



## **Modern Process Equipment Supplier Terms and Conditions**

Modern Process Equipment's Purchase Order is conditioned on Seller's agreement to below:

### **1. Acceptance of Terms.**

(a) Each purchase order ("Purchase Order") for goods and services issued under these Terms and Conditions constitutes an offer by Buyer to Seller upon the terms and conditions stated herein and on the face of such Purchase Order (collectively, the "Contract"), and such Contract shall become binding on the Seller upon Seller's acceptance either by acknowledgment or performance. Any Purchase Order of Buyer will contain these terms. Any acceptance of the Purchase Order is subject to acceptance of the express terms and conditions set forth herein. These terms and conditions constitute the entire agreement between the parties on the subject matter hereof, superseding all prior communications and negotiations.

(b) **There are no terms or conditions affecting the purchase order not set forth herein, and any terms or conditions proposed by seller which add to, vary from, or conflict with the terms and conditions set forth herein are hereby objected to and rejected by buyer, and such terms and conditions shall be void and of no effect. No other terms apply unless agreed in writing. Seller's acceptance, acknowledgment or commencement of performance constitutes acceptance of these without changes.**

### **2. Delivery.**

(a) Delivery must be as set forth in these terms and conditions and on the respective Purchase Order.

(b) **Time is of the Essence.** In the event of delayed delivery, Buyer, without limiting its other rights and remedies, reserves the right to cancel all or any portion of the affected order, and to purchase elsewhere without liability to Seller and Seller shall be liable Buyer's costs due to such failure, including but not limited to lost production time and costs or damages imposed on Buyer by its distributors, retailers and end user customers as a result of Seller's delayed delivery.

(c) Buyer reserves the right to return any goods delivered to Buyer prior to specified delivery date or to store such goods and services until such delivery date, and Seller shall be responsible for all costs and expenses relating to such return or storage. Buyer shall not be responsible for goods shipped in excess of quantities ordered.

3. **Title: Risk of Loss.** Unless otherwise specified in the Purchase Order, title and risk of loss of any goods sold hereunder shall transfer to Buyer at the time the goods are delivered to Buyer's facility or Buyer's end user's customer's facility as set forth in the Purchase Order.

4. **Intellectual Property Rights.** The Seller warrants that the goods do not, alone or in any combination, infringe any third-party patent or other proprietary or intellectual property rights (collectively "Intellectual Property Rights"). If any claim is made against Buyer that the goods and services infringe a third party's Intellectual Property Rights, Seller shall at its cost, but at Buyer's discretion (i) procure for Buyer and Buyer's customers, as the case may be, the right to continue using the goods; (ii) modify the goods and services so they cease to be infringing; (iii) replace the goods with a non-infringing equivalent. Otherwise, Buyer is entitled to terminate this contract and reclaim all sums which it has paid to Seller.

5. **Quality and Inspection.** All goods furnished must be of the best quality suited for the particular situation. Seller shall make no substitutions without Buyer's prior written consent. All goods purchased will be subject to inspection and approval of Buyer and/or Buyer's end user customer after delivery at destination, notwithstanding prior payment to obtain cash discount, unless otherwise agreed upon in writing. Goods rejected by Buyer and/or Buyer's end user customer shall be returned to Seller at Seller's sole risk and expense, or held for disposition at risk and expense of Seller. No replacement of goods shall be made without Buyer's express consent. Buyer's or Buyer's end user customer's inspection of goods shall not limit Buyer's ability to revoke acceptance or pursue other remedies in the event that defects are later discovered. Payment shall not constitute acceptance of Articles.

