

TERMS AND CONDITIONS OF PURCHASE

SC PL 01 Rev: 01

ALL TRANSACTIONS ARE GOVERNED BY BUYER'S TERMS AND CONDITIONS OF PURCHASE. ANY PROPOSAL OR DOCUMENT FROM SELLER THAT INCLUDES DIFFERENT OR ADDITIONAL TERMS THAT VARY FROM ANY OF HARBEC, INC. ("BUYER") TERMS AND CONDITIONS OF PURCHASE ARE OBJECTED TO AND DISALLOWED. NOTWITHSTANDING THE FOREGOING, ANY SUCH COUNTERPROPOSALS BY SELLER SHALL NOT OPERATE AS A REJECTION OF THE CONTRACT OF PURCHASE, BUT AS A REJECTION OF THE ADDITIONAL OR DIFFERENT TERM(S)

1. **Warranty.** Seller represents that with respect to all materials, supplies and equipment (herein collectively referred to as "materials") delivered and services furnished hereunder: (i) title shall be good, merchantable, rightful and the materials free of any security interest, lien or encumbrance; (ii) that materials will be new, free from defects in material and workmanship, be of quality, size, description and dimension required by Buyer, be fit for the purpose for which they are purchased and will meet the specifications, if any, and that Seller's services will be performed in a skillful and workmanlike manner; and (iii) the materials, the process by which they are made, the use for which they are designed by Seller and Buyer's use of the materials will not infringe any patent, trademark, copyright or other rights of any third parties ("Intellectual Property Rights"). This express warranty shall not be deemed waived by reason of either or both the receipt of the materials and payment therefore by Buyer. The foregoing is in addition to any and all other express or implied warranties applicable to the materials purchased hereunder.

2. **Compliance with Laws; Standards and Testing.** Seller represents and warrants that all materials furnished hereunder, and Seller's manufacturing thereof, complies with all applicable laws, ordinances, rules and regulations ("Laws"). The foregoing obligation includes without limitation compliance with all statutory, regulatory and contractual requirements that may be applicable to environmental matters, wages, hours and conditions of employment, subcontractor selection, discrimination, occupational health/safety, and motor vehicle safety. Seller will comply with the requirements of Export Administration Regulations (EAR; 15 C.F.R. § 730 et), International Traffic in Arms Regulations (ITAR; 22 C.F.R. § 12 et) and the National Industrial Security Program Operating Manual (NISPOM) for Safeguarding Classified Information of the Department of Defense (DFARS 252.204-7012)
 - (a) Seller will notify Buyer in writing upon receipt of this Purchase Order if the products are subject to laws and regulations relating to hazardous or toxic substances, hazardous waste disposal or to any other environmental or safety and health regulations. Seller will furnish all appropriate shipping certification and instructions for shipping, safety, handling, exposure, and disposal (including without limitation material data safety sheets) in a form understandable by Buyer's non-technical personnel and in enough detail to identify all actions that the user must take concerning the material. On request of Buyer, Seller will submit MSDS sheets in accordance with MSDSONline.
 - (b) Seller shall treat materials prior to shipment to Buyer in accordance with testing standards requested by Buyer, and shall furnish Buyer certifications in support thereof. Seller shall defend, indemnify and hold Buyer harmless from and against any losses, costs, liabilities, claims, demands or expenses (including without limitation attorneys' and other professional fees, court costs and settlement costs) arising from or relating to the Seller's breach of this clause.

- (c) When applicable, the foregoing obligation further includes without limitation compliance with all statutory, regulatory and contractual requirements that may be applicable to Seller pursuant to Buyer's status as a contractor or subcontractor with the U.S. Government, the provisions of which are made a part of this purchase order by reference and include, without limitation, Federal Acquisition Regulation and/or Defense Federal Acquisition Regulation. The full text of clauses may be accessed electronically at: _____.

3. Government Contract. Buyer reserves the right at any time to terminate this Contract to the extent that same covers Goods to be used by Buyer in performing a contract or subcontract for the U.S. Government. The rights of Buyer and Seller in such event shall be governed by the applicable Procurement Regulations relating to the termination of subcontracts under Buyer's contract with U.S. Government or subcontractor under such contract, and such Regulations are incorporated herein as though set forth herein full. If any FAR, DFARS Supplement Clauses are not applicable by their terms, they shall be self-deleting.

