

Purchase Order Terms and Conditions

1. **Acceptance of Contract:** General Die & Engineering, Inc., hereinafter referred to as "Buyer", shall not be bound by this order until seller executes and returns to Buyer the acknowledgement copy of this order. Seller shall be bound by this order and its terms and conditions when it executes and returns the acknowledgement copy, when it delivers to Buyer any of the goods ordered herein or conditions for Buyer any of the services ordered herein, or when it fails to deliver written objection to this Purchase Order within five days after receipt, whichever first occurs. This order expressly limits acceptance to the terms and conditions stated herein, and any additional or different terms proposed by the Seller are rejected unless expressly assented to in writing by Buyer. No contract shall exist except as hereinabove provided.
2. **Amendments:** The parties agree that this purchase order including the terms and conditions on the face and reverse side hereof together with any documents attached hereto or incorporated herein by reference contains the complete and final contract between Buyer and Seller that no agreement or understanding to modify this contract shall be binding upon Buyer unless in writing and signed by Buyer's authorized representatives. All specifications, drawings, and data submitted to Seller with this order or referred to by this order are hereby incorporated herein and made a part of this contract.
3. **Changes:** The Buyer reserves the right at any time to make written changes in any one or more of the following: (a) specifications, drawings, and data incorporated in this contract where the items to be furnished are to be specially manufactured for the Buyer; (b) methods of shipment or packing; (c) place of delivery; (d) time of delivery; (e) manner of delivery; and (f) quantities. If any such change causes an increase or decrease in the cost of or the time required for performance of this contract, an equitable adjustment shall be made in the contract price or delivery schedule, or both. Any claim by Seller for adjustment under this clause must be approved by the Buyer in writing before the Seller proceeds with such change. Prices increases shall not be binding on Buyer unless evidenced by a purchase order change notice or revision issued and signed by Buyer.
4. **Delivery:** Time is of the essence in this contract, and if delivery of goods is not made in the quantities and at the times specified, or rendering of services is not completed at the times specified, Buyer reserves the right without liability, and in addition to its other rights and remedies, to take either or both of the following actions: (a) direct expedited routings of goods (the difference in cost between the expedited routing and the order routing costs shall be paid by Seller); (b) terminate this contract by notice effective when received by Seller as to stated goods not yet shipped or services not yet rendered, and to purchase substitute goods or services elsewhere and charge Seller with any loss incurred. Seller shall be liable for excess transportation charges, delays or claims resulting from Seller's deviation from Buyer's routing instructions. Neither party shall be liable for excess costs of deliveries or defaults due to causes beyond its control and without its fault or negligence, provided, however, that when the Seller has reason to believe that deliveries will not be made as scheduled, written notice setting forth the cause of the anticipated delay will be given immediately to Buyer. If Seller's delay or default shall be excusable on if it arose out of causes beyond the control of both Seller and subcontractor and without the fault or negligence of either of them and the goods to be furnished or services to be rendered were not obtainable from other sources in sufficient time to permit Seller to meet the required delivery or performance schedule. Buyer will have no liability for payment for goods delivered to Buyer which are in excess of quantities specified in this contract and delivery schedules. Such goods shall be subject to rejection and return at Seller's expense, including transportation charges both ways. Buyer will not be liable for any material or production costs incurred in excess of the amount or in advance of the time necessary to meet Buyer's delivery schedules.
