

Virginia Port Authority  
Purchase Order Terms and Conditions  
(5/2018)

**1. Acceptance of Terms and Conditions**

**1.1** Acceptance of a Purchase Order from Virginia Port Authority. (“Buyer”) shall constitute acceptance of these Terms and Conditions, which are a part of the Purchase Order. Acknowledgment of a Purchase Order, in any form, including without limitation commencement of performance or shipment of material, shall be deemed to be acceptance of these Terms and Conditions. The Purchase Order itself, these Terms and Conditions, and any additional clauses in the specifications, drawings, amendments, and/or documents submitted by Buyer shall constitute the entire agreement between Buyer and Seller. No modification or alteration to these Terms and Conditions shall be binding unless consented to in writing by buyer.

**1.2** Terms and conditions in Seller’s acknowledgment, invoice or any other correspondence containing any conflicting terms not contained herein, whether or not such terms materially alter the Purchase Order, and even if Seller’s acceptance is expressly conditioned on Buyer’s acceptance of such conflicting or additional terms, are objected to by Buyer without need of further notice of objection, and are of no effort nor in any circumstance binding upon Buyer.

**1.3** Any change or addition to this Purchase Order, and any consent or agreement required by Buyer relating to this Purchase Order shall only be effective, if it is in writing signed by an authorized representative of Buyer’s Central Purchasing Division

**2. Delivery**

**2.1** Delivery must be in strict compliance with the required delivery date in the Purchase Order or the required schedule given in conjunction with a systems order or blanket order. Unless otherwise provided in the Purchase Order, delivery shall not be made more than 15 days prior to the delivery dates specified in the Agreement and Buyer may return earlier deliveries at Seller’s risk and expense.

**2.2** All materials to be delivered in connection with any Purchase Order shall be packed and packaged to ensure safe arrival at their destination, to secure the lowest transportation costs, and to comply with the requirements of common carriers. Delivery should be made by Seller at such times and places and of such items and quantities as may be specified by the Purchase Order.

**2.3** If Seller fails to meet its scheduled delivery date(s), then Buyer may, in addition to all other remedies it may have, require expedited shipment. Seller will pay any additional cost of shipping. Seller shall pay any additional charges resulting from deviation from Buyer’s routing instructions. If Seller fails to strictly comply with the Purchase Order delivery schedule, Buyer may, at its option, in addition to all other remedies Buyer may have, terminate the Purchase Order by giving notice to Seller, in which case Buyer shall have no liability to Seller.

**2.4** Title and risk of loss shall remain with Seller until (i) all materials are delivered to the

destination specified in the Purchase Order (ii) the arrival of the specified delivery date, and (iii) Buyer has accepted the materials. Notwithstanding such delivery, Seller shall bear risk of loss or damage to materials purchased hereunder from the time that Buyer gives notice of rejection of materials pursuant to the provision of this order. All materials provided hereunder shall be free and clear of all liens, claims, and encumbrances.

**2.5** If Seller encounters or anticipates difficulty in meeting the delivery schedule, Seller shall immediately notify Buyer in writing of the details and plan for corrective action. Such data shall be informational only and shall not be construed as a waiver by Buyer of any delivery schedule or of any rights or remedies. Parts or materials fabricated in anticipation of Buyer's Purchase Order will be at Seller's risk.

**2.6** Buyer's Purchase Order numbers and symbols must be plainly marked on all packing lists, invoices, packages, bills of lading, and shipping orders. Shipping memos or packing lists must accompany materials. Items shipped are not deemed received until all required documentation is received. Buyer's count or weight shall be determinate on shipments not accompanied by packing lists. Materials must be routed in accordance with Buyer's instructions.

**2.7** When materials are specially packed to avoid contamination or climatic exposure or if materials are temperature or age-sensitive, notice to this effect must be prominently placed on the bill of lading, packing sheet, and packages. If Seller fails to comply with this requirement, it shall be held liable for rejection of or loss to material due to such failure, including without limitation spoilage.

### **3. Inspection**

**3.1** Buyer shall have the right to inspect materials supplied hereunder to the extent practicable, at all places and times, including during the manufacture or fabrication, at Seller's facilities or elsewhere. Seller and Seller's suppliers will furnish without additional charge all reasonable facilities and assistance for the safety and convenience of Buyer performing their duties on Seller and Seller's supplier's premises.

