

## PURCHASE ORDER TERMS AND CONDITIONS

The Parties to this Purchase Order ("P.O.") are the supplier of the goods set forth on the P.O. ("Seller") and the purchaser of the goods set forth on the P.O. [J.W.McClenahan Co. (JWMCC)].

### 1. GENERAL.

- a) This P.O. includes all related specifications and regulations attached hereto or incorporated herein by reference.
- b) This P.O. is an offer to purchase the goods specified on the face hereof under the terms and conditions herein set forth. Acceptance will be effective only if by agreement to sell in accordance with these terms and conditions, commencement of performance, or by unconditional shipment of the goods.
- c) Any inconsistencies in the terms and conditions of this P.O. shall be resolved by reference to the following in the order of priority:
  - (i) First, any unprinted, typewritten agreement signed by JWMCC and Seller subsequent to the date of this P.O.
  - (ii) Second, any handwritten modifications to these terms and conditions initiated by both JWMCC and Seller.
  - (iii) Third, the printed terms and conditions set forth herein; and
  - (iv) Fourth, the terms of any invoice or confirmation from Seller to JWMCC to the extent not inconsistent with the terms hereof. However, in interpreting any such invoice or confirmation terms or any other written document addressed by Seller to JWMCC in connection with this agreement, if a possible inconsistent interpretation exists, such document will be deemed inconsistent. To the extent of any such inconsistency, terms of any such invoice or other document shall be void.
- d) "Goods" and "items" shall mean anything, including services, purchased pursuant to this P.O.
- e) "Government" herein shall refer to the U.S. Government unless otherwise specified.
- f) Seller recognizes that items purchased by JWMCC will be installed in products which JWMCC manufactures for resale to third parties, or resold to third parties, all of whom shall be beneficiaries of this P.O.

### 2. SHIPPING AND DELIVERY.

Unless otherwise specified, delivery shall be FOB the location indicated by JWMCC on the P.O. Delivery shall not be deemed complete until inspection and acceptance of the goods by JWMCC.

Seller is responsible for adequately packaging all goods for shipment and JWMCC shall not be charged for any such packaging. Time is of the essence and delivery shall be strictly in accordance with the terms and schedule of deliveries set forth herein. If Seller fails to meet the delivery schedule, without waiver of other rights, JWMCC may require expedited shipments at the Seller's expense.

### 3. INVOICE, TAXES AND PAYMENT.

A separate invoice shall be issued for each shipment. Unless otherwise specified herein, no invoice shall be issued prior to shipment of goods and no payment shall be made prior to receipt of goods and a correct invoice. Except as otherwise provided, the prices of goods ordered hereunder include all Federal, State, or local taxes and duties of every kind. Federal, State, or local taxes which are properly payable by JWMCC shall be stated separately in Seller's invoices.

Payment due dates, including discount periods, will be computed from date of receipt of goods or date of receipt of correct invoice (whichever is later) to the date JWMCC's check is mailed. Unless freight and other charges are itemized, any discount taken will be taken on the full amount of invoices. JWMCC may deduct from any amounts due or to become due to Seller, any sum of sums owing by the Seller to JWMCC; and in the event of any breach by Seller of any part of this P.O., or in the event of any lien, claim or other liability asserted against JWMCC, arising out of Seller's performance hereunder, the JWMCC shall have the right to retain out of any payments due or to become due to Seller an amount sufficient to completely protect the JWMCC from liability, loss, or damage resulting therefrom.

### 4. PRICE REVISIONS.

Seller warrants that the prices of goods sold to JWMCC under this P.O. are no less favorable than the prices at which similar goods are currently offered to others for such goods during the term of this P.O., Seller agrees to reduce the price payable hereunder in a corresponding amount.

