



TOMI ENGINEERING INC.

TERMS AND CONDITIONS (PURCHASE ORDER CLAUSES)

001. ACCEPTANCE, ACKNOWLEDGEMENT AND TERMS

THIS PURCHASE ORDER SHALL BECOME THE EXCLUSIVE AGREEMENT BETWEEN THE PARTIES FOR THE ARTICLES LISTED. THESE ARTICLES ARE SUBJECT TO THE TERMS AND CONDITIONS HEREOF; WHEN ACCEPTED BY ACKNOWLEDGEMENT OR COMMENCEMENT OF PERFORMANCE COMMUNICATED TO THE BUYER BY THE SELLER. ADDITIONAL OR DIFFERENT TERMS OR VARIANCES THEREOF PROPOSED OR MADE BY SELLER SHALL NOT BE APPLICABLE UNLESS ACCEPTED IN WRITING AND SIGNED BY THE BUYER. THE HEADINGS USED IN THIS ORDER ARE FOR CONVENIENCE ONLY AND SHALL NOT ALTER OR CHANGE THE MEANING OF THE CONTEXT HERE IN.

WHERE APPROPRIATE:

- A) REQUIREMENTS FOR APPROVAL OF PRODUCT, PROCEDURES, PROCESSES AND EQUIPMENT
- B) REQUIREMENTS FOR QUALIFICATION OF PERSONNEL
- C) QUALITY MANAGEMENT SYSTEM REQUIREMENTS
- D) THE IDENTIFICATION AND REVISION STATUS OF SPECIFICATIONS, DRAWINGS, PROCESS REQUIREMENTS, INSPECTION / VERIFICATION INSTRUCTIONS AND OTHER RELEVANT TECHNICAL DATA.
- E) REQUIREMENTS FOR DESIGN, TEST INSPECTION, VERIFICATION (INCLUDING PRODUCTION PROCESS VERIFICATION), USE OF STATISTICAL TECHNIQUES FOR PRODUCT ACCEPTANCE, AND RELATED INSTRUCTIONS FOR ACCEPTANCE BY THE ORGANIZATION, AND AS APPLICABLE CRITICAL ITEMS INCLUDING KEY CHARACTERISTICS.
- F) REQUIREMENTS FOR TEST SPECIMANS (E.G., PRODUCTION METHOD, NUMBER, STORAGE CONDITIONS) FOR DESIGN APPROVAL, INSPECTION / VERIFICATION, INVESTIGATION OR AUDITING.
- G) REQUIREMENTS REGARDING THE NEED FOR THE SELLER TO
 - 1) NOTIFY BUYER OF NONCONFORMING PRODUCT
 - 2) OBTAIN BUYER APPROVAL FOR NONCONFORMING PRODUCT DISPOSITION
 - 3) NOTIFY BUYER OF CHANGES IN PRODUCT AND / OR PROCESS, CHANGES OF SUPPLIERS, CHANGES OF MANUFACTURING LOCATION AND, WHEN REQUIRED, OBTAIN BUYER APPROVAL
 - 4) FLOW DOWN TO THE SUPPLY CHANGE THE APPLICABLE REQUIREMENTS INCLUDING CUSTOMER REQUIREMENTS.

002. DEFINITIONS

AS USED HEREIN, "ORDER" MEANS THIS PURCHASE ORDER; "ARTICLES" MEANS ALL SUPPLIES, MATERIALS, PRODUCTS, DATA, TANGIBLE AND INTANGIBLE PROPERTY, SERVICES, OR OTHER ITEMS TO BE FURNISHED BY SELLER UNDER THIS ORDER.

003. RECORDS RETENTION

THE SELLER SHALL MAINTAIN, SECURELY STORE AND ENSURE TIMELY ACCESS OF ALL RECORDS PERTAINING TO THIS ORDER FOR A MINIMUM OF TEN YEARS AFTER THE CLOSURE OF THIS ORDER. THESE QUALITY RECORDS SHALL BE ACCESSIBLE TO THE BUYER, ITS CUSTOMERS AND REGULATORY AGENCIES.

004. PACKING AND SHIPPING

UNLESS OTHERWISE SPECIFIED ALL PACKING AND PACKAGING SHALL COMPLY WITH BEST COMMERCIAL PRACTICE AND APPLICABLE CARRIER'S REGULATIONS, AND SHALL CONSIST OF SUITABLE CONTAINERS FOR OPTIMUM PROTECTION OF ARTICLES, AND TO FACILITATE IN PLANT HANDLING AND STORAGE. THE PRICE OF THIS ORDER INCLUDES ALL CHARGES FOR SUCH PACKING AND PACKAGING AND TRANSPORTATION TO THE F.O.B. POINT. SELLER SHALL MARK THE NUMBER OF THIS ORDER ON EACH CONTAINER AND INCLUDE A PACKING SLIP WITH EACH SHIPMENT.

