

PURCHASE ORDER TERMS AND CONDITIONS

1. **DEFINITIONS:** The terms "Purchaser" as hereinafter used means SUNBELT CONTROLS and the term "Seller" means the person, firm or corporation from whom the merchandise described on this purchase order has been ordered.
2. **CONFLICT OF CONDITIONS:** Any different terms or conditions in Seller's quotation or acknowledgement of this Purchase Order are not binding on Purchaser unless accepted in writing by Purchaser and shipment of any material or the rendering of any services shall be deemed to be an acceptance by Seller of the terms and conditions on this Order. Seller is hereby notified in advance of Purchaser's objection to any proposed or additional or different terms or conditions. Payment by the Purchaser of all or any part of the purchase price shall not be deemed an acceptance of any different terms or conditions.
3. **DISCOUNTS:** Discount period, if any is agreed to in writing, begins date invoice is received or date material is received, whichever is later.
4. **CHANGES:** This form, and Change Orders, thereto, when properly signed and bearing an order number, are the only forms which will be recognized by Purchaser as authority for charging merchandise to its account.
5. **EXCESS:** The quantity of merchandise delivered by Seller to Purchaser shall not be greater than the amount specified on this Purchase Order, unless an additional amount is first ordered by Purchaser in writing prior to shipment. At project completion, the Purchaser may return any unused portion of the merchandise to Seller which is in good condition for credit. If it is a standard material, then Seller shall offer full credit for the merchandise. If the merchandise is specifically manufactured or fabricated in accordance with the project specifications, then a reasonable restocking charge, not to exceed 25 percent of the original value, shall be negotiated between the Purchaser and the Seller.
6. **PACKING:** Seller shall properly package all merchandise for safe shipment to the Purchaser and a notice of shipment shall be sent by Seller to Purchaser at the time the merchandise described on the attached purchase order is shipped which shall state the number of the order, the kind of merchandise, the Seller's name and the route by which the shipment is being made.
7. **CARTAGE:** Seller warrants that any transportation costs included in the price will not exceed actual transportation costs paid to Seller. If this order calls for any transportation costs by Purchaser, Purchaser shall in no event be liable or accountable for any amount in excess of the actual cost of transportation. Seller shall be accountable for any excess transportation costs arising from Seller's failure to make delivery to the f.o.b. point or to follow shipping instructions specified.
8. **CANCELLATION AND DEFAULT:** If the merchandise covered by this order is standard stock merchandise, Purchaser at its option, may cancel at anytime any unshipped portion of this order without further obligation hereunder, except to make payment subject to other applicable terms hereof for the merchandise actually shipped prior to such cancellation. If this order covers merchandise manufactured or fabricated to Purchaser's specifications or specifications especially prepared by Seller's purchasers, then at any time prior to delivery of merchandise covered thereby, Purchaser at its option, may cancel this order, in whole or in part by written or telegraphic notice to Seller, and in such event the following provision shall cover and control:
 - (a) Upon effective date of such cancellation, Seller shall stop all work in connection with this order, except as otherwise directed by the Purchaser.
 - (b) Purchaser shall pay Seller's actual and direct out-of-pocket costs to the date of such cancellation, including Seller's expense in connection with cancellation of any subcontracts, all as approved by purchaser, plus 5% of such costs, provided, however, that in no event shall the total amount to be paid upon such cancellation, plus previously made, exceed the lesser of (1) the total aggregate purchase price specified herein; or (2) that portion of the aggregate total purchase price specified herein that the work actually performed hereunder to the date of cancellation bears to the entire work to be performed hereunder.
 - (c) On such payment the materials or uncompleted portions of the work shall be the property of the Purchaser and shall be subject to its disposition.None of the above provisions of this Article 8 relating to payment upon cancellation shall apply in the event, at the time notice of cancellation is given, Seller is in default in delivery or otherwise has breached any terms of conditions of this order. In the event of any such default or breach Purchaser shall have the right to terminate this order in whole or in part and the Purchaser may procure elsewhere merchandise similar to the merchandise as to which this order is so terminated, and Seller shall be liable for any costs, for such similar merchandise in excess of the price or prices specified herein, provided, however, that Seller shall continue the performance of this order to the extent not terminated by the Purchaser. In addition, to the rights provided above, Purchaser may exercise any other rights or remedies provided by law or under this order for any such default or breach by Seller.
