



## **EBE PURCHASE ORDER PROVISIONS**

The following articles will apply to all purchase orders issued to a vendor for items being purchased by EBE. (EBE hereinafter referred to as "Buyer", and the Vendor referred to as "Seller" or "Supplier".

### **1. ORDER ACCEPTANCE.**

This order is for the purchase and sale of goods and services described on the face of this order (hereinafter "items"). Acceptance of this order shall be limited to the terms and conditions contained herein and incorporated herein by reference. This order shall be deemed accepted upon the return of an acknowledgment copy of this order or the commencement of performance by Seller. These terms and conditions constitute the entire agreement between the parties and no change to or modification of this order shall be binding upon Buyer unless in writing and signed by an authorized representative of Buyer.

### **2. MATERIAL, EQUIPMENT, TOOLS AND FACILITIES.**

Title to property furnished to Seller by Buyer or paid for by Buyer under this order, as well as any replacements thereof, (all hereinafter referred to as "Property") shall be vested in Buyer with the right to demand possession at any time in the same condition as originally received by Seller, reasonable wear and tear excepted. Seller will use said Property only in the performance of work for Buyer. Seller shall bear the risk of loss of all Property while in Seller's custody or control and while in the custody or control of Seller's suppliers. Seller shall establish and maintain a system to control, protect, preserve and maintain all Buyer-owned property. Buyer shall have the right to enter Seller's premises at all reasonable times to inspect its property and Seller's records with respect thereto. Buyer does not warrant any aspect of the Property that it furnishes and all items delivered by Seller must be in strict accordance with the requirements of this order.

### **3. DELIVERIES AND SHIPMENTS.**

Delivery of the items and related data and/or documentation and/or performance of required services in accordance with the schedule are material requirements of this order. TIME IS OF THE ESSENCE. Seller will, at its expense, ship by express or air shipment or by the most expeditious way possible, if the delivery schedule is endangered for any reason other than Buyer's fault. Buyer reserves the right to reject all or any part of any delivery that varies from the quantity authorized by Buyer for shipment. All items shall be packaged in accordance with Buyer's instructions or, if none are specified, in accordance with good commercial practice in a manner sufficient to ensure arrival in an undamaged condition. Title and risk of loss to items shall pass to Buyer at the F.O.B. point specified on the face of this order, unless earlier passed pursuant to other provisions of this order.

Containers must be marked with the following: (i) address, (ii) purchase order number, (iii) part number, and (iv) any other special markings called for by this Order.

The Seller shall notify the Buyer of any known nonconforming product that is expected to be delivered or has been delivered. The Buyer shall have authority for approval or refusal of identified nonconforming product. Defective goods may be returned at Seller's expense.

### **4. INSPECTION/RIGHT OF ACCESS.**

Notwithstanding (i) payment, (ii) passage of title, or (iii) prior inspection or test, all items are subject to final inspection and acceptance or rejection by Buyer at Buyer's facility. Buyer may inspect 100% or a sample of all items or any lot of items at Buyer's option, and Buyer shall have the right to reject all or any portion of the items or lot of items if any such inspection reveals them to be, in Buyer's sole opinion, defective or nonconforming. At Buyer's request, Seller must repair or replace rejected items in an expedited manner at Seller's own expense. Buyer may, at Buyer's sole discretion, choose to rework, repair, or replace all or any portion of defective or nonconforming product delivered by Seller, at Seller's expense, if at Buyer's sole determination, it appears that Seller is unwilling, unable, or incapable of replacing such defective or nonconforming materials within the Buyer's required schedule. At all reasonable times, including the period of manufacture, the Buyer, and/or its customers and regulatory authorities with Buyer consent, reserves the right to audit processes and systems, records, and to verify conformance of the item(s) and services to be furnished hereunder at the places where the work is being performed, including those of the Seller's suppliers. Seller shall provide, without additional charge, reasonable facilities and assistance for safe and convenient inspection and test. Seller shall provide and



maintain a test and inspection system acceptable to Buyer and its customers, if required.

