

Hennecke Inc. Terms and Conditions of Purchase (2014)

1. Definitions.

- a. "Buyer" Hennecke Inc.
- b. "Seller" means the addressee named in the Purchase Order.
- c. "Order" means the Purchase Order, these Terms and Conditions of Purchase, the Scope of Work, if attached to the Purchase Order, and all documents and papers referenced and described in or attached thereto, including plans and specifications and attached drawings.
- d. "Supplies" means the material, equipment, articles, services or items covered by this Order.

2. Statement of Work.

Seller, at its own risk and expense and for the indicated consideration, shall furnish all labor, materials, supplies and equipment, and perform all work necessary to manufacture and/or otherwise provide and deliver to Buyer at the place of delivery specified, the supplies covered by this Order (including any spare parts, special tools, plans, drawings, technical manuals, technical services, and other data specified in or required with this Order) in strict accordance with the plans, drawings and specifications and requirements hereof, and will assume all responsibility and do all things required of Seller by this Order. No order shall be deemed to have been completed until all required engineering material has been received and finally approved and the supplies have been received, inspected and finally approved by Buyer. Seller shall be responsible for carefully and critically reviewing all the contract documents immediately upon receipt. In any case of error, omission, discrepancy or lack of clarity in the contract documents, Seller shall immediately notify Buyer. Any work performed, prior to correction or clarification of such error, omission, discrepancy or lack of clarity, shall be at Seller's own risk. No approval of plans, acceptance, payment, passage of title or other act shall relieve Seller of its responsibility to furnish the Supplies in strict accordance with the specifications and with the provisions of this Order and no waiver by Buyer of any breach on the part of Seller of any of its obligations, and no payment made hereunder shall be deemed to constitute an acceptance or approval of any defective or unsatisfactory Supplies or workmanship, or a waiver of the rights to Buyer to reject the same later.

3. Material and Workmanship.

Seller warrants and guarantees to, and agrees with, Buyer, Buyer's customer, and if other than Buyer's customer, the user or consumer of the Supplies, as follows: (a) Seller warrants, guarantees, and agrees that all Supplies have been or will be manufactured, fabricated, produced, and assembled in a good and workmanlike manner, and that only new and unused material and equipment will be included therein; (b) if a purpose for the Supplies is specified on the Purchase Order, Seller warrants, guarantees, and agrees that the Supplies will be fit for such purpose, and if no purpose for the Supplies is specified on the Purchase Order, Seller warrants, guarantees, and agrees that the Supplies are fit for the ordinary purposes for which the Supplies are used; (c) Seller warrants, guarantees, and agrees that the Supplies (and each unit or units therein) will conform to and meet the Specifications; (d) Seller warrants, guarantees, and agrees that the Supplies will be free from defects in workmanship and materials; and (e) Seller warrants, guarantees, and agrees that the Supplies are adequately contained, packaged, and labeled and conform to any promises or affirmations made on the container or label. Payment for, inspection or testing of, or receipt of the Supplies shall not constitute a waiver of any breach of warranty, guarantee, or agreement. Notwithstanding anything contained herein to the contrary, it is specifically agreed and understood that the warranties, guarantees, and agreements of Seller set forth in this Section 3 shall expire the latest of twenty-four months after delivery or eighteen (18) months from date of initial operation of the facility of Buyer's customer or other user or consumer of the Supplies; and unless otherwise specified on the face of the Order, in the event that any materials and equipment supplied by the Seller fail to meet above stated warranties and guarantees, Seller will, at Buyer's option, and at Seller's sole cost and expense, either repair or replace same or the applicable parts or components thereof. Seller will be given access to the job-site for the purpose of making repairs or replacements. In the event that the making of such repairs or replacements requires the removal of materials and equipment and/or the uncovering, reinstallation, and/or recovering of any work in place, the same shall be done at Seller's sole cost and expense. In the event that the Seller requests Buyer to return the materials and equipment (or any parts or components thereof) to Seller, Buyer will do so in conformance with Seller's instructions and at Seller's sole cost and expense. The foregoing remedies are cumulative and are in addition to any other remedies available to Buyer at law, in equity or under the Order.