**3.2** Such inspection may include raw materials, components, work in process, and completed products as well as drawings, specifications, and related data. Final inspection acceptance shall be in accordance with criteria specified in the Purchase Order and after delivery to the delivery point designated by the Purchase Order.

**3.3** Buyer may reject all materials found to be defective. Rejected materials may be returned to Seller at Seller's expense. At Buyer's request, Seller shall repair or replace defective materials at Seller's expense. Buyer's failure to inspect materials, failure to discover defects in materials, or payment for materials shall not constitute approval, acceptance, forfeiture of warranty rights, or limitation of any other of Buyer's rights provided by law or the Purchase Order.

**3.4** If required by Buyer at any time prior to Seller's full performance, Seller shall provide and maintain at no additional cost to Buyer an inspection/quality control system acceptable

to Buyer covering materials under this Purchase Order and shall tender to Buyer for acceptance only supplies that have been inspected in accordance with the inspection system and found by the Seller to be in conformity with the Buyer's requirements. As part of the system, Seller shall prepare records evidencing all inspections made under this system available and the outcome of such inspections. These records shall be kept complete and made available to Buyer before and after delivery. Buyer may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. Buyer's right of inspection, whether exercised or not, shall be solely for Buyer's benefit, and shall not relieve Seller of any warranties or other obligations under the Purchase Order.

**4. Over shipment**

Materials shall not be supplied in excess of ordered quantities and any applicable shipping tolerances specified in the Purchase Order. Seller shall be liable for return shipment costs for any excess quantities shipped by Seller and returned by Buyer. If Seller refuses to pay for such costs, in advance of return shipment, the over-shipped material will be retained by Buyer at no cost. Buyer is under no obligation to notify Seller of any over shipments.

**5. Price Warranty**

Unless otherwise specified in the Purchase Order, prices are F.O.B. to the destination stated in the Purchase Order and shall include all federal, state, and local taxes (if required), and insurance; no separate or additional charge will be allowed for packing, crating, drayage, or storage. Seller warrants that prices charged for the materials and services hereunder and not higher than those charged to any of Seller's other customers, including the Government, for materials or service of like grade and quality.

**6. Payment**

**6.1** Seller shall be paid within 30 days after the latest of (i) Buyer's receipt of materials ordered hereunder; (ii) completion of all services to be rendered hereunder, (iii) Buyer's inspection and acceptance of said materials and services, (iv) Buyer's receipt of properly prepared invoices in accordance with Buyer's invoicing instructions, and (v) the scheduled delivery date. Any adjustments in Seller's invoice due to shortages, rejection or other failure to comply with the provisions of the Purchase Order, may be made by Buyer before payment. Discount periods shall commence on the latest of final acceptance, satisfactory completion of acceptance testing (if required), scheduled delivery, actual delivery, receipt of any required documentation, or receipt of invoice. No charges will be honored unless specified on the face of the Purchase Order. Invoices must be accompanied by transportation receipt, if transportation is payable as a separate item. Invoice shall be mailed immediately after each shipment, in accordance with the instructions on the Purchase Order.

**6.2** Delays in receiving invoice, errors or omissions on invoices, such as Purchase Order number, or lack of supporting documentation required by the terms of the Purchase Order, will be cause for Buyer's withholding payment without losing discount privileges.

**7. Warranties**

**7.1** Seller warrants that materials ordered or delivered hereunder will be merchantable, free from defect in materials and workmanship, and conform to specifications, drawings, samples, or other descriptions furnished by Buyer, and will be fit and sufficient for the purpose intended. If the materials delivered will be incorporated in an item to be delivered to

Buyer's customer, Seller's warranty under this clause shall be extended to Buyer's customer. Such warranties, from date of acceptance, together with Seller's service warranties and guarantees, shall run to Buyer, its successors, assigns, customers at any tier, and ultimate user and joint users.

