

**ERCO WORLDWIDE (USA) INC.**  
**(REFERRED TO HEREIN AS "BUYER")**  
**CONDITIONS OF PURCHASE**

**1. PAYMENTS**

Discount invoices are payable based on the applicable discount periods, computed from the date of delivery of the ordered supplies or services or the date of receipt of the correct invoice, whichever is later.

**2. TITLE AND RISK OF LOSS**

2.1. Title to and risk of loss for all supplies delivered hereunder shall pass to Buyer upon delivery; provided, however, that Seller shall bear all risk of loss to supplies rejected by Buyer after notice of rejection, except to the extent of loss resulting from the negligence of Buyer.

2.2. If material or equipment is furnished by Buyer for performance of this purchase order, all risk of loss for such material or equipment shall be upon Seller until the material and/or the equipment has been delivered to Buyer.

**3. INSPECTION, REJECTION AND REMEDIES**

3.1. All supplies are subject to final inspection and acceptance at Buyer's plant. Such final acceptance will be made within a reasonable time after delivery. No inspection or test made prior to final inspection and acceptance shall relieve Seller from any responsibility to meet the requirements of this purchase order.

3.2. If any supplies are non-confirming, Buyer, in addition to its other rights, may reject such supplies and require prompt correction or replacement at Seller's expense, including shipping and packaging charges. If Seller fails to proceed promptly with the correction or replacement of such nonconforming supplies, Buyer may correct or replace such supplies and Seller shall be liable to Buyer for any excess costs thereby incurred by Buyer.

3.3. In addition to its other remedies, Buyer may charge back to Seller's account the amount paid for the rejected supplies pending replacement of same.

3.4. If Buyer accepts defective supplies, payment therefore shall be made at an equitable reduction in price.

**4. CHANGES**

4.1. Buyer may at any time by written order to Seller signed by Buyer's Purchasing Manager make changes in this Purchase Order.

4.2. Seller shall proceed promptly to make such ordered changes. If such changes affect the cost of, or time required for, performance, an equitable adjustment shall be made in the price and/or the delivery schedule, and this purchase order shall be amended in writing accordingly. Any claim for adjustment under this clause must be asserted within 30 days from the date of the written order effecting the change. In the absence of such notification, Buyer shall not be obligated to consider Seller's claim for an equitable adjustment resulting from a change. Nothing herein shall excuse Seller from proceeding with the purchase order as changed.

4.3. Unless authorized in writing by Buyer's Purchasing Manager, Seller shall not change any aspect of the work to be performed under this purchase order.

**5. WARRANTIES**

5.1. Seller warrants that it will convey the supplies with good title, free from any lien or encumbrance.

5.2. Seller represents and expressly warrants that all supplies or services ordered to specifications will conform thereto and to the drawings, samples or other descriptions furnished by Buyer, and that all supplies delivered and services rendered will be of good and merchantable quality and workmanship, free from defects and to the extent Seller has been advised, suitable for the purpose intended.

5.3. These representations and warranties are enforceable by Buyer and by all persons to whom the supplies may be sold or transferred.

**6. TERMINATION**

**6.1. For Default:**

6.1.1. Buyer may terminate this purchase order, or any part thereof, by written or facsimile notice of default to Seller signed by Buyer's Purchasing Manager if:

- a) Seller fails to comply with any provision of this purchase order, or so fails to make progress so as to endanger performance of this purchase order in accordance with its terms, and does not cure any such

failure to Buyer's reasonable satisfaction within a period of 10 days (or such longer period as Buyer may authorize by written notice signed by Buyer's Purchasing Manger) after receipt of notice from Buyer specifying such failure: or

- b) If Seller becomes insolvent or is subject to proceedings under any law relating to bankruptcy, insolvency or the relief of debtors.

6.1.2. In the event of such termination, Buyer may purchase alternative service or purchase or manufacture similar supplies and/or require Seller to transfer title and deliver to Buyer any or all property produced or procured by Seller under this purchase order, and Seller shall be liable to Buyer for any excess cost of Buyer; provided, however, Seller shall not be liable to Buyer for such excess cost if the default of Seller is due to causes beyond the control and without the fault or negligence of Seller.

6.2. For Convenience:

Buyer may terminate this purchase order, or any part thereof, by written or facsimile notice signed by Buyer's Purchasing Manger. In the event of such termination, Buyer shall pay to Seller costs incurred by Seller determined in accordance with sound accounting practices plus a reasonable allowance for profit earned thereon; provided that Seller shall not be entitled to any profits with respect to work and/or services not performed prior to the effective date of such termination, nor shall the total termination sum payable to Seller exceed the total purchase order price as reduced by the amount of payments otherwise made and as further reduced by the purchase order price of work not terminated; further provided, however, if Seller would have sustained a loss on the entire purchase order had it been completed, no profit shall be payable hereunder and an appropriate adjustment shall be made reducing the amounts otherwise payable hereunder to reflect that loss.

7. PATENT INDEMNITY

Unless this purchase order is for supplies manufactured according to a detail design furnished by Buyer, Seller shall at its own expense defend and indemnify Buyer and its customers from any claim of infringement of any patent by reason of the manufacture, use or sale of any supplies furnished hereunder.

