



2301 Silverville Road, P.O. Box 368  
Freeport, PA 16229-0315

## Terms and Conditions of Sale

### **OVERG INDUSTRIES, INC.**

Oberg Industries, Inc. (hereinafter "Seller") hereby gives notice of its rejection of any different or additional terms and conditions except for any such terms and conditions as may be expressly accepted by it in writing.

Unless different or additional terms and conditions are stated or referred to in Seller's proposal, in which event such different or additional terms and conditions shall be exclusive as to the particular subject covered, the terms and conditions stated below apply, and such terms and conditions supersede any prior or contemporaneous agreements or correspondence between the parties.

Seller will furnish to Buyer products and/or services as specified in Seller's proposal.

Prices are quoted in US Dollars and are valid for acceptance within 30 days from the proposal date unless otherwise stated therein. Prices for deliveries are firm for the agreed period of delivery, subject nevertheless, to the Seller's right to change the price due to materials price fluctuations. Prices for deliveries are understood to be net and F.O.B. Seller's manufacturing facilities. Freight will be prepaid and invoiced to the Buyer. The price includes packing in accordance with Seller's general practices.

Technical assistance or any other indirect services are not included in this offer unless otherwise stated in the proposal or the contract.

In addition to any price specified in the contract, Buyer shall pay or reimburse Seller the gross amount of any sales, use, gross receipts, excise, value-added, or similar tax applicable to the contract or the subject matter hereof, or Buyer shall furnish Seller with evidence of exemption acceptable to the taxing authorities.

Except as otherwise noted, all payments are due and payable net 30 days from date of invoice. Invoices will be issued in accordance with payment milestones that have been mutually agreed and specified in the contract; however, in the event such milestones are not included in the contract, then payment in full is due upon the rendering of an invoice immediately following delivery. Invoices for technical assistance are provided on a per diem basis, and invoices for training and spare parts will be issued for the total amount due immediately upon delivery of the services or part.

Seller may alter or suspend credit, or change credit terms provided herein, when in its sole opinion the financial condition of Buyer so warrants. In such case, in addition to any other remedies herein or by law provided, cash payment or satisfactory security from Buyer may be required by Seller before shipment, or the due date of payment by Buyer under any contract or order with Seller may be accelerated. If such assurances are requested by Seller and not provided by Buyer, Seller may stop work and withhold all subsequent deliveries and the portion of the selling price representing hours and material in process at such time shall be due and payable. Failure to pay any invoice at maturity shall make all other invoices from Seller to Buyer immediately due and payable, irrespective of terms, and Seller may stop work and withhold all subsequent deliveries on any open orders and retain possession of all other property of Buyer in its possession, until full payment is settled. Acceptance of less than full payment by Seller shall not be a waiver of any of its rights. The waiver by Seller of any of its rights hereunder shall not be construed to be a waiver of those rights upon any subsequent default.

Delivery will be made F.O.B. Seller's facilities with freight prepaid and invoiced to the Buyer. Title to and risk of loss of the parts and/or components and/or equipment or any part thereof shall pass to Buyer upon delivery to the carrier.

Delivery time is the number of weeks included in the proposal for delivery calculated from the date on which Seller has acknowledged the contract or received down payment (if applicable), whichever is later.

The quoted schedules depend upon prompt agreement on complete definition of the detailed scope of supply and receipt of information, including design data, drawing approval and manufacturing release according to the established project schedules. Delays by the Buyer in providing such agreement or information may result in an appropriate adjustment of the contract in accordance with the changes article.

Buyer's failure to reject any non-conforming products within ten (10) days of delivery and/or tender by Seller shall constitute acceptance of said products. Buyer must provide Seller with written notice of rejection of any non-conforming product within said ten (10) day period.

Buyer may request changes in the scope of the work and, if accepted by Seller, the price, schedule and other pertinent provisions of the contract shall be adjusted by written agreement of the parties prior to implementation of the change. No changes to the contract are binding on Seller unless approved by Seller, in writing, in advance of the proposed or agreed change. Any change to the contract resulting in a price adjustment shall be automatically added to the contract price and becomes due and payable as set forth herein.