**7.2** In the event of a breach of the foregoing warranty, Buyer may, at its option, either (a) return the materials for credit or (b) require prompt correction or replacement of the defective or nonconforming materials, and delivery to Buyer of any corrected or replaced materials shall be at Seller's expense. Materials required to be corrected or replaced shall be subject to the provisions of this paragraph and the "Inspection" section hereof in the same manner and to the same extent as materials originally delivered under the Purchase Order. The rights and remedies of Buyer provided in this clause shall not be exclusive and are addition to any other rights and remedies provided at law, or in equity, or under this Purchase Order.

**7.3** Seller warrants that all labor or services provided pursuant to the Purchase Order shall be performed in a prompt and workmanlike manner, in accordance with Seller's and material manufactures plans, instructions, specifications, requirements, and all applicable laws, rules, and regulations.

**7.4** Seller warrants that:

**7.4.1** Cost and pricing data furnished by Seller is complete, accurate, and current either (a) as certified in Seller's Certificate of Current Cost or Pricing Data, or (b) as furnished to Buyer by Seller, whether or not certified.

**7.4.2** Cost and pricing data furnished to Seller by its subcontractors at any tier is complete, accurate, and current, either (a) as certified in that subcontractor's Certificate of Current Cost or Pricing Data, or (b) as furnished to Seller by its subcontractor, whether or not certified.

**7.4.3** Cost and pricing data furnished to Seller by its subcontractors at any tier or prospective subcontractors at any tier, which was required to be complete, accurate, and current and to be submitted to support a subcontract cost estimate furnished by Seller, is complete, accurate, and current either as certified in Seller's Certificate of Current Cost or Pricing Data or as furnished to Buyer, whether or not certified.

**7.4.4** Any data not within, 1, 2, or 3 above, furnished by Seller or a lower tiered subcontractor or prospective subcontractor to Seller is complete, accurate, and current, as submitted.<sup>4</sup>

## **8. Compliance with Laws and Regulations**

**8.1** Seller will comply with the Fair Labor Standards Act of June 30, 1938, (29 USC 201-209), as amended, the Occupation Safety and Health Act of 1970, as amended, and the Toxic Substances Control Act, as amended. Seller also warrants that in the performance of this order Seller will comply with all applicable laws, rules, and regulations.

**8.2** Environmental Management System The facility has established an Environmental Management System; contractors and suppliers must communicate the VPA/VIT Environmental Policy to its employees. (This policy [can be found here.](#)) All contractors and suppliers are expected to adhere to this policy and to the environmental procedures described in this document. The facility has identified environmental aspects and impacts and has

developed environmental programs for their management.

**8.2.1** Anyone entering any VIT terminal must obtain an Access Agreement signed by VIT.

**8.3** Occupational Health and Safety Management System The facility has established an Occupational Health and Safety Management System; contractors and suppliers must communicate the VPA/VIT Occupational Health and Safety Policy to its employees. (This policy [can be found here](#)) All contractors and suppliers are expected to adhere to this policy and to all occupational health and safety procedures described in this document. The facility has identified occupational sources, situations and activities and has developed a safety management system for their management.

## 9. **Changes**

**9.1** Buyer may, at anytime by written notice to Seller, change the materials or services covered by this Purchase Order. If any such change causes an increase or decrease in the cost of, or the time required for, Seller's performance hereunder, then an equitable adjustment shall be made in the price or delivery schedule, or both.

**9.2** Any claim by Seller for adjustment under this section shall be proposed in writing within twenty (20) days from the date of receipt of Buyer's written notice directing the change. Where the cost of property acquired for the performance of a Purchase Order made obsolete or excess as a result of a change is included in the claim for equitable adjustment, Buyer shall have the right to prescribe the manner of disposition of such property, and Seller will diligently follow Buyer's direction.

**9.3** Failure to agree to any adjustment shall be a dispute within the meaning of the "Disputes" section of this Purchase Order. However, nothing in this section shall excuse Seller from proceeding with the order as changed.

## 10. **Buyer-Furnished Material or Supplies**

Buyer may, from time to time, deliver to Seller materials required by Seller for the performance of this order. In such an event, the total price of the Purchase Order shall be reduced by Seller's cost of such materials which Seller will provide upon Buyer's request and shall be agreed upon no later than thirty (30) days prior to such delivery.