- (a) The clause set forth in FAR 52.249-2 is incorporated and made a part hereof, except that in Paragraph (e) the reference to a "year" period for submission of a final termination proposal is changed to "six months," and where used therein, the term "Contractor" shall mean "Seller," the term "Contract" shall mean "Purchase Order," and the term "Government/Contracting Officer" shall mean "Harbec, Inc." The reference to "Disputes clause" of Paragraph (j) of FAR 52.249-2 shall mean the Dispute Resolution clause of this Purchase Order.

4. Indemnity. Seller will defend, indemnify and hold harmless Buyer, its affiliates, vendors, and their officers, directors, shareholders, employees, and agents from and against any and all loss, liability and expense by reason of (i) any actual or alleged violation of Laws, (ii) any actual or alleged infringement of Intellectual Property Rights, (iii) injury, death or property damage resulting, in whole or in part, from any negligent act or omission on the part of the Seller or which may result from the installation, operation or use of the materials furnished hereunder, (iv) a defect in the manufacture or design of the materials supplied hereunder, or (v) any breach or alleged breach by Seller of any representation, warranty, or other provision of these terms and Conditions of Purchase. Upon notification, Seller shall promptly assume full responsibility for the defense of any suit or proceeding which may be brought against Buyer or any of its subsidiaries, affiliated companies, agents and vendors in connection with the above, of for alleged unfair competition resulting from similarity in design, trademarks, or appearance of the materials or equipment. Seller shall further indemnify and hold Buyer, its subsidiaries, affiliated companies, agents and vendors harmless from any and all expenses, losses, claims, royalties, profits, and damages, including court costs and attorneys' fees, resulting from the bringing of such suits or proceedings or the threat thereof and from any settlement, decree or judgment therein. Buyer reserves the right to control any such suit or proceeding.

5. Cover; Delivery. In case of default by Seller, Buyer may obtain materials and services from other sources and hold Seller responsible for any damages occasioned thereby. The dates of delivery and quantities specified herein are of the essence for this order and delivery must be effected within the specified time period. If deliveries are not made on time and in the quantities specified, Buyer reserves the right to cancel and to purchase the materials and/or services elsewhere and hold Seller accountable therefore. Seller shall cooperate with Buyer in respect to all customs formalities applicable to the import or export of the materials, shall be responsible for determining proper import or export classifications, and shall provide Buyer documentation to Buyer's satisfaction for such classifications.

Time is of the essence in the performance of this Purchase Order (PO), and any delay in delivery is a material breach. Title transfers to Buyer upon delivery of the products to Buyer. Unless otherwise agreed, shipment of the Products shall be freight collect via Buyer's designated mode and carrier. If Seller fails to comply, shipment is FOB destination with Supplier bearing the risk of loss and cost of delivery and Buyer assumes no liability for loss and damage occurring prior to Buyer's receipt. Buyer is entitled to inspect the Products and/or Services (including the performance of tests) before or after receipt and regardless of whether any payment has been made by Buyer, whether the nonconformity substantially impairs the value of the Products and/or Services, or whether the nonconformity may be cured by Seller. Buyer has the right upon reasonable notice to enter Seller's facilities to inspect the production of Products and/or performance of Services, without precluding subsequent inspection and rejection of Products and/or Services. If the inspection discloses, in Buyer's good faith opinion, that Seller's ability to meet the requirements of this PO is questionable, Buyer may treat such circumstances as a material breach and terminate this PO without liability to Seller. If Products tendered pursuant to this PO are nonconforming, Buyer may return all the Products to Seller, at Seller's expense, for first priority repair, replacement or a refund at the election of Buyer.

6. **Prices.** Orders shall not be filled at prices higher than those quoted or charged to Buyer or specified herein. Unless otherwise agreed in writing, prices include packaging, labeling, crating, taxes, and duties. Seller further warrants that the Contract prices for the Goods are not less favorable than those currently extended to any other customer for the same or like Goods in equal or less quantities. Seller shall also supply a packing slip with each shipment of Goods, showing Buyer's Purchase Order number, ship date, invoice date, line number and release number. Payment will be due net (60) days following receipt and acceptance of the Goods and after all conditions of Buyer have been satisfied.