4. **Acceptance.**

No modification of this Order shall be effective nor shall different terms be imposed by the printed terms and conditions of any acknowledgment or other form submitted by Seller unless agreed to in writing by an authorized representative of Buyer specifically stating that such modification or different term is an amendment to this Order. Acknowledgment of this Order by Seller or shipment by Seller or any part of the materials or performance by Seller or any part of the services ordered hereunder constitutes acceptance of all terms and conditions of this Order.

5. **Order of Precedence.**

Except as otherwise expressly provided, to the extent of any inconsistency between these terms and other provisions of this Order, these terms shall control. If any discrepancy, difference or conflict exists in this Order, such discrepancy, difference or conflict shall be immediately brought to the attention of Buyer and pending Buyer's decision, Seller shall not proceed except at Seller's own risk.

6. **Changes.**

Buyer may at any time by written order only make changes in this Order. If such changes cause an increase or decrease in price or time required for performance, Seller shall notify Buyer promptly. Any claim by Seller for a price increase, delivery date extension, or other adjustment must be asserted in writing within 15 days from the date of Seller's receipt of Buyer's change order or the claim will not be allowed. Seller shall commence and perform the change promptly without waiting for agreement on any adjustments in price or schedule or otherwise caused thereby.

7. **Price.**

Seller's price includes all charges and taxes applicable to the Supplies or this transaction. Seller warrants and represents that the prices specified in this Order do not exceed the current selling price for the same or substantially similar Supplies taking into account the quantity involved in this Order.

8. **Payments and Documents.**

Payment shall be made by Buyer to Seller as stated elsewhere in this Order. Seller shall promptly furnish for Buyer's account such payment and/or performance bond security or other security as Buyer may require from time to time to protect the interest of Buyer. Unless otherwise expressly agreed in writing, Seller shall be responsible for obtaining and paying for any and all export and import licenses or permits necessary of performance of this Order. It is agreed in addition and not in limitation of any generality in this Order, that the price includes any and all applicable tariff(s) or duties imposed upon the Supplies by any government. Invoices for payment shall be supported by such documents in such form

as Buyer may reasonably request and shall bear such certifications as may be required by law, governmental regulations or the Order. Except as otherwise expressly provided in the Order, all payments are contingent on final acceptance of the Supplies by Buyer. Drafts on Buyer will not be honored by Buyer unless otherwise agreed by Buyer in writing. If required by Buyer prior to final payment under the Order, Seller will furnish to Buyer a release discharging Buyer from any liabilities, obligations, and claims arising under the Order. Seller shall issue separate invoices for each shipment against the Order, and each such invoice shall show the amount of Supplies shipped. Buyer's Purchase Order number and part number shall appear on all invoices, packages, crates, boxes, bills of lading, express receipts, correspondence and other instruments issued in connection with the Order. Bills of Lading and a notice of shipment shall be air-mailed to Buyer on the date a shipment goes forward, which shall state the Purchase Order number, the kind of Supplies shipped, part numbers, Seller's name, shipper, and shipping route. Chemical and physical reports (if required), shall be air-mailed to Buyer by Seller not later than the day after a shipment goes forward, or, in the case of services, on the day after completion. Buyer's count will be conclusive on all shipments not accompanied by a packing list. Invoices shall be air-mailed to the Buyer within ten (10) days after shipment goes forward.

9. **Termination for Convenience.**

Buyer may at any time terminate this Order in whole or in part for the convenience of the Buyer by delivery of a written notice thereof to Seller. Seller shall thereupon stop work in accordance with the notice, dispose of all Supplies in accordance with Buyer's written instructions and give Buyer a settlement proposal including Seller's reasonable costs and reasonable profits on the work terminated. This provision does not apply when Buyer is rejecting the Supplies, revoking acceptance or asserting its legal rights for breach order fault.

10. **Time of Essence.**

Time is of the essence.

