drawings, specifications, quantities, delivery schedules, or methods of shipment or packaging on any goods at any time. If such changes result in an increase or decrease in cost, an equitable adjustment of price and delivery schedules may be made, or Buyer may, at its option, terminate the Purchase Order if agreement on an adjustment cannot be reached. Claims for adjustment must be asserted by Seller within ten days of the change order.
- 5. Warranties.** Seller warrants that the Deliverables will conform to applicable specifications; instructions, drawings and data, and that samples will be merchantable, of good material and workmanship, free from defects and will be fit and sufficient for the purpose intended. These warranties shall be in addition to all other warranties, express, implied or statutory. Payment for, inspection of, or receipt of articles or services shall not constitute a waiver of any breach of warranty. Seller's warranties shall run to Buyer, its affiliates, subsidiaries, customers or users of the Deliverables and shall not be deemed to be exclusive of any other remedy at law or in equity available to Buyer, its affiliates, subsidiaries, customers or users of the Deliverables. Buyer's inspection, approval, acceptance, use of, or payment for all or any part of the Deliverables shall in no way affect its warranty rights. Seller shall at its expense indemnify, defend and hold harmless, Buyer, its directors, officers, employees, affiliates, subsidiaries, agents, customers and end users, from any and all loss, damages or liability (including, without limitation, reasonable legal fees and costs) arising out of or resulting in any way from any defect in the Deliverables, or from any act or omission of Seller, its agents, employees or permitted subcontractors in connection with the Deliverables. This indemnification shall be in addition to Seller's warranty obligations.
- 6. Inspection and Tests.** All goods ordered hereunder will be subject to inspection and testing by Buyer to the extent practicable at all times and places, including the period of manufacture and in any event prior to acceptance. Such goods will be subject to final inspection and acceptance by Buyer during a reasonable period following delivery to Buyer. It is expressly agreed that inspections and/or payments prior to delivery will not constitute final acceptance. If the goods delivered do not meet the specifications, or otherwise do not conform to the requirements of the Purchase Order, Buyer shall have the right to reject such goods. Goods which have been delivered and rejected in whole or in part may, at Buyer's option, be returned to Seller or held for disposition at Seller's risk and expense. Buyer will have the right, but not the obligation to examine Seller's records for the purpose of determining compliance with the terms of the Purchase Order. Should a compliance review be performed, Buyer or its duly designated representatives will provide reasonable notice to Seller and the records may be examined only during the normal business hours. Buyer will bear all costs of audit. The right to audit shall expire 18 months after the expiration or termination of the Purchase Order.
- 7. Buyer's Property.** Title to and right of immediate possession of any property, including without limitation, patterns, tools, jigs, dies, equipment or materials furnished or paid for by the Buyer shall remain in Buyer. No articles made therefrom shall be furnished by Seller to any other party without Buyer's prior written consent. Seller shall keep adequate records of such property, which shall be made available to Buyer upon request, and shall store, protect, preserve, repair and maintain such property in accordance with sound industrial practice, all at Seller's expense. Unless otherwise agreed to by Buyer, Seller shall insure Buyer's interest in such property against all risks of theft, loss or damage (including extended coverage). Copies of certificates of insurance evidencing this coverage will be furnished to Buyer on demand. In the event that Buyer's property becomes lost or damaged to any extent from any cause while in Seller's possession, Seller agrees to indemnify Buyer or replace such property, at Seller's expense, in accordance with Buyer's request. At the completion of the goods requested by Buyer in the Purchase Order for which Buyer's property was required, Seller shall request disposition instructions for all such property, or the remainder thereof, whether in its original form or in semi-processed form. Seller agrees to make such property available to Buyer at Buyer's request, in the manner requested by Buyer including preparation, packing and shipping as directed. Expenses for preparation for shipment will be for Seller's account and shipment shall be made F.O.B. Buyer's facility.
- 8. Drawings and Specification Review.** If, during the term of the Purchase Order, Buyer's representatives review drawings, specifications, or other data developed by Seller in connection with the Purchase Order and make suggestions or comments or approve such documents and data, such action is only an expression of opinion by Buyer and shall not serve to relieve Seller of any responsibility for the reliability, quality, rate of output, cost, delivery, performance or any other requirements of the Purchase Order.
- 9. Drawings and Data.** Seller shall keep confidential all information, drawings, specifications, or data furnished by Buyer, or prepared by Seller specifically in connection with the performance of the Purchase Order, and shall not divulge or use such information, drawings, specifications or data for the benefit of any other party. Except as required for the efficient performance of the Purchase Order, Seller shall not make copies or permit copies to be made without the prior written consent of Buyer. Seller shall not use, either directly or indirectly, any such data or any information derived therefrom for any purpose other than to perform the Purchase Order without obtaining Buyer's written consent. Seller shall return all information, drawings, specifications, or data of Buyer upon termination of this agreement or upon Buyer's demand.
