



## PURCHASE ORDER TERMS AND CONDITIONS

**1. ORDER.** Agreement by Seller to furnish the materials or services ordered, or its commencement of such performance, or acceptance of any payment, shall constitute acceptance by Seller of this Purchase Order subject to these terms and conditions. If this Purchase Order does not state price or delivery, Buyer will not be bound to any prices or delivery to which it has not specifically agreed in writing. Any terms or conditions proposed by Seller that are inconsistent with or in addition to these terms and conditions of purchase shall be void and of no effect unless specifically agreed to by Buyer in writing. Modifications of or additions to these terms and conditions, to be effective, must be made in writing and be signed by Buyer's purchasing representative. These terms and conditions, together with any referenced exhibits, attachments or other documents, constitute the entire agreement between the parties with respect to the subject matter of this Purchase Order; and supersede any prior or contemporaneous written or oral agreements. Buyer may terminate all or any part of this order for convenience at any time by written notice to Seller. Upon such termination, Buyer's liability for any Goods or Services ordered but not yet delivered shall be limited to (i) for products, reasonable raw material, and work-in-process (WIP) charges mutually agreed to by Seller and Buyer; and (ii) for services, services performed up to the effective termination date as set forth in the applicable Statement of Work.

**2. DELIVERY.** Time, quantity, and delivery to the delivery location are of the essence. Seller shall procure materials for, fabricate, assemble, pack, mark, and ship the ordered Goods, in the quantity(ies) ordered, to the delivery location(s) and by the delivery date(s), specified in this Purchase Order and/or (as applicable) perform the services within the due date(s) specified in this Purchase Order. Delivery times for goods will be measured to the time the Goods are received to the stated delivery location. Unless otherwise expressly agreed to by the Parties in writing, Seller may not make partial shipments of Goods to Buyer. If Seller does not comply with any of its delivery obligations under this Purchase Order Buyer may, in Buyer's sole discretion and at Seller's sole cost and expense, (a) approve a revised delivery date, (b) require expedited or premium shipment, or (c) refuse delivery of the Goods/continued performance of the services; cancel this Purchase Order and obtain similar goods/services from other sources. If Buyer cancels this Purchase Order in accordance with this Section 2, Buyer shall be relieved of all liability for any undelivered Goods or unperformed services. Goods not delivered to the original delivery date may be subject to late penalties of ten percent (10%) of sell price, per day late, up to one hundred percent (100%) of the total cost. Seller shall be responsible for any additional transportation charges in excess of those that would apply for the usual means of transportation. Seller shall notify Buyer in writing immediately of any actual or potential delay to the performance of this Purchase Order. Such notice shall include a proposed revised schedule, but such notice and proposal or Buyer's receipt or acceptance thereof shall not constitute a waiver to Buyer's rights and remedies under these terms and conditions.

**3. MODIFICATION.** This Purchase Order may not be orally modified or terminated. Buyer shall have the right by written order to make changes in this Purchase Order, including without limitation changes to drawings, designs, or specifications; quantity, method of shipment or packing; delivery schedule or place of delivery, and work schedule, shifts, starting time and starting date. If any such change causes an increase or decrease in the cost of Goods or Services, or the time required for the performance of, any work under this Purchase Order, Seller shall make a request in writing for an equitable adjustment within ten (10) business days of such change, and Buyer shall either make an equitable adjustment in the Purchase Order price or delivery schedule, or both, or shall withdraw such change, and this Purchase Order shall be modified accordingly. Information, advice, approvals or instructions given by Buyer's technical personnel or other representatives shall be deemed expressions of personal opinion only and shall not affect Buyer's and Seller's rights and obligations unless set forth in a writing that is signed by Buyer's purchasing representative and that states it constitutes an amendment or change to this Purchase Order. Nothing in this section, including any disagreement with the Buyer as to any claimed adjustment, shall excuse Seller from proceeding with the Purchase Order as changed.

