



General Purchase Order Terms and Conditions

Agility Cylinders

1. ACCEPTANCE AND MODIFICATION OF AGREEMENT

This order becomes a binding contract subject to the terms and conditions hereof, when accepted by acknowledgment or commencement of performance. Any modification of this order, to be valid, must be in writing and signed by Buyer's authorized representative. Any acknowledgment form or other form of Seller containing terms and conditions of sale submitted by Seller shall not have the effect of modifying the terms and conditions hereof. Buyer will consider Seller's requests for changes only if such requests are in writing and are directed to specific clauses in this order. No change shall be binding upon buyer unless specifically accepted in writing.

2. DELIVERY

Time of delivery is of the essence of this order, but neither party shall be liable for any default due to acts of God or of the public enemy, acts of any government or governmental agency acting in a sovereign capacity, fire, flood, epidemic or quarantine restrictions, strikes or freight embargoes or to other causes beyond its control and without its fault or negligence. Acceptance by Buyer of a late delivery of either the whole or part of the order shall not constitute a waiver of its claim for any damages resulting from the late delivery. Among other things, if Sellers deliveries are behind schedule and buyer calls upon Seller for premium transportation, Seller shall be liable for the difference between specified and premium transportation. Seller, among other things, shall perform overtime work and establish extra shifts without additional cost to Buyer, if necessary to maintain delivery dates. Unless expressly provided otherwise elsewhere in this order, each delivery shall be FOB destination.

3. INVOICES

All invoices will be submitted in duplicate. Invoices submitted prior to seven days preceding delivery of the supplies or services to which the invoices relate may be treated as dated as of the date of delivery of such supplies or services.

4. WARRANTIES

Seller expressly warrants that all supplies and services furnished hereunder are fit and safe for the purpose for which they are manufactured, free from defects in material and workmanship, free from defects in design except where design is provided by buyer, and conform to applicable specification, drawings, samples and descriptions. These warranties shall survive acceptance and payment by buyer. Work not in accordance therewith may, at Buyer's option, be returned to Seller, at Seller's expense, for credit or for correction or replacement at Seller's expense. The foregoing shall not limit any other rights which Buyer may have by reason of any breach of warranty.

5. TITLE AND RISK OF LOSS

Unless expressly provided otherwise elsewhere in this order, title to supplies covered by this order shall pass to Buyer upon final acceptance, regardless of when or where buyer takes physical possession, and risk of loss of or damage to supplies covered by this order shall remain with Seller until, and shall pass to Buyer upon, (a) delivery of the supplies to a carrier if transportation is FOB origin or (b) acceptance by Buyer or delivery of the supplies to Buyer at the destination specified in the order, whichever is later, if transportation is FOB destination. The risk of loss of or damage to supplies which so fail to conform to the order as to give Buyer a right of rejection shall remain with Seller until cure or acceptance, at which time the foregoing provision of this clause shall apply.

6. INSPECTION AND FINAL ACCEPTANCE OR REJECTION

The supplies or services ordered hereunder, including any related materials or work in process, as well as those portions of Sellers facilities which may be engaged in the performance of this order shall at all reasonable times be subject to inspection by Buyer or by Buyers customer. Seller shall cooperate with Buyer in promptly furnishing all information required by Buyer to determine the status, progress and anticipated schedule of work under this order, and shall provide all reasonable facilities and assistance at no additional cost for the safety and convenience of any inspectors in the performance of their duties. Notwithstanding any inspection by Buyer of the supplies or services ordered hereunder prior to delivery, all supplies and services ordered hereunder shall be subject to inspection, test and use by Buyer and to Buyers final acceptance thereof, subsequent to delivery. Any payment by Buyer for all or any part of the supplies or services ordered hereunder shall be deemed provisional and shall not constitute final acceptance or a waiver of any of the terms of this order. Buyer may reject and hold at Sellers expense subject to Settees disposal all supplies or services ordered hereunder that are defective or otherwise not in conformity with the terms of this order. Without limiting any other rights it may have. Buyer at its option may require Seller (a) to repair or replace at Sellers expense any supplies or services that fail to meet the terms of this order, or (b) to refund the price of any such supplies or services. All handling and transportation expenses of rejected supplies or services shall be borne by Seller.

