

TERMS & CONDITIONS

In all Instances AMM shall mean ADVANTAGE MACHINE & MANUFACTURING. None of the terms and conditions contained in the P.O./subcontract may be added to, modified, superseded or otherwise altered except by a written instrument signed by buyer and delivered by buyer to seller. All work performed hereunder and each shipment received by buyer from seller shall be deemed to be only upon the terms and conditions contained in the P.O./subcontract except as they may be added to, modified, superseded or otherwise altered, notwithstanding any terms and conditions that may be contained in any acknowledgment, invoice or other form of seller and notwithstanding buyer's act of accepting or paying for any shipment or similar act of buyer.

1. **INSPECTION AND ACCEPTANCE:** All items to be delivered hereunder shall be subject to inspection and test by AMM and the Government to the extent practicable at all times and places including the period of manufacture. AMM and Government representatives shall have access to all areas on the premises of the seller or of seller's subcontractors in which work on the P.O./subcontract is being performed. Seller and seller's subcontractors, at no additional cost, shall provide all reasonable facilities and assistance for the safety and convenience of AMM and Government representatives. At the time of inspection, seller and seller's subcontractors shall make available to AMM and the Government inspectors copies of drawings, specifications and process, preservation and package data applicable to the item to be inspected. All items to be delivered hereunder shall be subject to final inspection and acceptance by AMM at destination, notwithstanding any payments or inspection at source. AMM shall accept or give notice of rejection of items delivered hereunder within ninety (90) days after receipt. AMM failure to give notice of rejection within ninety (90) days after receipt shall constitute acceptance but such acceptance shall not waive any warranty. AMM may return rejected/defective items to seller at seller's expense for repair, replacement, or refund, or may retain such items with an equitable price reduction. Seller shall provide and maintain a quality control system acceptable to AMM and the Government.
2. **DELIVERY: NOTICE OF DELAY**
 - a) Time is and shall remain a very important element of this purchase order, and no acts of Buyer, including without limitation modifications of this purchase order or acceptance of late deliveries, shall constitute waiver of this provision. Buyer also reserves the right to refuse or return at Seller's risk and expense shipments made in excess of Buyer's orders.
 - b) Seller shall notify Buyer, in writing, immediately of any actual or potential delay or threat to delay the timely performance of this purchase order.
3. **TERMINATION FOR CONVENIENCE.**
 - a) Buyer may by notice, in writing, direct Seller to terminate this purchase order or work under this purchase order in whole or in part at any time, and such termination shall not constitute a default. In such event, unless Seller shall have default or been in default in performance hereof, Buyer and Seller shall have all rights and obligations accruing to it both at law or in equity, including Buyer's rights to title and possession of goods paid for.
 - b) Seller shall be reimbursed for actual, reasonable, and substantial costs, plus a reasonable profit for work performed to date of termination. Buyer may take immediate possession of all work so performed upon notice of termination.
 - c) Seller's obligations under the warranty, patent and confidentiality provisions of this purchase order shall survive such termination.
4. **TERMINATION FOR DEFAULT:**
 - a) Buyer may, by notice in writing, direct Seller to terminate this purchase order or work under this purchase order in whole or in part at any time for breach of any one or more of its terms. Further, the insolvency of the Seller or adjudication of bankruptcy of the Seller or the filing of a voluntary or involuntary petition of bankruptcy by the Seller or the making of an assignment for the benefit of creditors by the Seller shall also be a breach hereof.
 - b) In the event of Seller's default hereunder, the Buyer may exercise any or all rights accruing to it, both at law.
 - c) Seller's obligations under the warranty, patent and confidentiality provisions of this purchase order shall survive such termination.
5. **REMEDIES:**
 - a) The rights of both parties hereunder shall be in addition to their rights and remedies at law or in equity. Failure of Buyer to enforce any of its rights shall not constitute a waiver of such rights or of any other rights.
 - b) In no event shall Seller be entitled to anticipatory profits or special (including multiple or punitive), incidental or consequential damages.
6. **CHANGES:** AMM may at any time, and without notice to sureties, make changes within the general scope of this P.O./subcontract which affect the (i) drawings, designs or specifications of supplies being specially manufactured for AMM; (ii) method of shipment or packing; (iii) place of delivery; and (iv) delivery

