

TERMS AND CONDITIONS OF PURCHASE ORDER

GENERAL TERMS AND CONDITIONS

The offer of Morgan Advanced Materials & Technology Inc. ("Buyer") to purchase the goods and/or services (collectively "Work") described in this purchase order is expressly conditioned upon Seller's acceptance of the terms and conditions set forth herein, which shall constitute the sole terms and conditions for such purchase. Buyer rejects all contrary or additional terms and conditions of Seller contained in any acceptance or sales acknowledgement unless expressly agreed to in writing by Buyer. Seller shall be deemed to have accepted the terms and conditions contained herein upon the earlier of (i) Seller's failure to notify Buyer of Seller's rejection of these terms and conditions within ten (10) days of Seller's receipt thereof or (ii) Buyer's receipt of any goods and/or services delivered hereunder. These terms and conditions are incorporated and made a part of the purchase order to which they are attached or in which they are incorporated by reference.

Except as otherwise agreed in a written contract in effect between Buyer and Seller for the purchase and sale of the goods and/or services described herein the following terms and conditions apply:

1. General Conditions. Seller shall furnish all services, labor, materials, equipment, tools and everything necessary to undertake and complete all the Work contemplated by the drawings, plans, specifications, addenda and other communications provided and as described on the purchase order.

2. Prices. Prices for the Work are set forth in this purchase order. If no price is stipulated herein, the Work shall be charged at prices not exceeding those last previously quoted or charged to Buyer for Work of like kind or quality; provided, however, if Seller shall offer a lower price for the Work to any of its customers ordering the same or lesser quantity thereof prior to receipt by Seller of payment for the Work hereunder, the price of the Work shall be reduced to such lower price and if Seller receives payment hereunder it will promptly refund to Buyer the difference between the price contained in this purchase order and such lower price.

3. Taxes. Seller shall be responsible for the payment of the amount of all taxes, excises and other governmental charges (including taxes on or measured by net income) required to be paid with respect to the production, sale or transportation of any goods manufactured for or delivered to Buyer hereunder, except as may otherwise be provided by law.

4. Payment. Payment terms, unless otherwise specified in this purchase order, are net 30 days after the date of Seller's invoice. Seller may only invoice Buyer for Work on or after the date that such Work is performed or delivered to Buyer in accordance with the terms hereof. Payment for Work performed or delivered under the purchase order shall not constitute an acceptance thereof.

5. Delivery. Time is of the essence. Delivery of all goods purchased by Buyer shall comply with shipping instructions supplied by Buyer and the goods shall be packed for shipment in manner suitable for the method of shipment specified in such instructions. If any goods are not delivered within the time specified in this purchase order, or within a reasonable time if no time is specified, Buyer may either (i) refuse to accept such goods and terminate this purchase order, or (ii) cause Seller to ship the goods by the most expeditious means of transportation, whereupon any additional transportation charges in excess of those which would apply for the usual means of transportation shall be for the account of Seller.

6. Representations by Seller. Seller represents and warrants to Buyer that (i) it holds all right, title and interest in and to the goods and has the right and authority to sell the goods to Buyer and (ii) all right, title and interest in and to the goods shall pass to Buyer upon delivery to, and acceptance thereof by, Buyer in accordance with the terms hereof.

7. Warranty for Goods. Seller warrants that all goods delivered hereunder and all materials and equipment incorporated into Work (i) shall be of Seller's standard quality for the type and grade of material involved and free from defects, latent or patent; (ii) shall conform to all specifications, drawings or descriptions furnished or specified by Buyer; (iii) shall be merchantable and shall be fit for the particular purpose for which they are required; (iv) shall be adequately contained, packaged and labeled and shall conform to any promises and affirmations of fact made on the container and label; and (v) shall be free of any claim of any third party. In the event of any inconsistency among the foregoing, the description given in this purchase order shall control Seller's warranty. Buyer's inspection and/or acceptance of and/or payment for goods and/or services shall not constitute a waiver by it of any warranties.

8. Breach of Warranty for Goods. If Buyer shall determine that any goods do not conform to the warranty set forth herein it shall notify Seller thereof and Buyer may, in its sole discretion, return to Seller either the specific non-conforming goods or the entire shipment of which the non-conforming goods were a part whereupon, in addition to any other remedies Buyer may have at law or in equity, Seller shall, at Buyer's option (i) replace such non-conforming goods or shipment of goods with goods or shipment of goods which conform to the warranty hereof, or (ii) refund to Buyer the purchase price and shipping charges therefor. All shipments and deliveries of non-conforming goods by Buyer shall be at the expense of Seller and, if paid by Buyer, Seller agrees to reimburse Buyer upon demand therefor.

