



## PURCHASE ORDER TERMS AND CONDITIONS

These purchase order terms and conditions ("Terms") apply to the purchase of goods and/or services by the **Anchor Harvey** entity ("Buyer") from the supplier of the goods and/or services ("Seller"), each party as identified on the face of the Purchase Order.

**1. Terms.** The Purchase Order together with the Terms and any documentation referenced by Buyer in the Purchase Order, constitutes an offer by Buyer to purchase the parts, systems, components, raw materials, and related services ("Products"), or separate stand-alone services ("Services") at the specified quantity, price, description and delivery date stated in the Purchase Order, and is not an acceptance of any offer by Seller to sell. Seller's shipment of Products or performance of Services under a Purchase Order, or receipt of payment from Buyer relating to a Purchase Order, constitutes Seller's acceptance of these Terms. No changes or additions to these Terms by Seller are binding on Buyer unless expressly accepted in writing by Buyer. Any other different terms and conditions of Seller that may be contained in any proposal, quotation, acknowledgment, invoice, delivery receipt or other form are hereby rejected.

**2. Purchase Order.** Buyer shall issue a Purchase Order to Seller in either paper or electronic form for the purchase of Products or Services. The Purchase Order includes these Terms and any associated agreements, releases against the Purchase Order, warranty agreements between Buyer and Seller, and any specifications, drawings, and exhibits, pursuant to which Seller is to provide the Products or Services. If the Purchase Order is issued as a blanket purchase, the total blanket purchase quantity is an estimated volume and not a commitment to purchase. Only written or electronic releases by Buyer identifying the specific quantities to be purchased and the corresponding delivery date are considered binding orders.

**3. Delivery.** The Products shall be delivered, and the Services shall be performed in accordance with the delivery terms set forth on the Purchase Order. Products shall be routed to provide the most economical transportation rates. Seller shall not give any other customer of Seller any priority over Buyer in the allocation of Seller's production, time of delivery being of the essence. If any Products or Services are not delivered within the time specified in the Purchase Order or within a reasonable time if no time is so specified, Buyer may either (i) refuse to accept such Products or Services and terminate the Purchase Order with no cost to Buyer; (ii) cause Seller to ship the Products by the most expeditious means of transportation and any additional transportation charges in excess of those which would apply for the usual means of transportation shall be paid by Seller; or (iii) accept the Products or Services and Seller shall be liable for all direct damages caused by Seller's failure to meet the delivery specifications.

**4. Inspection.** All Products and Services are subject to inspection and test by Buyer or its designee throughout the manufacturing process, the time of shipment and a reasonable time after arrival at the final destination. Buyer is entitled, after prior notice to Seller, to take samples and carry out any other necessary investigations and tests with respect to the manufacture of Products. Final inspection and acceptance by Buyer shall be at Buyer's premises. Defective Products or Products not in conformance with Buyer's specifications shall be held at Seller's risk or returned to Seller at Seller's expense. Returned Products shall be deducted from total shipments, and Buyer shall be entitled to full reimbursement or credit for returned Products. Payment for Products or Services prior to inspection does not constitute acceptance of the Products or Services or a waiver of Buyer's rights. If requested by Buyer, Seller shall furnish Buyer with documentation establishing the country of origin and value of the Products, including, as applicable, affidavits of manufacture, an accurate and complete Certificate of Origin, and an ASTM Certificate of Analysis.

**5. Title and Risk of Loss.** Title to the Products shall pass to Buyer upon delivery to Buyer. Regardless of delivery point or delivery terms, risk of loss or damage to the Products shall not pass to Buyer until the Products are received, inspected and accepted by Buyer at the delivery destination.

**6. Pricing and Payment.** Terms of payment for all Seller invoices are forty-five (45) days from the date of invoice unless the Purchase Order specifies different terms. Unless Buyer consents in writing, a Purchase Order may not be filled at a price higher than that set out on the Purchase Order, or in the absence of a stated price, at a higher price than that previously quoted in writing by Seller or paid by Buyer. Buyer may withhold or off-set any payment due under any Purchase Order between Buyer and Seller.

**7. Taxes and Duties.** The prices for the Products or Services exclude all imposts, duties, and federal, state and local sales, use or excise taxes from which Seller cannot obtain exemption. The amounts of any non-exempted taxes shall be shown separately in Seller's pricing quotation and invoice. Any additional or increased tax, freight rate, tariff or duty levied on or imposed upon the Products or the manufacture or sale thereof after the date of a Purchase Order shall be paid by Seller.