005. INSPECTION AND RIGHT OF ENTRY

(a). EACH ARTICLE SHALL BE SUBJECT TO INSPECTION AND TEST BY BUYER TO THE EXTENT PRACTICABLE AT ALL TIMES AND PLACES, INCLUDING DURING MANUFACTURE AND, IN ANY EVENT PRIOR TO FINAL ACCEPTANCE. THE BUYER MAY INSPECT THE PLANT OR PLANTS OF SELLER OR ANY OF ITS SUBCONTRACTORS ENGAGED IN THE PERFORMANCE OF THIS ORDER. AUTHORIZED REPRESENTATIVES OF THE BUYER, CUSTOMER OR GOVERNMENT SHALL, UPON REQUEST, BE AFFORDED THE OPPORTUNITY TO INSPECT AND/OR WITNESS TESTING OF SUPPLIES/SERVICES, OR BE PERMITTED ON-SITE REVIEW OF EVIDENCE OF CONTRACTOR PERFORMANCE OF SUCH INSPECTIONS/TESTS. IF ANY INSPECTION OR TEST IS MADE BY BUYER, CUSTOMER OR GOVERNMENT ON THE PREMISES OF SELLER, SELLER WITHOUT ADDITIONAL CHARGE SHALL PROVIDE ALL REASONABLE DATA, FACILITIES, AND ASSISTANCE FOR SUCH INSPECTORS IN THE PERFORMANCE OF THEIR DUTIES. NO INSPECTION OR TEST MADE PRIOR TO FINAL INSPECTION AND ACCEPTANCE SHALL RELIEVE SELLER FROM RESPONSIBILITY FOR DEFECTS OR OTHER FAILURE TO MEET THE REQUIREMENTS OF THIS ORDER. FAILURE TO INSPECT AND ACCEPT OR REJECT SUPPLIES SHALL NOT RELIEVE SELLER FROM RESPONSIBILITY FOR SUCH SUPPLIES.

(b) IN ANY CASE ANY ARTICLE THAT IS DEFECTIVE IN MATERIAL OR WORKMANSHIP OR OTHERWISE NOT IN STRICT CONFORMANCE WITH REQUIREMENTS OF THIS ORDER, BUYER SHALL BE NOTIFIED IMMEDIATELY. ALSO BUYER SHALL HAVE THE RIGHT EITHER TO REJECT IT, REQUIRE ITS CORRECTION, OR ACCEPT IT WITH AN EQUITABLE ADJUSTMENT IN PRICE. ANY ARTICLE WHICH HAS BEEN REJECTED OR REQUIRED TO BE CORRECTED MAY BE RETURNED TO AND REPLACED OR CORRECTED BY AND AT THE EXPENSE OF THE SELLER, INCLUDING TRANSPORTATION CHARGES. WHEN REQUIRED BY DELIVERY SCHEDULE, BUYER MAY BY CONTRACT OR OTHERWISE, REPLACE OR CORRECT SUCH ARTICLE AND CANCEL EXISTING ORDER WITH SELLER.

(c) FINAL INSPECTION AND ACCEPTANCE OF ARTICLES SHALL BE MADE BY BUYER AFTER DELIVERY OR AS OTHERWISE INDICATED IN THIS ORDER, ACCEPTANCE SHALL NOT WAIVE BUYER'S RIGHTS REGARDING LATENT DEFECTS, FRAUD, SUCH GROSS MISTAKES AS AMOUNT TO FRAUD, AND THE SELLER'S WARRANTY OBLIGATIONS.

(c) THE SELLER SHALL ENSURE THAT ALL APPLICABLE PERSONNEL INVOLVED WITH THIS PURCHASE ORDER ARE AWARE OF THEIR CONTRIBUTION TO PRODUCT OR SERVICE CONFORMITY, THEIR CONTRIBUTION TO PRODUCT SAFETY AND THEIR AWARENESS OF THE IMPORTANCE OF ETHICAL BEHAVIOR.