8. RESERVATION OF REPRODUCTION RIGHTS

If supplies or other subject matter called for by this purchase order have been originated or designed in accordance with Buyer's request or specifications or other data furnished by Buyer, all rights to reproduction, use of or sale of such supplies or other subject matter are vested in and reserved to Buyer.

9. TRANSFER OR ASSIGNMENT PROHIBITED: SUBCONTRACTING LIMITED

This purchase order shall not, nor shall any interest therein, be assigned or transferred by Seller, nor shall the work to be performed be subcontracted or performed by others without the prior written consent of Buyer's Purchasing Manager. Buyer may assign this purchase order, without Seller's consent, to its parent company or to any purchaser of all or substantially all of Buyer's assets, or to any successor by way of merger, consolidation or similar transaction. Subject to the foregoing, this Contract shall be binding upon and shall enure to the benefit of the parties and their respective successor and permitted assigns.

10. SPECIAL TOOLING

Any special tooling, the cost of which is included in the price of this purchase order, whether designed by Seller, by Buyer, or by a third part, shall become upon acquisition or manufacture, the property of Buyer. Seller shall deliver such special tooling to Buyer or Buyer's designees after performance is completed hereunder, unless retention by Seller of such special tooling has been consented to in writing by Buyer's Purchasing Manager. The term "special tooling" shall include all items which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the production of supplies or parts hereof, or the performance of such services as are to be supplied to Buyer hereunder.

11. INDEMNIFICATION

Seller specifically agrees to indemnify and hold Buyer harmless from and against any and all claims for loss, damage, injury or liability arising substantially out of breach of Seller's warranties set forth in Section 5 hereof or the

negligent manufacture of the supplies. Buyer, for its part, specifically agrees to indemnify and hold Seller harmless from and against any and all claims for loss, damage, injury or liability arising out of the negligent manufacture, sale or distribution of the packaged finished product or its contents, or possession or use of the supplies provided the supplies conform to Seller's warranties. Regarding claims arising out of this paragraph for downtime or loss of production, no incidental or consequential damages shall be allowed to either Buyer or Seller.

## **12. SAFETY AND HEALTH**

Seller represents and warrants that its employees and agents who will be granted access to Buyer's premises have received all training required by the Occupational, Safety and Health Administration or by its successor and by any state agency. Seller further represents and warrants that all such employees and agents have received satisfactory hazard training appropriate to Buyer's facility. Seller covenants to follow Buyer's safety rules and to maintain its own health and safety program for its employees and agents sufficient to prevent injury or illness to such person resulting from their presence on Buyer's premises. Seller shall indemnify Buyer from and against any claims, including fines, penalties and cost (including attorney's fees) relating to violations of safety or health laws or regulations (including any wrongful discrimination) by Seller or its agents.

## **13. LAW GOVERNING**

This purchase order shall be governed by and construed according to the laws of the state where the supplies are to be delivered to Buyer or the services to be performed.

## **14. EQUAL EMPLOYMENT OPPORTUNITY**

Seller agrees to comply with all applicable rules, regulations and relevant orders issued pursuant to Title VII of the Civil Rights Act of 1964 as amended, the Rehabilitation Act of 1973 as amended, the Vietnam Era Veterans Readjustment Assistance Act, and Executive Order 11246.

## **15. RESPONSIBLE PRACTICES**

15.1. Seller shall comply with its obligations pursuant to this purchase order in a manner which protects people and the environment and shall meet or exceed all applicable legal requirements related to the manufacture, storage, transportation and delivery of the supplies. Seller covenants that it shall observe such standards of operation as are necessary to prevent the release of air, soil or surface or subsurface contaminants and that it shall remove from Buyer's premises all waste (if any) resulting from its operation on Buyer's premises and remediate any contamination resulting from its operations. Seller shall indemnify ERCO from any claims, including fines, penalties or cost (including attorney's fees), relating to violations of environmental laws by Buyer or its agents.

15.1. At the time of delivery of the supplies, Seller shall provide to Buyer in writing all necessary information concerning the safe handling, use and disposal of the supplies.

15.2. Seller shall be available at all reasonable times to respond to requests for information and assistance regarding the supplies.

## **16. SUMMARY**

16.1. The terms and conditions of this purchase order set for the entire agreement between the parties hereto and supersede all communications, representations or agreements, whether oral or written, between the parties hereto with respect to the subject matter hereof; and no agreement or understanding varying or extending the terms or conditions of this purchase order will be binding unless in writing and signed by Buyer's Purchasing Manager. No conditions stated by the Seller in accepting this purchase order shall be binding upon Buyer if in conflict with, inconsistent with, or in addition to the terms and conditions contained herein unless expressly accepted in writing signed by Buyer's Purchasing Manager. The remedies herein reserved shall be in addition to any further remedies provided in law or equity.

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Buyer is a member of the Chemistry Industry Association of Canada (CIAC) or the American Chemistry Council (ACC) and is committed to the Responsible Care® Ethic and Principles for Sustainability, through its commitment to the Responsible Care Global Charter. Buyer requires the support of its suppliers to meet the principles of Responsible Care®.