**4. FORCE MAJEURE.** Any delay or failure of either party to perform its obligations under this Purchase Order will be excused to the extent that the delay or failure was caused directly by an event beyond such party's control, without such party's fault or negligence and that by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable (which events may include natural disasters, embargoes, explosions, riots, wars or acts of terrorism) (each, a "Force Majeure Event"). Seller's financial inability to perform, changes in cost or availability of materials, components or services, market conditions or supplier actions or contract disputes will not excuse performance by Seller. Seller shall give Buyer prompt written notice of any event or circumstance that is reasonably likely to result in a Force Majeure Event and the anticipated duration of such Force Majeure Event. Seller shall use all diligent efforts to end the Force Majeure Event, ensure that the effects of any Force Majeure Event are minimized and resume full performance under this Purchase Order. During any Force Majeure Event, Buyer may, at its option (a) purchase Goods from other sources and reduce the quantities under this Purchase Order by such quantities without liability to Seller, and require Seller to reimburse Buyer for any additional costs to Buyer of obtaining the substitute Goods compared to the prices for such goods under this Purchase Order, (b) require Seller to deliver to Buyer all finished Goods, WIP or parts and materials produced or acquired for work under this Purchase Order, or (c) require Seller to provide Goods from other sources in quantities and at a time requested by Buyer and at the prices for the Goods provided in this Purchase Order. If requested by Buyer, Seller shall, within fifteen (15) days of such request, provide adequate assurances that a Force Majeure Event will not exceed sixty (60) days. If the delay lasts more than such sixty (60) day period, or if Seller does not provide such adequate assurances, Buyer may immediately terminate this Purchase Order without any liability to Seller.

## **5. WARRANTIES; REMEDIES; INSPECTION.**

a. Warranties. In connection with the Goods or Services purchased under this Purchase Order, Seller expressly warrants for the Warranty Period as follows: (i) the Goods shall strictly conform to all specifications, drawings, instructions, statements on containers or labels, descriptions and samples; (ii) the Goods shall be free from latent or apparent defects in workmanship and material and shall be new and of the highest quality; (iii) Buyer shall receive title to the Goods that is free and clear of any liens, encumbrances, charges, and any actual or claimed patent, copyright or trademark infringement; (iv) the Goods shall be merchantable, safe, and fit for the Buyer's intended purposes, which purposes have been communicated to Seller; (v) the Goods shall be adequately contained, packaged, marked, and labeled; (vi) all Services performed by Seller shall be performed in a competent, workmanlike manner and in accordance with industry standards; (vii) the Goods shall be manufactured in compliance with all applicable federal, state, provincial, and local laws, regulations or orders, and agency or association standards or other standards applicable to the manufacture, labeling, transporting, licensing, approval or certification. These warranties shall survive inspection, test, delivery, acceptance, use, and payment by Buyer and shall inure to the benefit of Buyer, its successors, assigns, customers and the users of Buyer's products.



If Buyer experiences any defect, failure or non-conformity during the Warranty Period, Buyer shall have the right to take the following actions, at Buyer's option: (i) retain the defective Goods in whole or in part with an appropriate adjustment in the price for the Goods; (ii) require Seller to repair or replace the defective Goods or re-perform the work and/or Services in whole or in part at Seller's sole expense, including all shipping, transportation and installation costs; and (iii) correct or replace the defective Goods with similar items and recover the total cost from Seller, including the cost of product recalls. For purposes of this Purchase Order, "Warranty Period" (a) thirty-six (36) months from the day of first use of the Goods by Buyer or acceptance by Buyer, whichever occurs later; or (b) if the Goods are incorporated, in whole or in part, into goods sold by Buyer to third parties, eighteen (18) months after acceptance by such third parties or the time period of warranty that Buyer gives to such third parties, whichever occurs later. Notwithstanding the foregoing, Seller agrees to waive the expiration of the Warranty Period in the event there are failures or defects discovered after the Warranty Period of a significant nature or in a significant portion of the Goods. In no event shall Buyer be liable to Seller for anticipated profits or for incidental or consequential damages. For purposes of this definition (a) "failures or defects of a significant nature" shall mean material defects that (i) render the Goods unsafe, inoperative, or unable to perform their intended function; (ii) materially impair the performance, reliability, or compliance of the Goods with applicable specifications; (iii) require substantial repair or replacement to restore the Goods to their intended condition; or (iv) relate to or affect safety-critical parts or systems such that failure could reasonably be expected to cause personal injury, property damage, or noncompliance with applicable safety or regulatory standards. Examples include, without limitation, structural failures, safety-critical component malfunctions, recurring defects that substantially reduce product life or performance, or failures that could result in a safety recall or field campaign; and (b) "a significant portion of the Goods" shall mean a recurring or systemic issue affecting (i) at least ten percent (20%) of the Goods supplied under the applicable purchase order or shipment, or (ii) a quantity of Goods sufficient to indicate a design, material, or process defect rather than an isolated occurrence.