6. **Seller's Warranty.**

(a) Seller warrants to Buyer for twelve (12) months from the later of the date of delivery or first use all goods and services covered by the Purchase Order that the goods and services will: (a) strictly conform to Seller's specifications, drawings, samples and other written materials and descriptions, or, to the extent the goods were purchased to Buyer's specifications and drawings as set forth or referred to in this Purchase Order, that the goods strictly conform with those specifications and drawings; (b) be free from defects in design, material and workmanship; (c) be of merchantable quality and suitable for the particular purposes intended, whether express or reasonably implied; and (d) bear all warnings, labels, and markings required by applicable laws and regulations.

b) This warranty shall survive inspection, acceptance and payment by Buyer and shall extend to Buyer and its direct and indirect customers, including distributors, retailers and end user customers. Seller will extend to Buyer all applicable warranties extended to Seller by Seller's suppliers with respect to goods delivered by Seller to Buyer. Seller will advise the Buyer immediately if Seller becomes aware that any goods delivered to Buyer may be defective in materials, workmanship or design. If any goods are found during the warranty period to be defective in materials, workmanship or design, Seller, at Seller's cost, will at Buyer's option either replace them F.O.B. Buyer's plant or repair them in place, with such repair or replacement to be completed within a reasonable time after Buyer's notice to Seller, not to exceed ten (10) days.

c) In addition, Seller warrants that: (a) none of the goods covered hereby, to the extent they are subject to laws prohibiting adulteration or misbranding, is adulterated or misbranded within the meaning of such laws as of the date of delivery to Buyer; (b) all goods covered hereby may be introduced into interstate commerce without violation of applicable laws and regulations; (c) all services have been performed in a good and workmanlike manner; and (d) all goods and services furnished or rendered pursuant to the Purchase Order have been produced, sold, delivered or rendered to Buyer in compliance with all applicable federal, state and local laws, ordinances, codes, rules, regulations or standards, including without limitation, the Fair Labor Standards Act, and those pertaining to the manufacture, labeling, invoicing and sale of such goods or services, environmental protection, immigration, employment and occupational safety and health.

7. **Buyer's Remedies.** Buyer's acceptance of all or any part of the goods or services provided hereunder shall not be deemed a waiver of the failure of such goods or services to conform to all of the warranties set forth in Section 6. Buyer retains the right to cancel any portion of the remaining order, to reject any portion of the goods or services delivered, or to revoke acceptance as to any portion of the goods or services accepted, and return such goods to Seller and to recover the purchase price, any excess costs of cover, and damages, including manufacturing costs, costs of removal or recall, transportation and custodial expenses, injury to person or property incurred by Buyer, all in addition to Buyer's other remedies under the applicable Purchase Order or applicable law. If Seller becomes insolvent or makes an assignment for the benefit of creditors, or files or has filed against it any petition in bankruptcy, Buyer shall have the right to cancel any outstanding Purchase Order immediately.

8. **Prices; Payment.**

(a) The price payable by Buyer shall be the price as stated on the Purchase Order. All prices are for services and goods delivered F.O.B. Buyer's facility, freight prepaid, and represent the entire cost to Buyer, unless specifically stated otherwise, and are firm. Any increase in price resulting from specification changes initiated by Buyer must be authorized in writing by Buyer. Should Seller offer or sell goods of equivalent quality and quantity to a third party at a lower price than that in effect under a Purchase Order, then Buyer shall receive the benefit of such lower price on all shipments of goods made by Seller to Buyer while such lower price is in effect.

(b) Payment will be made following receipt and acceptance of the goods and receipt, in proper form and substance, of all documentation required by the applicable Purchase Order. Invoices will be paid, after necessary approval, on the 60th day following that in which the invoice is received. The foregoing payment terms apply unless otherwise stated on the Purchase Order.

(c) As a condition to any payment hereunder, Seller shall furnish to Buyer, upon request, an executed waiver of liens and claims in form reasonably satisfactory to Buyer. Seller agrees to indemnify, defend and hold harmless Buyer from and against any and all liens and encumbrances arising out of Seller's performance of the Purchase Order or arising out of any claim for payment by any laborer, subcontractor or supplier of Seller.