- 10. Use of Information.** Seller agrees that all information heretofore or hereafter furnished or disclosed to Buyer by Seller in connection with the placing or filing of the Purchase Order is furnished or disclosed as a part of the consideration for the Purchase Order, that such information is not, unless otherwise agreed to by Buyer in writing, to be treated as confidential or proprietary and that Seller shall assert no claims by reason of the use or disclosure of such information by Buyer, its assigns or its customers.
- 11. Advertisements.** Seller shall not in any manner advertise or publish the fact that it has furnished Buyer, or contracted to furnish Buyer, the goods or services herein mentioned without prior written consent of Buyer. Seller shall not disclose any details in connection with the Purchase Order to any other party except as may be otherwise provided.
- 12. Tooling.** Unless otherwise specified in the Purchase Order, all tooling and/or all other articles required for the performance hereof shall be furnished by Seller, shall be maintained in good condition and replaced when necessary at Seller's expense, and if furnished by Buyer, returned to Buyer upon demand.
- 13. Termination.** Buyer may terminate the performance of the work under the Purchase Order in whole at any time, or from time to time in part, by written notice to Seller. Upon receipt of such notice, Seller shall, unless the notice directs otherwise, immediately discontinue all work and the placing of all orders for materials, facilities and supplies in connection with the performance of the Purchase Order and shall proceed to cancel promptly all existing orders and terminate all subcontracts insofar as such orders or subcontracts are chargeable to the Purchase Order. Upon the termination of work under the Purchase Order, full and complete settlement of all claims of Seller with respect to the terminated work shall be made as follows:
- 13.1. As compensation to Seller for such termination, unless such termination is for the default of Seller, Buyer shall pay Seller the percentage of the total order price corresponding to the proportion of the amount of work completed on the date of termination to the total work to be done, that are not recoverable in the normal course of Seller's business, as Seller's full compensation for the work completed under the Purchase Order; and
- 13.2. Upon Buyer's payment to Seller in accordance with this paragraph, title to all equipment, materials, work-in-progress, finished products, plans, drawings, specifications, information, special tooling and other things for which Seller has paid such vest in Buyer.
- Nothing contained in this paragraph shall be construed to limit or affect any remedies, which Buyer may have as a result of default, by Seller.
- 14. Default - Cancellation.** Buyer reserves the right, by written notice of default, to cancel the Purchase Order without liability to Buyer, in the event of the happening of any of the following: insolvency of Seller, the filing of a voluntary petition in bankruptcy by Seller, the filing of an involuntary petition to have Seller declared bankrupt, the appointment of a Receiver or Trustee for Seller, or the execution by Seller of an assignment for the benefit of creditors. If Seller fails to perform as specified herein, or if Seller breaches any of the terms hereof, Buyer reserves the right, without any liability to Buyer, upon giving Seller written notice, to (i) cancel the Purchase Order in whole or in part, by written notice to Seller and Seller shall be liable to Buyer for all damages, losses and liability incurred by Buyer directly or indirectly resulting from Seller's breach, or (ii) obtain the goods ordered herein from another source with any excess cost resulting therefrom chargeable to Seller, if such deficiencies are not remedied. The remedies herein provided shall be cumulative in addition to any other remedies provided at law or in equity.
- 15. Force Majeure.** Neither party shall be liable for defaults or delays due to Acts of God or the public enemy, acts or demands of any Government or any Governmental agency, strikes, fires, floods, accidents, or other unforeseeable causes beyond its control and not due to its fault or negligence. Each party shall notify the other in writing of the cause of such delay within five (5) days after the beginning thereof.
- 16. Compliance with Laws.**
- 16.1. General: Seller shall comply fully with all applicable federal, state and local laws in the performance of this Agreement including, but not limited to, all applicable employment, tax, export control and environmental laws.
- 16.2. Customs: Upon Superior Hydraulic Services, LLC's request, Seller will promptly provide Superior Hydraulic Services, LLC with a statement of origin for all Deliverables and United States Customs documentation for Deliverables wholly or partially manufactured outside of the United States.
- 17. Indemnification.** Seller will defend, hold harmless and indemnify Buyer from and against any liability and expenses (including, without limitation, attorney and other professional fees and disbursements) arising from or in connection with any damages, injuries or third party claims or demands to recover for personal injury, death, or property damage caused by or arising out of any of the Deliverables (regardless of whether such claim or demand arises under tort, negligence, contract, warranty, strict liability or other legal theories), except to the extent such injury, damage or loss results from Buyer's negligent actions, alteration or misuse.