b. Inspection. All material and workmanship shall be subject to inspection and test at all reasonable times and places by Buyer or Buyer's customer before, during, and after performance and delivery. The Buyer may require Seller to repair, replace or reimburse the purchase price of rejected material or Buyer may accept any materials and upon discovery of nonconformance, may reject or keep and rework any such materials not so conforming. Cost of repair, rework, replacement, inspection, transportation, repackaging, and/or reinspection by Buyer shall be at Seller's expense. If inspection and test are made on the premises of Seller or Seller's lower tier subcontractors, Seller shall furnish without additional charge all reasonable facilities, information and assistance necessary for the safe and convenient inspection and tests required by the inspectors in the performance of their duty. Buyer's failure to inspect does not relieve Seller of any responsibility to perform according to the terms of the Purchase Order.

c. Remedies. The rights and remedies of Buyer and the warranties of Seller set forth in this Purchase Order shall not be exclusive and are in addition to any other rights, remedies, and warranties provided by law or under this Purchase Order. Any attempt by Seller to limit Buyer's warranties, remedies or the amount and types of damages Buyer may seek shall be null and void. Buyer's approval of Seller's design, material, process, drawing, or specifications shall not be construed to relieve Seller of the warranties set forth in this Purchase Order.

**6. CONFIDENTIALITY; PROPRIETARY INFORMATION; BUYER'S PROPERTY; INVENTIONS.** Unless otherwise expressly agreed in writing to the contrary:

a. All specifications, information, data, drawings, software and other items supplied to Buyer by Seller shall be disclosed to Buyer on a non-proprietary basis and may be used and/or disclosed by Buyer without restriction, unless (i) otherwise required by the U.S. Government Regulations referred to below, or (ii) the Buyer has executed a separate agreement restricting the use and disclosure of such information, data, software and the like.

b. All specifications, information, data, drawings, software and other items that are (i) supplied to Seller by Buyer or (ii) obtained or developed by Seller in the performance of this Purchase Order or paid for by Buyer shall be proprietary to Buyer, shall be used only for purposes of providing Goods or Services to Buyer pursuant to this Purchase Order, and shall not be disclosed to any third party without Buyer's express written consent. All such items supplied by Buyer or obtained by Seller in performance of this Purchase Order or paid for by Buyer shall be promptly provided to Buyer on request or upon completion of this Purchase Order.

c. Any invention or intellectual property first made or conceived by Seller in the performance of this Purchase Order or which is derived from or based on the use of information supplied by Buyer shall be considered to be the property of Buyer; and Seller shall execute such documents necessary to perfect Buyer's title. Unless otherwise expressly agreed in writing to the contrary, any work performed pursuant to this Purchase Order that includes any copyright interest shall be considered a "work made for hire."

d. With respect to Goods to be produced by Seller in accordance with drawings or specifications furnished by Buyer, Seller grants to Buyer an irrevocable, non-exclusive, and royalty-free license to make, have made, use, and sell any improvement(s) to such Goods that is conceived, developed or reduced to practice by Seller in the production of the Goods under this Purchase Order.