9. **Termination.** Buyer may at any time, with or without cause, terminate a Purchase Order in whole or in part upon written notice to Seller. Upon receipt of notice of such cancellation, Seller will stop work immediately and promptly terminate all orders and subcontracts relating to the cancelled order. Any claim for termination charges must be submitted to Buyer in writing within ten (10) days after receipt of notice of cancellation, and shall be limited to the cost of unique work-in-process or the cost of paying claims to Seller's suppliers for work directly allocable to goods terminated. Seller shall not be entitled to any other termination fee. Buyer will not be responsible for any commitments by Seller in advance of those necessary to comply with the schedules set forth on the applicable Purchase Order. Upon payment of Seller's claim and Buyer's request, Seller shall preserve, protect and deliver to Buyer, at Buyer's expense, materials on hand, work in progress, and completed work, materials, and goods paid for both in its own and in its suppliers' plants.

10. **Changes.** Prior to any shipment of goods, Buyer may, at its option, cancel or change any related order. Buyer will confirm all such change orders in writing as soon as practicable. Seller shall notify Buyer within seven (7) days after receipt of a notice of change if the change will affect the delivery schedule or price. Any changes by Seller in specifications, pricing, shipment, routing or other conditions of this contract shall be invalid until acknowledged by Buyer in writing. Seller shall not negotiate or accept such changes to any order directly with Buyer's ultimate customer without giving Buyer due notice and an opportunity to have a representative present at such negotiation. Changes to any order resulting from such negotiation will not be valid until an additional and/or change order in writing is given by Buyer's authorized agent.

11. **Assignment and Set-Off.** This contract may not be assigned by Seller without the written consent of Buyer and any attempted assignment or delegation without such consent shall be void. Buyer shall be entitled at all times to set-off any amount owing from Seller to Buyer against any amounts otherwise payable to Seller.

12. **Performance of Work.** If the applicable Purchase Order calls for work to be performed by Seller, all work performed and all materials used in connection therewith shall be at the risk and expense of and shall be replaced by Seller in the event of any damage or destruction thereof prior to delivery to and acceptance by Buyer. If the applicable Purchase Order calls for work to be performed by Seller upon any premises owned or controlled by Buyer or Buyer's customer, Seller will keep the premises and the work free and clear of all mechanics liens and will furnish Buyer with waivers and such other evidence of payment as Buyer may request. Whenever Seller shall, by virtue hereof, have in its possession any property belonging to Buyer, Seller shall be deemed an insurer thereof and shall be responsible for its safe return to Buyer.

13. **Indemnification.**

(a) To the extent permitted by law, Seller shall indemnify, hold harmless and defend Buyer, its affiliates and their respective officers, directors, agents, representatives, employees, subcontractors, customers, users of Seller's goods from any and all losses, injuries, deaths, claims, liabilities, damages, costs or expenses (including attorneys' fees) arising from or related to (i) the negligence (including strict liability), gross negligence, or willful mis-

conduct of Seller, its affiliates and their respective employees, contractors, subcontractors, vendors and agents; (ii) violation of any law or regulation; (iii) alleged infringement of any patent, copyright or trademark or violation of any other intellectual property right of a third party. This indemnity shall apply without regard to whether the claim, damage, liability, or expense is based on breach of contract, breach of warranty, negligence, strict liability or tort. This indemnity shall survive delivery and acceptance of the Articles. Upon Buyer's request, Seller shall defend Buyer against any third-party claims. Seller shall not enter into any settlement without Buyer's written consent.

(b) In no event shall Seller be required to indemnify the Buyer for any injury, death, or loss to the extent caused solely by the negligence or intentional misconduct of the Buyer.