9. **INSPECTION AND RETURN:** Irrespective of any prior payment therefore, all merchandise hereby ordered is subject to inspection and testing by Purchaser within a reasonable time after arrival at the ultimate destination. If upon inspection or testing such merchandise is found to be unsatisfactory, defective, or inferior quality or workmanship or any other requirements of this Purchase Order, then without prejudice to any other rights or remedies, Purchaser may return the merchandise or any part thereof to Seller, and all amount therefore paid by Purchaser to Seller on account of the purchase price of such returned merchandise together with any costs incurred by purchaser in connection with the original delivery or return of such merchandise shall be repaid to Purchaser by seller. Neither the inspection or the acceptance of merchandise shall release the Seller from any of the warranties or other provisions of this Order. Purchaser reserves the rights, even after it has been paid for and accepted said merchandise, to make a claim against Seller on account of any merchandise hereby ordered which does not prove to be satisfactory or is defective.
10. **WARRANTY:** Seller warrants that said merchandise will correspond with the description of the same of this Purchase order, will conform to any applicable specifications and shall be of good merchantable quality and fit for the known purpose for which it is sold. Seller also warrants that said merchandise is free and clear of all liens and encumbrances whatsoever and that Seller has a good marketable title to same, and Seller agrees to hold Purchaser free and harmless against any and all claimants to said merchandise. The warranty/guarantee period of the said merchandise shall be for a period of one (1) year after the date of acceptance of the work by the Owner or more if required by specifications. The Seller shall repair or replace any defective material and/or equipment during installation, start-up and/or within said warranty period, without expense whatsoever to SUNBELT CONTROLS, ordinary wear and tear and unusual abuse or neglect expected. In the event of failure to comply with the above mentioned within 48 hours after being notified in writing. SUNBELT CONTROLS is hereby authorized to proceed to have the defects remedied and made good at the expense of the Seller who hereby agrees to reimburse the cost and charges therefore immediately on demand to the Purchaser.
11. **PATENTS:** Seller agrees that the sale or use of merchandise covered by this Purchase Order does not infringe upon any United States patent, trademark or copyright and Seller shall hold Purchaser and its vendees harmless against any suit or judgement entered against the Purchaser or its vendees on account of any infringement.
12. **MATERIAL SAFETY DATA SHEETS:** California State Law requires manufacturers and supplier or materials, which contain one or more hazardous substances, as determined by CAL/OSHA, a Material Safety Data Sheet (MSDS) on Form OSHA 20 be provided to the Purchaser. The MSDS must give information regarding the health risks in the use of the substance, proper precautions for handling the substance, necessary personal protection equipment and other safety precautions in the use or exposure to the hazardous substance, as well as emergency procedures for spills, fire, disposal and first aid. If your product contains a hazardous substance, please send SUNBELT CONTROLS a MSDS immediately. Failure to do so could result in payments being withheld.
13. **LOSS OR DAMAGE:** Seller shall assume and pay any and all loss or damage to said merchandise from any cause whatsoever until delivered to Purchaser at the f.o.b. point specified on this Purchase Order. Upon delivery of such merchandise to a common carrier at such f.o.b. point properly consigned to Purchaser, any loss or damage to such merchandise thereafter occurring shall be borne by Purchaser.
14. **LAW AND REGULATIONS:** Seller warrants that all merchandise delivered pursuant to this order shall have been produced, sold and delivered to Purchaser in compliance with all applicable laws and regulations, including the Federal Occupational Safety and Health Act of 1970, and that the prices therefore, are not in excess of any applicable prices established by law or government regulation.
15. **TAXES:** The Purchaser certifies that he is a licensed contractor, and material covered by this Purchase Order is tax exempt by reason of consumption in tax exempt construction, or if subject to tax, tax will be paid direct to the state involved by the Buyer, unless specifically noted otherwise on the Purchase Order. Detailed Tax Exemption Certificates, Direct Pay Permits, or other certification required by the involved will be furnished upon request.