7. TECHNICAL DATA

All specification, drawing, designs, know how, trade secrets, technical data, inventions or other information which are furnished by Buyer or developed by Buyer or Seller in connection with the subject matter of this order, shall be the sole and exclusive property of Buyer, and Seller agrees to keep all such information confidence and not to disclose it to other parties without the specific written consent of Buyer, Seller agrees to disclose promptly to Buyer any proprietary information developed in connection with the subject matter of this order and to transfer all right, title and interest in and to such proprietary information to Buyer including any applications for patents or other registration thereon prepared at Buyers expense. Buyer shall not be bound to treat as proprietary to Seller any material so labeled by Seller unless a specific written commitment to do so is contained elsewhere in this order or in a separate agreement between Buyer and Seller. Nothing in this clause shall restrict any right of the United States Government ("Government") to authorize the use of technical data in the furnishing of supplies or services directly to the Government. Seller will notify Buyer prior to any such use.

8. MATERIAL AND PROPERTY FURNISHED BY BUYER

All materials, tools, equipment, or data furnished by Buyer on other than a charge basis in connection with this order shall be deemed to be bailed to Seller for mutual benefit, and title thereto shall remain in Buyer or, if Government owned, in the Government. Seller shall be responsible for any loss or damage thereto and taxes assessed thereon and shall keep all such materials, tools and equipment adequately insured against risk of loss or damage for their replacement value at Seller's expense while they are in Seller's possession. Such items may not be used in the performance of any other contracts by Seller, except that, in the furnishing of supplies or services directly to the Government, Seller may use any such items which are Government owned or which are subject to rights of the Government to authorize such use. Seller will notify Buyer prior to any such use.

9. PRICE

If price is omitted it is agreed that Seller's price will be the lowest available market price.

10. PATENTS, TRADEMARKS, TRADE NAMES AND COPYRIGHTS

Seller agrees to indemnify and save harmless Buyer, its officers, agents, successors, assigns and customers against all damages, claims, demands, attorneys' fees and costs of any kind for actual or alleged infringement of any trade name, trademark, copyright or patent (unless the supplies ordered are of Buyer's design) arising in connection with the possession, sale or use of any supplies or services ordered hereunder.

11. TERMINATION AT BUYER'S OPTION

Buyer may terminate this order in whole or in part by written, facsimile or telegraphic notice of termination, whereupon Seller will terminate pursuant to the notice the work started under the order. Seller will promptly advise Buyer of the quantities of applicable work and material on hand or purchased for this order prior to termination and of the most favorable disposition that Seller can make thereof. Seller will comply with Buyers instructions regarding disposition of such work and material. Within 30 days after receipt of such notice of termination, Seller will submit all its claims pursuant thereto. Buyer will have the right to check such claims at any reasonable

time by inspecting and auditing the records, facilities, work or materials of Seller relating to this order. Buyer will pay Seller the order price of finished work and the cost to Seller (excluding profit or losses) of work in process and raw material, based on any audit Buyer may conduct and generally accepted accounting principles, less, however, the reasonable value or cost (whichever is higher) of any items used or sold by Seller and of any defective, damaged or destroyed work or material. Buyer will make no payments for completed work, work in process or material fabricated or procured by Seller beyond that authorized in writing by Buyer. Payment made under this clause will constitute Buyer's only liability in the event this order is terminated as provided herein. Seller's acceptance of such payment will constitute an acknowledgment that Buyer has fully discharged such liability. The provisions of this clause will not apply to any termination by Buyer for default by Seller or for any other cause allowed by law or under this order.

12. TERMINATION FOR DEFAULT

Buyer may terminate this order in whole or in part without any liability of Buyer to Seller by written, facsimile or telegraphic notice if Seller refuses or fails to comply, or so fails to make progress as to endanger compliance with any provisions of this order, including Seller's warranties, or if Seller becomes insolvent or makes a general assignment for the benefit of creditors or if a petition under the Bankruptcy Act is filed by or against Seller. If Seller's financial condition is found to be, becomes, or remains unsatisfactory to Buyer during the term of this order, Buyer may terminate this order on 10 days written notice and also terminate all other orders covering purchases by Buyer of Seller's supplies or services whether or not Seller may otherwise be in default, and no rights shall accrue to Seller against Buyer on account of such termination. Seller agrees to indemnify and save Buyer harmless from any loss, penalty or damages resulting from Seller's failure to make progress or Seller's refusal or failure to comply provided in this clause, Buyer may procure, upon those so terminated, and Seller shall be liable to Buyer for any excess cost for terminated under the provisions of this clause. The rights and remedies of Buyer provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this order.