11. Termination for Default.

- a. Buyer may, by written notice of default to Seller, terminate the whole or any part of this Order in any one of the following circumstances:
 - (1) if Seller fails to make delivery of the Supplies within the time specified as delivery date or any written extension thereof; or
 - (2) if Seller fails to perform any other provisions of this Order, or so fails to make progress as to endanger performance of this Order in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten (10) days (or longer as Buyer may authorize in writing) after receipt of notice from Buyer specifying such failure.
- b. In the event the Buyer terminates this Order in whole or in part as provided in this Section 11, Buyer may procure the Supplies from another source upon such terms and in such manner as Buyer may deem appropriate, and Seller shall be liable to Buyer for any excess costs, provided, that Seller shall continue the performance of this Order to the extent not terminated.
- c. If this Order is terminated as provided in this Section 11, Buyer, in addition to any other rights provided herein, may require Seller to transfer title and deliver to Buyer in the manner and to the extent directed by Buyer (1) any completed Supplies, and (2) such partially completed Supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawing information and contract rights as Seller has specifically produced or specifically acquired for the performance of such part of this Order as has been terminated, and the Seller shall upon direction of Buyer, protect and preserve property in possession of the Seller in which Buyer has an interest. Payment for completed Supplies delivered to and accepted by Buyer shall be at the applicable contract price.
- d. After notice of termination of this Order under the provisions of this Article, if it is determined for any reason that Seller was not in default under the provisions of this Article, or that the default was excusable under the provisions of this Article, the rights and obligations of the parties shall be determined as if the notice of termination had been issued pursuant to Section 9.
- e. Buyer may terminate this Order for default at any time upon written notice to Seller if a petition is filed by or against Seller under the bankruptcy laws applicable to Seller or makes a general assignment for the benefit of his creditors or a receiver is appointed for any property of the Seller.

12. Rights With Respect to Engineering Data.

All design/engineering data furnished to Seller by Buyer shall be the sole property of Buyer. All plans, including working plans (including reproducible) and other specified design/engineering data, produced by the Seller in the performance of this Order, shall be the sole property of Buyer and Buyer shall have the full right to use same in such manner as they may deem proper, including without limitation to the generality of the foregoing, the right to make reproducible and copies, and right to publish, or to withhold from publication, and the right to alter therein, additions thereto, or other changes. Seller shall be permitted to retain copies or duplicates of such plans, working plans and data thereof for its own office records. Seller shall have no right to sell or transfer such plans, working plans and data to any other person.

13. Inspection.

- a. All material and workmanship (except as otherwise provided in the specifications) shall be subject to inspection by representatives of Buyer at any proper time during manufacture and during the performance of the contract work at any and all places where such manufacture and performance of contract work are carried on, and Seller shall be required to insert these requirements in any supply contract or subcontract let with respect to this contract.
- b. When Buyer has reserved the right to approve Seller's plans prior to manufacture and until working plans covering the contract work have been approved by Buyer, commencement of such contract work shall be at Seller's own risk.
- c. All workmanship and material which Buyer may reject shall be satisfactorily corrected with proper workmanship and/or material to conform to the requirements of the specifications and of this Order. If such defective workmanship or material cannot be satisfactorily corrected as determined by the Buyer, such defective workmanship or material shall be replaced. The cost of such correction or replacement shall be for the sole account of the Seller. Seller shall promptly segregate and remove such rejected material. The acceptance of such workmanship and materials shall not prejudice the rights of Buyer under Section 19 hereof, nor relieve Seller of any obligations under this Order. Defects appearing in any stage of the contract work shall be cause for rejection even though the item in question may have previously been passed as satisfactory.
- d. Seller shall provide and maintain a quality control and inspection system acceptable to Buyer covering the Supplies hereunder. Inspection and test requirements of this Order shall be for the convenience of Buyer and shall not relieve Seller of Seller's responsibility to provide a quality product which meets all applicable specifications and requirements of this Order.

