

# Viper Northwest, Inc

## Terms and Conditions of Purchase

**1) WARRANTIES** In addition to Seller & Service's standard warranties with respect thereto, Seller warrants to Buyer and its Customers that all items delivered and all services rendered hereunder will conform with the requirements hereof and will be free from defects.

In addition to other remedies that may be available by law or in equity, Buyer may, at its option, return any nonconforming or defective items to Seller or require correction or replacement at the location of the item at the time the defect is discovered – all at Seller's risk and expense. Seller shall repay such portion of the contract price or such additional amount as is equitable under the circumstances. Acceptance of items by Buyer therefore shall not relieve Seller of its responsibilities hereunder.

**2) CHANGES** By written order, Buyer may, from time to time, order work suspension or make changes in quantities, drawings, designs, specifications, place of delivery, delivery schedules, and methods of shipment, packaging, property and services of Seller. If any such change causes an increase or decrease in the price of this purchase order or in the time required for its performance, Seller shall promptly notify Buyer thereof and assert its claim for adjustment within 10 days after the change is ordered and an equitable adjustment shall be made. Nothing in this clause shall excuse Seller from proceeding immediately with the purchase order as changed. Whether made pursuant to this clause or by mutual agreement, changes shall not be binding upon Buyer except when confirmed in writing by a member of Buyer's Purchasing Department. The issuance of information, advice, approvals or instructions by Buyer's technical personnel or other representatives shall be deemed expressions of personal opinion and shall not affect Buyer's and Seller's rights and obligations hereunder unless the same is in writing that is signed by a member of Buyer's Purchasing Department and expressly states that it constitutes an amendment to this purchase order.

**3) INFRINGEMENT INDEMNITY** In lieu of any other warranty given to Buyer by Seller against infringement, statutory or otherwise, it is agreed that Seller shall defend at its expense any suit against Buyer or its Customers based on a claim that any item furnished under this purchase order or the normal use of sale thereof infringes any U.S. Letters Patent and shall pay costs and damages finally awarded in any such suit, provided that Seller is notified in writing or the suit and given authority, information and assistance at Seller's expense for the defense of same. If the use or sale of said item is enjoined as a result of such suit, Seller, at no expense to Buyer, shall obtain for Buyer and its Customers the right to use and sell said item or shall substitute an equivalent item acceptable to Buyer and extend this patent indemnity thereto.

**4) DOCUMENT MARKING AND USE** Seller agrees that, except as may otherwise be agreed in writing or as otherwise authorized by Seller, any document(s) furnished to Buyer in connection with this order shall be free from confidential, proprietary or restrictive use marking, other than statutory patent, copyright or U.S. Government security notices. Buyer, its agents or assigns, may duplicate or use such document(s) in connection with further manufacture, use or disposition of the material furnished under this order and may remove, obliterate or ignore any marking on such document not authorized by this clause.

**5) PROPRIETARY INFORMATION, DUPLICATION AND DISCLOSURE** Seller agrees that proprietary information disclosed by Buyer to Seller for the purpose of this purchase order and identified as proprietary shall be held in confidence and used only in performance of this purchase order, provided that when the U.S. Government has an independent right to use such information, Seller may use such information for U.S. Government purposes to the extent of such right. If Seller desires to employ Buyer's proprietary information for uses other than those specifically allowed hereunder, Buyer agrees to negotiate with Seller in an effort to formulate a mutually satisfactory licensing agreement. No item furnished under this purchase order, or tools, plans, designs or specifications for producing the same that have been specifically designed for or by Buyer shall be duplicated or furnished to others without prior written consent of Buyer. If the U.S. Government has the independent right to use such tools, plans, designs and specifications, Seller may use them to produce such articles for direct sale to the U.S. Government.

Seller agrees that it will not publicize this purchase order or any of Seller's performance hereunder, discloses any details in connection with said performance of third parties, or use Buyer's name in connection with Seller's publicity without prior written approval from Buyer.

**6) ASSIGNMENTS AND SUBCONTRACTING** Neither this purchase order nor any interest herein nor claim hereunder may be assigned by Seller either voluntarily or by operation of law, nor may all or substantially all of this purchase order be further subcontracted by Seller without prior written consent of Buyer. No consent shall be deemed to relieve Seller of its obligations to comply fully with the requirements hereof.

**7) GENERAL** This purchase order and the attachments and documents incorporated herein by reference constitute the complete and exclusive statement of the terms of the agreement between Buyer and Seller and it supersedes all prior presentations, understandings and communications of other provisions. Buyer's failure to insist, in any one or more instances, upon the performance of any term or terms of this purchase order shall not be construed as a waiver or relinquishment of Buyer's right to such performance or to future performance of such a term or terms, and Seller's obligation in respect thereto shall continue in full force and effect. Time shall be of the essence hereunder but Seller shall perform work and make deliveries hereunder no earlier than and only to the minimum extent consistent with delivery schedules and other requirements.

a. All materials shall be suitably packed, marked and shipped according to the requirements of common carriers in a manner to secure lowest transportation costs and no additional charge shall be made to the Buyer unless otherwise stated herein.

b. No charge shall be made by Seller for drayage or storage unless otherwise stated herein. No charge will be allowed for boxing, packing or crating unless agreed upon in writing.

c. Packing slips must accompany each shipment and the purchase order number shall be placed on each packing slip. A Certificate of Compliance and/or Analysis in duplicate must accompany each shipment.

d. Original bill of lading or other shipping receipt for each shipment shall be promptly forwarded by Seller according to instructions issued by the Buyer.

e. Seller agrees to describe material on a bill of lading or other shipping receipt and to route shipment according to instructions issued by the Buyer.

f. All freight shipments must be shipped as directed on the face of the order.

