

## **Metro-Tex Fabricators, Inc.**

### **Purchase Order Terms and Conditions**

1. Acceptance of Terms and Conditions. These terms shall govern all transactions between Metro-Tex Fabricators, Inc. ("Metro-Tex") and Seller. By acceptance of this purchase order, Seller agrees to be bound by and comply with all the terms and conditions herein. However, acknowledgment of receipt of this order, shipment of the goods ordered hereunder, or commencement of performance and delivery called for by this order shall constitute acceptance of this purchase order by Seller. This order does not constitute an acceptance by Metro-Tex of any offer to sell, quotation, or proposal by Seller. Reference in this order to any such offer to sell, quotation, or proposal shall in no way constitute a modification of any of the terms and conditions of this order. This purchase order, together with any additional writing signed by Metro-Tex, represents a complete and exclusive statement of the agreement between the parties. This order may not be modified or supplemented by oral representations, Seller's price quote or order acknowledgment, a course of dealing, Seller's performance or delivery, or in any other way. Objection is made to any such attempted modification or supplementation of this order and shall not be binding upon Metro-Tex unless specifically accepted in writing by Metro-Tex. To the extent not otherwise provided herein, the terms of all agreements between Metro-Tex and Seller shall be those provided by the Uniform Commercial Code in effect in the State of Texas on the date hereof which would be provided if the parties were silent as to those terms.

2. Delivery. Time is of the essence for this purchase order, and Seller shall immediately notify Metro-Tex in writing of any delay or threatened delay in Seller's performance. If Seller fails to deliver goods or complete services to be furnished hereunder, Metro-Tex shall be entitled in addition to any other remedy available at law or equity, to assess such amounts as may be set forth on the face of this Purchase Order as liquidated damages for delay. The Seller agrees that such amounts are a reasonable pre-estimate of the damages which Metro-Tex may suffer as a result of such delay, and are assessed as liquidated damages and not as penalty. Unless otherwise stated on the face of this purchase order, delivery of goods ordered hereunder shall be made F.O.B. Metro-Tex's warehouse in Houston, Texas, and title will pass to Metro-Tex upon receipt of goods. Transportation charges are to be billed to the Seller by carrier and will be borne by Seller. Risk of loss in transit lies with the Seller. No charges for unauthorized transportation will be allowed. Any unauthorized shipment which results in excess transportation charges must be fully prepaid by Seller. Metro-Tex may cancel this Purchase Order in whole or in part without any liability if the delivery of goods is not complete by the required delivery date. Metro-Tex shall have the right to inspect and test the goods ordered hereunder at any time prior to delivery, and to inspect such goods within a reasonable time after delivery. The goods shall not be deemed accepted until after such inspection following delivery. The making of any inspection, or the failure of Metro-Tex to make any inspection, payment, or acceptance of the goods delivered shall in no way impair Metro-Tex's right to reject or revoke its acceptance of nonconforming goods or to seek any other remedies to which Metro-Tex may be entitled.

3. Title and Risk of Loss. Seller agrees to deliver to Metro-Tex, unencumbered title to the goods purchased pursuant to this Purchase Order, free and clear of all liens, claims, and encumbrances. Title and risk of loss to goods delivered hereunder shall pass to Metro-Tex upon receipt by Metro-Tex at its warehouse, unless otherwise agreed in writing.

4. Right of Rejection. If any goods and services ordered herein are found at any time to be defective, or otherwise not in conformity with any requirements of this order, including applicable drawings and specifications, Metro-Tex, in addition to such other rights, remedies, and choices as it may have by contract or law, may at its option and sole discretion (a) reject and return such goods at Seller's expense; (b) take such action as may be required to cure all defects and bring the goods into conformity with all requirements, in which event all costs and expenses incurred by Metro-Tex including material and handling charges shall be borne by Seller; and (c) require Seller to re-perform at its own expense, any defective portion of the services performed. Seller is required to replace nonconforming goods with goods that conform to this order.

5. Right of Suspension. Metro-Tex may, at any time, by written notice to Seller, suspend performance of work required to complete this order. Notice of suspension shall specify the date of suspension and the estimated duration of the suspension. Upon receiving any such notice of suspension, Seller shall promptly suspend further performance of the work to the extent specified. During the period of suspension, Seller shall properly care for and protect all work in progress and any materials, supplies, or equipment Seller has on hand for performance of the work. Upon the request of Metro-Tex, Seller shall promptly deliver to Metro-Tex copies of any outstanding purchase orders and subcontracts of Seller for materials, equipment, and service for the work, and shall take action relative to such purchase orders and subcontracts as may be directed by Metro-Tex. Metro-Tex may at any time withdraw the suspension of performance of the work as to all or part of the suspended work by written notice to Seller specifying the effective date and scope of withdrawal, and Seller shall resume diligent performance of the work upon the effective date of withdrawal of suspension.