#### **5. WARRANTY.**

Seller warrants to Buyer, its successors and customers that for a period of twelve (12) months after delivery of items or completion of services or for such longer period offered by Seller, that all items furnished to Buyer will be free from defects in material and workmanship, will conform to applicable drawings, designs, specifications and samples, will meet all functional and performance requirements and, to the extent this order calls for services to be performed, that such services will be free from defects in workmanship, will meet all of the requirements of this order and will be performed to the highest standards of workmanship in the industry.

#### **6. CHANGES: by Buyer**

Buyer may, at any time, by a written change order, without notice to any sureties, make changes in any one or more of the following: (i) drawings, designs, specifications, where the items to be furnished are to be specially manufactured for the Buyer in accordance therewith; (ii) method of shipment or packing; (iii) place or time of inspection, delivery, or acceptance; (iv) the quantity and/or type of services ordered, (v) the work or service schedules, and (vi) the amount of any Buyer furnished property. If any such change causes an increase or decrease in the cost of or time required for performance of this order, whether or not changed by the order, an equitable adjustment shall be made in the price or delivery schedule or both and this order shall be modified accordingly. No claim by Seller for adjustment hereunder shall be allowed unless made in writing for a specified amount within twenty (20) days from the date notice of any such change is received by Seller. Only a member of Buyer's Management Team has authority to approve a change. Nothing in this Article shall excuse Seller from proceeding with performance of this order as changed.

#### **7. CHANGES: by Seller (supplier)**

Seller shall notify the Buyer of changes to product and/or process definitions that may impact form, fit, or function at the time of order. Seller shall immediately notify the Buyer when a change occurs in manufacturing facility location or Quality Management.

#### **8. STOP WORK ORDERS.**

Buyer may, at any time by written order, require Seller to stop all or any part of the work under this order for a period of up to ninety (90) days after delivery of such stop work order, and for any further period as the parties may agree. Immediately upon receipt of such stop work order, Seller shall comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work stoppage. At any time during such period, Buyer may, in whole or in part, either cancel the stop work order or terminate the work in accordance with the "Termination" Article of this order (see Article 9, below). To the extent the stop work order is canceled or expires, Seller shall resume work. If a stop work order is the sole and exclusive cause of a material change in cost or delivery, an adjustment shall be made in the price (excluding profit) or the delivery schedule, or both and this order modified accordingly; provided, however, that no adjustment in price or delivery shall be made under this Article if, (i) the work would have been otherwise interrupted or delayed, or (ii) such adjustment is available or expressly excluded under any other provision of this order. No claim for adjustment shall be allowed unless submitted to Buyer in writing in a specified amount within twenty (20) days after the work is terminated or the stop work order expires or is canceled whichever first occurs.

#### **9. TERMINATION.**

Buyer may terminate this order in whole or in part at any time by written or electronic notice stating the extent and effective date of such termination. In such event, the rights of the parties shall be governed by the provisions of the clause set forth in Subsection 52.249-2 of the Federal Acquisition Regulations ("FAR") as in effect on the date of this order, which clause is incorporated herein by reference. Buyer shall have the right to audit all elements of any termination claim and Seller shall make available to Buyer or Buyer's representative on request, all books, records, and papers relating thereto.

Buyer reserves the right to terminate this order in whole or, from time to time, in part for Seller's default (i) if Seller fails or refuses to perform in accordance with any of the requirements of this order or to make progress so as to endanger performance hereunder, or (ii) if Seller becomes insolvent or suspends any of its operations or if any petition is filed or proceeding commenced by or against Seller under any state or Federal law relating to bankruptcy, arrangement, reorganization, receivership or assignment for the benefit of creditors. If, after a default termination, it is determined that Seller was not in default, the termination shall be considered to have



been made pursuant to the first subparagraph of this Article. Buyer or its designee shall have the right to audit all elements of any termination claim and Seller shall make available to Buyer or Buyer's designee on request, all books, records, and papers relating thereto. Termination of the order for default shall be without prejudice to any other rights and remedies of the Buyer under statute or common law.