**7. PATENTS; TRADEMARKS; COPYRIGHTS.** SELLER SHALL INDEMNIFY AND HOLD BUYER HARMLESS FROM ALL CLAIMS, DEMANDS, ACTIONS, PENALTIES, FINES, LOSSES, COSTS OR OTHER LIABILITIES CLAIMS, DAMAGES, LOSSES, AND EXPENSES (INCLUDING ATTORNEY FEES) FOR INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENTS, TRADEMARKS, OR COPYRIGHTS, MISAPPROPRIATION OF TRADE SECRETS, OR ANY LITIGATION OR CLAIMS BASED ON OR RELATED IN ANY WAY TO THOSE THEORIES IN CONNECTION WITH THE SALE OR USE OF THE GOODS OR OUT OF THE SERVICES FURNISHED PURSUANT TO THIS PURCHASE ORDER. SELLER SHALL, IF REQUESTED BY BUYER, ASSUME AT ITS OWN EXPENSE THE DEFENSE OF ALL SUITS ALLEGING SUCH THEORIES.

**8. SOFTWARE.** If this Purchase Order includes the procurement of software, Supplier grants Buyer a non-exclusive, non-transferable, worldwide license to use the software solely for Buyer's internal business purposes, subject to the terms of this Purchase Order and any mutually agreed license agreement. Supplier represents and warrants that: (i) it has the full right to license the software; (ii) the software does not infringe the intellectual property rights of any third party; and (iii) the software is free from harmful code at the time of delivery. Unless otherwise agreed in writing, Buyer shall not be subject to any additional clickwrap / shrink wrap or online terms and conditions presented during download or installation of the software.



**9. INDEPENDENT CONTRACTORS.** Seller is an independent contractor, and its employees, agents, or representatives are not Buyer's employees, agents, or representatives for any purpose including, but not limited to, federal, state, and local tax obligations, unemployment and worker's compensation obligations, social security, and any and all other benefits.

**10. INDEMNIFICATION.** SELLER SHALL INDEMNIFY AND HOLD HARMLESS BUYER, ITS OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, CONTRACTORS, AFFILIATES AND ASSIGNS FROM ANY AND ALL CLAIMS, DEMANDS, ACTIONS, PENALTIES, FINES, LOSSES, COSTS OR OTHER LIABILITIES (INCLUDING BUT NOT LIMITED TO LOSS OF GOODS, DAMAGES TO PERSON OR PROPERTY, CLAIMS FOR WRONGFUL DEATH, WORKER'S COMPENSATION OR SIMILAR BENEFITS AND ATTORNEYS FEES AND EXPENSES, INCLUDING THOSE INCURRED TO ENFORCE THIS INDEMNIFICATION) (COLLECTIVELY "LOSSES") ARISING OUT OF OR RESULTING FROM SELLER'S BREACH OF WARRANTY OR PERFORMANCE OF THIS PURCHASE ORDER OR ANY ACT OR OMISSION OF SELLER, WHETHER OCCURRING ON BUYER'S PREMISES OR ELSEWHERE. HOWEVER, SELLER SHALL HAVE NO OBLIGATION TO BUYER TO THE EXTENT SUCH LOSSES ARE ATTRIBUTABLE TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF BUYER. SELLER'S OBLIGATIONS UNDER THIS SECTION 10 SHALL EXTEND TO THE ACTS AND OMISSIONS OF ITS EMPLOYEES, CONTRACTORS, SUBCONTRACTORS AND AGENTS.

**11. DISPUTES.** Any controversy or claim that may arise out of or in connection with this Purchase Order that after good faith negotiations cannot be resolved to both Parties' mutual satisfaction may be resolved by submitting the claim to a court of competent jurisdiction. Pending resolution or settlement of any dispute arising under this Purchase Order, Seller will proceed diligently as directed by Buyer with the performance of this Purchase Order. Irrespective of the place of performance, this Purchase Order will be governed by, and construed in accordance with, the laws of the State of Maryland without regard to its conflicts of law principles. THE RIGHTS AND OBLIGATIONS OF THE PARTIES SHALL NOT BE GOVERNED BY THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS AND SELLER AND BUYER HEREBY DISCLAIM THE SAME.