- e. If any inspection or test is made on the premises of Seller or a subcontractor, Seller, without additional charge, shall provide all reasonable facilities and assurance for safety and convenience.
- f. All inspections and tests shall be performed in such a manner as not to unduly delay the work. Buyer reserves the right to charge to Seller any additional cost of inspection and testing when Supplies are not ready at the time such inspection and test is scheduled to take place or when reinspection or retesting is necessitated by prior rejection. Failure to inspect and accept or reject Supplies shall neither relieve Seller from responsibility for such Supplies as are not in accordance with the Order requirements nor impose liability on Buyer therefor.
- g. Records of all inspection work by Seller shall be kept complete and available to Buyer during the performance of this Order and such longer period as may be specified elsewhere in this Order.
- h. Buyer may inspect the Supplies ordered and all Supplies therefor at all times and places including Seller's and its Seller's facilities and Seller shall furnish necessary gages, equipment, facilities and assistance therefor at no added costs.

13. Confidentiality and Use of Information.

Seller shall not, at any time, before or after the completion, cancellation or termination of the Order, divulge to anyone other than Buyer's officers (or such other persons as such officers may designate), or, except in the performance of the Order, make any use of (without the Buyer's prior written consent) any designs, drawings, patterns, plans, specifications, data, and other information, and knowledge derived therefrom, relating to (1) their performance of the Order, (2) Buyer's business, or (3) any other business or technical information related to the Order, whether or not furnished by Buyer, which is either confidential in nature or is not intended to be disclosed to others, which Seller shall have obtained before the completion, cancellation, or termination, of the Order and which is not generally of public knowledge. Advertising or publicity releases of any kind of information relating to the manufacture of the Supplies or the performance of the Order are not permitted unless prior authorization for such releases has been obtained in writing from Buyer. Any knowledge or information concerning Seller's products, methods, or manufacturing processes which Seller may disclose to Buyer incident to the performance of the work under the Order shall not, unless otherwise specifically agreed upon by Buyer in writing, be deemed to be confidential or proprietary information, and accordingly, shall be acquired free from any restrictions and shall be deemed to have been disclosed as a part of the consideration for the Order, and Seller agrees not to assert any claim (other than a justified claim for patent infringement) against Buyer by reason of Buyer's use or alleged use thereof.

14. Patent Infringement.

Seller shall be responsible for any liability with respect to any and all claims against Buyer for infringement of patents or of patent rights involving the Supplies and Seller shall defend and save harmless and indemnify Buyer against all such claims and costs, expenses, charges and damages which Buyer may be obligated to pay by reason thereof, including expenses of litigation, if any, provided that upon any such claim being made Buyer shall be notified promptly of such claim and also of any suit in connection therewith and shall be given an opportunity to defend the same and provided further that Seller shall make payment on account of any such claims unless either with the consent of Buyer or pursuant to the degree of a proper court or tribunal.

16. Delivery Date.

- a. Seller shall deliver the Supplies covered by this Order no later than the date or dates specified in the Order as "Delivery Date". Unless otherwise expressly provided, the delivery date as shown on the face of the Order shall be construed as date of arrival at the destination specified in this Order. Seller shall commence and prosecute the contract work, including furnishing of drawings, with due diligence and dispatch and make deliveries as specified.
- b. If Seller encounters or anticipates difficulty in meeting the Order delivery schedule, Seller shall immediately notify Buyer in writing giving pertinent details; provided, however, that this data shall be informational only in character and shall not be construed as a waiver by Buyer of any delivery schedule or date of any rights or remedies provided by law or by this Order.
- c. If Seller fails to meet the delivery schedule required by this Order with the result that Buyer elects to call upon the Seller for expedited shipments, without diminution of Buyer's other remedies at law and under this Order, Seller shall pay the difference between the method of shipping specified in the Order and premium transportation rates. Supplies fabricated or performed beyond Buyer's written releases shall be at Seller's risk. Buyer reserves the right, without loss of discount privileges, to pay invoices covering supplies shipped in advance of the schedule on the normal maturity after the date specified for delivery.
- d. If any delivery is made which is not in all respects in accordance with the provisions of this Order (including time of delivery), Buyer reserves the right to reject such delivery and, in addition, if Buyer so elects, Buyer may treat this Order as repudiated by Seller and cancel any outstanding deliveries hereunder, without prejudice to Buyer's rights to claim damages or to enforce any other remedy provided by law. All expenses and storage, if any, resulting therefrom shall be for Seller's account.