#### **10. EXCUSABLE DELAYS.**

Neither party shall be in default for any delay or failure to perform hereunder due to causes beyond its control and without its fault or negligence; provided, that any delay or failure to perform caused by the default of a supplier of the Seller at any lower-tier shall be excused only if it is beyond the control of both Seller and such supplier and without the fault or negligence of either and the items to be furnished are not obtainable from other sources in sufficient time to permit Seller to meet the delivery schedule. If delivery of any item is delayed by any excusable delay of more than three (3) months, Buyer may, without any additional extension, cancel all or part of any order with respect to the delayed product, and exercise any of its remedies in accordance with Termination Article 9 above, provided, however, that the Buyer shall not be entitled to monetary damages or specific performance where Seller's breach is the result of an Excusable Delay.

#### **11. PRICES, TAXES AND NEW MATERIAL.**

Seller warrants that none of the items furnished under this order are surplus, used, remanufactured or reconditioned or of such age or so deteriorated as to impair the usefulness or safety thereof, unless otherwise specifically stated on the face of this order. Unless otherwise provided on the face of this order, THE PRICES APPEARING HEREIN INCLUDE ALL PACKAGING, CRATING AND FEDERAL, STATE AND LOCAL TAXES, IF APPLICABLE, AND ARE FIRM FOR THE PERIOD OF CONTRACT PERFORMANCE.

#### **12. PAYMENT TERMS.**

Payment periods will be computed from either the date of delivery or acceptance of the items ordered or the date of receipt of correct and proper invoices prepared in accordance with the terms of the order, whichever is later. The payment date will be delayed on a day-for-day basis for any item that is delivered later than called for by the schedule on the face of this order. Payment terms will be (i) as mutually agreed between Buyer and Seller; or (ii) if no agreement between Buyer and Supplier, Net 30 days.

#### **13. SETOFF.**

Buyer may offset any amount due from Seller to Buyer, whether or not under this order, from any amounts due to Seller under this order.

#### **14. DESIGNS, DRAWINGS AND DATA**

With respect to any technical or other information and/or data, whether transmitted in writing, orally, or otherwise, that: (i) has been supplied to Seller by or on behalf of Buyer; or (ii) Seller has designed, developed, or created at Buyer's expense; or (iii) Seller has designed, developed, or created specifically to meet Buyer-furnished technical requirements; (hereinafter designated "information"), and with respect to any item designed, developed, and/or created using such information, Seller, in consideration of Buyer's furnishing of such information and/or design funding, agrees that it will not use or assist others in using, such information, design funding, or tooling to develop for, or supply items to, anyone other than Buyer, either as production, spares, or repaired items, without Buyer's prior written consent. Seller shall not use or disclose such information to others except in the performance of orders for Buyer, and upon Buyer's request, such information and all copies thereof shall be returned to Buyer. If Seller must disclose such information in the course of fulfilling its contractual obligations, it shall be responsible for insuring compliance with these provisions by all entities which receive such information.

Information shall be and remain the property of Buyer. Moreover, information prepared by Seller specifically in connection with performance of this order, including original works of authorship created by Seller, are considered "works made for hire" under U.S. Copyright Law. Buyer shall be deemed the author of such works. If any such work is determined by a court of competent jurisdiction not to be a work made for hire, this agreement shall operate as an irrevocable assignment by the author of such work to Buyer, of the copyright in the work, including all right, title and interest throughout the world. Seller further agrees to assign to Buyer all other intellectual property rights to information or to any item designed, developed, or created using such information.