7. **Inspection and Rejection.** Materials are subject to inspection, test, and acceptance by Buyer, its agents and customers, regulatory authorities and the ultimate purchaser at any level of the supply chain. Buyer shall have a reasonable number of days from the date of arrival to inspect the materials and notify Seller of any non-conformity to the order specifications (including quantity and delivery dates). Such inspection may not occur until final sale of the materials to Buyer's customers. Buyer reserves the right to reject any material, even after delivery and inspection at customer's site, which does not fulfill the specifications of the order or time of delivery and (i) return rejected materials to Seller at Seller's risk and expense for full credit at the order price without prejudice to any right to other damages for such breach, (ii) to require Seller at Seller's expense to replace rejected materials at the unit price of this order, or (iii) consider this order breached as to the rejected quantity and cancelled as to any unfulfilled portion of this order, and to hold Seller liable for such breach and cancellation. Seller is not relieved of the responsibility imposed by this clause, either as to proper packaging, quantity of materials or specifications, by reason of acceptance by Buyer. All data, documents, and any certificates of conformance from the Supplier and sub-tiers shall be in English, or contain an English translation, and must be signed by a company Quality representative.
 - (a) **Right of Access:** Buyer, its agents and customers, regulatory authorities and the ultimate purchaser reserves the right to conduct an inspection on-site at Seller's location or any level of the supply chain on product ordered. Nothing herein shall relieve Seller from its obligations of testing, inspection, quality control or compliance with product specifications. Seller is responsible for submitting any requested test data to Buyer prior to shipment.
 - (b) **Record Retention:** All assembly/production/programming documents, material certifications (including inserts/hardware), supplier generated quality documents (C of C, FAI reports, inspection records, and discrepancy reports), Harbec models, purchase orders and any customer related flow down documents shall be archived for a minimum of 10 years or as

directed by purchase order and available upon request unless otherwise requested via purchase order after which the Supplier agrees to either return or destroy related records.

- 8. Payment and Invoicing.** Invoices and bills of lading showing full routing should be dated and mailed at the time of shipment. Invoices bearing transportation charges must be supported with attached original receipted transportation bills and, in the case of consolidated carload shipments, must show weight and rate. Payment may be made by check, credit card, or wire transfer (all fees are borne by Buyer). Where Seller has extended credit to Buyer, terms of payment shall be net sixty (60) from date of invoice, without offset or deduction unless otherwise noted. On any past due invoice, Seller may impose interest at the rate of one and a half percent [1.5%] per month. If Buyer fails to make each payment when it is due, Seller reserves the right to change or withdraw credit and thereby suspend or cancel performance under any or all purchase orders or agreements in which Seller has extended credit to Buyer. In the event of default by Seller, Buyer shall be entitled to costs, fees, and expenses, included but not limited to recovery of attorney fees, court costs and fees, and collections costs.
- 9. Force Majeure.** If the manufacture, transfer or receipt or use by either party of any materials covered hereby is prevented, restricted or interfered with by reason of any event beyond the reasonable control of the party so affected, such party, upon prompt notice to the other party (and in the case of Buyer, prior to actual shipment), shall be excused from making or taking deliveries hereunder to the extent of such prevention, restriction or interference but, at Buyer's option, deliveries so omitted shall be made upon notice thereof to Seller, upon cessation of such contingency.
- 10. Assignment.** Seller may not assign this purchase order or any of Seller's obligations hereunder without Buyer's written consent.
- 11. Insurance.** Seller shall maintain at its own expense at all times while performing hereunder occurrence-based liability insurance and product-liability insurance with a reputable and financially responsible carrier(s) satisfactory to Buyer for coverage in amounts not less than USD [1] million per occurrence, USD [2] million in aggregate, and all other insurance required by applicable law. Seller shall furnish insurance certificates as directed by Buyer, satisfactory in form and substance to Buyer, showing the above coverages, and providing for at least 10 days prior written notice to Buyer by the insurance company of cancellation or material modification.
- 12. Seller's Representatives.** If Seller's employees, subcontractors, consultants, or other representatives under Seller's control perform any services at Buyer's premises or at Buyer's direction at the premises of others, (i) such persons shall comply with all rules and regulations of such premises and (ii) Seller shall keep materials and the premises on which the work is performed free and clear of all liens for material and labor incident to the performance of Seller's services hereunder. (iii) Supplier must notify Harbec of changes to processes, products, or services, including changes of their external providers or location of manufacture, and obtain the Harbec's approval.
- 13. Termination.** In the event of any proceeding voluntary or involuntary in bankruptcy or insolvency by or against Seller, or in the event of an appointment of a receiver or assignee for the benefit of creditors, with or without Seller's consent, Buyer may cancel any unfilled part of this order without any liability whatsoever on Buyer's part. Buyer may terminate this Purchase Order at any time without cause upon 5 days written notice to Seller. Either party may terminate this Purchase Order immediately if the other party materially breaches this Purchase Order which is not cured within 30 days of receipt of written notice of the non-breaching party's intent to terminate. In the event of