Seller's expenses due to (a) delays (other than delays which are within the reasonable control of Seller, (b) changes in applicable laws and requirements after the date of Seller's proposal and (c) additional inspections or tests required by Buyer beyond those required for compliance with Seller's quality assurance program will be treated as changes to the scope of work and the contract will be adjusted as set forth in the previous paragraph.

Seller will not be liable for failure to perform any obligation or delay in performance resulting from any cause beyond the reasonable control of Seller or its suppliers or from any act of God: act of civil or military authority; act of war whether declared or undeclared; act (including delay, failure to act, or priority) of any governmental authority, Buyer, Buyer's customer, or other contractors; or civil disturbance; insurrection or riot; sabotage; fire; inclement weather conditions; earthquake; flood; strike; work stoppage or other labor difficulty; embargo; fuel or energy shortage; wreck; major product breakdown; design change; delay or accident in shipping or transportation; or failure or delay beyond its reasonable control in obtaining necessary manufacturing facilities, labor or materials from its usual sources.

In the event of delay in performance excusable as set forth herein, the time for performance of the work will be extended by a period of time reasonably necessary to overcome the effect of the delay.

Buyer shall clarify with Seller any inconsistencies or conflicts in the contract. Should Buyer fail to contact Seller to resolve any such conflicts or inconsistencies, Buyer will be solely responsible for any errors resulting from any conflicts or inconsistencies occurring in this purchase order. Where documents are referenced, the issue date in effect at the time of purchase order or change notice placement shall be applicable, unless another issue date is specified in the purchase order or change notice.

Seller's warranties do not apply to Buyer's design or material, including process specifications.

Seller warrants that the products and/or services supplied by it will be of the kind and quality specified in the Seller's proposal and will be free of defects in workmanship and material for a period of twelve (12) months from date of substantial completion. In the event any product fails to comply with this warranty, and Buyer notifies Seller promptly in writing of such noncompliance, Seller shall correct such noncompliance, at its option, by repair or replacement

of defective part(s) F.O.B. Seller's repair plant or factory. This product warranty does not apply to third party software, consumables and wearing parts.

Seller warrants that the product, when delivered, shall not be subject to any encumbrances, liens, security interests, or other defects in title. In the event of any noncompliance with this warranty, Seller, upon prompt written notice, shall defend the title to the product.

THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES WHETHER STATUTORY, EXPRESS OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE).

THE REMEDIES PROVIDED HEREIN ARE THE BUYER'S EXCLUSIVE REMEDIES FOR ANY FAILURE OF SELLER TO COMPLY WITH ITS OBLIGATIONS. CORRECTION OF ANY DEFECT OR NONCOMPLIANCE IN THE MANNER AND FOR THE PERIOD OF TIME PROVIDED ABOVE SHALL CONSTITUTE COMPLETE FULFILLMENT OF ALL SUCH LIABILITIES OF SELLER WHETHER THE CLAIMS OF THE BUYER ARE BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE WITH RESPECT TO OR ARISING OUT OF THE WORK FURNISHED OR PERFORMED HEREUNDER.

If performance under this contract is held, delayed or rescheduled for not more than 90 days at the request of the Buyer, it will be subject to the changes provisions set forth herein. If performance under this contract is held, delayed or rescheduled for more than 90 days at the request of the Buyer, Seller may define these actions as a termination for Buyer's convenience, and Seller will then be entitled to recover all costs and fees as hereinafter set forth. Further, if product is ready for shipment and shipment cannot be made for causes beyond Seller's reasonable control, Seller shall submit an invoice for the balance due on such product payable net 30 days from date of invoice.