#### **15. PATENT, TRADEMARK AND COPYRIGHT INDEMNITY**

Seller shall indemnify and hold harmless Buyer from any and all damages, costs, including legal fees, losses, and liabilities resulting from a suit or proceeding from infringement of any patent, trademark or copyright by reason of the sale or use of any item sold to Buyer hereunder, and from reasonable expenses incurred by Buyer in defense of such suit or proceeding if Seller does not undertake the defense thereof; provided, that Seller is promptly notified of any such suit and, except for suits against the U.S. Government, Buyer offers Seller full and exclusive control of the defense of such suit or proceeding when products of Seller only are involved therein or the right to participate in the defense of such suit or proceeding when products other than those of Seller are also involved therein; except that, this indemnity shall not extend to infringement resulting solely from Seller's compliance with Buyer's specific designs, processes or formulas. In the event of an injunction or restraining order, Seller shall, at its own expense, either procure for Buyer the right to continue to sell and use the item, or replace or modify the item so that it becomes non-infringing. Seller shall also indemnify Buyer's customers and agents for such infringement if and to the extent that Buyer has agreed so to indemnify them, but to no greater extent than Seller has indemnified Buyer herein and under the same conditions as set forth herein.

#### **16. INDEMNIFICATION AND INSURANCE.**

Seller shall indemnify and hold harmless Buyer, its directors, officers, employees agents and invitees from and against all liability, demands, claims, losses, costs, damages and expenses, including but not limited to attorneys' fees, by reason or on account of property damage, death and personal injury of whatsoever nature or kind arising out of, as a result of, or in connection with the performance of this order that is occasioned by the actions or omissions of Seller or its subcontractors or suppliers of any tier. Seller will maintain and carry liability insurance which includes but is not limited to commercial general liability (including product liability and for services to be performed, completed operations liability) in a sum no less than \$1 million, automobile liability in a sum no less than \$1 million, workmen's compensation in an amount no less than the applicable statutory minimum requirement and employer's liability in an amount of no less than \$1 million. Seller will, if requested by Buyer, furnish certificates of insurance from its carrier(s) on the foregoing coverages, which shall provide that such coverage shall not be changed without thirty (30) days advance written notification to Buyer from the carrier(s).

#### **17. NOTICE OF LABOR DISPUTES.**

Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this order, Seller shall immediately give notice thereof, including all relevant information with respect thereto, to Buyer.

#### **18. SELLER'S STATUS.**

It is understood and agreed that seller and/or its employees engaged in the performance of this order by the Seller, are not employees of EBE and are not entitled to EBE employee benefits or privileges or any payment from EBE (other than as expressly provided for in this order) and the Seller shall pay the salaries or expenses, applicable taxes, including Social Security and unemployment of said employees. Seller shall also pay any expenses normally paid by an employer in connection with its employees assigned to EBE and shall be deemed to be an Independent Contractor at all times during its performance of the work specified in this order.

#### **19. COMPLIANCE WITH LAWS.**

Seller shall comply with all applicable federal, state and local laws, Executive Orders, rules and regulations during performance of this order, including but not limited to, the Occupational Safety and Health Act of 1970 as amended ("OSHA"); Toxic Substances Control Act as amended ("TSCA"); the Fair Labor Standards Act of 1938 as amended ("FLSA"); the Clean Air Act as amended; the International Traffic in Arms Regulations ("ITAR") as amended; and the Anti-Kickback Act of 1986 as amended.

Seller warrants that all representations and certifications furnished by Seller as required by law or regulation in connection with this order are accurate, current and complete as of the effective date of this order, and that to Seller's knowledge no person has been paid a kickback or illegal gratuity in connection with this order. Seller agrees to indemnify and hold Buyer and its customers harmless for any loss, damage or expenses sustained because any certification or representation herein or required by law or regulation made by Seller was inaccurate, non-current or incomplete or due to Seller's non-compliance with any applicable law or regulation.



To the extent it is applicable to Seller's products, Seller shall at all times be in compliance with the Fastener Quality Act (Public Law 101-592 as amended by Public Laws 104-113, 105-234, and 106-34) and as amended from time to time (the "Act"). Seller shall defend (with counsel of Buyer's choosing), indemnify and hold harmless Buyer from any and all claims, demands and causes of action brought by Buyer and/or by a third party against Buyer in any manner relating to Seller's failure to comply with the Act. Seller's indemnity shall include, but not be limited to, reimbursement of any costs associated with any return, recall or retrofit of parts sold under this order which are not in compliance with the Act.