9. Warranty for Services. Seller warrants that all services shall conform to the terms of this purchase order, shall be performed in a good and workmanlike manner, and shall be free of all defects in the materials and workmanship until the expiration of one (1) year after completion of the Work, as evidenced by final payment of Buyer to Seller. Upon receiving written notice from Buyer, Seller shall promptly make such repairs and replacements as are necessary to correct any failure to meet any warranty hereunder, at Seller's sole expense. In the event Seller does not correct such failure within a reasonable time, Buyer shall have the right to have such corrections made and Seller shall pay Buyer the costs thereof, promptly after receipt of an invoice. Neither acceptance of or payments for the Work or any parts thereof, or (ii) refund to Buyer the purchase price and shipping charges therefor. All shipments and deliveries of non-conforming goods by Buyer shall be at the expense of Seller and, if paid by Buyer, Seller agrees to reimburse Buyer upon demand therefor.

10. Quality. Buyer and its customers reserve the right to review and verify at Seller's facility the quality of work, manufacturing processes, records and materials applicable to this purchase order.

11. Seller's Examination. Seller shall be held to have examined any specifications and/or drawings provided by Buyer and to have made all investigations essential to the understanding of the difficulties which may be encountered when performing the Work and to be satisfied as to the conditions under which Seller shall be obliged to operate, the character and nature of the Work, safety regulations and all other considerations which may affect the Work in any manner.

12. Labor. Seller shall operate as an independent contractor and no employee of Seller or its subcontractors shall be deemed an employee of Buyer. Seller acknowledges that it is solely responsible for the conduct of its employees while providing services pursuant to this purchase order. Further, Seller shall employ, or cause to be employed, on or in connection with the performance of the Work, only persons who are fit and skilled in the work assigned and have received all safety training appropriate for any hazards involved in the Work. Should any disorderly, incompetent or objectionable person be employed on the Work by Seller or by any of its subcontractors, Seller shall, upon request of Buyer, cause such person to be removed immediately from Seller's premises. Unless exempted therefrom, Seller shall comply with the following orders, rules and regulations and any other applicable equal opportunity requirements, all of which are hereby incorporated by this reference: Section 202 of the Executive Order 11246; the affirmative action clauses for the handicapped (41 C.F.R. 60-741.4); and for veterans (41 C.F.R. 60-250.4) the clauses requiring utilization of minority business (41 C.F.R. 1-1.1310-2), small businesses (32 C.F.R. 7-104.14 AND 41 C.F.R. 1-1.710-3) and female-owned businesses (Executive Order 12138).

13. Site Rules. Seller shall obtain all required and necessary permits and licenses and shall comply with all laws, ordinances and governmental rules and regulations applicable to the Work, to labor employed on the Work and to the preservation of the public health and safety. All regulations and rules of Buyer in effect at the site regarding safety, employee's passes, badges and conduct on the property shall be rigidly observed by Seller, its personnel, employees and subcontractors.

14. Insurance. At all times that Seller is providing services to Buyer, Seller shall maintain insurance policies, including bodily injury liability, property damage liability, commercial general liability and statutory workers compensation insurance in amounts specified by Buyer. Seller shall furnish written certificates establishing that the required insurance has been procured and is being maintained, and such certificates shall provide that written notice of cancellation shall be given to Buyer at least thirty (30) days prior to the effective date of such cancellation. Seller further agrees to use only subcontractors that provide insurance certificates of comparable coverage. No representative or subcontractor of Seller shall be allowed entry to Buyer's site to perform services until Buyer has received a copy of the certificate(s) of insurance.

15. Title and Risk of Loss. Title passes to Buyer upon delivery of the goods to Buyer's delivery location and Seller bears all risk of loss or damage to the goods until delivery is made.

16. Confidentiality. All non-public, confidential or proprietary information of the Buyer, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the Work is confidential, solely for the use of performing the Work and may not be disclosed or copied unless authorized by Buyer in writing. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) known to the Seller at the time of disclosure; or (c) rightfully obtained by the Seller on a non-confidential basis from a third party.