5. **Inspection and Acceptance:** Payment for any goods under this contract shall not constitute acceptance thereof, all goods purchased hereunder are subject to inspection at Buyer's destination either before or after payment or before or after acceptance, at Buyer's option. Buyer reserves the right to reject and refuse acceptance of goods which are not in accordance with the instructions specifications, drawings and data or Seller's warranties (express or implied). Goods not accepted will be returned to Seller for full credit or replacement at Buyer's option and at Seller's risk and expense including transportation charges both ways. No replacement of rejected goods shall be made unless specified by Buyer in writing. Buyer shall not be liable for failure to accept any part on the goods if such failure is the result of any cause beyond the control of Buyer. Among such causes, but not definitive thereof, are fires, floods, acts of God, strikes, difference with employees, casualties, delays in transportation, shortages of cars, inability to obtain necessary materials or machinery or total or partial shutdown of Buyer's plant for any cause. Acceptance of any part of the goods shall not bind Buyer to accept future shipments nor deprive it of the right to return goods already accepted. Acceptance of all and any parts of the goods shall not be deemed to be a waiver of Buyer's right either to cancel or to return all or any portion of the goods because of failure to conform to this contract, or by reason of defects, latent or patent, or other breach of warranty, or to make any claim for damages, including manufacturing costs, damage to materials, or articles caused by improper boxing, crating or packing, and loss of profits or other special damages occasioned the Buyer. Such rights shall be in addition to any other remedies provided by law.
6. **Packing, Drayage and Containers:** No charges for packing, drayage or containers will be allowed unless specified on the face of this order, or specifically listed as an additional and separate charge on Seller's quotation and acceptance of this order. Seller shall be liable for damage for materials or articles described herein caused by improper boxing, crating or packing.
7. **Seller's Warranties:** Seller hereby warrants that the whole of the goods furnished hereunder shall be of merchantable quality and fit for Buyer's purposes and that they shall conform to Buyer's instructions, specifications, drawings and data. Seller hereby further warrants that the whole of the goods furnished hereunder shall conform to all representations, affirmations, promises, descriptions, samples or models forming the basis of this contract. Seller agrees that these warranties shall survive acceptance of the goods. Seller further warrants that all services performed for or on behalf of the Buyer will be performed in a competent, workmanlike manner and shall be free from faults and defects. Said warranties shall be in addition to any warranties and no other implied or express warranties shall be deemed disclaimed or excluded unless evidenced by a purchase order change notice or revision issued and signed by Buyer.
8. **Property of Buyer:** Unless otherwise provided in this order or agreed to in writing, property of every description including but not limited to all tooling, tools, equipment and material furnished or made available to Seller, title to which is in Buyer, and any replacement thereof shall be and remain the property of Buyer. Property other than material shall not be modified without the written consent of the Buyer. Such property shall be plainly marked or otherwise adequately identified by Seller as "Property of General Die & Engineering, Inc." and shall be safely stored separately and apart from Seller's property. Seller shall not use such property except for performance of work hereunder or as authorized in writing by Buyer. Such property while in Seller's possession or control shall be kept in good condition, shall be held at Seller's risk, and shall be kept insured by Seller, at its expense, in an amount equal to the replacement cost with loss payable to Buyer. To the extent such property is not material consumed in the performance of this order, it shall be subject to inspection and removal by Buyer and Buyer shall have the right of entry for such purposes without any additional liability whatsoever to Seller. As and when directed by Buyer, Seller shall disclose the location of such property and/or prepare it for shipment and ship it to Buyer in as good condition as originally received by Seller, reasonable wear and tear excepted.
9. **Special Tooling:** The term "special tooling" as used in this clause shall be deemed to include all jigs, dies, fixtures, molds, patterns, special cutting tools, special gauges, special test equipment, other special equipment, and manufacturing aids, and drawings and any replacements of the foregoing, acquired or manufactured or used in the performance of this order, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the production of the supplies or parts thereof or performance of the services of the type required by this order. The term does not include (a) items of tooling or equipment heretofore acquired by Seller, or replacement thereof, whether or not altered or adopted for use in the performance of this order, (b) consumable small tools, (c) general or special machine tools or similar capital items, or (d) tooling, title to which is in Buyer. Seller agrees that special tooling shall be retained and not used or reworked except for performance of work hereunder or as authorized in writing by Buyer. While in Seller's possession or control, Seller warrants that it will keep the special tooling in good condition fully covered by insurance, and will replace it when lost, destroyed, or necessary for performance of work hereunder. Upon cessation or termination of the work under this order for which the special tooling is required. Seller shall furnish Buyer a list of the products, parts or services for the manufacture or performance of which such special tooling was used or designed and a list indicating where each item of the special tooling is located, and shall transfer title to and possession of the special tooling to Buyer for an amount equal to the unamortized cost thereof, or dispose thereof as Buyer may direct in writing. In addition, Buyer shall have the right to take possession of, including the right of entry for such purpose, any special tooling, title to which Buyer acquires hereunder, without any additional liability whatsoever to Seller.
