



TERMS AND CONDITIONS OF PURCHASE ORDER

1. ACCEPTANCE

Agreement by Seller to furnish the materials or services hereby ordered, or its furnishing such materials or services in whole or in part, or the commencement of work by the Seller with reference thereto shall constitute acceptance by Seller of this order subject to these terms and conditions. In the event that this order does not state price or delivery, Buyer will not be bound to any prices or delivery to which it has not specifically agreed in writing. Any terms or conditions proposed by Seller inconsistent with or in addition to the terms and conditions of purchase herein contained shall be void and of no effect, unless specifically agreed to by Buyer. Modifications hereof or additions hereto, to be effective, must be made in writing and be signed by Buyer. These terms and conditions, together with such modifications and with such data relating to price and delivery as are accepted in writing by Buyer, constitute the entire agreement between the parties. The rights of both parties hereunder shall be in addition to their rights and remedies at law or equity. Failure of Buyer to enforce any of its rights shall not constitute a waiver of such rights or of any other rights.

2. PRICES

The acceptance of this order constitutes a warranty that the prices to be charged for articles or services ordered herein are not in excess of prices charged to other customers for similar quantities and delivery requirements.

3. DELIVERY

It is understood and agreed that time is of the essence of this order.

4. TAXES

The prices set forth in this Purchase Order include all applicable Federal, State and Local Taxes. All such taxes shall be stated separately on Seller's invoice.

5. PACKING AND SHIPMENT

Unless otherwise specified, price is to cover net weight of material ordered hereunder and no charges will be allowed for boxing, crating, carting, or storage. Without the Purchaser's prior written consent, deliveries against this order shall not be made in whole or in part prior to the date or dates shown hereon, nor shall they exceed the quantities specified.

6. OVERSHIPMENTS

Buyer will pay only for maximum quantities ordered. Overshipments will be held at Seller's risk and expense for a reasonable time awaiting shipping instructions. Return shipping charges for excess quantities will be at Seller's expense.

7. INSPECTION

The articles and all parts, material and workmanship entering into the performance of this order shall be subject to inspection, test and count by Buyer and the Government of all times and places whether during or after manufacture. If any of the articles shall be defective in material or workmanship or otherwise not in conformity with the requirements of this order, Buyer, in addition to its other rights, may reject the same for full credit or may rework same at Seller's expense or require prompt correction or replacement thereof at Seller's expense, including transportation charges.

8. WARRANTY

Seller warrants that all material ordered hereunder will conform in all respects with the specifications, drawings, sample or other description furnished or specified by the Buyer, and will be merchantable and free from any defects in material and workmanship; and Seller further warrants that all material purchased hereunder that is manufactured in accordance with the Seller's specifications shall be fit and sufficient for the purposes for which it was designed. Seller agrees that the foregoing warranty shall survive acceptance of the payment for the material, and shall save Buyer harmless from any loss, damage or expense, whatsoever, including attorney's fees, that Buyer may incur as a result of any breach of such warranties.

9. PAYMENT

(a) All payments are made conditional upon acceptance by the Buyer of the articles called for under this Purchase Order.



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(b) No invoice will be passed for payment unless it bears this Purchase Order Number and contains the following certification: "The supplier herein represents that the goods and/or services covered hereby were produced in compliance with the requirements of the Fair Labor Standards Act of 1938 as amended."

(c) Invoices for tools will not be honored until production pieces are approved by the Buyer's Inspection Department.

(d) All invoices are aged from the stamped received date at McGrath RentCorp/Mobile Modular Management Corporation.

10. CHANGES

The Buyer may at any time, by a written order, make changes, within the general scope of this order, in any one or more of the following:

(a) applicable drawings, designs or specifications.

(b) method of shipment or packing.

(c) place of delivery.

If any such changes causes an increase or decrease in the cost of, or the time required for performance of this order, an equitable adjustment shall be made in the order price or delivery schedule, or both, and the order shall be modified in writing accordingly. Any claim by the Seller for adjustment hereunder must be asserted within 20 days from the date of receipt by the Seller or the notification of change provided, however, that such period may be extended upon the written approval of the Buyer. However, nothing in this clause shall excuse the Seller from processing with the order as changed or modified.

11. TERMINATION FOR DEFAULT

(a) The Buyer may terminate all or any part of this order, without liability to the Seller, by written notice or default if Seller fails to perform its obligations under this order as specified, or so fails to make progress as to endanger performance under this order and in accordance with its terms. The Buyer is the sole judge under such circumstances.