**20. RELEASE OF INFORMATION TO PUBLIC.**

Seller shall not, without the prior written consent of Buyer, make any release of information concerning this order or any other information related to the Buyer.

**21. ORDER OF PRECEDENCE.**

In the event of any conflict among the provisions of this order, the following order of precedence shall apply in interpreting this order:

- A. The text of the order.
- B. Any Special or Supplemental Terms and Conditions incorporated by reference in the order.
- C. These General Purchase Order Provisions.
- D. Other Contract Documents.

**22. DISPUTES.**

Except as otherwise specifically provided in this order, any dispute concerning a question of fact and/or law arising under this order that is not disposed of by agreement of the parties shall be decided by arbitration under the rules and procedures of the American Arbitration Association. To the extent that the issue in dispute between Buyer and Seller is related to an issue in dispute between Buyer and its customer, Seller agrees to a stay in arbitration proceedings until Buyer's dispute with its customer is finally resolved, either through settlement or judgment. Pending settlement or final decision of any such dispute, Seller shall proceed diligently with the performance of this order in accordance with the directions of the Buyer.

**23. CHOICE OF LAW.**

The construction, interpretation and performance hereof and all transactions hereunder shall be governed by the law of the State of California. Jurisdiction and venue shall be proper only in a state or federal district court of California.

**24. RIGHTS AND REMEDIES OF BUYER.**

The rights and remedies of the Buyer set forth herein shall be in addition to any other rights and remedies provided in law or equity and the failure or delay by Buyer to exercise any rights or remedies under this order shall not operate as a general waiver thereof.

**25. NON-WAIVER.**

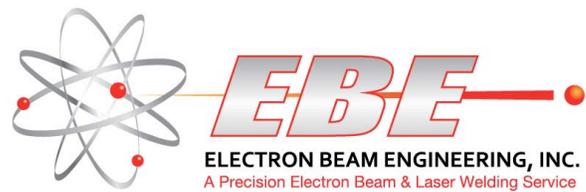
No failure by Buyer to assert its rights under any provision of this order, or failure of Seller to perform any provision of this order, shall be effective as a waiver thereof unless consented to in writing by the buyer; nor shall any such waiver constitute an advance waiver of any other provision or failure to perform.

**26. ASSIGNMENT AND SUBCONTRACTING.**

Any assignment or subcontract for a majority of the materials and/or labor by Seller of or under this order shall be void unless consented to by Buyer in writing.

**27. SEVERABILITY.**

If in any instance, any provision of this agreement shall be determined to be invalid by any court of competent jurisdiction, or unenforceable under any applicable law, such provision shall be ineffective only to the extent of such prohibition or unenforceability. All remaining provisions shall remain in full force and effect.



## **28. FEDERAL ACQUISITION REGULATIONS.**

If a contract is issued under a United States Government prime contract or subcontract, the clauses listed in FAR subpart 52.3 – Provision and Clause Matrix, required for the type of contract issued and in effect on the date of the contract, are incorporated herein by reference and the terms and conditions thereof shall be controlling over any conflicting terms and conditions set forth herein. A list of applicable FAR provisions may be incorporated into this section under separate cover.

## **29. NOTICES.**

All notices required or permitted to be given hereunder or by any other purchase order requirement, shall be deemed to be properly given if delivered in writing personally, or sent by United States certified or registered mail, addressed to Buyer, or to Seller as the case may be, at the addresses set forth on the face of the purchase order with postage thereon fully prepaid. The effective time of notice shall be at the time of mailing. Facsimile or electronic transmission is an acceptable alternate method of notification provided that both buyer and seller mutually agree and the sender obtains a confirmation of receipt.