### **8. Warranty.**

(A) Seller warrants that the Products (i) are free from all liens and defects in title, manufacture, workmanship and material; (ii) conform to the specifications provided by or referred to by Buyer; including those contained in the Buyer's Vendor Quality Manual published on Buyer's website at [www.anchorharvey.com](http://www.anchorharvey.com); (iii) are new and of the best quality (unless otherwise specified) and merchantable and fit for the intended purpose; (iv) conform in all respects with samples, descriptions and specifications supplied by Seller; (v) are adequately contained, packaged, marked and labeled; and (vi) in the case of software, do not contain or include a virus, malware, freeware, shareware, keystroke logger, secretive monitoring or access spy system, or any program or subroutine that places restrictions on Buyer's ability to use and freely transfer.

Seller warrants that all facilities where the Products are produced are currently certified and shall remain certified during the term of the Purchase Order under ISO9000, AS9100 and any other applicable standard specified in the Purchase Order or otherwise communicated by Buyer to Seller, unless exempted in accordance with Buyer's procedures. Without limiting the foregoing, Buyer will in accordance with ISO9001 and AS9100, communicate to Seller certain requirements, including without limitation, applicable statutory and regulatory requirements and/or special product and process characteristics, to be observed, adhered to, or performed by Seller in the course of Seller's providing the Products or Services. Seller shall promptly communicate those same requirements, as applicable, to all of Seller's suppliers or subcontractors who are contributing to the Products or Services. Seller shall also include in its agreements with its suppliers and subcontractors, a paragraph that is substantially similar as this paragraph so that Seller's suppliers and subcontractors will be similarly bound to communicate all requirements to their respective suppliers and subcontractors, and so on. Buyer is deemed to be a third-party beneficiary of these provisions.

(B) Seller warrants that the Services shall conform to Buyer's specifications and be performed in a professional and workmanlike manner by qualified personnel. Seller shall employ good, sound procedures, skill, care and judgment, and perform the Services in accordance with all applicable local, state and national laws, regulations, codes and standards.

(C) If the Products or Services or any part thereof do not conform to the warranties set forth above, Seller shall, at Buyer's option and at Seller's sole cost and expense, promptly rework, repair or replace the Products or reperform the Services to Buyer's satisfaction at the delivery point specified in the Purchase Order. If the Products are reworked, replaced or repaired, the warranty period for the Products shall be suspended from the date Seller receives notice of the warranty claim until the date the Products are reworked, replaced or repaired to Buyer's satisfaction. Seller's liability hereunder extends to any services, operations or labor necessary for the rework, repair or replacement of all or any part of the nonconforming Products, and including but not limited to, all costs arising out of removal, re-inspection, re-testing, transportation and/or warehousing. If Seller does not remedy the nonconformity to Buyer's satisfaction within a reasonable time after notice, Buyer may exercise any or all of the remedies available to Buyer at law or in equity. The warranties described in this Section 8 are in addition to any warranties extended to Buyer by Seller or implied or provided by law.

**9. Changes.** Buyer reserves the right to change the specifications or other requirements on reasonable notice to Seller. Any differences in price, delivery, or warranty resulting from such changes shall be equitably adjusted, and Buyer shall modify the Purchase Order in writing. Any claim by Seller for adjustment shall be submitted to Buyer in writing within thirty (30) calendar days from receipt of Buyer's notice. Price increases and/or extensions of time for delivery or completion are not binding on Buyer unless evidenced by a change order issued and signed by an authorized representative of Buyer and accepted by Seller.

**10. Termination.** Buyer may, at any time, terminate a Purchase Order in whole or in part, with thirty (30) days prior written notice. If Buyer terminates for convenience, Buyer shall reimburse Seller for only those Products or Services which are completed, delivered or in transit but in any case, not in excess of the Purchase Order price. If delivery of the Products or performance of the Services is suspended, delayed or interrupted by Buyer, and if Seller is authorized by Buyer to resume the delivery of the Products or performance of the Services, an equitable adjustment of the purchase price and the delivery schedule may be made to the Purchase Order, but only to the extent that Buyer was the direct cause of the delay or interruption. Buyer may cancel any Purchase Order when Buyer deems itself insecure due to threatened or actual bankruptcy or insolvency of Seller, the filing of any petition in bankruptcy, the appointment of a receiver or trustee for Seller, or the execution by Seller of an assignment for the benefit of creditors. **IN NO EVENT SHALL BUYER BE LIABLE FOR INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, OVERHEAD OR OTHER DIRECT OR INDIRECT COSTS, UNAMORTIZED DEPRECIATION, LOSS OF USE OR LOST PROFITS OR REVENUE ARISING OUT OF OR RELATED TO ANY PURCHASE ORDER.**