17. **Point of Delivery – Risk of Loss.**

Point of delivery shall be as stated elsewhere in the Order. Notwithstanding any other provision to the contrary Seller shall bear the risk of loss until the Supplies have been delivered to such destination as may be specified elsewhere in this Order.

18. **Liens and Title.**

Title to the Supplies, free and clear of any and all liens and encumbrances, shall pass to Buyer from the Seller at the FOB point specified by this Order, or at such other points as may hereafter be specified by the Buyer. Passage of title to the Supplies (or any part thereof) shall not in any way relieve Seller of its obligations under this Order, nor be treated as a waiver by Buyer of the right later to reject any part of the Supplies which fail to meet any requirements. Seller shall assume and pay for any loss or damage to the Supplies until delivery at the delivery point specified by the Order, or until title otherwise passes from Seller to Buyer, whichever occurs later. If any lien or encumbrance is asserted against the Supplies or any part thereof, Buyer shall have the right to discharge the same, by (1) filing a bond or other security or (2) in its discretion, paying full amount thereof. If Buyer should so discharge any such lien or encumbrance, Seller shall bear the cost, if Buyer has not yet paid the Order price, Buyer may deduct the amount of such cost from the Order price, if Buyer has paid the Order price, Seller shall promptly pay the Buyer the amount of such cost.

19. **Notices.**

Notices given under this Order will be effective upon receipt of notice.

20. **Non-Waiver of Remedies.**

- a. The remedies of Buyer provided under this Order are cumulative and in addition to those provided by law and may be exercised separately, concurrently or successively until full performance by Seller. Without limiting the foregoing generality, and notwithstanding the limitation imposed by the Disputes Article of this Order, Buyer shall be entitled to specific performance of this Order in any case where Buyer in its discretion deems such relief to be necessary.
- b. Notwithstanding any inspection or failure to reject by Buyer, if at any time within warranty period or period for rejection as stated herein there shall appear or be discovered any weakness, any deficiency, any failure, any breaking down or deterioration in Supplies furnished by Seller, or failure to function as prescribed by the plans and specifications and all requirements of this Order, Buyer may, at its

option, and without electing or limiting its remedies hereunder, repair or attempt to repair such Supplies and charge Seller for all expenses of Buyer attributable to such repair effort and delays attendant thereto.

20. **Time for Rejection.**

Buyer may reject at any time Supplies which do not conform to this Order.

21. **Indemnity.**

SELLER AGREES TO PAY, DISCHARGE AND HOLD HARMLESS, DEFEND AND INDEMNIFY BUYER AND ITS AFFILIATES FROM ALL LIENS, CLAIMS, DAMAGES, SUITS (INCLUDING LEGAL FEES AND OTHER EXPENSES INCIDENT THERETO), JUDGMENTS, AWARDS AND LIABILITY, WHETHER GROUNDLESS OR NOT, THAT ARISE OUT OF OR RELATE TO THE AGREEMENT OR THE GOODS AND SERVICES PROVIDED UNDER THE AGREEMENT (COLLECTIVELY, "CLAIMS"), INCLUDING, BUT NOT LIMITED TO, CLAIMS: (a) BY SUBCONTRACTORS, MATERIALMEN, SUPPLIERS, LABORERS AND OTHERS RELATING TO THE PAYMENT FOR GOODS AND SERVICES PROVIDED PURSUANT TO THE AGREEMENT OR ANY PORTION OR COMPONENT THEREOF ("PAYMENTS"); (b) BY AN INDIVIDUAL OR ENTITY ON ACCOUNT OF ANY DAMAGE TO PROPERTY OR INJURY (INCLUDING DEATH) TO PERSONS (INCLUDING ANY DAMAGE OR INJURY TO THE PROPERTY OR PERSON OF ANY EMPLOYEE OF SELLER OR BUYER); OR (c) FOR BREACH OF ANY REPRESENTATION, WARRANTY, COVENANT OR OBLIGATION OF SELLER HEREUNDER.