006. REJECTION

IN THE REGULAR COURSE OF ITS BUSINESS, BUYER MAY REJECT, REFUSE ACCEPTANCE OR REVOKE ACCEPTANCE ("REJECTION" HEREIN) OF ANY OR ALL OF THE GOODS OR ANY TENDER THEREOF WHICH ARE NOT STRICTLY IN CONFORMANCE WITH ALL THE REQUIREMENTS OF THE CONTRACT (PURCHASE ORDER); AND BY NOTICE, REJECTION TAG OR OTHER COMMUNICATION, NOTIFY SELLER OF SUCH REJECTION. AT SELLER'S RISK AND EXPENSE, ALL SUCH GOODS WILL BE RETURNED TO SELLER FOR IMMEDIATE REPAIR, REPLACEMENT AND OTHER CORRECTION AND REDELIVERY TO BUYER.

007. DELIVERY

UNLESS OTHERWISE SPECIFIED ON THE FACE HEREOF DELIVERY SHALL BE BUYER'S FACILITY (F.O.B. DESTINATION). SELLER SHALL FOLLOW THE DELIVERY SCHEDULE STATED ON THIS ORDER AND UNLESS EARLIER DELIVERIES ARE STATED AS ACCEPTABLE, SHALL NOT MAKE DELIVERIES EARLIER THAN TWO WEEKS, BEFORE THE SCHEDULED DELIVERY DATES. IF ITEMS ARE RECEIVED MORE THAN TWO WEEKS IN ADVANCE OF SCHEDULED DELIVERY DATE, BUYER MAY RETURN THEM AT SELLER'S EXPENSE, OR PAYMENT FOR SUCH ITEMS MAY BE WITHHELD TO CONFORM TO THE DELIVERY SCHEDULE.

008. WARRANTY

SELLER BY ACCEPTING THIS ORDER INDICATES A FULL UNDERSTANDING OF THE REQUIREMENTS TO FULFILL THIS ORDER SUCH AS DRAWINGS, SPECIFICATIONS, TEST AND ACCEPTANCE CRITERIA, PACKING AND MARKING REQUIREMENTS, AND OTHER INFORMATION AND WILL COMPLY THEREWITH. SELLER CONFIRMS ANY EXPRESS WARRANTY (ORAL OR WRITTEN) PREVIOUSLY MADE, AND WARRANTS THAT ALL ITEMS SHALL BE FREE FROM DEFECTS OF MATERIAL OR WORKMANSHIP; SHALL CONFORM TO DRAWINGS, SPECIFICATIONS, THEIR ACCEPTANCE CRITERIA OR ANY SAMPLES PREVIOUSLY DELIVERED, REGARDLESS OF ANY PREVIOUS DEALINGS.

009. RESPONSIBILITY FOR PERFORMANCE

BUYER ISSUANCE OF THIS CONTRACT IS BASED IN PART ON BUYER RELIANCE UPON SELLER'S ABILITY, EXPERTISE AND AWARENESS OF THE INTENDED USE OF THE GOODS, AND SELLER'S CONTINUING COMPLIANCE WITH ALL APPLICABLE LAWS AND REGULATIONS DURING THE PERFORMANCE OF THIS CONTRACT. FURTHER, SELLER SHALL NOT, BY CONTRACT, OPERATION OF LAW, OR INTEREST IN THIS CONTRACT, INCLUDING BUT NOT LIMITED TO ANY RIGHT TO MONEYS DUE OR TO BECOME DUE, OR DELEGATE ANY OF ITS DUTIES OR OBLIGATIONS UNDER THIS CONTRACT, OR SUBCONTRACT ALL OR SUBSTANTIALLY ALL OF ITS PERFORMANCE ASSIGNMENT, DELEGATION OR SUBCONTRACTING BY SELLER. WITH OR WITHOUT BUYER'S CONSENT, SHALL RELIEVE SELLER OF ANY OF ITS OBLIGATIONS UNDER THIS CONTRACT.

010. RAW MATERIAL CERTIFICATION/TRACEABILITY

WITH EACH SHIPMENT, THE SELLER SHALL INCLUDE A CERTIFICATE THAT STATES THAT THE MATERIAL USED IN THE MANUFACTURE OF THE GOODS FURNISHED UNDER THIS CONTRACT WERE TESTED, INSPECTED, AND FOUND TO BE IN COMPLIANCE WITH THE APPLICABLE MATERIAL SPECIFICATIONS. THE CERTIFICATE WILL ALSO INCLUDE THE FOLLOWING INFORMATION:

- (a) MANUFACTURER'S LOT IDENTIFICATION NUMBER OF THE ITEM BEING FURNISHED.
- (b) NAME OF THE MILL PRODUCER OF THE MATERIAL.
- (c) RAW MATERIAL HEAT LOT NUMBER.
- (d) MATERIAL SPECIFICATION, INCLUDING REVISION LETTER OR NUMBER. SELLER WILL MARK EACH INDIVIDUAL ITEM AND APPLICABLE DOCUMENTATION (I.E. TEST REPORT, SHIPPING REPORT, OR CERTIFICATION) TO SHOW CLEAR TRACEABILITY TO LOT, HEAT LOT, OR BATCH NUMBER. UNLESS OTHERWISE DIRECTED BY THIS CONTRACT OR THE SPECIFICATION, WHEN THE SIZE OF THE ITEM DOES NOT PERMIT MARKING OR INDIVIDUAL ITEMS, SELLER WILL LABEL EACH PACKAGE OR BOX FURNISHED.
- (e) WHEN DOMESTIC MATERIAL IS REQUIRED, AND SO STATED ON THE PURCHASE ORDER, THE MATERIAL SHALL CONFORM TO THE REQUIREMENTS OF DFAR 252.225-7014 FOR SPECIALTY METALS MELTED IN A QUALIFYING COUNTRY.

011. CERTIFICATE OF CONFORMANCE

A CERTIFICATE OF CONFORMANCE IS REQUIRED COVERING THE ARTICLE HEREBY CONTRACTED FOR. THIS MUST STIPULATE THAT THE ITEMS MEET ALL DRAWINGS, SPECIFICATIONS, AND OTHER APPLICABLE DOCUMENTATION REQUIREMENTS. THIS CERTIFICATE SHALL ALSO SPECIFY THAT PROCESS CERTIFICATION, CHEMICAL AND PHYSICAL TEST REPORTS, AS REQUIRED ON FILE AND MAY BE INSPECTED BY BUYER'S QUALITY ASSURANCE REPRESENTATIVE AND/OR THE GOVERNMENT REPRESENTATIVE. THIS CERTIFICATE SHALL BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF SELLER'S QUALITY ASSURANCE DEPARTMENT.

012. CONTROL OF SUBTIER SOURCES

ALL PRODUCTS SCHEDULED FOR DELIVERY TO BUYER AND PROCURED BY SELLER FROM SELLER'S SUBTIER SOURCES AT EVERY TIER SHALL COMPLY WITH ALL APPLICABLE PROVISIONS OF DRAWINGS, SPECIFICATIONS AND OTHER REQUIREMENTS OF BUYER'S PURCHASE ORDER. WHEN BUYER'S PURCHASE ORDER REQUIRES THE USE OF SUBTIER SOURCES APPROVED BY BUYER, SELLER'S SYSTEM SHALL ASSURE THAT ONLY SUBTIER SOURCES CURRENTLY APPROVED BY BUYER ARE USED TO PROCURE PRODUCTS OR SERVICES FOR USE IN OR ON BUYER'S PURCHASE ORDERS. USE OF BUYER SPECIFIED SUBTIER SOURCES DOES NOT RELIEVE SELLER OF COMPLIANCE TO ALL APPLICABLE PRODUCT.

013. CUSTOMER APPROVAL REQUIREMENTS

SELLER MUST BE APPROVED (WHEN REQUIRED) BY THE APPLICABLE APPROVAL AGENCY PRIOR TO PERFORMING THE OPERATIONS NOTED ON THIS PURCHASE ORDER. IF SELLER IS NOT APPROVED BY THE PRIME CONTRACTING SOURCE (BOEING, NORTHROP GRUMMAN, and LOCKHEED ETC.) TO PERFORM THE PROCESSES NOTED ON THE PURCHASE ORDER. THE SELLER SHALL IMMEDIATELY NOTIFY TOMI ENGINEERING AND SUSPEND ALL WORK UNTIL FURTHER INSTRUCTIONS ARE GIVEN.

