



2301 Silverville Road
Freeport, PA 16229-0315

Terms and Conditions of Purchase

OBERG INDUSTRIES, INC.

1. **ACCEPTANCE:**

A) This order is Buyer's offer to Seller and does not constitute an acceptance by Buyer or any offer to sell, quotation or proposal. Any reference to such offer to sell, quotation or proposal is solely for the purpose of incorporating the description and specifications of the goods and services contained therein to the extent that such description and specifications do not conflict with the description and specifications on the face of this order. This order consists only of the terms contained herein and on the face of this order and any supplements, specifications or other documents expressly incorporated therein by reference. B) It is expressly agreed that Seller's acknowledgment or confirmation of this order, or shipment of the goods or performance of the services called for by this order shall constitute agreement by Seller to the terms and conditions of sale contained in this order. This order supersedes all other writings and is expressly conditional upon Seller's acceptance. Any additional, or different terms or conditions contained in any acknowledgement of this order by Seller shall be deemed objected to by Buyer without need of further notice of objection and shall be of no effect nor in any circumstance binding upon Buyer unless accepted by Buyer in writing. Acceptance or rejection by Buyer of any such additional terms or conditions shall not constitute an acceptance of any other additional term or conditions.

2. **(A) NON-ASSIGNMENT:**

Assignment by Seller of this order or any part thereof without the written consent of Buyer shall be void.

(B) SUBCONTRACTING:

Seller shall not enter into a subcontract with any other party for the furnishings of any completed or substantially completed items or services described in this order without Buyer's prior written consent in each such case.

3. **GOVERNMENT REGULATIONS:**

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 this invoice 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.** Seller warrants that it 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.

4. **TOXIC SUBSTANCES AND EPA**

REQUIREMENTS:

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.

5. **INDEMNITY AND INSURANCE:**

Seller shall defend and indemnify Buyer against all damages, liabilities, claims, losses and expenses (including attorney's fees) arising out of, or resulting in any way from any defect in the goods or services purchased hereunder or from any failure by Seller to fully comply with the provisions of this purchase order or any act or omission of Seller, its agents, employees or subcontractors. Seller shall maintain general liability insurance (including products and completed operations liability and contractual liability) and automobile liability insurance (including liability for hired and non-owned vehicles) with combined single limits of not less than \$1,000,000. Seller shall also maintain worker's compensation and employer's liability to comply with state specified minimum limits. Higher limits of insurance may be required as determined by the Buyer as will adequately protect Seller and Buyer against damages, liabilities, claims, losses, and expenses. Seller agrees to submit certificates of insurance evidencing its insurance coverage when requested by Buyer.

6. **TIME OF PERFORMANCE:**

As to Seller's obligations under this purchase order, time is of the essence.

7. **UNLESS OTHERWISE SPECIFIED ON THE FACE OF THIS ORDER, ALL RISK OF LOSS OR DAMAGE TO THE MATERIAL OR EQUIPMENT FURNISHED IN THIS**

ORDER SHALL PASS TO BUYER UPON DELIVERY AND ACCEPTANCE BY BUYER. TITLE SHALL PASS TO BUYER, F.O.B. COMMON CARRIER, AT POINT OF DESTINATION.

8. **TERMINATION:**

Buyer may at any time terminate this order in whole or in part for its convenience upon written notice to Seller in which event Seller shall be entitled to reasonable termination charges consisting of a percentage of the order price reflecting the percentage of the work performed prior to termination plus actual direct costs resulting from termination. IN NO EVENT SHALL SELLER BE ENTITLED TO PAYMENT IN EXCESS OF THE PURCHASE ORDER PRICE OR LOST OPPORTUNITY COSTS, UNABSORBED OVERHEAD OR ANTICIPATED PROFITS AS A RESULT OF SUCH TERMINATION AND IN NO EVENT SHALL SAID TERMINATION COSTS EXCEED THE AMOUNT OF THIS PURCHASE ORDER.

9. **PROPRIETARY INFORMATION:**

The specifications, drawings, designs, manufacturing data and other information transmitted to Seller by Buyer in connection with the performance of this purchase order or developed by Seller under this purchase order are the property of Buyer and materials transmitted to Seller are disclosed in confidence upon the condition that they are not to be produced or copied or used for furnishing information or equipment to others, or for any other purpose detrimental to the interest of Buyer.

10. **PATENTS:**

Seller agrees, at its own expense, to defend any suit or action against Buyer or against those selling or using the goods or services covered by this order for alleged infringement of patent, trademark, copyright or invention rights arising from the sale or use of such goods or services and to indemnify and save Buyer harmless from any damages, liabilities, claims. Losses and expenses (including attorney's fees) paid or incurred by Buyer, in connection with any such suit or action, whether against Buyer or against those selling or using the goods or services covered by this order; provided, however, that this indemnity shall not apply to any such damages, liabilities, claims, losses, or expenses arising out of compliance by Seller with specifications furnished by Buyer.