### 5. WARRANTY.

- a) Seller warrants to JWMCC and to any third party ultimately using any item, whether such third party is a customer of JWMCC or not, that all items delivered hereunder will be free of all defects of workmanship and materials and will conform strictly to applicable specifications, drawings, approved samples, models and descriptions, if any, and will be fit and sufficient for their intended use. If Seller is responsible for the design of any item, Seller warrants that all such items will be free from design defects and, as designed, will be suitable for use by JWMCC, including installation by JWMCC in its ultimate product.
- b) Neither inspection and acceptance by JWMCC nor prior written approval by JWMCC of proposed designs, including specifications, drawings, descriptions, or samples submitted by Seller shall relieve Seller of any obligations under this warranty.
- c) Seller shall be liable to JWMCC and any intermediate or ultimate user hereinafter a "Customer" of any item covered by this P.O. or any product of JWMCC which incorporates any item covered by this P.O. for all damages incurred as a result of any defect of whatever kind in any such item.
- d) The foregoing express warranty is an addition to any warranty customarily made by Seller in connection with the sale of similar goods and is also in addition to any and all implied warranties whether of merchantability and fitness for purpose or use or otherwise.
- e) Seller's warranty shall extend for a minimum period of one year (or such longer period as Seller customarily warrants its product) from the time the product is first used by JWMCC or, in the case of goods incorporated in a product of JWMCC, for a minimum period of one year from the first use of the final product by a Customer.

### 6. INDEMNIFICATION.

Seller shall defend, indemnify and hold harmless JWMCC against any claims, loss or liability, including costs, expenses and attorneys fees, for personal injury or property damage resulting from defects or deficiencies in the goods furnished pursuant to this P.O. This shall include, but is not limited to, any injury or damage suffered by any Customers or any employees of JWMCC. Notwithstanding the agreed delivery point, this indemnity shall extend to any and all claims from any source for damages resulting from the leakage of noxious or corrosive material or contaminants or any other hazardous material, substance or waste while the goods are in transit to the location at which they will be utilized by JWMCC. The liability of Seller shall extend to the payment of all fines or penalties, if any, imposed upon JWMCC by any governmental agency.

### 7. PATENTS.

- a) Seller shall defend, indemnify, and hold harmless, JWMCC and its customers against any liability including costs, expenses and attorneys fees, for or by reason of any actual or alleged infringement of any patent arising out of the manufacture, use, sale, or disposal of any items furnished under this P.O. except where such supplies or articles would be normally non-infringing but are rendered infringing by reason of Seller's compliance with JWMCC's detail design and stated requirement for specific structure and Seller gives prompt notice of any claim of infringement related thereto.
- b) Inventions; improvements, and discoveries arising out of or generated by this P.O. shall become the property of the JWMCC. Seller agrees to execute application papers and assignments to enable JWMCC to file patent applications on any such inventions.

### 8. INSPECTION AND QUALITY CONTROL.

- a) All items furnished under this P.O. by Seller to JWMCC shall be subject to inspection and tests by JWMCC, representatives or any third party purchasing JWMCC's product in which items will be used ("user's representative"), and, where applicable, the Government. To the extent practicable, inspection may be made at all times and places, including the period of manufacture, and prior to acceptance.
- b) If any items furnished hereunder are defective in material and workmanship or otherwise not in conformity with the requirements of this P.O., the JWMCC shall have, without waiver of other rights, the right either to reject them (with or without instructions as to their disposition) or to require their correction and return them to Seller at Seller's risk and expense, including transportation. JWMCC may charge Seller for the cost of an above normal level of inspection if rejection of the items based on JWMCC's normal inspection level endangers production schedules and if the inspected items are necessary to meet production schedules of either JMCC or Seller. Items furnished which have been rejected or required to be corrected shall be removed or if permitted or required by JWMCC corrected in place by and at the expense of Seller promptly after notice. If items thereafter tendered for acceptance are repaired items.

Seller shall inform JWMCC they are not new. If Seller fails to promptly remove such supplies or lots of supplies which are required to be removed or promptly replaced or correct such supplies or lots of supplies, JWMCC may either by contract or otherwise replace or correct such supplies and charge the Seller the costs incurred in replacing or correcting or cancel this P.O. for default as provided in paragraph 14. Additional Remedies.