**11. Force Majeure.** Neither party shall be liable for any delay or failure to perform where the delay or failure is directly caused by causes beyond its control, including but not limited to acts of God, acts of governmental, quasi-governmental, civil or military authority; fires, floods, earthquakes or other natural disaster; epidemic, pandemic, or quarantine; riot, insurrection, or acts of terrorism or the effects thereof; accident or wrecks in transport, or suspension of any mode of transport. In the event of such delay, the delivery date shall be extended for a period equal to the time lost by reason of the delay, or where necessary to overcome the direct effects of the force majeure event. If the effects of a force majeure event continue for more than thirty (30) days, Buyer may terminate the Purchase Order.

**12. Confidential Information.** Seller may gain access or knowledge through its business relationship with Buyer to proprietary information about Buyer's or its customer's operations and business information, including but not limited to plans, products, processes, equipment, know-how and technical documentation ("Confidential Information"). Seller shall keep all Confidential Information confidential, including its business relationship with Buyer and the terms of the Purchase Order, and shall not disclose any such information to others except as authorized in advance by Buyer in a signed writing or as required by law. Confidential Information shall not be used by Seller for the production and/or supply of any goods or services to any other party. The

supply of Products or performance of Services under a Purchase Order does not constitute a grant of any rights under Buyer's or its customer's intellectual property rights to Seller, other than to supply the Products or perform the Services. Seller shall not use Buyer's trade name and/or trademarks without Buyer's prior written consent.

### 13. Indemnification.

(A) Seller shall indemnify, defend and hold harmless Buyer and its parents, subsidiaries, affiliates, and their officers, directors, members, managers, employees, successors and assigns ("Indemnified Parties"), from any and all third party actions, claims, demands, suits, liabilities, losses, obligations, damages, judgments, settlements, costs and other expenses (including reasonable legal and attorneys' fees), whether any act, error or omission or negligence of Buyer contributed thereto, which relate to, or arise out of any actual or alleged (i) negligent acts or omissions or willful misconduct of Seller, its employees, representatives, agents and subcontractors, relating to the Products or Services under the Purchase Order; (ii) claim or finding that the Products, Services or a breach of Seller's representation, warranties or obligations hereunder, caused or contributed to death, bodily injury, illness or personal injury of any person or loss or damage to property, including loss of use; (iii) direct or contributory infringement of, or inducement to infringe, any patent, trademark, copyright, trade secret or other proprietary right by reason of manufacture, use or sale of the Products or Services; (iv) Seller's failure to comply with and observe local, state and federal laws and regulations and international treaties or agreements applicable to Seller's business, the Products or Services; (v) product liability, tort, contractual or other claims relating to the Products; and (vi) inaccuracy or invalidity of, or defect in, any certificate furnished by Seller to Buyer.

(B) If any Products create, cause or contribute to a product repair campaign or recall, Seller shall indemnify as described in (A) above and shall pay all costs of recall, repair, and correction, including but not limited to, labor, administrative costs, internal costs, reasonable attorneys' fees and expenses, and any actual, direct damages including loss of use incurred by Indemnified Parties. The remedies provided in this paragraph are cumulative and do not limit Seller's liability.

**14. Insurance.** Seller shall maintain in force for the duration of performance under a Purchase Order, and for as long as the warranty period described in Section 8, Commercial General Liability insurance with a combined single limit of \$5,000,000 per occurrence (which limit may be satisfied in combination with Seller's umbrella policy) protecting the Indemnified Parties against claims of bodily injury, including death, personal injury, and property damage, including loss of use, arising out of or attributed or related to the Products or Services. The Commercial General Liability insurance shall provide coverage including but not limited to products liability, contractual liability, completed operations, broad form property damage, personal and advertising injury and shall expressly cover the contractual liability assumed by Seller under Section 13. The pollution exclusion, if any, in the Commercial General Liability insurance does not apply to pollution which arises out of the products/completed operations hazards. If any Services are to be performed on Buyer's premises, Seller shall maintain the following minimum insurance coverages: (i) workers' compensation insurance meeting statutory requirements; (ii) employer's liability insurance with no less than \$1,000,000 million limits; and (iii) Automobile Liability insurance with not less than a \$1,000,000 million combined single limit covering owned, non-owned and hired autos. The workers' compensation and employer's liability policies shall provide a waiver of subrogation in favor of the Indemnified Parties.

