

## PHILLIPS & JOHNSTON, INC. PURCHASE ORDER GENERAL TERMS AND CONDITIONS

The term "Seller" contained in these General Terms and Conditions ("Terms") shall mean the manufacturer, distributor agent or representative of the material, supplies or services furnished herein. The term "Buyer" shall mean Phillips & Johnston, Inc. and operating divisions. These Terms govern the Purchase Order issued herewith and any other products, goods, or services purchased by Buyer from Seller. These Terms are an essential part of Buyer's offer to buy goods or services and must be accepted if the offer is to be accepted by Seller. Seller's proposed terms and conditions of sale, whether offered before or after the Purchase Order as part of any proposal, quotation, acknowledgment or otherwise, however denominated, regardless of whether such proposed terms and conditions of sale conflict or do not conflict with these Terms are deemed material and specifically objected to and rejected. The Purchase Order is strictly offered subject to these Terms and any attempt to add, delete or modify any of the provisions contained herein is objected to and rejected by Buyer. The provisions of the Purchase Order and these Terms are the sole and exclusive terms of the parties' agreement unless specifically agreed to in writing by the President, Chief Operating Officer or Chief Financial Officer of Buyer. Seller's commencement of work or acquisition of materials to design, manufacture or produce the goods shall be deemed to be acceptance of the Purchase Order and these Terms.

### PRICE

Unless stated otherwise in the Purchase Order, the prices shown are firm. No surcharges are allowed. Seller warrants that the price, delivery and payment terms in the Purchase Order are the most favorable terms that it offers any buyer for products or services of the same or similar character. During the term of the performance of the Purchase order, if Seller makes an offer to sell any such products or services to a third party at a lower price or upon one or more terms that are more favorable than the price or terms then applicable under the Purchase Order, Seller shall notify Buyer in writing and an equivalent reduction or modification of terms will apply to all products or services purchased thereafter for the balance of the performance the Purchase Order.

### PAYMENT TERMS AND DISCOUNT

Unless otherwise agreed in writing, payment in full shall be due forty-five (45) days after Buyer's receipt of Seller's invoice. No invoice may issue prior to delivery of the goods at the point of delivery. The payment discount is one and one-half percent (1.5%) for payment within ten (10) days of Seller's receipt of the properly issued invoice.

### CANCELLATION

In the event Seller fails to deliver as specified herein or fails to make substantial progress to deliver in the period specified or Seller fails to provide Buyer with adequate assurances of performance, as determined by Buyer, the Buyer reserves the right to cancel the Purchase Order or any part thereof and any other pending purchase orders, without charge and without prejudice or recourse on the part of the Seller, regardless of whether such lack of progress, performance or delay is caused by circumstances under reasonable control of the Seller. Further, Buyer may cancel all or part of any Purchase Order at any time for convenience, provided however, that if Buyer makes a cancellation for convenience, it shall pay Seller the purchase price for any identifiable lot of finished goods ready for delivery and Seller's materials cost for material actually purchased, paid for and received by Seller at the time of cancellation. Any such claim for finished goods and material costs (including copies of purchase orders for materials, invoices and proof of payment and receipt) shall be presented to the Buyer with immediate delivery of the finished goods or within seven (7) days of cancellation, whichever is earlier. Seller's obligations regarding warranty, indemnity, insurance, compliance with laws, arbitration, applicable law, drawbacks, insurance, audit, confidentiality and non-solicitation survive the cancellation or termination of the Purchase Order or these Terms.

### INSPECTION

Buyer or its authorized representative shall have the right, but not the obligation, to inspect any material, workmanship or other items furnished or used by the Seller and reject any item which is defective or not suitable for the purposes intended or which is not in accordance with the specification or requirements of the Purchase Order. This inspection may be made as required at the facility of the Seller and/or Buyer or elsewhere, as may be necessary. Inspection of goods does not imply acceptance. Rejection and revocation of acceptance are reserved by Buyer and may occur at any time authorized by law.

### WARRANTY

Seller warrants all material and supplies shall be free from all defects in material and workmanship in all respects and items furnished comply with all applicable specifications and requirements shown on the Purchase Order. Seller warrants that the goods sold to Buyer shall be new and of first quality and free and clear of any liens or claims by any other entity. Seller also warrants that the goods shall conform to the specifications and descriptions of the Buyer as contained in the Purchase Order, applicable industry standards and be merchantable and fit for the purpose intended. Seller warrants that the goods sold shall be produced by Seller and that no subcontractor was used in the manufacturing or process. Any warranty or limited warranty, express or implied, by Seller shall be in addition to all rights and remedies of Buyer under these Terms, the applicable UCC and the law. Buyer's remedies shall be cumulative and not exclusive. For non-tubular products and non-raw materials, Seller shall maintain, repair and keep in serviceable condition all goods sold under the Purchase Order for the reasonable, useful lifetime for the goods.