10. **Proprietary Rights:** All technical information in the nature of designs, blueprints, specifications, engineering data for production or product know how, which is supplied to the Seller by the Buyer to facilitate or assist in the performance of this contract, shall, unless otherwise agreed, be considered and kept confidential by the Seller, and the Seller will use and cause its employees and agents to use extreme caution not to disclose any such information either directly or by incorporation of such information in or its use in manufacturing products for others. Additionally, Seller agrees to assign to the Buyer and not otherwise to make use of any invention, improvement or discovery (whether or not patentable) conceived or reduced to practice in the performance of this contract by any employee of the Seller or other person working under the Seller's direction, and such assignment shall be considered as additional consideration for the making of this contract. Upon completion of performance of this contract, the Seller shall deliver to the Buyer any and all information relating to any such invention, improvement or discovery and shall cause employee or others subject to Seller's instructions to sign as appropriate all documents necessary or convenient to enable the Buyer to file applications for patents throughout the world and to obtain title thereto.
11. **Patent Indemnity Clause:** The Seller agrees, upon receipt of notification, to promptly assume full responsibility for the defense of any suit or proceeding which may be brought against Buyer or any of its subsidiaries, constituent companies, agents or vendees, hereinafter for the purposes of the Section collectively referred to as the Buyer, for alleged patent infringement, as well as for the trademark, or appearance of goods, by reason of the use or sale of any goods furnished under this contract, except for goods manufactured entirely to Buyer's specifications, and the Seller further agrees to indemnify Buyer against any and all expense, loss, royalties, profits and damages, including court costs and attorneys' fees resulting from the bringing of such suit or proceedings, including any settlement or decree or judgment entered therein. The Buyer may be represented by and actively participate through its own counsel in any such suit or proceedings, if it so desires. The Seller's obligations hereunder shall survive acceptance of the goods and payment therefor by the Buyer.
12. **Indemnification:** Seller further agrees to indemnify and save Buyer harmless from any and all losses, liabilities, damages, claims, demands, suits, actions, proceedings, subrogations, and expenses, including court costs and reasonable attorneys' fees, related in any way to this contract, or the services performed or goods delivered under this contract, except for goods manufactured entirely to Buyer's specifications, which are claimed or made by any person, firm, association or corporation, including employees, workmen, servants or agents of the Seller and his subcontractors arising from any cause or for any reason whatsoever. Seller further agrees, upon receipt of notification, to promptly assume full responsibility for the defense of any and all such suits, actions, or proceedings which may be brought against Seller or against Buyer. In the event Buyer's machinery or equipment is used by Seller in the performance of any work that might be required under this contract, such machinery or equipment shall be considered as being under the sole custody and control of Seller during the period of such use by Seller.
13. **Insurance:** If this contract covers the performance of labor for Buyer, Seller agrees to indemnify and protect Buyer against all liability, Claims or demands for injuries or damages to any person or property growing out of the performance of this contract. Seller further agrees to furnish Insurance Carrier's Certificate showing that Seller has adequate insurance coverage in the following minimum amounts: Workmen's Compensation - Statutory limits for State or States in which the work is to be performed. General Public Liability \$100,000/\$1,000,000 and Property Damage \$1,000,000, Automobile Public Liability \$50,000/\$1,000,000 and Property Damage \$1,000,000. Said Certificate must set forth the amount of coverage, number of policy and date of expiration. If Seller is a self-insurer, the Certificate of the Department of Labor and Industry of the State of which said labor is to be performed must be furnished by such Department directly to Buyer. Compliance by Seller with insurance requirements does not in any way affect Seller's indemnification of Buyer under Article 12 above.