The Indemnified Parties are to be named as additional insureds on Seller's General Liability and Automobile Liability policies. Such insurance shall be primary and noncontributory with respect to any insurance maintained by Buyer. Seller shall maintain all required policies of insurance with insurers having a minimum AM Best rating of at least A.X. Upon request, Seller shall furnish Buyer with certificates of insurance as evidence of coverage. If the policy does not provide for notice directly to Buyer, Seller shall promptly notify Buyer of the cancellation or modification of any insurance. Neither the foregoing insurance nor the certificate shall be construed in any way as a limitation on Seller's liability under a Purchase Order.

**15. Compliance With Laws.** Seller hereby certifies and agrees that Seller, its Products and Services comply with all applicable federal, state, and local laws, rules, regulations, directives, ordinances, executive orders and statutes ("Laws") applicable to the country or countries of manufacture, sale, purchase and use. These Laws include, but are not limited to, Occupational Safety and Health Act, International Traffic in Arms Regulations and the sanctions regulations administered by the U.S. Treasury Department Office of Foreign Assets Control, Environmental Protection Act, Toxic Substances Control Act, Fair Labor Standards Act, and those that require affirmative action and prohibit discrimination, the U.S. Foreign Corrupt Practices Act, and any applicable anti-bribery Laws of other countries, all as amended. If the export or use of Seller's Products outside of the United States of America can be considered restricted because of national export or other regulations, Seller is obliged to inform Buyer in writing of such fact and of the consequences of the restrictions. Seller shall also inform Buyer promptly of any changes in export regulations covering Seller's Products. Seller represents and warrants that it shall not provide to Buyer any Products or components thereof that contain conflict minerals as defined in Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

**16. Right to Audit.** Upon Buyer's request, Seller shall permit Buyer or its authorized representatives to access Seller's facilities and records to assess Seller's compliance with the terms of Section 15, the performance of a Purchase Order, or any other matter relating to the performance or a breach under a Purchase Order. Buyer shall bear the cost of the audit, provided, however, if the audit reveals a material non-compliance by Seller, then Seller shall bear the cost of the audit. Buyer shall conduct the audit during Seller's regular business hours and upon at least five (5) business days prior notice.

**17. Government Contracts.** Products may be used by Buyer in fulfilling a U.S. Government prime contract or subcontract and may, therefore, be subject to applicable U.S. Government procurement regulations in effect at the time of accepting the Purchase Order. If the Purchase Order contains a U.S. Government Prime Contract Number, the parties shall negotiate in good faith the Federal Acquisition Regulations (FARS and/or DFARS) provisions to apply to the Purchase Order, but shall include at a minimum, all such provisions as are made mandatory flow-downs in any contract with the third party performing a Prime Contract.

**18. Governing Law.** This Purchase Order shall be governed by and construed in accordance with the substantive laws of the State of Illinois, without regard to the conflict of law principles. Any legal proceeding arising out of or in connection with this Purchase Order shall be brought in the Circuit Court of Cook County of the State of Illinois, or the United States District Court for the Northern District of Illinois located in Chicago, Illinois. Buyer and Seller consent to the exclusive jurisdiction and venue of the courts set forth herein. The United Nations Convention on Contracts for the International Sale of Goods does not apply.

**19. General.** (A) The Vendor Code of Conduct ("Vendor Code") published on Buyer's website at [www.anchorharvey.com](http://www.anchorharvey.com) is incorporated by reference into these Terms and Seller agrees it shall comply with the provisions of the Vendor Code. (B) The rights and remedies of Buyer hereunder are cumulative and in addition to all Buyer's other rights and remedies in law or equity. (C) Buyer's failure to insist on strict performance of any Terms shall not be deemed a waiver of any rights or remedies that the Buyer shall have and shall not be deemed a waiver of any subsequent default of the Terms. (D) Any provision of the Terms that is prohibited by law, regulation or ordinance shall be ineffective to the extent of such prohibition without invalidating the remaining provisions. (E) Seller may not assign any rights or delegate any obligations, in whole or in part, under the Purchase Order to any third party without the prior written consent of Buyer. Any attempted assignment without such prior written consent shall be void. (F) Seller shall maintain, and make available to Buyer, adequate records of its activities under any Purchase Order for ten (10) years following final shipment of the Products or performance of the Services, or as required by applicable law, whichever is longer. (G) The provisions of Sections 8-Warranty, 12-Confidential Information, 13-Indemnification, 14-Insurance, and 18-Governing Law shall survive any termination of any Purchase Order.