## 11. **Rights and Reservations**

**11.1** Seller warrants and insures that all designs, processes, drawings, specifications, reports, data and other information, and the features of all parts, equipment, tools, gauges, patterns, and other items furnished or disclosed to Seller by Buyer in connection with a request for bid, request for quote, request for proposal or Purchase Order, are maintained in strict confidence and shall not be transmitted to any other person or entity. Upon completion or termination of the designated process, Seller shall return all such information and items to Buyer or make such other disposition thereof as may be directed or approved by Buyer.

**11.2** Information which Seller shall have disclosed or may hereafter disclose to Buyer, in connection with the placement and performance of a request or Purchase Order, shall be non-confidential and non-proprietary. Accordingly, such information shall be free from any restrictions.

## 12. **Stop Work Order**

**12.1** Buyer may at any time by written notice to Seller, require Seller to stop all or any part of the work called for by this Purchase Order for a period of up to ninety (90) days after the notice is delivered to Seller ("Stop Work Order"). Upon receipt of the Stop Work Order, Seller shall comply with its terms and take all reasonable steps to minimize costs allocable to the work covered by the Stop Work Order during the period of work stoppage.

**12.2** Within a period of ninety (90) days after a Stop Work order is delivered to Seller, Buyer Shall either cancel the Stop Work Order or terminate the work covered by the Stop Work Order as provided in the “Default” or the “Termination for Convenience” sections hereof, as Buyer deems appropriate. Seller shall resume work upon cancellation or expiration of any Stop Work Order. If the Stop Work Order results in an increase in the time required for the performance of this order or in Seller’s costs properly allocable thereto, an equitable adjustment shall be made in the delivery schedule or prices, or both.

**13. Termination for Default**

**13.1** Default: Buyer may, by written notice of default to Seller, terminate this Purchase Order in whole or in part if Seller fails to:

**13.1.1** Deliver materials or to perform the services within the time specified in this Purchase Order or any extension;

**13.1.2** Make progress, so as to endanger performance of this Purchase Order; or.

**13.1.3** Strictly comply with any of the other provisions of this Purchase Order.

**13.2** If Buyer terminates a Purchase Order for default, Buyer may acquire supplies and /or services similar to those terminated, and Seller will be liable to Buyer for any excess costs for those supplies or services. However, Seller shall continue any work not terminated.

**13.3** If Buyer terminates a Purchase Order for default; Buyer may require Seller to transfer title free and clear of claims, liens, and encumbrances and deliver to Buyer, as directed by Buyer, any 1) completed materials, and 2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as “manufacturing materials”) that Seller has specifically produced or acquired or the Purchase Order. Seller shall also protect and preserve property in its possession in which Buyer has an interest. Buyer shall pay Purchase Order prices for completed supplies delivered and accepted. Buyer shall pay for manufacturing materials delivered and accepted by Buyer an amount equal to the cost of Seller’s materials incorporated therein. Buyer may withhold from these amounts any sum Buyer determines to be necessary to protect Buyer against loss because of Seller’s breach.

**13.4** If after termination for default, it is determined that seller was not in default, the rights and obligations of the parties shall be the same as if the termination had been for convenience hereunder. Seller shall reimburse Buyer for reasonable attorney fees incurred by buyer to enforce the provisions of the Purchase Order or to secure costs and/or damages for the breach thereof, or in pursuing any other remedy hereunder by law or in equity.<sup>6</sup>

**14. Termination for Insolvency**

If any proceedings are brought by or against Seller to place seller in bankruptcy or receivership, for an assignment for the benefit of creditors, or under any other law relating to insolvency, then Buyer may terminate this Purchase Order. Any termination under this section shall be deemed to be a termination for default in accordance with the section entitled “Termination for Default.”

**15. Termination for Convenience**

The performance of work under this Purchase Order may be terminated in whole, or from time to time in part, by Buyer for its convenience. If Seller terminates for convenience, Seller shall deliver to Buyer all materials and/or work in progress to Seller relating to the Purchase Order. Within 30 days after Buyer’s receipt thereof, Buyer shall pay to Seller (i) its actual costs of goods incorporated in the materials, and (ii) Seller’s direct cost of labor expended for the production of the materials, the actual direct cost of labor for services rendered, if any.