16. GENERAL:

- (a) Equipment and/or materials included in this order shall be in strict accordance with project plans, specifications, addenda for subject project, as it pertains specifically and singularly to the equipment being purchased and subject to final approval and acceptance by owners, architects and engineers. The manufacture of this equipment and/or materials shall be bound by the same conditions of performance and guarantee under this Purchase Order as the Purchaser is bound, under requirements of the plans, specifications, and addenda in the contract documents for this project. The word "contractor" as used in the project specification shall mean Seller and various sections of specifications shall apply to the product/equipment/material covered in this Purchase Order. Unloading and field installation shall be the responsibilities of the Purchaser, unless noted otherwise.
- (b) Time is of the essence hereof, in accepting this order, making any deliveries and performing field/start-up services hereunder. Seller agrees to all of the terms and conditions stated in this Purchase Order form and agrees to perform this Order, make deliveries and perform field/start-up services hereunder as required hereby, and to comply with overall project schedule for completion of project. Seller is responsible for Purchaser's loss, cost and damages resulting from Seller's failure to comply with agreed delivery dates.
- (c) This Purchase Order, together with any written documents which may be attached hereto and/or incorporated by specific reference, constitutes the entire agreement between the parties and supersedes all previous communications between them either oral or written. All such previous communications are hereby abrogated and withdrawn, and no stipulations, representations or agreements by Purchaser or any of its officers, agents or employees shall be binding on the Purchaser unless reduced to writing and attached to or incorporated in the Purchase order by reference as above provided and no local general or trade custom shall alter or vary the terms hereof.
- (d) In case of conflicts between the terms and conditions, the more stringent requirement as determined by Purchaser shall govern.
- (e) In the event there should be legal action in connection with this Purchase Order, then the prevailing party is entitled to recover reasonable attorneys and expert fees in addition to the other relief to which it is entitled.
- (f) Listing of vendor's lead times and/or promised delivery dates does not imply Purchaser's agreement to same.
- (g) Seller shall furnish all necessary lien waivers, affidavits or other documents, required to keep the Job premises free of all liens or claims for liens, arising out of the furnishing of the material or equipment herein, as payments are made from time to time under this purchaser order.

17. COMPLIANCE WITH DRAWINGS AND SPECIFICATIONS:

- (a) Any technical specifications or data furnished to the Seller with this Purchase Order or any other applicable general conditions, special conditions, specifications, plans, drawings, and addenda referred to in the project specifications or contract plans are incorporated herein as "the Contract Requirements". All material supplied under this Purchase Order shall conform with and be manufactured in accordance with such Contract Requirements. No deviation shall be permitted except with the prior written approval or Purchaser.
- (b) Seller shall furnish to Purchaser copies of accurate submittal drawings and data. With respect to the furnishing of the accurate submittals, time is of the essence. Where applicable, separate submittals for each item are to be furnished. A single submittal carrying multiple items shall not be deemed sufficient hereunder. All proposed deviations from the Contract Requirements referred to above, shall be clearly shown on the submittal drawings and data and shall be fully described in their transmittal if indicated on the face hereof. Seller shall also furnish submittal drawings and data on purchased materials.
- (c) In accordance with contract documents, Seller shall furnish specified number of copies of operating and maintenance manuals to Purchaser.
- (d) Seller shall furnish qualified personnel, without additional cost, to provide erection assistance, start-up of equipment, field performance testing, and on-site operating and maintenance instruction and supervision to representative designated in the Contract requirements or in the absence of such designation therein, to representative designated to Purchaser.
- (e) It is understood and agreed that at all times during which hoisting and rigging equipment is being supplied to Purchaser, operator of such equipment shall be in charge of his entire equipment and shall at all times be the judge of the safety and property of any suggestion to him from the Purchaser, its agents or employees. Seller further agrees to save, indemnify and hold harmless Purchaser from all loss, claims, demands or causes of action, which may arise from the existence or operation of Sellers equipment.
- (f) The ideas, information, drawings and specifications supplied by Purchaser shall remain the Purchaser's property, shall be retained in confidence by Seller and not disclosed to any other person or entity.