termination, Buyer's liability shall be limited to the price of, and Seller shall deliver to Buyer, products and/or services scheduled for delivery and/or performance during the period ending on the date notice of termination is received.

- 14. Buyer's Property.** All tools, dies, patterns, designs, molds, drawings, specifications, and other data or papers, and the like furnished by Buyer to Seller in connection with this order by Buyer remains the property of Buyer. In the event materials furnished by Buyer to Seller include any intellectual property of Buyer, Seller is granted a non-exclusive, non-transferable, non-sublicenseable and non-assignable license required only for the production of materials under this order, and shall use Buyer's intellectual property only for that purpose. Except for this license, no right, interest, ownership or privilege of use of Buyer's intellectual property shall inure to the benefit of Seller.
- 15. Confidentiality.** Seller agrees not to reveal to any other person or use for any other purpose other than the fulfillment of Buyer's order any information that is considered proprietary by Buyer, unless such has been expressly agreed to in writing by Buyer.
- 16. Survival of Obligations.** All warranty, indemnification and confidentiality provisions set forth in this agreement, including all revisions and modifications of those provisions to which the parties may agree in the future, shall remain in full force and effect notwithstanding the termination or expiration of this Purchase Order.
- 17. Choice of Law.** This Agreement between Buyer and Seller shall be construed, and the respective rights and duties of Buyer and Seller shall be determined, according to the laws of the State of New York, without giving effect to its principles of conflicts of laws. The UN Convention on Contracts for the International Sale of Goods shall not apply to this Agreement
- 18. Dispute Resolution.** Any dispute, controversy or claim arising out of or related in any way to this purchase order, these Terms and Conditions of Purchase, and/or any related contract, including but not limited to the validity, scope and enforceability of this clause, which cannot be amicably resolved by the parties shall be solely and finally settled by arbitration administered by the American Arbitration Association in accordance with its commercial arbitration rules. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitration shall take place before one arbitrator sitting in Wayne County, New York. The language of the arbitration shall be English. The arbitrators will be bound to adjudicate all disputes in accordance with the laws of the State of New York. The decision of the arbitrators shall be in writing with written findings of fact and shall be final and binding on the parties. Each party shall bear its own costs relating to the arbitration proceedings irrespective of its outcome. This section provides the sole recourse for the settlement of any disputes arising out of, in connection with, or related to this Agreement.
- 19. Supplier Awareness:** Supplier must comply with all applicable laws and regulations, employee competent personnel to ensure Buyer's requirements are met, and be committed to the highest standards of ethics and business conduct. Supplier must not engage in unfair business practices (i.e. business gifts, etc.), and should avoid involvement in activities that could be perceived as a conflict-of-interest. Supplier to enforce all product safety requirements, including the management of critical items and key characteristics. Supplier shall communicate any concerns regarding product safety to Harbec. Supplier will ensure that employees and people working on its behalf are aware of:

- Their contribution to product or service conformity.
- Their contribution to product safety.
- The importance of ethical behavior.
- Prevent the use of counterfeit parts.

20. Quality Management System: The seller shall implement and maintain an industry recognized Quality Management System. Harbec reserves the right to review the Supplier's Quality Management System.