13. SUSPENSION OF WORK

Buyer may, by written order, suspend all or part of the work to be performed under this order for any period not to exceed ninety (90) days. Within such period, or any extension thereof to which the parties may agree. Buyer shall either cancel such suspension or terminate the work covered by suspension in accordance with Clause 11 or Clause 12 thereof. Seller shall resume work whenever a suspension is canceled or expires. An equitable adjustment shall be made in the delivery schedule or order price, or both, if the suspension results in a change in Seller's cost of performance or ability to meet the order delivery schedule, provided Seller asserts a claim for adjustment within twenty (20) days after the end of the period of suspension, and provided the suspended work is not terminated in accordance with Clause 12 hereof.

14. COMPLIANCE WITH LAW

Seller agrees that the supplies or services ordered hereunder will be produced or rendered in accordance with all applicable Federal, State and local law, orders and regulations, including but not limited to, the Federal Occupational Safety and Health Act and the Fair Labor Standards Act of 1938, as amended.

15. NON DISCRIMINATION IN EMPLOYMENT

Unless this purchase order is exempted by rules, regulations, or orders of the Secretary of Labor, vendor agrees to comply with the EEO provisions of Executive Order 11246, as amended; with the affirmative action for workers with disabilities clause set forth in Section 503 of the Rehabilitation Act of 1973, and its implementing regulations; and with the affirmative action for disabled veterans and veterans of the Vietnam era clause set forth in 38 US 4212, and its implementing regulations; and these are by reference incorporated herein.

16. CHANGES

Buyer may at any time make changes in the drawings, specification, samples or other description with respect to any supplies or services ordered hereunder or in the quantities or performance schedule provided herein. If any such change causes an increase or decrease in the cost of this order or in the time required for its performance, Seller shall promptly notify Buyer thereof and submit its proposal for adjustment within 30 days after the change is ordered, and an equitable adjustment shall be made. Seller shall proceed immediately to perform this order as changed and nothing in this clause shall excuse Seller from proceeding with this order as changed, including failure of the parties to agree to any adjustment to be made under this clause. All changes must be in writing and signed by Buyer's authorized purchasing representative.

17. NO WAIVER

Any failure by Buyer to exercise its rights under this order, including Buyer's right to insist upon strict compliance by Seller with the terms of this order, shall not constitute a waiver of Buyer's right thereafter to exercise any of its rights under this order, including Buyer's right to insist upon strict compliance by Seller with the terms of this order.

18. PERFORMANCE BY SELLER

Seller shall not assign this order or delegate the performance of its duties hereunder without the written consent of Buyer.

19. WORK ON BUYER'S PREMISES

If any work under this order is to be performed on Buyer's premises, Seller agrees to defend, indemnify and hold Buyer harmless from and against any claims, losses or damages due to injury or death of any persons, including Seller's agents, servants or employees, and damage to or the destruction of any property, resulting from Seller's acts or omissions incident to or arising out of such work.

20. TAXES

The order price includes all applicable Federal, State and local taxes and duties.

21. NOTICE OF DELAYS

When any actual or potential labor dispute or any other condition is delaying or threatens to delay the timely performance of this order, Seller will immediately give written notice thereof to Buyer. Such notice shall include all relevant information with respect to such dispute or other condition.

22. DISPUTES

The parties to this order shall exercise their best efforts to resolve by agreement all disputes arising under this order. Any dispute considered significant by either Buyer or Seller and which Buyer and Seller are not able initially to resolve by agreement shall be referred to and reviewed by the highest management of each party prior to resort by either party to legal proceedings to resolve the dispute. If agreement still cannot be reached, the parties shall be free to exercise any legal or equitable remedies which may be available under this order and the law applicable thereto. Notwithstanding the foregoing, Seller shall proceed diligently with the performance of this order and in accordance with Buyer's instructions pending a final resolution of the dispute.

23. PRECEDENCE

In the event of any inconsistency among the reference documents, attachments, drawings, specifications or other provisions of this order, the following order of precedence shall apply: (a) special terms and condition, (b) general terms and conditions, (c) specifications, (d) drawings, and (e) all other attachments or documents incorporated herein by reference.

24. RELEASE OF INFORMATION

Seller shall not release to the public, without prior written approval of Buyer, information in any form concerning this order or its subject matter.

25. APPLICABLE LAW

This order shall be governed by, and construed in accordance with, the laws of the State of Nebraska.