6. Right of Termination. Metro-Tex may terminate all or any part of this order at any time by written notice to Seller. Upon termination (other than due to Seller's insolvency or fault including failure to comply with this order), Metro-Tex and Seller shall negotiate reasonable termination costs which will be identified by Seller within thirty (30) days of termination notice.

7. Notice of Default. Time is of the essence for this purchase order. Except in instances of delay which are due to causes beyond the reasonable control and without the fault or negligence of Seller and all of its suppliers, Metro-Tex may by written notice of default to Seller, terminate the whole or any part of this order upon the occurrence of any of the following: (a) Seller fails to perform within the time specified herein; (b) Seller fails to make progress so as to endanger performance of this purchase order in accordance with its terms; or (c) Seller fails to comply with any of the terms and conditions of this purchase order. Termination of the order shall become effective if Seller does not cure such failure within a period of ten (10) days after receipt of notice of default from Metro-Tex. Upon termination, Metro-Tex may procure goods, supplies, or services similar to those terminated, by such terms as it shall deem appropriate. Seller shall continue performance of this order to the extent not terminated and shall be liable to Metro-Tex for any

excess costs for such similar goods, supplies, or services. As an alternate remedy and in lieu of termination for default, Metro-Tex, at its sole discretion, may elect to extend the delivery schedule and/or waive other deficiencies in Seller's performance in which case an equitable reduction in the purchase order price shall be negotiated. In the event Seller for any reason anticipates difficulty in complying with the required delivery date, or meeting any other requirements of this order, Seller shall promptly notify Metro-Tex in writing. If seller does not comply with Metro-Tex's delivery schedule, Seller must provide delivery by the fastest available method and absorb charges resulting from such premium transportation. The rights and remedies of Metro-Tex provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this purchase order.

8. Payment and Taxes. All prices specified herein are firm and shall not be subject to change. Seller's total price shall be deemed to include all federal, state, and local sales, use, excise, value added, privilege, payroll, or occupational taxes and any other taxes, fees, or duties applicable to the goods furnished to Metro-Tex. No extra charges of any kind will be allowed unless specifically agreed to in writing by Metro-Tex. Metro-Tex shall be entitled at all times to set-off any amount owing at any time from Seller to Metro-Tex or any of its affiliated companies against any amount payable at any time by Metro-Tex in connection with this or any other order between Metro-Tex and Seller.

9. Warranty and Liability. Seller warrants and represents that all goods and services provided pursuant to this purchase order are of merchantable quality, fit for the particular purpose for which they are intended, and are free from any third party claims.. Seller further warrants that all goods and services provided hereunder are free from defects in design, workmanship, and material, will strictly conform with all requirements of this order and all the specifications, samples, drawings, designs and other requirements (including performance specifications) approved or adopted by Metro-Tex. Seller further warrants and represents that all services will be performed by competent personnel in accordance with generally accepted industry standards. Seller shall, at its own expense, promptly repair or replace, at Metro-Tex's option, any delivered goods which shall be found by Metro-Tex to be defective, non-conforming or otherwise not in accordance with this warranty. Seller agrees that all warranties pursuant to this purchase order shall extend to, and be for the benefit of, Metro-Tex and Metro-Tex's customers. Any attempt by Seller to limit, disclaim, or restrict any warranties or remedies of Metro-Tex, by acknowledgment or otherwise, shall be null, void, and ineffective without the written consent of Metro-Tex.

10. Compliance. Seller warrants and represents that goods delivered pursuant to this Agreement, and the sale or use thereof, shall not infringe any patent, trade secret, copyright or trademark, and that Seller will at its own expense defend , indemnify, and hold harmless Metro-Tex and Metro-Tex's customers from and against all claims, demands, actions, and liability based on alleged or actual infringement thereof. Metro-Tex, at its option, may require Seller to deliver non-infringing goods, modify Seller's goods so as to become non-infringing, procure for Metro-Tex the right to continue using Seller's infringing goods, or refund the purchase price thereof upon the return by Metro-Tex of the infringing goods. Seller warrants that all goods delivered hereunder shall be in strict compliance with all applicable laws and regulations to which the goods are subject. Seller shall indemnify and hold harmless, Metro-Tex and its customers from all loss, liability, and fines

incurred by any of them as a result of Seller's failure to so comply.