### DEFECTIVE MATERIAL OR WORKMANSHIP

If Seller performs or furnishes material or supplies, constructs, erects, inspects or delivers hereunder defective items, Seller will indemnify, defend and save harmless Buyer from all loss or the payment of all sums of money by reason of accidents, injuries or damages to person or property and any resulting harm or damages that may happen or occur in connection therewith. The remedies and obligations set forth in these Terms are not exclusive.

### INTELLECTUAL PROPERTY

In the event any good, service or article sold and delivered hereunder shall be covered by a patent, copyright or application or any form of a claim of intellectual property, Seller indemnifies, defends and saves harmless Buyer, from any and all claim, loss, cost or expenses or account, including attorney's fees, of any and all claims, proceedings of any kind, suits or judgments caused by the use or sale of any such good, service or article in violation or alleged violation of such rights under such patent, copyright, application or claim of intellectual property.

### CHANGES

Buyer may change the specifications, descriptions or quantities of any goods in any Purchase Order, provided such goods are not finished and ready for delivery. If a change is proposed, Buyer shall notify Seller of the proposed change in writing, including email, and within forty-eight (48) hours of such notification of a proposed change Seller shall advise Buyer in writing, including email, of any impact such proposed change may have on the price, delivery or other terms of the Purchase Order. If Seller does not timely respond, the proposed change shall be deemed accepted and implemented without any changes in the price, time of delivery or other terms of the Purchase Order. If Seller timely notifies Buyer of changes in price, delivery or other terms, Buyer shall, within forty-eight (48)

hours after receipt of such written notification of changes in price, delivery or other terms advise Seller in writing, including email, whether the proposed changes should be implemented and applicable terms changed.

#### **DELIVERY AND SHIPPING**

Shipping and all taxes and duties, except income taxes of the Buyer, are included in the price. Unless otherwise agreed in writing, all goods sold are FOB Buyer's designated facility, which is the point of delivery. Risk of loss transfers at the point of delivery. All goods sold are delivered duty paid. If any value-added or similar tax is applicable, Seller shall itemize it in order to allow the Buyer to reclaim that value-added or similar tax from the appropriate government authority. Packing, boxing or cartage charges will not be charged to the Buyer unless specifically authorized in the Purchase Order.

#### **RELATIONSHIP AND SUBCONTRACTS**

The relationship between Buyer and Seller is purely an independent contract for goods and/or services. There is no partnership, joint venture, employee/employer or agency relationship, express or implied between the parties. Seller shall not subcontract or enter into a joint venture of any kind for the performance of all or any portion of its performance of its obligations without the prior written approval of the Buyer. If all or any portion of the Purchase Order is anticipated by Seller to be subcontracted by Seller to another party, Seller shall so advise Buyer in writing prior to acceptance of the Purchase Order and Seller shall submit the terms of any such proposed subcontract to Buyer for approval. If such subcontracting arrangements are not acceptable to Buyer, it may withdraw the Purchase Order without charge or penalty.

#### **DRAWBACKS**

For any purchases of imported material, the Seller will provide to the Buyer a "Certificate of Delivery of Imported Merchandise" thereby transferring all rights to the "Drawback" recoveries to the Buyer. The "Certificate of Delivery of Imported Merchandise" shall be forwarded to the Buyer within 30 days of the date of the invoice for the purchase of the material.

#### **CONFLICT MINERALS**

Seller hereby warrants and represents that none of the goods sold under this agreement include Conflict Minerals from the Democratic Republic of the Congo or any of its adjoining countries. Terminology used in this section is as defined or used in Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 or any rules and regulations promulgated in support thereof.