- 18. Insurance.** If the Purchase Order contemplates the provision of services by Seller, Seller shall maintain and keep in force at its own expense, the following insurance at limits reasonably requested by Buyer: Commercial General Liability (including products and contractual liability), Commercial Automobile, Worker's Compensation, and Professional Liability. Seller shall provide a Certificate of Insurance to Buyer to verify such coverage, which shall provide at least 30 days' Notice of Cancellation to Buyer.
- 19. Intellectual Property Indemnification.** Seller shall indemnify and save harmless Buyer, its successors, assigns, customers or users of its products, from and against all loss, liability and damage, cost and expense (including reasonable attorney fees), resulting from any claim that the manufacture, use, sale or resale of any Deliverables supplied under the Purchase Order infringe any patent or patent rights, trademark, copyright or other intellectual property right of a third party, and Seller shall when notified, defend any action or claim of such infringement at its own expense.
- 20. Assignment.** Neither the Purchase Order nor any rights or obligations therein may be assigned by Seller nor may Seller delegate the performance of any of its duties hereunder without Buyer's prior written consent.
- 21. Applicable Law and Jurisdiction.** The validity, interpretation and performance of these terms and conditions shall be governed by the laws of the State of Texas without reference to conflict of laws principles. The parties agree that any action related to this agreement shall be venued in the Federal District Court or the Superior Court for the State of Texas, and the parties hereby irrevocably commit to the jurisdiction of these courts.
- 22. Attorneys' Fees.** In the event there is any dispute concerning the terms of this agreement or the performance of any party, and any party retains counsel for the purpose of enforcing any of the provisions of this agreement or asserting the terms of this agreement in defense of any suit filed against said party, each party shall be solely responsible for its own costs and attorneys' fees incurred in connection with the dispute irrespective of whether or not a lawsuit is actually commenced or prosecuted to conclusion.
- 23. Invoices and Notices.** All correspondence and invoices covering the Purchase Order must be addressed to Buyer's Purchasing Department at the address indicated on the Purchase Order. The parties agree that for any transactions subject to the Purchase Order, facsimile signatures shall be accepted as original signatures, orders may be transmitted electronically and any document created pursuant to the Purchase Order may be maintained in an electronic document storage and retrieval system, a copy of which shall be considered an original. Neither party shall raise any objection to the authenticity of the Purchase Order or any document created hereunder, based on the use of a facsimile signature, electronic order or the use of a copy retrieved from an electronic storage system.
- 24. Severability.** In case any one or more provisions contained in the Purchase Order shall be invalid, illegal, or unenforceable in any respect, the validity, legality, or enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.
- 25. Title.** With the exception of software not specifically developed for Buyer under the Purchase Order, (i) all Deliverables shall be the sole and exclusive property of the Buyer, and where applicable, shall be considered "works made for hire" under the U.S. Copyright Act (Title 17, United States Code), and all intellectual property, proprietary and industrial rights associated with Deliverables shall be owned exclusively by Buyer; (ii) by the Purchase Order, Seller assigns to Buyer for no additional consideration all such rights to the Deliverables, including the right to any extensions and renewals of such rights; and (iii) if requested by Buyer, Seller shall, without additional consideration, sign a separate written assignment of such rights to Buyer or any other document necessary for Buyer to establish, maintain or enforce such rights in the Deliverables.
- 26. Hazardous Chemicals and Hazardous Materials.** Prior to shipment or transfer of any hazardous chemical(s), as defined by regulations promulgated pursuant to the Occupational Health and Safety Act ("OSHA"), Seller shall provide Buyer with a complete, up-to-date Material Safety Data Sheet and shall properly mark such hazardous chemical(s) with a label satisfying the requirements of OSHA's Hazard Communication Standard (29 CFR Part 1910.1200 et seq.). Any shipment or transfer by Seller of any hazardous material(s) (as defined by regulations promulgated by the U.S. Department of Transportation ("DOT") and Appendix A of Federal Standard number 313A), shall be conducted consistent with the requirements of DOT regulations promulgated at 40 CFR Part 171 et seq.
- 27. Relationship of Parties.** The Seller and Buyer are independent contractors. Nothing in the Purchase Order shall be deemed to create a partnership, joint venture, franchise, employment, or agency relationship between the parties. Neither party shall have the power or authority to bind or obligate the other party.
- 28. Limitation of Liability.** In no event shall Buyer be liable for any incidental, indirect, special, consequential or punitive damages, even if Buyer knew or should have known of the possibility of such damages.