The contract may not be terminated for the convenience of the Buyer. Any attempt to terminate other than for material breach will result in Buyer being charged a reasonable cancellation fee equivalent to all of Seller's costs for labor, materials and overhead identified to the contract which have been incurred up to the date of notice of termination, plus the cost of all special tooling, fixturing, manufacturing equipment, special software, and other materials or supplies required by Seller to complete the contract; together with the payment of an additional amount equal to ten (10) percent of the contract price to compensate Seller for the administrative and overall organizational support required to perform under the contract.

This contract may be terminated by the Seller for Seller's convenience only by written notice and upon return of Buyer's materials and any unearned payments to date of termination. Seller shall not be liable to Buyer for any compensatory damages, including consequential and incidental damages, as a result of termination for Seller's convenience.

In the event Buyer commits a material breach and the Buyer fails to take steps to remedy such breach within 30 days from receipt of written notice specifying the nature and extent of such breach, and such breach prevents substantial completion of the contract, the Seller may, by subsequent written notice, terminate the contract.

No title to or ownership of any manufacturing processes, manufacturing apparatus, equipment, trade secrets, patents, trademarks, and/or copyrights or any parts thereof is transferred to Buyer or Buyer's end user by any delivery of products and services hereunder. Third party software provided by Seller may be subject to a separate license agreement and/or registration requirements, including prohibition on copying and limitations on use.

Seller retains for itself all of its intellectual property rights in any supporting documentation supplied hereunder, including but not limited to all designs, engineering details, and other data pertaining to any product and/or services sold except where such rights are assigned under written agreement by a corporate officer or Seller.

Seller may have a proprietary interest in any information that may be furnished pursuant to the contract. Buyer will keep in confidence and will not disclose any such information which is specifically designated as being proprietary to Seller without the prior written permission of Seller or use any such information for other than the purpose for which it is supplied. The provisions of this paragraph shall not apply to information, notwithstanding any confidential designation thereof, which is known to Buyer without any restriction as to disclosure or use at the time it is furnished, which is or becomes generally available to the public without breach of any agreement, or which is received from a third party without limitation or restriction on said third party or Buyer at the time of disclosure.

Seller also has a proprietary interest in the proposal and the contract. Accordingly, neither document will be disclosed in whole or in part to third parties without the prior written permission of Seller.

Notwithstanding any other articles of the contract, the product provided by Seller can only be exported or re-exported after Buyer has obtained the appropriate export license or authorization from the US Department of Commerce required by the Export Administration Regulations. Buyer's contract will contain a notice of Buyer's intention to export or re-export product contracted hereunder.

Seller will, at its own expense, defend or at its option settle any suit or proceeding brought against Buyer so far as based on an allegation that any services, processes or products (including parts thereof), or use thereof for its intended purpose, constitutes an infringement of any United States intellectual property rights of others, if Seller is notified promptly in writing and given authority, information, and assistance in a timely manner for the defense of said suit or proceeding. Seller will pay the damages and costs awarded in any suit or proceeding so defended.

Seller will not be responsible for any settlement of such suit or proceeding made without its prior written consent. In the event that the service, product or any part thereof is held to constitute infringement or its use by Buyer is enjoined, Seller will, at its option and its own expense, either (a) procure for Buyer the right to continue using said product, service or Buyer's material; (b) replace it with substantially equivalent non-infringing product; (c) modify it so it becomes non-infringing; or (d) if all else fails, refund a portion of the price paid to Seller.

Seller will have no duty or obligation to Buyer to the extent that the service or product is (a) supplied according to Buyer's design or instructions wherein compliance therewith has caused Seller to deviate from its normal course of performance, (b) modified by Buyer or its contractors after delivery, or (c) combined by Buyer or its contractors with items not furnished hereunder and by reason of said design, construction, modification or combination, a suit is brought against Buyer. In addition, if by reason of such design, instruction, modification, or combination, a suit or proceeding is brought against Seller, Buyer shall protect Seller in the same manner and to the same extent that Seller has agreed to protect Buyer as set forth hereinabove.