(b) In the event of Seller's default or potential inability to perform this order, Seller agrees upon demand by Buyer to deliver to Buyer the raw materials and work in process acquired in order to perform under this order, and Buyer may then complete the work deducting the cost of such completion from the price, or in the alter active pay to Seller the cost of such raw materials and work in process.

12. TERMINATION FOR CONVENIENCE, BREACH OF CONTRACT, DAMAGES

Buyer may, by notice in writing, direct Seller to terminate this order or work under this order in whole or in part at any time and such termination shall not constitute a default. In such event, unless Seller shall have defaulted or be in default in performance hereof, Buyer and Seller shall have the rights and obligations contained in the Uniform Termination Clause for Subcontracts set forth in Section 8-706 of the Armed Services Procurement Regulations, as amended to the date of this order, which clause is hereby incorporated by reference and made a part thereof. The insolvency or adjudication of bankruptcy of or the filing of a voluntary petition in bankruptcy, or the making of an assignment for the benefit of creditors by, either party, shall be a material breach hereof. In no event shall Seller be entitles to anticipatory profits, or to special or consequential damages.

13. SUBCONTRACTING

No subcontracting shall be made by the Seller with any other party for furnishing any of the completed or substantially completed articles, spare parts, or work, herein contracted for, without the prior written approval of the Buyer.

14. PATENTS, ROYALTIES AND INCUMBRANCES

All materials supplied must be free from liability of royalties, patent rights and mechanics liens or other incumbrances, and vendor agrees to indemnify the purchaser against all claims, demands, costs and actions for actual or alleged infringements of patent rights in the use, sale or resale of said material or merchandise.

15. BUYER'S PROTECTION IN CONNECTION WITH WORK DONE AT ITS PLANT

The Seller shall take such steps as may be reasonably necessary to prevent personal injury or property damage during any work thereunder that may be performed by any employees or agents or subcontractors of the Seller at the Buyer's plant, and the Seller shall indemnify and hold harmless the Buyer from and against all loss, liability, and damages arising from or caused solely by any act or omission of such agents, employees or subcontractors of the Seller, and Seller shall maintain such insurance against public liability and property damage, and such Employee's Liability and Compensation Insurance as will protect the Buyer against the aforementioned risks and against any claims under any Workmen's Compensation and Occupational Disease Acts.

16. COMPLIANCE WITH LAWS



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The Seller warrants that no law, rule or ordinance of the United States, a State or any other governmental agency has been violated in the manufacture or sale of the items or in the performance of services covered by this order, and will defend and hold the Buyer harmless from loss, cost or damage as a result of any such actual or alleged violation.

17. GRATUITIES

Seller warrants that it has not offered or given and will not offer or give to any employee, agent or representative of Buyer any gratuity with a view toward securing any business from Buyer or influencing such person with respect to the terms, conditions or performance of any contract with or order from Buyer. Any breach of this warranty shall be a material breach of each and every contract between Buyer and Seller.

18. NON-DISCLOSURE OF CONFIDENTIAL MATTER

Materials purchased hereunder with the Buyer's specifications or drawings shall not be quoted for sale to others without the Buyer's written authorization. Such specifications, drawings, samples or other data furnished by the Buyer shall be treated as confidential information by the Seller, shall remain Buyer's property and shall be returned to it on request.

19. ASSIGNMENT

No right or obligation under this order (including the right to receive moneys due and to become due hereunder), shall be assigned by Seller without the prior written consent of Buyer, and any purported assignment without such consent shall be void.

20. BUYER - FURNISHED PROPERTY

All tools or other materials furnished by the Buyer for use in the performance of this order shall remain the property of the Buyer (or of the Government, as the case may be) shall be used by the Seller in the performance of this order only, in accordance with the requirements of the order relating to such use, and shall be returned to the Buyer when requested upon the completion or termination of the order to the extent not previously delivered to the Buyer.

21. EXAMINATION OF RECORDS

Acceptance of this order constitutes an agreement by the Seller that the Comptroller General of the United States, or any of his duly authorized representatives, shall have access to, and the right to examine any directly pertinent books, documents, papers and records of the Seller involving transactions related to this purchase for a period not to exceed three (3) years after final payment under this order. The Seller further agrees to include this same provision in all his subcontracts under this order that exceed \$1,000.

22. INSPECTION AND AUDIT

Seller agrees that its books and records and its plants, or such parts thereof as may be engaged in the performance of this purchase order, shall, at all reasonable times, be subject to inspection and audit by any authorized representative or agent of the Department of Defense.