**12. COMPLIANCE.**

a. Seller shall comply with physical and information security policies identified in this Purchase Order or provided to Seller by Buyer.

b. Seller shall comply with applicable laws. Seller shall, at its own expense: (i) obtain and maintain in the approvals, licenses, filings or registrations necessary to perform the Services; and (ii) comply with all applicable laws including those specified in this Purchase Order.

c. Export Compliance. The Services, parts, components, devices, software, technology, and other materials or Goods provided under this Purchase Order (collectively, "Items") may be subject to U.S. and other import / export jurisdiction. The parties must comply with all applicable international and national laws, including but not limited to the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, U.S. Department of Treasury's Office of Foreign Assets Control Sanctions programs, and end-user, end-use, and end destination restrictions by U.S. and other governments. Seller agrees to provide Buyer with the import / export control classifications and information, including documentation, on the applicable import, export or re-export authorizations and all necessary information about the Items for any required import. Should Buyer furnish any technology or data to Seller in performance of work, Seller will not supply such technology or data to any foreign national or foreign entity without the prior express written permission of Buyer.

d. Workplace Safety and Health. Seller shall comply with (and shall require, through contract, all Subcontractors to comply with) applicable laws related to workplace safety and health, including the Occupational Safety and Health Act of 1970 (OSHA) in parallel State laws approved under OSHA Section 18. Seller shall promptly notify Buyer if Seller encounters unsafe conditions or workplace hazards in a Buyer provided or controlled facility. Seller shall take appropriate safety measures until Buyer is able to correct the hazard.

e. Other Employment Laws. Seller and its Subcontractors shall comply with all applicable federal, state, and local labor and employment laws. Seller and its Subcontractors shall comply with the applicable requirements of 41 CFR §§ 60-300.5(a) and 60-741.5(a), which prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and require affirmative action to employ and advance in employment such individuals. Seller and its Subcontractors shall also comply with the applicable requirements of 29 CFR Part 471, Appendix A to Subpart A, related to employee notice obligations. Seller and its Subcontractors shall comply with all other applicable equal opportunity and non-discrimination laws, including those at the state and local level.

f. Buy American Act Certificate of Compliance. Unless otherwise stated in writing, Seller shall provide to Buyer, an accurate and complete Buy American Act Certificate of Compliance for all products. The language and format of the certificate must comply with the requirements prescribed in the Federal Acquisition Regulation (FAR) (48 C.F.R. §§ 25.1101(a) and 52.225-2).

g. Quality Registration. Unless otherwise stated in writing, for all Goods and Services (as applicable) Seller is required to be registered to, compliant with, or working towards, ISO 9001, or a derivative Quality Management System such as AS9100 or TS-16949. If Seller provides production components, Seller is also required to be capable of fulfilling all quality requirements in the Seller Quality Manual, which can be accessed at <http://forterra.com>. If Seller is currently registered, then Seller must maintain their certification with an accredited registrar and must furnish copies of their registration certificates to Buyer upon request. If Seller is compliant to ISO 9001, but not certified by a recognized third-party registrar, Seller agrees to provide evidence of such compliance to Buyer upon request. If Seller is working towards its quality registration, Seller must provide, upon Buyer's request, evidence of such efforts and, upon receipt of registration certification, inform Buyer and furnish copies of its registration certificates. Seller must immediately notify Buyer of lapse, probation, or loss of certification status. reserves the right to provide identified Quality Management System findings to the Seller's Certification Body.

h. Ethics. Buyer is committed to conducting business with integrity and in accordance with the highest ethical standards, as outlined in Buyer's Code of Business Ethics and Conduct available at [www.forterra.com](http://www.forterra.com) ("Buyer's Code"). By the acceptance of this Purchase Order, Seller represents it has neither received nor given any gifts or gratuities, nor participated in any other conduct in connection with this Purchase Order that violates Buyer's Code. In addition, Seller represents it has implemented and will maintain a similar code of ethics and business conduct and will conduct its activities in a manner consistent with Buyer's Supplier Code of Business Ethics and Conduct (available at <https://www.forterra.com/legal/supplier-code-of-conduct>) ("Standards"). If, at any time, Buyer determines that Seller is in violation of such Standards, Buyer may cancel this Purchase Order upon written notice to Seller and Buyer shall have no further obligation to Seller.



i. Other Terms and Conditions. Unless otherwise stated in writing, Seller shall provide Goods and Services (as applicable) in compliance with the requirements in FAR 52.204-25; DFARS 252.225-7007; DFARS 252.225-7008; DFARS 252.225-7009; DFARS 252.225-7012; DFARS 252.225-7020; DFARS 252.225-7030; and DFARS 252.225-7031. Seller shall not provide any Goods or incorporate any technology or equipment into any Product(s) that are banned by or through the National Defense Authorization Act(s).