14. **Buyer's Property.** All drawings, special tools, dies and similar items made in connection with this purchase order and paid for by Buyer are Buyer's property, shall be maintained by Seller in good condition free and clear of any liens or encumbrances, shall not be used for any third party, shall be clearly marked as Buyer's property and upon Buyer's written request, Seller shall deliver immediately to Buyer all items and other property of the Buyer. Seller agrees that upon any termination it shall hold and store in a commercially reasonable manner all such Buyer's property and all goods, including unassembled components, identified to a contract, purchase order, or release of Buyer and all equipment owned by Buyer in the possession or control of Seller. For all such goods and equipment within ten days after notice of such termination or an actual termination Seller agrees to communicate to Buyer a description of such goods and equipment along with a request for directions. Buyer shall communicate with Seller within a reasonable time advising of its preferred disposition of such goods and equipment. Seller agrees that all such equipment shall be returned to or made available to Buyer immediately upon request, subject only to Buyer's confirmation that Buyer shall pay reasonable costs of assembling and transporting such equipment.

15. **Consequential and Incidental Damages.** Seller acknowledges that Seller's failure to deliver conforming goods to Buyer in accordance with the schedule set forth in this purchase order will result in Buyer's incurring substantial damages. In the event that Seller fails to deliver conforming goods in accordance with the schedule set forth in this purchase order, Buyer shall be entitled to recover liquidated damages, by withholding from any payments due to Seller, a sum equal to one percent (1%) of the total purchase price stated on the face of the Purchase Order for each week that delivery of the goods or services is late. The liquidated damages applicable to each good or service that is not delivered in accordance with the schedule shall not exceed, in the aggregate, eight percent (8%) of the total purchase price stated on the face of the Purchase Order. If the liquidated damages applicable to Seller reach such aggregate limit, any further delay by Seller shall be a material breach of this Purchase Order. Seller acknowledges that Buyer's damages in the event of Seller's delay are difficult to calculate precisely, and Seller agrees that the liquidated damages in this Purchase Order are not a penalty but are a reasonable estimate of Buyer's damages. Nothing contained in this paragraph shall limit any other rights and remedies that Buyer may have at law or in equity.

16. **Governing Law; Disputes.** This contract shall be governed by Illinois law, including the Uniform Commercial Code. Illinois shall be the exclusive venue for any suit or legal proceeding arising out of this contract. The federal and states courts of Cook County, Chicago, Illinois, shall be the exclusive forum for adjudicating any claim, controversy or dispute concerning a question of fact or law arising out of or relating to this Purchase Order and Terms and Conditions. Seller hereby consents to the jurisdiction and venue of such courts, and waives any objection it may have on the basis of lack of personal jurisdiction or forum non conveniens.

17. **Confidentiality.** Seller shall not disclose to any person any information received from Buyer, if such information has been identified by Buyer as confidential or is reasonably known to be confidential, including, but not limited to designs, processes, drawings, specifications, reports, data and other technical or proprietary information and the features of all goods, including any parts, equipment, tools, gauges, patterns or other items furnished or disclosed to the Seller by the Buyer in connection with this contract ("Buyer's Confidential Information"). Seller shall not disclose such information to any third party or use such information for any purpose other than to perform Seller's obligations under this contract. The previous sentence shall not apply to information that is otherwise publicly available or that Seller receives from a third party not subject to confidentiality restrictions. Upon termination of this contract or any individual purchase order, Seller shall return all Buyer's Confidential Information to Buyer or make such other disposition thereof as may be directed and approved by Buyer in writing.

18. **Relationship of the Parties.** Seller's relationship to Buyer in performance of this Contract is that of independent contractors. Neither Seller nor any of the persons furnishing materials or performing work or services which are required by an order are employees of Buyer.

19. **Waiver.** Failure to enforce or exercise any term of this contract does not constitute a waiver of such term and does not affect the right later to enforce such or any other term contained herein.

20. **Severability.** The invalidity or unenforceability of any term of this contract will not adversely affect the validity of or enforceability of the remaining terms. This contract will be given effect as if the invalid or unenforceable term had been replaced by a term with similar economic effect.

21. **Entirety.** The terms and conditions set forth in this contract constitute the entire agreement between the parties hereto and no modification hereof shall be binding unless mutually agreed to in writing.