18. CLAIMS RESOLUTION PROCEDURE: All claims, disputes and matters in question arising out of, or relating to this Purchase Order or the breach thereof, except for claims which have been waived by the making or acceptance of final payment, shall be decided by the claims procedure, including any arbitration and/or forum selection clause, specified in the contract between Purchaser and Contractor or Owner. In the absence of an agreement to arbitrate in the contract between Purchaser and Contractor or Owner, claims or disputes shall be arbitrated if elected by Purchaser.**18.1** In the event the contract between Purchaser and Contractor or Owner or if arbitration is elected by Purchaser, the following shall apply;

- (a) Notice of Demand for Arbitration shall be filed in writing with Seller and shall conform to the requirements of the arbitration provision set forth in any contract between Purchaser and Contractor or Owner. The Demand for Arbitration shall be made within a reasonable time after the written notice of the claim, dispute or other matter in question, and in no event shall be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matters in question would be barred by the applicable statute of limitations.
- (b) The award rendered by the arbitrator(s) shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.
- (c) Unless otherwise agreed in writing, Seller shall continue to sell and deliver merchandise as specified in the Purchase Order, and, if so, Purchaser shall continue to make payments in accordance with this Purchase Order.
- (d) To the extent not prohibited by their contracts with others, the claims and disputes of Purchaser, Seller, Owner, Contractor, Subcontractor and other subcontractors involving a common question of fact or law shall be heard by the same arbitrator(s) in a single proceeding. In this event, it shall be the responsibility of Seller to prepare and present Purchaser's case, to the extent the proceedings are related to this Purchase Order. Should Purchaser enter into arbitration with the Owner, Contractor or others regarding matters relating to this Purchase Order, Seller shall be bound by the result of the arbitration to the same degree as Purchaser.
- (e) This section shall not be deemed a limitation of any rights or remedies which Purchaser may have under the Federal or State mechanic's lien laws or under any applicable payment bonds unless such rights or remedies are expressly waived by him.
- (f) Seller agrees to consolidation and/or joinder of all parties whose participation is necessary to complete resolution of the claim or dispute.

19. EQUAL OPPORTUNITY: Seller agrees to be subject to all applicable contract clauses required by federal, state, or local law, rule, or regulation to be included in this PO, including, but not limited to, the following clauses, which are incorporated herein by this reference: Equal Opportunity Clause (41 CFR 60.1.4); Affirmative Action Clause for Disabled Veterans and Veterans of the Vietnam Era (41 CFR 60-250.4); Affirmative Action Clause for Handicapped Workers (41 CFR 60-741.4); and the Certification of Nonsegregated Facilities Clause (41 CFR 60.1.8; 41 CFR 1-12.803.10). In addition, Seller agrees and certifies, if applicable, that it has developed a written affirmative action compliance program (41 CFR 60-1.40(a)) and annually files Standard Form 100 (EEO-1) (41 CFR 60-1.7(a)).**20. ENTIRE AGREEMENT:** This Purchase Order represents the entire Agreement between Purchaser and Seller and supercedes any prior written or oral representations. Modifications to this Agreement proposed by Seller are not acceptable unless specifically agreed to in writing by Purchaser.