- c) If any inspection or test is made by JWMCC, user's representative or the Government on the premises of Seller or of subcontractor, Seller without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of such inspectors in the performance of their duties. If inspection

or test is made at a point other than premises of Seller or a subcontractor, it shall be at the expense of JWMCC except as otherwise provided in this P.O.; provided that in case of rejection JWMCC shall not be liable for any reduction in value of samples used in connection with such inspection or test. All inspections and tests by JWMCC and Government shall be performed in such manner as to not unduly delay the work. JWMCC reserves the right to charge Seller any additional cost to inspect and test when supplies are not ready at the time such inspection and test is requested by Seller or when reinspection or retest is necessitated by prior rejection. Inspection and acceptance or rejection of the supplies shall be made as promptly as practicable after delivery to JWMCC's plant or to such other place of final delivery as may be specified herein, regardless of prior payment. Failure to inspect and accept or reject supplies shall neither relieve Seller from responsibility for such supplies as are not in accordance with the P.O. requirements nor impose liability on JWMCC.

- d) Seller shall provide and maintain inspection and quality control systems acceptable to JWMCC covering the items furnished hereunder. Records of all inspection work by both JWMCC and Seller shall be kept intact and made available upon request to the other party during the performance of the P.O. and for six years following delivery under this P.O.
- e) Paragraph 9 shall not affect the rights or liabilities of the parties under paragraph 6. Warranty, and failure to inspect by JWMCC or user's representative, or Government, shall not in any way relieve the Seller of any of its obligations.

### 9. CHANGES.

JWMCC reserves the right at any time by a written change order, to make changes within the general scope of this P.O. in any one or more of the following -

- a) Drawings, designs or specifications where the goods are being specifically manufactured for JWMCC,
- b) Methods of shipment or packing,
- c) Time and place of delivery,
- d) Quantity of goods ordered, and
- e) Termination for JWMCC's convenience.

If any such change causes an increase or decrease in the cost of or time required for performance of any part of the work under this P.O., JWMCC's change order shall state an equitable adjustment to the price or delivery schedule or both. Any claims by Seller for an additional adjustment will be precluded if not made in writing within 10 days from the date of receipt by Seller of notification of the change and JWMCC's increased price. If JWMCC and Seller fail to agree on any claim for adjustment under this clause, such failure shall not excuse Seller from diligently prosecuting the performance of work hereunder as changed. Except as expressly provided for there shall be no adjustment in the price or time for performance hereunder unless an authorized representative of JWMCC directs a change by issuance of a written change order to this P.O.

### 10. NOTICE OF DELAY.

Seller shall immediately notify JWMCC in writing if delivery of all or a part of the goods cannot be delivered within the time specified herein or any extension thereof. Such notice shall include the reasons for the delay, the corrective measures being taken, and the earliest anticipated delivery date. Such notice shall not derogate from any other rights of JWMCC in this P.O.

### 11. DEFAULT.

JWMCC may, by written notice of default to Seller, cancel the whole or any part of this P.O. or exercise any other remedy for JWMCC's goods at law or in equity including any remedy under the Uniform Commercial Code in any of the following circumstances: (a) If Seller fails to make delivery of the goods within the time specified herein or any extension thereof; (b) If Seller fails to perform any of the other provisions of this P.O. or fails to make progress with the result that performance of this P.O. in accordance with its terms is endangered and does not cure such failure within a period of ten (10) days, or such longer period as JWMCC may authorize in writing, after receipt of notice from JWMCC specifying such failure; (c) Seller is in breach of any of the other terms or conditions of this P.O.; or (d) Insolvency proceedings are instituted by or against either party and are not dismissed or cured within 30 days.