### 13. MISCELLANEOUS.

a. Additional Charges. No extra charges of any kind will be allowed unless specifically agreed to in writing by the Buyer.

b. Transportation. All prices under this Purchase Order are established as F.O.B. Seller's dock. Title will transfer at Seller's dock, and Seller assumes responsibility for freight damaged Goods. Seller must pay the costs of any unauthorized shipment.

c. Seller's Inventory. Buyer has no obligation to place orders with Seller, and any orders placed shall be in its sole discretion. Nonetheless, the actual quantity of Goods or Services to be purchased shall be determined by Buyer acting in its sole discretion. Any forecasts supplied by Buyer from time to time are estimates only and Seller is solely responsible for managing Seller's raw material, work in process and inventory.

d. Conflicts. In the event of conflict between specifications, drawings, samples, designated type, part number, or catalog description, the specifications shall govern over drawings, drawings over samples (whether approved by Buyer), and samples over designated type, part number, or catalog description. In cases of ambiguity in the specifications, drawings, or other requirements of this Purchase Order, Seller shall, before proceeding, consult Buyer, whose written interpretation shall be final and binding on the parties.

e. Payment. Payment terms are net thirty (30) days. All payments are in U.S. Dollars unless otherwise expressly provided in this Purchase Order. Seller shall provide Buyer with lien releases, in a form acceptable to Buyer, from Seller and all its subcontractors before any payments shall be due.

f. Taxes. Unless this Purchase Order specifies otherwise, the price of this Purchase Order includes, and Seller is liable for and shall pay, all taxes, impositions, charges and exactions imposed on or measured by this Purchase Order except for applicable sales and use taxes that are separately stated on Seller's invoice. Prices shall not include any taxes, impositions, charges or exactions for which Buyer has furnished a valid exemption certificate or other evidence of exemption. To the extent that Buyer is required to do so under applicable United States law or tax regulations, Buyer may deduct from any payments due to Seller pursuant to this Purchase Order such taxes as Buyer is required to withhold from such payments and pay such taxes to the relevant tax authorities; provided, however, that Buyer provides Seller with relevant tax receipts or other suitable documentation evidencing the payment of such taxes promptly after such taxes are paid.

g. Severability. If any term of this Purchase Order is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term shall be deemed revised or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of this Purchase Order shall remain in full force and effect.

h. Ambiguity. No ambiguity in any provision contained in this Purchase Order shall be construed against a party by reason of the fact it was drafted by such party or counsel.

i. Waiver. No waiver under this Purchase Order is effective unless it is in writing, identified as a waiver to this Purchase Order and signed by an authorized representative of the Buyer. Buyer's waiver authorized on one occasion is effective only in that instance and only for the purpose stated and does not operate as a waiver on any future occasion.

j. Assignment. This Purchase Order may be assigned by only Buyer and any attempted assignment by Seller without the prior written consent of Buyer shall be void or voidable at the election of Buyer.

k. Responsibility and Insurance. Seller shall be responsible for the actions and failures of all parties retained by, through, or under Seller in connection with the performance of this Purchase Order. Seller shall also maintain and cause its subcontractors to maintain such General Liability, Property Damage, Employer's Liability, and Workers' Compensation Insurance, Professional Errors and Omissions Insurance, and Motor Vehicle Liability (Personal Injury and Property Damage) Insurance as are specified in this Purchase Order or, if none are specified, such amount as will protect Seller (and its subcontractors) and Buyer from said risks and from any claims under any applicable Workers' Compensation, Occupational Disease, and Occupational Safety and Health statutes. Seller shall provide Buyer with certificates evidencing required insurance upon Buyer's request.