**8) PRICES** Seller warrants that any unit prices charged herein do not exceed the unit prices charged by Seller to the U.S. Government or other Customer in substantially similar transactions.

**9) SPECIAL PROVISIONS FOR U.S. GOVERNMENT WORK** If this order involves U.S. Government work (see prime contract number on face of order) the following provisions shall apply:

a. In the manufacture of items to be supplied hereunder Seller shall use jigs, fixtures and/or other devices or appliances in all processes where such use is conducive to interchangeability for uniformity of the product, of such character as will reduce the need for selective assembly, and wherever Buyer determines that such devices or appliances are incorrect, worn, damaged or defective to such an extent as to adversely affect basic interchangeability of the item manufactured.

b. Seller shall promptly report to Buyer each accident or incident that results in damage or injury with significant implications involving an aircraft, missile, space vehicle or major component thereof.

c. If the items purchased hereby are certified for national defense use by DMS Reg. 1, then Seller shall follow the provision of DMS Reg. 1 and all other applicable regulations and order of BDSA in obtaining controlled materials and other products and material needed to fill this order.

d. Seller will deliver a copy of this purchase order to any authorized U.S. Government representative upon request.

**10) INSOLVENCY** Buyer may cancel the contract in the event of any of the following: insolvency of Seller, filing of a voluntary petition in bankruptcy, filing of an involuntary petition against the Seller, appointment of a receiver of trustee for the Seller, execution by Seller of any assignment for the benefit of those creditors.

**11) FAIR LABOR STANDARDS ACT** Seller agrees to comply with all applicable requirements of Section 6, 7 and 12 of the Fair Labor Standards Act, as amended, and of all regulations and orders of the U.S. Department of Labor issued under Section 14 thereof. All invoices must carry the following certificate in order to be passed for payment:

"Seller hereby certifies that these goods were produced in compliance with all applicable requirements of Section 6, 7 and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the U.S. Department of Labor issued under Section 14 thereof."

**12) INSPECTION** All material and workmanship entering into the performance of this order may be inspected and treated at all times and places, either before, during or after manufacture by inspectors designated by Buyer, the Buyer's Customer inspectors or by Government inspectors. Such inspection does not relieve Seller of its obligation to meet specifications and must be authorized or imposed by the Buyer's purchasing department. Buyer shall have the right to reject any items not in conformity with requirements of the order or require that corrections be made. If Buyer rejects goods or if Seller, when requested to make changes, fails to do so, Buyer may terminate or replace the goods; in either case, the Buyer may charge the Seller with the cost or damages occasioned thereby. Buyer reserves the right to withhold payment until receipt and acceptance of goods, provided that acceptance or rejection shall be made in a reasonable time after receipt of goods purchased. Seller will furnish reasonable facilities and assistance for testing on its premises at its own expense. During performance of this order, Seller's Quality Control or Inspection System and Manufacturing Processes may be subject to review, verification and analysis. Government inspection or release of product prior to shipment is not required unless Seller is otherwise notified.

**13) VARIATION IN QUANTITY** Variations in quantity are not allowed unless specifically approved in writing by the Buyer's Purchasing department pursuant to the clause of his order entitled "CHANGES".

**14) DISPUTES** Disputes shall be subject to the laws of the State of Oregon. If this order is issued pursuant to a Government contract and should Seller wish to protest a unilateral decision of the Government Contracting Officer, Buyer will present said claim at Seller's expense, if Buyer has such right in the prime contract or order that this purchase order is issued pursuant thereto. Seller's rights shall not extend beyond Buyer's rights as set forth in the prime contract clause entitled "Disputes", under no circumstances shall Seller have the contractual right under this order to submit a claim directly to the Government Contracting Officer.

**15) EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROVISIONS** The following provisions are hereby incorporated by reference: Executive Order 11246, as amended - Section 503 of the Rehabilitation Act of 1973, as amended and 38 USC 4212, Vietnam Era Veterans Readjustment Act of 1974, as amended.

**16) INVOICING** Unless otherwise stated on the face of this order, all payment terms are Net 45 days from date of shipment. After each shipment made or service provided under this order, Seller shall send a separate invoice, in duplicate that includes item numbers, and is accompanied by a bill of lading, express receipt, or other proof that Goods were delivered or Services were performed. Payment of invoice shall not constitute acceptance of the Goods or Services and shall be subject to appropriate adjustment for failure of Seller to meet the requirements of this order. Buyer may set off any amount owed by Seller, or any of its affiliated companies to Buyer against any amount owed by Buyer to Seller under this order.

### Contractor and Subcontractor Listing Requirement

1) As provided by 41 CFR 60 250, the Seller agrees that all employment openings of the Seller that exist at the time of the execution of this order and those that occur during the performance of this contract, including those not generated by the contract and including those occurring at an establishment of the Seller other than the one wherein the contract is being performed but excluding those of independently operated corporate affiliates, shall, to the maximum extent feasible, be offered for listing at an appropriate local office of the State employment service system wherein the opening occurs and to provide such periodic reports to such local office regarding employment openings and hires as many as may be required provided that this provision shall not apply to openings that the Seller fills from within the Seller's organization or are filled pursuant to a customary and traditional employer-union hiring arrangement and that the listing of employment openings shall involve only the normal obligations that attach to the placing of job orders.

2) The Seller agrees further to place the above provision in any subcontract directly under this Order.