### 12. ADDITIONAL REMEDIES.

Not by way of limitation, the remedies of the parties include - A

- a) If this P.O. is cancelled pursuant to paragraph 13 above, in addition to any other rights and remedies granted hereunder, JWMCC may -
  - i) Required Seller to transfer and deliver in the manner and to the extent directed by JWMCC any completed items, and any partially completed items which Seller has specifically produced or specifically acquired for the performance of the part of this P.O. which has been cancelled. Seller shall protect and preserve the property in possession of the Seller in which JWMCC has an interest. Payment for completed goods delivered to and accepted by JWMCC, shall be at the P.O. price. Payment for incomplete goods delivered to and accepted by JWMCC and for protection and preservation of property shall be the actual costs to the Seller.
  - ii) Foreclose the security interest provided for in paragraph 3 hereof and exercise any and all the remedies of JWMCCs.
  - iii) Procure upon such terms and in such manner as JWMCC may deem appropriate goods similar to those cancelled and Seller shall be liable to JWMCC for any excess costs for such similar goods provided that Seller shall continue the performance of this P.O. to the extent not cancelled. The rights and remedies of JWMCC provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this P.O. The failure of this JWMCC to insist upon strict performance of any of the terms of this P.O. or to exercise any rights hereunder shall not be construed as a waiver of JWMCC's rights. In any dispute hereunder, the prevailing party shall be entitled to reasonable attorneys fees incurred with or without litigation.

### 13. INSURANCE.

Regardless of which party has the risk of loss during the performance of this P.O., Seller agrees to procure at its cost and expense insurance covering the goods subject to this P.O., naming Seller and JWMCC as insureds as their interests may from time to time appear. Seller is responsible for obtaining any and all insurance covering its workmen and those of any of its subcontractors.

### 14. COMPLIANCE WITH LAWS AND REGULATIONS.

Seller shall at all times comply with all applicable federal, state and local laws, rules and regulations including but not limited to the Occupational Safety and Health Act of 1970, the Fair Labor Standards Act of 1938, as amended, including all regulations and orders of the administrator of Wage and Hour Division issued under Section 14 thereof, and the Equal Employment Opportunity Act. Seller shall indemnify and hold harmless JWMCC for any and all damages suffered by JWMCC as a result of Seller's failure to comply with any applicable government laws and regulations and for any failure of the goods furnished under this P.O. to so comply. SELLER shall ensure that all of its hazardous materials are properly evaluated, handled, stored, labeled and provided with a material safety data sheet as required by Hazard Communications Standards 29 CFR 1910.1200 and any other applicable laws or regulations.

### 15. ASSIGNMENT AND SUBCONTRACTING.

- a) Seller may not assign this P.O. or any interest herein without prior written consent of JWMCC except that claims for moneys due or to become due under the P.O. may be assigned to a bank, trust company or other party providing financing without such consent. JWMCC shall be furnished with two executed copies of any such assignment. Payment to an assignee of any claim shall be subject to setoff or recoupment for any present or future claim or claims which JWMCC may have against Seller except to the extent that any such claims are expressly waived in writing by JWMCC. JWMCC reserves the right to make direct settlements or adjustments in the price with Seller under terms of this P.O. notwithstanding any assignments of claims for moneys due or to become due hereunder and without notice to the assignee.
- b) Seller shall obtain JWMCC's written approval before subcontracting this P.O. components, or any portion hereof, however, this limitation shall not apply to purchase by Seller of standard commercial supplies or raw materials.

### 16. WAIVER AND PARAGRAPH TITLES.

Except as may be expressly indicated otherwise, all rights and remedies provided for herein shall be cumulative and in addition to any other rights or remedies provided by law. JWMCC's waiver of a breach of any provision of this P.O. by Seller shall not constitute a waiver of future compliance therewith and such provision, as well as all other provisions of this P.O., shall remain in full force and effect. The organization of certain provisions of this P.O. into paragraph form or the assignment of any headings or titles thereto is solely for convenience and ease of reference and does in no way define, limit or describe scope or intent of this P.O. or any of its provisions.

### 17. GOVERNING LAW AND JURISDICTION.

This P.O. is made pursuant to the laws of the state of California and Nevada and shall be construed, interpreted and governed according thereto. If litigation arises hereunder or as a consequence of any transaction contemplated by or resulting from this P.O. or from either party's performance or breach thereof, jurisdiction and venue for such litigation shall be in the United States District Court located in Sacramento, CA or Reno, NV.