THIS ARTICLE IS AN EXCLUSIVE STATEMENT OF ALL THE DUTIES OF THE PARTIES RELATING TO INTELLECTUAL PROPERTY RIGHTS AND DIRECT OR CONTRIBUTORY INFRINGEMENT AND OF ALL THE REMEDIES OF BUYER RELATING TO ANY CLAIMS, SUITS, OR PROCEEDINGS INVOLVING INTELLECTUAL PROPERTY RIGHTS. COMPLIANCE WITH THIS ARTICLE AS PROVIDED HEREIN SHALL CONSTITUTE FULFILLMENT OF ALL LIABILITIES OF THE PARTIES UNDER THE CONTRACT WITH RESPECT TO INTELLECTUAL PROPERTY RIGHTS.

Seller reserves the right to assign any or all of its rights and obligations under the contract to a subsidiary, an affiliated company, or successor(s) in interest of Seller, in which event Seller shall notify the Buyer in writing and will remain liable as guarantor of the performance of the obligations thus assigned.

BUYER EXPRESSLY AGREES THAT NEITHER SELLER NOR ITS SUPPLIERS WILL UNDER ANY CIRCUMSTANCES BE LIABLE UNDER ANY THEORY OF RECOVERY, WHETHER BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), UNDER WARRANTY, OR OTHERWISE, FOR: ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE WHATSOEVER; DAMAGE TO OR LOSS OF PROPERTY, EQUIPMENT AND/OR PRODUCT; LOSS OF PROFITS OR REVENUE; LOSS OF USE OF BUYER'S MATERIAL; EQUIPMENT PRODUCT OR POWER SYSTEM;

INCREASED COSTS OF ANY KIND, INCLUDING BUT NOT LIMITED TO CAPITAL COST, FUEL COST AND COST OF PURCHASED OR REPLACEMENT POWER; OR CLAIMS OF CUSTOMERS OF BUYER.

BUYER EXPRESSLY AGREES THAT THE REMEDIES PROVIDED HEREIN ARE EXCLUSIVE AND THAT UNDER NO CIRCUMSTANCES SHALL THE TOTAL AGGREGATE LIABILITY OF SELLER AND ITS SUPPLIERS UNDER ANY THEORY OF RECOVERY, WHETHER BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), UNDER WARRANTY OR OTHERWISE, EXCEED TEN (10) PERCENT OF THE TOTAL PRICE PAID TO SELLER UNDER THE CONTRACT.

THE PROVISIONS OF THIS ARTICLE SHALL PREVAIL OVER ANY CONFLICTING OR INCONSISTENT PROVISIONS SET FORTH ELSEWHERE IN THE CONTRACT AND SHALL SURVIVE TERMINATION, EXPIRATION OR CANCELLATION OF THE CONTRACT.

The validity, construction and performance of the contract, shall be governed by and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, United States, without application of its choice of law rules.

Seller shall indemnify and hold the Buyer harmless for claims of third parties for physical damage to property and personal injury, including death, occurring on the premises of the Seller during the performance of the work hereunder, and resulting directly from (and to the extent of) any negligent act, action, omission, or failure to act when under a duty to act, on the part of Seller or its subcontractors while engaged in the work.

Buyer shall indemnify and hold Seller harmless for claims of third parties for physical damage to property and personal injury, including death, occurring on the premises of the Buyer during the performance of the work hereunder, and resulting directly from (and to the extent of) any negligent act, action, omission, or failure to act when under a duty to act, on the part of Buyer or its subcontractors.

Seller will design and manufacture product under the contract in accordance with Seller's standards. Seller will consider Buyer's request for compliance with new or revised codes and standards effective after the date of the proposal as a revision in accordance with the changes article. If not contained in the design specifically in the Seller's proposal, charges required to comply with state or local codes and standards shall be brought to Seller's attention prior to the commencement of manufacture, and shall also be subject to the changes article.