## **16. Accountable Property and Data**

**16.1** All drawings, specifications, technical data, computer software, materials, and accountable property (i.e. tooling, test equipment, plant equipment, etc.) furnished or paid for by Buyer shall be:

- 1) the property of Buyer,
- 2) subject to removal at any time without additional cost demand by Buyer,
- 3) used only in filling orders from Buyer, and
- 4) kept separate from other drawings, specifications, technical data, computer software, and materials, and shall be identified as the property of Buyer. Seller shall return all drawings, specifications, technical data, and computer software to Buyer upon request. Any such property of Buyer, which is retained by Seller, shall remain subject to the foregoing restrictions on use, reproductions, and disclosure.

**16.2** Buyer may, at any time, pay Seller for the cost of part or all materials paid for or produced by Seller and immediately become the owner thereof free and clear of all liens, claims, and encumbrances. Buyer shall be entitled to possession at the completion of the order, or at such earlier date as Buyer designates. Seller will segregate such property upon Buyer's request, and Seller will give Buyer a bill of sale for such material and evidence that it is free and clear of liens, claims, and encumbrances. Upon termination of an order for cause or convenience, Buyer may use all drawings, documents, or other records related to this order for cause or convenience. Buyer may use all drawings, documents, or other records related to this order whether created by Buyer or Seller without further compensation to Seller. Seller may not disclose the existence of an order or the items to be supplied without buyer's written consent.

## **17. Patents and Copyrights**

**17.1** Seller warrants that Buyer will suffer no claim, damages, or liability arising from any of the material's breach of any patent, trademark, copyright, or similar law. Seller agrees to defend, indemnify, and hold harmless Buyer, its customers and agents against all claims, liability, damages, and attorney's fees arising from any breach of the foregoing warranty or the actual or alleged infringement of any patent, copyright, or work arising out of the manufacture use, sale, delivery, or disposal of materials furnished under this order. In the event of any such claim against Buyer, Seller shall furnish to Buyer all evidence and information in possession of Seller pertaining to the infringement and relating to the performance of the Purchase Order.

**17.2** Seller shall disclose, deliver, and does hereby assign to buyer all inventions, discoveries, processes, data, plans, specifications, information, and computer software generated from this order whether or not specified to be delivered hereunder. Seller agrees to execute all documents required by Buyer in this regard.

## **18. Insurance-Work on Buyer's Premises**

**18.1** If Seller, Seller's employees or agents enter on to Buyer's premises for any reason in connection with any order or otherwise, Seller and such other parties shall comply with all of Buyer's security requirements and all safety, protection, traffic, and OSHA regulations.

**18.2** Seller shall defend, indemnify, and hold Buyer harmless from all claims, actions, demands, loss, liability and causes of action, including without limitation attorney's fees, arising from injury, including death, to any person, or damage to any property, when such injury or damage results in whole or in part from the acts or omissions of Seller, Seller's employees or agents, except damage caused solely by the gross negligence of Buyer.

**18.3** Seller and any subcontractor used by Seller in connection with an order shall carry Worker's Compensation and Employee's Liability Insurance to cover Seller's and contractor's legal liability arising from accidents to their employees. Seller and its subcontractors shall carry Comprehensive General Liability and adequate Comprehensive Automobile Liability Insurance covering the legal liability of Seller and the subcontractors for damage to person and/or property arising out of the operations of Seller or its subcontractors.

**18.4** At Buyer's request, Seller shall furnish to Buyer certificates from Seller's insurers showing such coverage is in effect and agreeing to give Buyer ten (10) days' prior written notice of cancellation of the coverage. Buyer may stipulate minimum liability coverage. Buyer shall be named as an additional insured under such liability insurance policies.

**19. Assignment and Subcontracting**

Seller shall not assign any Purchase Order in whole or part without prior express written consent of Buyer. Nor shall Seller subcontract for completed or substantially completed materials or services purchased hereunder without the prior express written consent of Buyer. The limitation shall not apply to the purchase by Seller of standard commercial supplies or raw material. Seller shall select subcontractors (including supplies) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of Buyer and the Purchase Order.