14. **Cancellation:** Buyer shall have the right to cancel for default all or any part of the undelivered portion of this contract, if Seller does not make deliveries as specified in the delivery schedule, if Seller breaches any of the terms hereof including warranties of Seller, or if Seller becomes insolvent or commits an act of bankruptcy, if it is determined, however, that Seller's failure to perform this contract is due to unforeseeable causes beyond the control and without the fault or negligence of Seller (other than insolvency or an act of bankruptcy) such cancellation shall be deemed to have been made pursuant to Article 15 hereof entitled "Termination", provided that such causes shall include delays and defaults of subcontractors only to the extent and without the fault or negligence of either of them and the goods to be furnished were not obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedule. Such right of cancellation is in addition to and not in lieu of any other remedies which Buyer may have in law or equity.
15. **Termination:** The Buyer may terminate performance of work under this order in whole or from time to time on part by written notice of termination, where upon the Seller will stop work on the date and to the extent specified in the notice and terminate all orders and subcontractors to the extent they relate to the terminated work. Seller will promptly advise the Buyer of the quantities of applicable work and material on hand or purchased prior to termination and the most favorable disposition that the Seller can make thereof. Seller will comply with the Buyer's instructions regarding transfer and disposition of title to the possession of such work and material. Within 60 days after receipt of such notice of termination, Buyer will have the right to check such claims at any reasonable time or times by inspecting and auditing the records, facilities, work or materials of the Seller relating to his order. Buyer will pay the Seller without duplication, the order price for finished work accepted by the Buyer and the cost to the Seller of work in process and raw material allocable to the terminated work based on any audit the Buyer may conduct and generally accepted accounting principles: less however, (a) the reasonable value or cost (whichever is higher) of any items used or sold by the Seller without the Buyer's Consent; (b) the agreed value of any items used or sold by the Seller with the Buyer's consent; and (c) the cost of any defective, damaged or destroyed work or material. Buyer will make no payments for finished work, work in process or raw material fabricated or procured by the Seller in excess of any order or release. Notwithstanding the above, payments made under this clause shall not exceed the aggregate price specified in this order less payments otherwise made or to be made, and adjustments shall be made reducing the payments hereunder for costs of work in process and raw material to reflect on a pro rata basis any indicated loss on the entire contract had it been completed. Payment made under this clause will constitute the Buyer's only liability in the event this order is terminated hereunder. Except as otherwise provided in this order, the provisions of this clause will not apply to any cancellation by the Buyer for default by the Seller or for any other cause allowed by law or under this order.
16. **Compliance With Applicable Laws:** Seller agrees that, in the performance of this contract, it will comply with all applicable laws, statutes, rules, regulations or orders of the United States government or of any state or political subdivision thereof. Without limiting the generality of the foregoing, Seller agrees that it will include on all invoices, and that all invoices in order to be approved for payment must include the following statement: "Seller represents that with respect to the production of the goods covered by this invoice, it has fully complied with all provisions of the Fair Labor Standards Act of 1938, as amended."
17. **Non-Discrimination in Employment:** The Seller agrees that the representations and provisions required by Section 202 of Executive Order No. 11246 of September 24, 1965, as to non-discrimination in employment are hereby incorporated in and made a part of this contract.
18. **Waiver:** The failure of Buyer to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this contract or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such terms, covenants, or conditions of the future exercise of such right, but the obligation of Seller with respect to such future performance shall continue in full force and effect.
19. **Assignment:** None of the sums due or to become due nor any of the work to be performed under this contract shall be assigned nor shall Seller subcontract for completed or substantially completed material called for by this contract without Buyer's prior written consent.