11. **BUYER FURNISHED PROPERTY:**

The following terms apply to any tools, patterns, equipment, material, or other property which is supplied to Seller by Buyer (hereinafter "Buyer Furnished Property"):

Title to Buyer Furnished Property shall remain with Buyer. Seller shall segregate and clearly mark Buyer Furnished Property to show Buyer's ownership and shall preserve Buyer's title thereto free and clear of all encumbrances. Seller shall, if requested by Buyer, submit to Buyer an itemized inventor showing the description and location of each item of Buyer Furnished Property. Buyer shall have the right to enter Seller's premises to inspect Buyer Furnished Property. Should Seller fail to perform the duties imposed upon it by this section or should Buyer at any time have reason to believe that its title to, or right to the possession of any Buyer Furnished Property is threatened, Buyer shall have the right to enter upon Seller's premises and remove such property. Upon completion or termination of this Purchase Order, Seller shall segregate all Buyer Furnished Property and shall dispose of the same as Buyer may direct. Buyer reserves the right to abandon Buyer Furnished Property at no additional cost to Buyer upon issuance of written notification to Seller of such intent.

Seller shall, at its expense, perform all maintenance, repairs, and replacements necessary with respect to Buyer Furnished Property so that the same may remain suitable for the use contemplated hereby and may be returned to Buyer in as good condition as when received, except for reasonable wear and tear or consumption of materials necessarily resulting from their use.

Seller shall give Buyer prompt written notice of any Buyer Furnished Property which upon delivery is found to be defective. The correction or replacement of such defective property shall be accomplished at Buyer's written direction.

Upon delivery to Seller, the risk of loss or damage to Buyer Furnished Property shall be upon Seller. Risk of loss or damage shall transfer to Buyer when such property is returned to Buyer.

Seller waives any and all claims relating to loss, damage, injury, or delay arising out of or related to Buyer Furnished Property and Seller shall indemnify Buyer against any and all liability for damage to property or injury to or death of persons arising from or incidental to the presence or use of Buyer Furnished Property, whether such damage, injury, or death be caused by defects in such property, negligence in the use thereof, strict liability, or otherwise.

12. CHANGES AND MODIFICATION OF AGREEMENT:

Buyer may at any time, by written purchase order revision, make changes in the scope of work to be provided hereunder including changes to drawings and specifications as deemed necessary by Buyer. If such change will affect the price or

delivery date for such services, Buyer and Seller shall mutually agree in writing upon an equitable adjustment in the price and/or delivery date to reflect the effect of such change. All claims by Seller for adjustment under this paragraph must be asserted within 20 days from the date the change is ordered by Buyer. Seller shall not suspend performance of this purchase order while Buyer and Seller are in the process of making such changes and any related adjustments, and upon release in writing by Buyer, Seller shall comply with and perform such changes in accordance with the terms of this purchase order during such time. Changes to the work by Seller shall be made only with the prior written authority of Buyer. No other changes, modifications, alteration or waiver of or to the provisions of this purchase order shall be effective unless made or accepted in writing by an authorized representative of Buyer.

13. RESOLUTION OF CONFLICTS OR INCONSISTENCIES:

Seller shall clarify with Buyer any inconsistencies or conflicts in this Purchase Order. Should Seller fail to contact Buyer to resolve any such conflicts or inconsistencies, Seller 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.

14. WARRANTY:

Seller expressly warrants that all goods to be supplied hereunder shall conform to the specifications, drawings, samples or other description upon which this order is based, shall be fit and sufficient for the purpose intended, merchantable, of good material and workmanship and free from defect and that goods of Seller's design will be free from defect in design. Seller agrees to warrant the goods for one (1) year after shipment. Inspection, test, acceptance or use of the goods furnished hereunder shall not affect Seller's obligation under this warranty, and such warranty shall survive inspection, test, acceptance and use. This warranty shall run to Buyer, its successor, assigns and customers and the user of its products. In addition to any other remedies available to Buyer, Seller agrees to replace or correct defects (including labor and transportation) in any goods not conforming to the foregoing warranty promptly, without expense to Buyer, when notified of such non-conformity by Buyer. In the event of failure by Seller to correct defects in or replace non-conforming goods promptly, Buyer, after reasonable notice to Seller, may make such corrections or replace such goods and charge for the costs incurred by Buyer thereby.

15. TAXES:

The contract price includes any present and future federal, state, local or other taxes, duties, fees, and other charges levied against the Seller and applicable to this Contract or the material, equipment or services covered, hereunder. The contract price also includes the taxes, if any, levied on wages and/or salaries paid to the Seller's employees.

16. INDEPENDENT CONTRACTOR:

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.

17. GOVERNING LAW:

This order shall be construed and interpreted in accordance with the laws of the state in which Buyer is located.

18. ACCESS TO WORK:

The Buyer and its Customer shall at all times have access to all places of manufacture where equipment or materials are being made or prepared for use under this purchase order and they shall have full facilities for unrestricted inspection of such equipment or materials and full access to all manufacturing records including materials and inspection records for a complete review or audit.

19. GRATUITIES:

It shall be deemed on event of default subject to possible termination by Buyer under Section 8 hereof 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.