Seller shall, in connection with any goods or services or workmanship provided by Seller hereunder, comply with all applicable federal, state and local laws, rules, and regulations, and indemnify and hold Buyer harmless from any claim, fine, penalty or proceeding resulting therefrom. Seller certifies that it is in compliance with: (A) FAIR LABOR STANDARDS ACT. Each of the Seller's invoices covering materials covered by this purchase order must carry the following certificate or its equivalent in order to be passed for payment: "Seller hereby certifies that any materials covered by the contract were produced in compliance with all applicable requirements of the Fair Labor Standards Act, as amended, and of regulations and orders issued thereunder." (B) OCCUPATIONAL SAFETY AND HEALTH ACT. Seller warrants that the goods to be furnished hereunder comply with the requirements of the Occupational Safety and Health Act of 1970, as amended. (C) EQUAL EMPLOYMENT OPPORTUNITY. This purchase order is subject to non-discrimination provisions 1 through 7, Section 202 of Executive Order No. 11246 or amendments thereof. (D) VIETNAM ERA VETERANS READJUSTMENT ASSISTANCE ACT OF 1974. This purchase order is subject to the requirements of 38 U.S.C. 2012, Executive Order No. 11701, and the regulations set forth at 41 C.F.R. 60-250.1 et.seq., as amended. (E) REHABILITATION ACT OF 1973. This purchase order is subject to the requirements of 29 U.S.C. 793, Executive Order No. 11758, and the regulations set forth at 41 C.F.R. 60-741 et.seq., as amended. (F) MINORITY BUSINESS ENTERPRISE. This purchase order is subject to the requirements of Executive Order No. 11625 and the applicable regulations, as amended. (G) U.S. GOVERNMENT CONTRACTS. In the event this order is issued under a U.S. Government Contract, the flowdown terms thereunder shall take precedence over and supplement these terms and conditions. (H) EXPORT/IMPORT CONTROL. Buyer and Seller warrant that they will fully and completely comply with government export regulations, including but not limited to the International Traffic in Arms Regulations ("ITAR") and the Export

Administration regulations ("EARs") to the extent that the goods and/or data to be provided hereunder are subject to said laws and regulations.

Seller warrants that each and every chemical substance delivered under this purchase order shall, at the time of sale, transfer or delivery, be on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Agency pursuant to Section 8 (b) of the Toxic Substance Control Act (Public Law 94-469), as may be amended. Seller shall submit to Buyer, material safety data sheets, prepared in accordance with OSHA Hazardous Communication Standard, 29 CFR 1910.1200, as required. Seller shall be responsible for all chemical substances or mixtures which it or its subcontractors or suppliers of any tier bring upon premises of Buyer or Buyer's customer. Seller shall be responsible for removing and disposing all such substances and/or mixtures, containers, materials, and residue from their use, in accordance with all applicable federal, state, and/or local statutes, laws, regulations, rules, orders and ordinances.

Seller shall be an independent contractor with respect to any goods, services, or workmanship provided by Seller hereunder. Neither Seller nor its subcontractors, nor the employees of either, shall be deemed to be servants, employees, or agents of the Buyer.

It shall be deemed an event of default subject to possible termination by Buyer if it is found that gratuities (in the form of entertainment, gifts or otherwise) were offered or given by the Seller to any officer, agent, employee or representative of Buyer with a view towards securing a contract or securing favorable treatment with respect to the awarding, amending, or the making of any determination with respect to the performance of such contract.

All questions arising in connection with this transaction shall be resolved in accordance with the laws of the Commonwealth of Pennsylvania.

All disputes, unless previously settled between the parties, shall finally be settled in accordance with Rules of Arbitration of the American Arbitration Association by one or more arbitrators appointed in accordance with the rules. The decision of the arbitrators shall be final. The arbitration shall be held in Pittsburgh, Pennsylvania. Notwithstanding the foregoing, either party may petition a court of appropriate jurisdiction for emergency or injunctive relief to enforce its rights hereunder in which case, Buyer and Seller consent to the exclusive jurisdiction of the State and Federal District courts sitting in the Western District of Pennsylvania.

REV: 01/09 ACK