23. SECURITY REQUIREMENTS

Seller agrees to be responsible in all matters within its control for the safeguarding of all information or material classified "Top Secret", "Secret", or "Confidential", in accordance with the provisions currently set forth in paragraph 7-104.12 of Armed Services Procurement Regulations as the same may be renumbered or amended from time to time. For purposes of such clause, Seller shall be deemed the Contractor, and the Contracting Officer shall be defined as the Contracting Officer administering the Government contract under which this order is issued. Seller will comply with the security clearance requirements and with the Espionage and security laws of the United States. Seller agrees to insert this Article in its Purchase Orders to sub-vendors, which involve access to classified material.

24. RENEGOTIATION

This contract shall be subject to any Act of Congress whether heretofore or hereafter enacted and to the extent indicated therein providing for the renegotiations of said contract and shall be deemed to contain all the provisions required by any such act without subsequent amendment of this contract specifically incorporating such provisions. By acceptance of this order, the vendor agrees to insert the provisions of this clause, including this paragraph. In subcontracts as defined in Section 103(g) of the Renegotiations Act of 1951, except any subcontract of a class or type described in Section 106(a) of the Renegotiations obligation with respect to this contract or any subcontract hereunder which is not imposed by an Act of Congress heretofore or hereafter enacted.



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25. WALSH-HEALEY, WORK HOURS, AND BUY-AMERICAN ACTS

Seller agrees that in the production of materials furnished in this order, it will comply with the provisions, when applicable of the Walsh-Healey Public Contracts Act (4 U.S.C. 35-45) and the regulations, determinations and exemptions of the Secretary of Labor thereunder; the Work Hours Act of 1962 (Pub. Law 87-581, 76 STAT, 357-360), and the Buy-American Act (Act of March 3, 1933, 41 U.S.C. Section 10-a-d).

26. NONDISCRIMINATION IN EMPLOYMENT

The provisions of paragraphs (1) through (7) of EXECUTIVE ORDER 10925 dated March 6, 1961, as amended; are hereby incorporated herein by reference and the term "CONTRACTOR" wherever appearing therein shall be deemed to refer to the SELLER under this purchase order.

27. NOTICE OF LABOR DISPUTES

Whenever an actual or potential labor dispute is delaying or threatens to delay the timely performance of this order, Seller will immediately notify the Buyer and Government representative designated by the Buyer of such dispute and furnish all relevant details. Seller will include a provision identical to the above in each subcontract hereunder and immediately upon receipt of any such notice pass it on to the Buyer.

28. PATENT LICENSE

The Seller, as part consideration for this purchase order and without further cost to the Buyer, hereby grants and agrees to grant to the Buyer and, to the extent requested by the Buyer, to the Government, an irrevocable, non-exclusive, royalty-free right and license to use, sell, manufacture and cause to be manufactured, products embodying any and all inventions and discoveries made, conceived or actually reduced to practice in connection with the performance of this purchase order.

29. UTILIZATION OF SMALL BUSINESS

In accordance with the provisions of ASPR I-707.3 the Seller agrees to accomplish the maximum amount of subcontracting to small business concerns that the Seller finds to be consistent with the efficient performance of this contract.

30. OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this purchase order, or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this purchase order if made with a corporation for its general benefit.

31. SPECIAL TOOLING

If all of the costs of special tooling used in the performance of this order have been charged to this order, or to this order and other orders placed by the Buyer, title to such special tooling shall vest in the Buyer, at the option of the Buyer. Such tooling is to be used only in the performance of such Purchase Orders unless otherwise approved by the Buyer. The Seller agrees that it will follow normal industrial practice in the identification and maintenance of property control records on all such tooling, and will make such records available for inspection by the Buyer or the Government at all reasonable times. After the termination or completion of such order(s) and upon the request of the Buyer, the Seller shall furnish a list of such tooling in the form requested and shall make such tooling available for disposition of the Buyer.

32. SETOFFS

Seller agrees that Buyer shall have the right to set off against any amounts which may become payable by Buyer to Seller under this order or otherwise any amounts which Seller may owe to Buyer, whether arising under this order or otherwise.

33. GOVERNMENT RIGHTS

It is understood that the Seller may produce items for direct sale to the U.S. Government where the U.S. Government has the right to use the equipment, tools, gauges, patterns, designs, drawings, engineering data or other technical or proprietary information furnished by the Buyer which are required to produce the items.

34. ADVERTISING

Seller shall not in any manner advertise, publish or release any information concerning this purchase order or any portion thereof, without prior written consent of Buyer.



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35. UTILIZATION OF CONCERNS IN LABOR SURPLUS AREAS

In accordance with the provisions of ASPR 1-805.3, the Seller agrees to use his best efforts to place his subcontracts with concerns which will perform such subcontracts substantially in areas of persistent or substantial labor surplus where this can be done, consistent with the efficient performance of the contract at prices no higher than are obtainable elsewhere.