1. Force Majeure. Neither party shall be liable for its delay or failure in performing hereunder due to conditions or events beyond its reasonable control, including without limitation, natural disasters, war, terrorism, accidents, labor disputes or shortages, governmental laws, ordinances, rules and regulations and inability to obtain material, equipment, or transportation. If Seller is unable to supply any of the goods or services because of any such condition or event, Seller shall immediately notify Buyer of such fact and shall provide Buyer with a good faith estimate of when Seller expects to be able to supply such goods or services. Buyer shall thereupon have the option, upon notice to Seller, of obtaining substitutes for some or all of such goods or services from other suppliers, whereupon the total quantity of goods deliverable or services to be rendered hereunder shall be reduced by the quantity so substituted, and the amount payable by Buyer shall be reduced pro-rata.

2. Compliance with Laws. In the performance of this purchase order, Seller shall comply with all federal, state and local laws, statutes, rules, and regulations.

3. Intellectual Property Rights and Warranty. For purposes of this purchase order, "Deliverables" shall mean all work product and all related written reports, requirements and design documents (including newly created technical and non-technical data embodied therein), specifications, drawings, custom tooling, dies, patterns, blueprints, tracings, diagrams, models, samples, software programs, flow charts, notes, technical data, compilations, outlines and other similar documents and materials (including all intermediate versions and derivative works therefrom), that are developed, authored, conceived, originated, prepared or otherwise created by or on behalf of Seller as a result of the relationship created under this purchase order and the Work to be performed pursuant hereto, along with all intellectual property rights. All Deliverables shall be transferred to Buyer upon the completion of the Work or upon the cancellation of this purchase order for any reason. Notwithstanding the foregoing, all Deliverables shall be deemed to be the sole and exclusive property of Buyer, as well as "works made for hire" as contemplated by the U.S. Copyright Act (17 U.S.C. § 101). Seller agrees to do all things reasonably necessary to protect the interests of the Buyer in the Deliverables, including but not limited to cooperating with Buyer so that Buyer, at its expense, can obtain patents and copyrights. For the avoidance and doubt, and in addition to and not in lieu of any of the provisions herein, Seller hereby grants to Buyer a nonexclusive, perpetual, sub-licensable, fully paid-up and royalty-free license to all of the Deliverables, to use, copy, modify, maintain, support, and create derivative works of the same at Buyer's sole discretion. Seller warrants that: (i) neither the Work furnished hereunder nor the sale or use thereof will infringe any United States or Foreign Letters Patent, trademark, copyright; or other proprietary or similar rights; (ii) Seller shall, at its own expense, defend any claim or suit that may arise with respect to any aforementioned infringement or allegation thereof; and (iii) Seller shall indemnify and hold Buyer and/or its customers harmless from all loss and expense incurred on account of any alleged or actual infringement. Buyer shall promptly notify Seller of any infringement claim made against it. The warranty provided herein shall not apply to goods to the extent such goods are manufactured exclusively in accordance with Buyer's specifications.

4. Assignment. Seller may neither assign any right or interest in the agreement resulting from Seller's acceptance of Buyer's purchase order nor delegate performance of any of its obligations without Buyer's written consent.

5. Governing Law. The validity, interpretation and performance of the agreement resulting from Seller's acceptance of Buyer's purchase order shall be governed by the laws of the state of New York without regard to its rules concerning conflicts of laws. The United Nations Convention on the International Sale of Goods shall not apply to this purchase order.

6. Entire Agreement; Modification; Waiver. The agreement resulting from Seller's acceptance of Buyer's purchase order constitutes the entire agreement between Buyer and Seller for the purchase and sale of the goods or services described herein. No course of dealing between Buyer and Seller and no usage of trade shall vary any terms and conditions herein. Buyer reserves the right at any time prior to shipment or performance to make changes, by written notice, relating to this purchase order. No modification or waiver of the terms or conditions hereof by the Seller shall be binding upon Buyer unless approved in writing by Buyer.

7. Arbitration. All disputes which may arise out of, in relation to or in connection with this purchase order shall, unless settled by mutual consultation in good faith, be resolved by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association ("AAA"). The arbitration will be conducted at the offices of the AAA in New York, New York before an independent and impartial arbitrator. The arbitrators shall only interpret and apply the terms or conditions of this purchase order and shall not change any terms or conditions hereof or deprive either party of any right or remedy provided for in this purchase order. Any arbitration award rendered pursuant hereto shall be final and binding upon the parties hereto. Judgment upon any arbitration award rendered may be entered in any court of competent jurisdiction or application may be made to such court for judicial recognition of the award or an order of enforcement as the case may be.