- schedules, if any such change causes an increase or decrease in the cost of, or the time required for, performance of this P.O./subcontract, an equitable adjustment shall be made in the P.O./subcontract price or delivery schedule or both, and the P.O./subcontract shall be modified in writing accordingly. Changes to this P.O./subcontract shall, however, only be authorized if they are directed in writing by AMM Purchasing Department and no other written or oral change direction, including assistance, suggestions or advice that may be rendered by other AMM personnel, shall authorize a change or entitle seller any adjustment to this P.O./subcontract. Any claim by seller for adjustment under this clause must be asserted in writing, in the form of a complete change proposal fully supported by factual information, to AMM Purchasing Department no later than thirty (3) days after the date of receipt by seller of the written change authorization, or within such extension of that thirty (30) day period as AMM in its sole discretion may grant in writing at seller's request prior to the expiration of said period or any extension thereof, provided, however, that AMM may at its discretion, consider any such claim regardless of when asserted. Pending any such adjustment, seller will diligently proceed with the P.O./subcontract direction.
7. **TAXES:** Seller agrees to pay all local, state and Federal excise sales and use taxes when applicable (unless otherwise agreed in writing).
 8. **REPRODUCTION RIGHTS:** Seller agrees that the information contained in reports, drawings, documents or other records which are furnished to seller by AMM relative to this P.O./subcontract shall not be disclosed to others nor used for purposes other than performance of this P.O./subcontract without AMM's written consent, provided, however, that this clause shall not apply to information in the public domain nor shall it limit any rights the Government may have in such information.
 9. **AMM PROPERTY LIABILITY:** Seller shall keep all property furnished by AMM and all property to which AMM acquires title by virtue of this P.O./subcontract segregated and clearly marked and will maintain complete inventory thereof. Seller assumes all risk of loss of or damage to such property while in seller's custody or control and will immediately notify AMM of loss of, or destruction or damage to such property. Seller shall also be liable for all losses to AMM occasioned by seller's failure to furnish timely written notice to AMM of loss of, or destruction of, or damage to AMM property suffered in transit or prior to receipt by seller. As directed by AMM, upon termination or completion of this P.O./subcontract, seller will deliver such property, to the extent not incorporated in delivered end products, to AMM in good condition subject to ordinary wear and tear and normal manufacturing losses.
 10. **PAYMENT:**
 - a) Seller will submit an original invoice marked "original" and one copy marked "copy" to the attention of the Advantage Machine & Mfg. Accounts Payable Department for each shipment. Where applicable, taxes must be separately itemized. P.O./subcontract number and item number must appear on all shipping documents, invoices, quality certifications and packing sheets.
 - b) Determination of due date, whether under net or discount terms offered by the seller and provided for on the face of the P.O./subcontract will be based on the latest of (i) the date material is received, (ii) the date material is scheduled to be shipped/received under the P.O./subcontract, or (iii) the date an acceptable invoice is received.
 - c) Payment will be determined to have been made when deposited in the mail.
 11. **DISPUTE:** If a dispute between AMM and seller arises under the P.O./subcontract, seller agrees to proceed with the performance of the work hereunder, including the delivery of products, in accordance with AMM instructions pending resolution of the dispute. Upon resolution of the dispute, the P.O./subcontract shall be equitably adjusted (if necessary) to reflect such resolution.
 12. **SUBCONTRACTS:** Seller will not subcontract, without AMM prior written consent, for the design or procurement of the whole or any substantial portion of any item ordered hereunder.
 13. **APPLICABLE STATE LAW:** This P.O./subcontract will be governed by the laws of the state of Texas regardless of its place of execution or performance.
 14. **RELEASE OF INFORMATION:** Seller shall not publish any information developed under this purchase order nor distribute it nor make any news release about the subject matter of the P.O./subcontract without prior approval of AMM.
 15. **WARRANTY:**
 - a) Seller warrants the material delivered or services rendered on this P.O./subcontract to be free from defects in workmanship, materials and design and to be in accordance with AMM's specifications, drawings and/or samples in all respects. These warranties shall survive final acceptance and payment pursuant to UCC-2-601 and 2-608.
 - b) This warranty entitlement covers both AMM and AMM's customers.
 - c) Seller shall be liable for and save AMM harmless from any loss, damage or expense whatsoever that AMM may suffer from breach of any of these warranties. Remedies include replacement (if AMM so elects) of nonconforming goods.
 16. **PRECEDENCE:** Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence; (i) typed provisions of the P.O./subcontract, (ii) P.O./subcontract attachments, (iii) the printed portion of this P.O./subcontract including these Terms and Conditions and (iv) specification attached or