**20. Notices**

All notices required or permitted to be given hereunder shall be deemed to be properly given if delivered in writing personally, electronically forwarded, or sent by United States certified or registered mail addressed to Seller or Buyer, as the case may be, at the addresses set forth in the approved name and address information maintained by Buyer or Seller, with postage fully prepaid. The effective time of notice shall be at the time of forwarding.

**21. Waiver**

Waiver of any term and condition, breach of an order or granting of an extension for performance within a Purchase Order shall not be deemed to be waiver of any other term and condition contained herein.

**22. Disputes**

**22.1** All suits, claims and other matters arising out of or relating to this Purchase Order maybe brought only in the state or federal courts located in Norfolk, Virginia. Pending the resolution of any such dispute, Seller shall diligently pursue the performance of the Purchase Order under the terms and in the manner set forth in the order or as otherwise directed by Buyer.

**22.2** At buyer's sole discretion, and with its written direction, and instead of resolution in court, Buyer may require that any dispute, claim, or suit be submitted to mediation before a mediator designated by Buyer, and, if necessary, arbitration through an arbitration procedure designated by Buyer, the result of which will be final and binding on both parties. Such mediation and arbitration will take place in Norfolk, Virginia. The parties will each pay one half of the cost of the mediator. Seller will pay Buyer its reasonable attorney's fees if Seller loses any arbitration.

**23. Order of Precedence**

These Terms and Conditions, the Purchase Order and all documents and specification incorporated by reference constitute the entire agreement of the parties as to the subject matter hereof and all prior agreements are merged herein; provided, however, that to the

extent not contrary to the terms hereof, the obligations of a seller under the Uniform Commercial Code shall apply to Seller. In the event of any inconsistency among the foregoing, the inconsistency shall be resolved by giving precedence in the following order: (a) the Purchase Order, (b) these Terms and Conditions, (c) the specifications, (d) the drawings, and (e) the other documents incorporated by reference.

**24. Applicable Law**

The validity, performance, and construction of this Purchase Order shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without reference to its choice of law provisions.

**25. Quality Assurance**

If Quality Assurance requirements apply to the Purchase Order, Seller is required to prepare and send with each shipment a "Certificate of Compliance" prepared in accordance with the instructions provided.

**26. News Releases**

Without prior written consent of VIT, seller shall make no news releases (including photographs and films, public announcements of denial or confirmation of same, or interviews with media representatives) on any part of the subject of the Purchase Order or any phase of any program hereunder. Seller may not reference Buyer in any of Seller's marketing materials.

**27. Taxes**

Buyer is exempt from sales tax in accordance with the Virginia Retail Sales and Use Tax Code 58.1-608, K. Seller shall not include in the purchase price any taxes imposed by any taxing authority of the state in which the project is located, or any political subdivision thereof, upon the sale or use of the materials covered by a Purchase Order. Any such sales or use tax, if applicable, shall be paid by Seller. Seller shall prepay all freight and transportation charges to the F.O.B point of delivery and such freight charges shall be stated separately, as requested from the sales price of material, so as not to impose any tax upon Buyer.

**28. Remedies**

Any remedies specified for Seller's breach of this Purchase Order shall not be exclusive. If Seller breaches any provision, representation, covenant or warranty under this Purchase Order, Buyer shall have all rights and remedies specifically stated in this Purchase Order, as well as those available under applicable law, including without limitation specific performance and all rights and remedies under the Uniform Commercial Code. Additionally, Seller shall indemnify, defend and hold Buyer harmless from any loss, damages, liability, claim or suit, including without limitation costs and reasonable attorney's fees, arising from Seller's breach of any duty, provision, representation, covenant or warranty under this Purchase Order. Seller shall pay Buyer's reasonable costs and attorney's fees incurred to enforce this Agreement.

**29. Miscellaneous**

**29.1** TIME IS MATERIAL AND OF THE ESSENCE FOR SELLER'S PERFORMANCE.

**29.2** The term "materials" in this Purchase Order, shall include all goods and other personal property, tangible and intangible, to be delivered, provided or assigned to Buyer under this Purchase Order.

**29.2.1** All of Seller's warranties, representations, promises, covenant and agreements shall survive any termination of this Purchase Order.