8. Remedies. All of Buyer's rights hereunder are separate and cumulative and in addition to any other rights Buyer may have at law or in equity, and no exercise by Buyer of any right hereunder shall preclude Buyer from exercising any other legal or equitable right or remedy available to it.

9. Indemnification. Seller shall indemnify, hold harmless and save Buyer, its affiliates, shareholders, directors, officers, employees, successors and assigns (individually, a "Buyer Indemnitee") from and against, for and in respect of, any and all demands, judgments, injuries, penalties, damages, losses, obligations, liabilities, claims, actions or causes of action, encumbrances, costs, expenses (including without limitation, reasonable attorneys' fees) suffered, sustained, incurred or required to be paid by any Buyer Indemnitee arising out of or based upon or in connection with or as a result of Seller's performance under this purchase order, including but not limited to (i) any breach of any representation or warranty made by Seller herein or of any obligation of Seller hereunder, (ii) the use by Buyer, its affiliates or customers of the goods or services, (iii) product liability claims in connection with any of the goods or services used by Buyer, its affiliates or customers, (iv) any violation of any federal, state or local rule, regulation or governmental order, (v) property damage, injury, sickness and/or diseases, including death, resulting at any time from bodily injury, sickness and/or disease, where such injury, sickness or disease is in any way connected to the goods delivered or the services performed pursuant to this purchase order. In the event that this purchase order provides for services to be performed on property owned or controlled by any party or parties other than Buyer, the aforesaid obligation to defend, indemnify and hold harmless shall be expanded to include such party or parties, their employees and agents. This indemnification clause applies regardless of the negligence of Buyer or Buyer's employees.

10. Termination. Buyer may, by notice in writing, terminate this purchase order at any time, whether or not Seller is in default, and such termination shall not constitute default. In no event shall Seller be entitled to anticipatory profits or to special or consequential damages. In the event of such termination, Seller shall protect all property in its possession in which Buyer has an interest, shall terminate all Work and commitments made under or pursuant to this purchase order as quickly and effectively as possible. Buyer shall pay Seller that percentage of the price corresponding to the percentage of Work performed and goods or equipment accepted by Buyer prior to the notice of termination less all amounts previously paid, plus actual direct costs reasonably necessitated by the resulting termination. Seller shall not be paid for any Work done or goods or equipment delivered after receipt of notice of termination, for any costs incurred by Seller's suppliers or subcontractors that Seller could have reasonably avoided, or for any other amounts not explicitly provided for in this Section. Seller shall, if so directed by Buyer, ship to Buyer all goods and equipment for which Buyer shall have paid.

11. Rights to Information. Seller shall not, without Buyer's prior written consent, disclose any information relative to this purchase order, except as may be necessary to ensure performance. Seller, however, agrees that any knowledge or information which Seller shall have disclosed or may hereafter disclose to Buyer in connection with this purchase order, shall not, unless otherwise specifically agreed to in writing by Buyer, be deemed to be confidential or proprietary information, and shall be acquired free from any restrictions (other than a claim for patent infringement) as part of the consideration for this purchase order. All designs, drawings and specifications furnished to Seller by Buyer in connection with this purchase order shall remain the property of Buyer at all times and shall be returned to Buyer at once upon the completion or termination of this purchase order. Seller agrees it will not use such designs, drawings and specifications in connection with goods produced or work performed for anyone other than Buyer.

12. Audit. Seller shall maintain a true and correct set of records, including accounts, invoices, tickets and any other materials or documents (the "Records") pertaining to the Work performed hereunder, any payments received or costs incurred and compliance herewith by Seller in connection with the performance of its obligations hereunder. Seller further agrees to retain all Records for a period of at least two (2) years after the end of the calendar year in which this purchase order expires or terminates, and agrees that Buyer (or its designated professional advisors) may, at any time during this purchase order or until the expiration of such two-year period (including any additional time as may be required to resolve any dispute), at its own cost and expense, and upon providing written notice to Seller, audit any Records for purposes of verifying compliance with this purchase order. Buyer and/or its authorized representatives shall have the right to reproduce and retain copies of any of the aforesaid Records and shall be responsible for all costs associated therewith. The rights of Buyer under this Section shall be additional to and shall not prejudice any other or additional rights and remedies afforded to Buyer by law to audit the Records and shall be without prejudice to Buyer's right to take legal action with respect thereto, including the right to dispute any invoice as a result of such audit. In the event that an error is discovered pursuant to this Section, then the Parties shall remedy the error, and the Party owing payment shall pay the other Party the amount concerned within 30 days of the error being substantiated.