Incorporated by reference. AMM's specification shall prevail over any subsidiary documents; referenced therein. Seller shall not use any specification in lieu of those invoked by the P.O./subcontract without written consent of AMM's Purchasing Department.

17. PATENTS: Seller warrants that the sale, use or incorporation into manufactured products of all machines, parts, components, services, devices material and rights furnished or licensed hereunder which are not of AMM's design, composition, or manufacture shall be free and clear of infringement of any valid patent, copyright, trademark or other proprietary rights. Seller shall save AMM and its customers harmless from any and all expenses, liability and loss of any kind (including all costs and expenses including attorney's fees) growing out of claims, suits or actions seller, hereby, agrees to defend. Seller may replace or modify infringing goods with comparable goods of substantially same form, fit and function so as to remove the source of infringement.
18. COMPLIANCE WITH STATUTES AND REGULATIONS:
 - a) Seller warrants and certifies that in the performance of the P.O./subcontract it will comply with all applicable statutes, rules, regulation and orders of the United States and of any State or political subdivision thereof, and agrees to indemnify AMM against any loss, cost, damage or liability by reason of seller's violation of this clause. Seller will comply with the Fair Labor Standards Act of June 30, 1938; 29 USC 201-219 as amended.
 - b) Seller certifies that all equipment and materials delivered under the P.O./subcontract are in conformance with the latest OSHA requirements.
 - c) The seller certifies that in the performance of this P.O./subcontract, it will comply with all applicable US Department of Transportation regulations on hazardous materials and any other pertinent Federal, state or local statutes, laws, rules or regulations; and Seller further agrees to save AMM harmless from any loss, damage, fine, penalty or expense whatsoever that AMM may suffer as a result of seller's failure to comply with this certification. The foregoing is in addition to and not mitigation of any other requirements of this P.O./subcontract.
19. INDEMNITY AGAINST CLAIMS:
 - a) Seller shall defend, indemnify and hold harmless AMM and AMM's directors, officers, employees and agents from any liability, claim of liability, expense, cause of action, loss or damage whatsoever including attorney's fees arising out of or in any way connected with seller's performance or failure to perform this P.O./subcontract or that of seller's agents, employees or subcontractors. Seller shall be responsible for the actions and failure to act of all parties retained by, through, or under seller in connection with the performance of this P.O./subcontract. Seller shall also maintain such Public Liability, Property Damage, Employer's Liability and Compensation Insurance and Motor Vehicle Liability (Personal Injury and Property Damage) Insurance as are specified in this P.O./subcontract or if none are specified, such amounts as will protect seller (or its subcontractors) and AMM from said risks and from any claims under any applicable Worker's Compensation, Occupational Disease and Occupational Safety and Health statutes including the Occupational Safety and Health Act.
 - b) Seller shall without limitation as to time indemnify and save AMM harmless from all claims which may be asserted against property covered hereunder, including without limitation mechanic's liens or claims arising under Worker's Compensation or Occupational Disease laws and from all claims for injury to persons or property arising out of or related to such property unless the same are caused solely and directly by Advantage Machine's negligence.