014. CORRECTIVE ACTION

WHEN A QUALITY (SYSTEM OR PRODUCT) NONCONFORMANCE IS IDENTIFIED BY BUYER, BUYER MAY REQUEST A FORMAL CORRECTIVE ACTION RESPONSE FROM SELLER. SUCH REQUESTS REQUIRE A TIMELY AND DOCUMENTED RESPONSE BY SELLER AND SHALL INCLUDE THE FOLLOWING INFORMATION:

- (a) SELLER'S ANALYSIS OF THE ROOT CAUSE OF THE PROBLEM, INCLUDING A STATEMENT EXPLAINING WHY SELLER'S INSPECTION/QUALITY SYSTEM FAILED TO DETECT THE NON-CONFORMANCE;
- (b) WHEN APPLICABLE, A STATEMENT THAT SELLER'S STOCK OR INVENTORY HAS BEEN RE-INSPECTED AND NON-CONFORMING PRODUCT(S) REMOVED;
- (c) DESCRIPTION OF THE POSITIVE ACTION TAKEN BY SELLER TO PRECLUDE RECURRENCE; AND
- (d) THE EFFECTIVITY (DATE, SERIAL NUMBER, ETC.) OF THE CORRECTIVE ACTION IMPLEMENTED BY THE SELLER.

015. DPAS RATED PURCHASE ORDERS

THE PURCHASE ORDER WILL BE IDENTIFIED WHETHER OR NOT THIS IS A DPAS RATED ORDER. THE RATING WILL BE BY CIRICLING 'DO', 'DX' OR 'N/A' INDICATING THE APPLICABLE RATING REQUIRED. WHEN IDENTIFIED AS NOTED A DPAS RATED ORDER CERTIFIED FOR NATIONAL DEFENSE USE, YOU ARE REQUIRED TO FOLLOW ALL OF THE PROVISIONS OF THE DEFENSE PRIORITIES AND ALLOCATIONS SYSTEM REGULATION. NOTE ALL 'DO' RATED PURCHASE ORDERS HAVE EQUAL PRIORITY WITH EACH OTHER AND TAKE PREFERENCE OVER UNRATED ORDERS. ALL 'DX' RATED ORDERS HAVE EQUAL PRIORITY WITH EACH OTHER AND TAKE PRECEDENCE OVER 'DO' RATED ORDERS AND UNRATED ORDER.

016. BUYER SOURCE INSPECTION

TOMI ENGINEERING INSPECTION IS REQUIRED AT SELLER'S FACILITY. EVIDENCE OF SUCH INSPECTION WILL BE INDICATED ON THE SHIPPING REPORT ACCOMPANYING EACH SHIPMENT. GOODS ORDERED BY THIS CONTRACT ARE SUBJECT TO TOMI ENGINEERING INSPECTION AT ANY GIVEN POINT PREVIOUSLY ESTABLISHED AND/OR THROUGHOUT PRODUCTION, PROCESSING AND TESTING OPERATIONS. TOMI ENGINEERING WILL ESTABLISH AND COORDINATE THE MANDATORY TOMI ENGINEERING INSPECTION POINTS. SELLER WILL NOTIFY TOMI ENGINEERING QUALITY ASSURANCE AT LEAST FORTY-EIGHT (48) HOURS PRIOR TO MANUFACTURING OR PROCESSING IN CONJUNCTION WITH THIS CONTRACT.

017. GOVERNMENT SOURCE INSPECTION

GOVERNMENT SOURCE INSPECTION (GSI) IS REQUIRED PRIOR TO SHIPMENT FROM SELLER'S PLANT. UPON RECEIPT OF THIS PURCHASE ORDER, SELLER SHALL PROMPTLY NOTIFY THE GOVERNMENT REPRESENTATIVE WHO NORMALLY SERVICES SELLER'S PLANT SO THAT APPROPRIATE PLANNING BY THE GOVERNMENT REPRESENTATIVE CAN BE ACCOMPLISHED. IF SELLER CANNOT LOCATE OR CONTACT THE GOVERNMENT REPRESENTATIVE, SELLER SHALL NOTIFY BUYER IMMEDIATELY.

018. CANCELLATION

BUYER SHALL HAVE THE RIGHT TO TERMINATE THIS ORDER (AND ANY CONTRACT MADE PURSUANT THERETO) AT ANY TIME.

019. SELLER'S FIRST ARTICLE INSPECTION REPORT

CONCURRENT WITH DELIVERY OF EACH PRODUCTION PRODUCT (S) AND FIRST ARTICLE SAMPLE (S) SELLER SHALL SUBMIT TO BUYER A FIRST ARTICLE INSPECTION REPORT DOCUMENTING THE RESULTS OF SELLER'S FIRST ARTICLE TEST AND/OR INSPECTION. THE FIRST ARTICLE REPORT SHALL SHOW THE ACTUAL DIMENSIONS OR VALUES OBTAINED BY SELLER FOR EACH SPECIFIED CHARACTERISTIC AND EVIDENCE OF COMPLIANCE TO ALL ENGINEERING DRAWING NOTES.