11. Governing Law. This agreement shall be governed by and construed according to the laws of the State of Texas. All actions hereunder shall be brought in the state courts of Harris County, Texas, or the federal courts in and for the Southern District of Texas.

12. Indemnity. Seller releases Metro-Tex from any liability to Seller, and Seller will defend, indemnify and hold Metro-Tex harmless from and against, all suits, actions, claims and demands, by whomever brought, based on loss for illness, injury or death, property loss or damage whenever occurring, suffered, or incurred by Seller, its contractors, and subcontractors and the officers, employees, agents and representatives of any of them, arising out of or related in any way to the sale or delivery of goods or performance of the services hereunder. Metro-Tex shall be entitled to control the defense of any claim subject to indemnification hereunder, including the right to compromise with counsel selected by it.

13. Authorizations. Seller is solely responsible for the timely procurement of any necessary government authorizations, including, without limitation, export or import licenses and exchange permits. If Metro-Tex applies for any such authorization, it does so as a convenience for Seller and Metro-Tex shall have no responsibility for any errors therein or failure to pursue or obtain an authorization. Seller will comply with any applicable export control laws and regulations.

14. Seller's Insolvency. If, in the judgment of Metro-Tex, Seller ceases to conduct its operations in the normal course of business, including the failure to meet its obligations as they mature, or if any proceeding under bankruptcy or insolvency law is brought by or against Seller, or if a receiver for Seller is appointed or applied for, or an assignment for the benefit of creditors is made by the Seller, Metro-Tex may terminate this order without liability. This section shall not apply to deliveries previously made, or to goods covered by this order then completed and subsequently delivered in accordance with the terms of this order.

15. Assignment and Subcontracting. Assignment by the Seller of this purchase order or any interest herein or any payment to become due hereunder, without written consent of Metro-Tex shall be void. Seller shall not subcontract nor delegate performance of all or any substantial part of the work called for under this order without the prior written consent of Metro-Tex.

16. Changes to Order. This Purchase Order shall not be changed or otherwise modified except upon the prior written authorization of a duly authorized representative of Metro-Tex. Metro-Tex shall have the right to make any changes to the goods and services ordered under this purchase order, including changes to the method of shipment or packing, place and time of delivery, or the quality of goods ordered, and Seller agrees to perform this purchase order in accordance therewith. If in Seller's opinion such change will cause an increase or decrease in the cost of, or time required for performance and delivery hereunder, Seller shall notify Metro-Tex promptly. If additional cost or time is required for performance or delivery hereunder, Seller shall not proceed without written authorization from Metro-Tex, directing Seller to proceed. If any such changes cause an increase or decrease in the cost of, or the time required for the performance of any work under this contract, whether changed or not changed, an equitable adjustment shall be made in the Contract Price,

delivery schedule, or both, and the purchase order shall be modified in writing accordingly. Any claim by the Seller for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Seller of the notification of change. Any change to this order shall be authorized only by a duly executed purchase order amendment hereto.

17. Title to Technical Information. All rights and title including intellectual property rights to any drawings, spec sheets, or other technical information shall remain the sole and exclusive property of Metro-Tex. Seller agrees not to use such drawings and any information for any purpose other than this Purchase Order or to disclose such drawings and information to any third party except for normal operations, without the prior written consent of Metro-Tex.

18. Purchaser's Property. Unless otherwise agreed in writing, all goods, equipment, or material of every description furnished to Seller by Metro-Tex or specially paid for by Metro-Tex, and any replacement thereof, or any materials affixed or attached thereto, shall be and remain the personal property of Metro-Tex. Such property and, whenever practical each individual item thereof, shall be plainly marked or otherwise adequately identified by Seller as the property of Metro-Tex and shall be safely stored separate and apart from Seller's property. Such property, while in Seller's custody or control, shall be held at Seller's risk and kept insured by Seller at its own expense in an amount equal to replacement cost, with loss payable to Metro-Tex. Such property shall be subject to removal at Metro-Tex's written request, in which event Seller shall prepare such property for shipment and shall redeliver to Metro-Tex in the same condition as originally received by Seller, reasonable wear and tear excepted, all at Seller's expense.

19. Waiver. No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. The failure of Metro-Tex to enforce at any time or for any period of time any of the provisions hereof shall not be construed to be a waiver of such provisions or of the right of Metro-Tex to thereafter enforce each and every such provision.