#### **COMPLIANCE WITH LAWS**

Seller shall: (a) comply with all applicable national, European Union ("EU"), state/provincial and local laws, rules, regulations and orders in the performance of its obligations under the Purchase Order, including without limitation laws and regulations concerning export and import regulations and requirements, environmental, health and safety, equal employment opportunity, and privacy of personal data; (b) comply with any provisions, representations or agreements, or contractual clauses required to be included or incorporated in the Purchase Order, including the Equal Opportunity Clause set forth in 41 CFR Chapter 60-1.4, the Affirmative Action Clause regarding Disabled Veterans and Veterans of the Vietnam Era set forth in 41 CFR Chapter 60-250.4, the Affirmative Action Clause regarding Handicapped Workers set forth in 41 CFR Chapter 60-741.4; the provisions of 29 CFR part 470 pursuant to Executive Orders 11246 and 13201; and any other provisions or contractual clauses required by the OFCCP as set forth in 41 CFR Chapter 60, as well as any Executive Orders as now or hereafter issued, amended or codified; and Seller is in compliance with the requirements for non-segregated facilities set forth in 41 CFR Chapter 60-18; (c) the goods sold were or will be produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended, including Section 12(a) and Seller shall insert a certificate to that effect on all invoices submitted in connection with this Purchase Order, if so instructed by Buyer; (d) each chemical substance constituting or contained in products transferred hereunder is on the list of chemical substances compiled and published by: (i) the Administrator of the Environmental Protection Agency pursuant to the Toxic Substances Control Act (15 USC Section 2601 et seq.) as amended; (ii) the European Inventory of Existing Commercial Chemical Substances (EINECS) or the European List of Notified Chemical Substances (ELINCS); or (iii) any equivalent lists in any other jurisdictions to which the products will likely be shipped; (f) goods may be shipped world-wide; Seller warrants no products supplied hereunder have been or will be produced utilizing forced, indentured or convict labor, or utilizing the labor of persons in violation of the minimum working age law in the country of manufacture or in any jurisdiction in which goods or services are provided hereunder, or in violation of minimum wage, hour of service, or overtime laws in the country of manufacture or provided services.

Seller shall not, either on its own or through its agents or affiliates violate the Foreign Corrupt Practices Act (15 U.S.C. Section 78dd-1, et. seq.) as amended (the "FCPA") or any other applicable law. Seller and its officers, employees, affiliates and agents shall not, directly or indirectly or through third parties, pay, promise or offer to pay, or authorize the payment of, any money or give any promise or offer to give, or authorize the giving of anything of value to any individual, entity, official or government for purposes of corruptly obtaining or retaining or facilitating business for or with, or directing business to, any person or entity, including Buyer. Seller shall ensure that no part of any payment, compensation, reimbursement or fee paid by Buyer to Seller will be used, directly or indirectly, as a corrupt payment, gratuity, emolument, bribe, kickback or other improper benefit. Seller shall provide to Buyer supporting documents requested by Buyer for any expenses incurred, tangible or intangible property provided, and/or services performed by Seller and its agents, subcontractors or representatives in performance of the Purchase Order to ensure compliance with the FCPA. Seller understands and acknowledges that, notwithstanding any other provision contained in the Purchase Order or terms, neither Buyer nor its representatives shall be obligated to reimburse any expense incurred or pay for any activity which Buyer believes Seller has failed to provide adequate documentation or support to confirm that an expense or charge did not violate the FCPA, or an expense reimbursement or conveyance of any property or right that would cause Buyer or any of its affiliates to be in violation of the FCPA.

Seller warrants that it is certified as part of the Customs-Trade Partnership Against Terrorism program (C-TPAT). Seller agrees to provide Buyer with a copy of the official letter confirming certification, the certificate and the Status Verification Indicator or SVI and audit record. If not C-TPAT certified, Seller will provide evidence of a substantially similar supply chain security program utilized in its country of operation and any other documentation requested by Buyer. Seller also agrees to grant Buyer access, if requested, to confirm or evaluate Seller's compliance with C-TPAT standards or of its similar certification.

#### **ARBITRATION**

Unless otherwise agreed in writing, any controversy or claim arising out of or relating to the Purchase Order, these Terms or an agreement of the parties, including payment and warranty claims, shall be resolved by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules in Chicago, Illinois, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Costs (including the fees of the American Arbitration Association and the costs and expenses of the arbitrators) shall be divided equally between the parties. Attorney's fees are not awardable to the prevailing party and each party shall bear its own attorney's fees and costs. The decision shall be made by a panel of three (3) arbitrators and shall be an award with findings of fact and conclusions of law.

## **INSURANCE**

For the period of performance of the Purchase Order and for five (5) years thereafter Seller and any subcontractors shall maintain the following minimum insurance coverages: (i) Worker's compensation as required under the applicable laws of the jurisdiction(s) in which goods are manufactured and services performed; (ii) Employer's Liability as required under the applicable laws of the jurisdiction(s) in which the goods are manufactured and services are to be performed, subject to a limit of \$2,000,000 per occurrence; (iii) Property Damage covering the full value of all products and services owned, rented, used or leased by Seller hereunder; (iv) Comprehensive General Liability – Bodily Injury/Property Damage in the amount of \$5,000,000 combined single limit per occurrence; and (v) Comprehensive Automobile Liability – Bodily Injury/Property Damage covering all owned or hired vehicles in the amount of \$2,000,000 combined single limit per occurrence. All required insurance must be with companies licensed in the jurisdiction(s) in which goods are manufactured and services are performed and acceptable to Buyer. Upon Seller's request, Seller shall furnish Buyer a certificate of insurance issued by its insurance carrier certifying that such insurance coverages are in effect and requiring the insurance carrier to notify Buyer at least thirty (30) days prior to any expiration or termination of, or material change to, the policy. In addition, all such policies shall name Buyer as an additional insured and contain a waiver of subrogation against Buyer. The minimum coverages set forth herein do not imply any limitations on the liability of Seller or any subcontractor.

## **AUDIT**

Seller shall permit Buyer access to: (i) all locations where work is performed in connection with the goods or services provided for in the Purchase Order, and (ii) Seller's books and records relating to the Purchase Order for purposes of confirming information required under the Purchase Order or these Terms.

## **APPLICABLE LAW**

The contract formed by Seller's acceptance of this Purchase Order shall be interpreted and governed in accordance with the laws of the State of Illinois without regard to its choice of law provisions. The rights, warranties (express and implied) and remedies authorized by the Uniform Commercial Code, as adopted by the State of Illinois, govern this transaction and no disclaimers or limitations of remedies are effective.

## **CONFIDENTIALITY**

Seller recognizes that the Purchase Order as well as all negotiations and discussions of Buyer's needs, requirements and specifications are confidential in nature and Seller agrees that it will neither use nor disclose any information, specifications, drawings, communications or materials of any kind related to Buyer's Purchase Order or Buyer's business unless compelled to do so by process of law and even then, giving Buyer written notice prior to disclosure. Seller acquires no rights in any information, patent, copyright or intellectual property disclosed to it by Buyer.

## **OTHER**

Time is of the essence of the parties' agreement. The Purchase Order, these Terms and any written agreements signed by both Buyer and Seller through the representatives identified herein shall constitute the full and final expression of the parties' agreement. No oral or written statements or terms, prior, contemporaneous or subsequent hereto become a part of the parties' agreement.

Buyer shall be entitled at all times to set-off any amount owing at any time from Seller to Buyer or any of its affiliates against any amount payable at any time by Buyer.

Seller will comply with all of Buyer's site rules and regulations when performing services on Buyer's premises.

To the fullest extent permitted by law, Seller indemnifies and saves harmless, and will defend Buyer and its affiliated companies, their customers, directors, officers, employees and agents, from and against any loss, liability, cost, expenses, suits, actions, claims and all other obligations and proceedings whatsoever, including without limitation, all judgments rendered against, and all fines and penalties imposed upon Buyer and any reasonable attorney's fees and any other cost of litigation (hereinafter collectively referred to as "liabilities") arising out of injuries to persons, including death, or damage to property in any way attributable to or alleged to be attributable to the goods or services sold to the Buyer or the performance and prosecution of the Purchase Order or utilization of the goods sold, including without limitation breach of warranty or product liability except that Seller's obligation herein to indemnify Buyer shall not apply to any liabilities arising from Buyer's sole negligence as determined by Buyer. Seller agrees to expressly waive its immunity, if any, under the applicable workers' compensation law if such immunity may affect this indemnification obligation. Seller also waives any right of subrogation against Buyer for any claim.

During the performance of the Purchase Order and for a period of twenty-four (24) months after its final completion, Seller shall not, directly or indirectly: (i) contact, recruit, solicit or induce, or attempt to contact, recruit, solicit or induce, any employee, consultant, agent, director or officer of the Buyer to terminate his/her employment with, or otherwise cease any relationship with Buyer; (ii) contact, solicit, divert, take away, or attempt to contact, solicit, divert or take away, any clients, customers, vendors or accounts of Buyer; or (iii) use its knowledge of Buyer's clients, customers, vendors or employees or any confidential information about Buyer's clients, customers, vendors or employees to do business with, negotiate or make agreements or terms with them or communicate with them to the Buyer's detriment.