22. **Law and Forum.**

This Order shall be interpreted in accordance with the laws of the State of Pennsylvania. In the event of any dispute or controversy relating to or arising under this Order, including any challenges to the validity hereof, the parties hereto mutually consent to the exclusive jurisdiction of the state courts in the State of Pennsylvania and of the federal courts within Pennsylvania. In the event any of the provisions of this Order or the application of any such provisions to the parties hereto with respect to their obligations, shall be held by a court of competent jurisdiction to be contrary to the laws of the State of Pennsylvania or federal law, the remaining provisions of this Order shall remain in force and effect. **TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, BUYER AND SELLER HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY THAT BUYER OR SELLER MAY HAVE IN ANY ACTION OR PROCEEDING, IN LAW OR IN EQUITY, IN CONNECTION WITH THIS ASSIGNMENT. BUYER AND SELLER EACH REPRESENT AND WARRANT THAT NEITHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT IT WILL NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THIS RIGHT TO JURY TRIAL WAIVER. EACH PARTY ACKNOWLEDGES THAT THE OTHER PARTY HAS**

BEEN INDUCED TO ENTER INTO THIS ORDER BY, AMONG OTHER THINGS, THE PROVISIONS OF THIS WAIVER.

23. Backcharges.

In the event of items or services furnished by Seller under this Order are found to be defective as to workmanship or materials or not to be in conformance with plans or specifications, it remains the responsibility of Seller to promptly correct any deficiency when so directed. Buyer will take reasonable measures to discover such noncompliance as quickly as practical; however, failure to do so shall in no way relieve Seller of its responsibility during the term of this Order, and/or the guarantee period as stated elsewhere in the order, to promptly make such modifications as required so as to minimize delay and/or damage to other work. If upon being notified by Buyer of deficient work or materials, and having been directed to correct the deficient work or materials by a specific date consistent with the current Project Schedule, Seller states or by its actions indicates its inability or unwillingness to comply, then Buyer shall proceed to accomplish the work by the most expeditious means available to it and to backcharge Seller for the cost of the required work.

24. Expediting.

The work furnished under this Order, including all warranty work, shall be subject to expediting by Buyer. Buyer's representatives shall be afforded free access during working hours to Seller's plants, and Seller agrees to procure a similar right for Buyer, for expediting purposes with respect to Seller's subcontractors and subsellers. As required by Buyer, Seller shall supply schedules, progress reports and unpriced copies of Seller's purchase orders and subcontract for Buyer's use in expediting. Seller shall notify Buyer in writing of any actual or anticipated delays immediately upon discovery. Such notice shall include an estimated period of delay, cause, and corrective actions being taken. Slippage in Seller's schedule may be deemed to be reasonable grounds for insecurity in which event Buyer may demand in writing that Seller provide adequate assurances that Seller will perform on time.

25. Copyrights.

Seller agrees to grant Buyer and to its customers a royalty-free right to reproduce, use and disclose any and all copyrighted or copyrightable matter required to be delivered by Seller to Buyer under this Order.

26. Compliance With Laws.

Seller shall comply with all applicable state, federal and local laws, rules and regulations. Seller represents that it has complied with and will continue to comply during the performance of this Purchase

Order with all export laws and regulations, directives and other applicable administrative actions issued thereunder, including but not limited to the International Traffic in Arms Regulations (22 C.F.R. Parts 121 - 130) and the Export Administration Regulations (22 C.F.R. 2751-2794), and any other standards issued pursuant thereto.

27. Packing.

All items shall be packed to meet the carrier's requirements and to assure lowest transportation rates consistent with adequate protection against loss or damage.

28. Assignment/Subcontracting.

Seller may not assign or subcontract this Order or any portion thereof without prior written consent from the Buyer. Any attempted, unpermitted assignment shall be void from the date of attempted assignment.

29. Safety and Health.

The supplies shall conform to all laws and regulations applicable to Buyer at date of delivery and in particular to the Occupational Safety and Health Act of 1970, as amended, and pertinent regulations thereunder.

30. Independent Contractor.

Seller is an independent contractor and not an agent or employee of, or partner or joint venturer with, Buyer. Seller bears all of the rights, obligations, and liabilities applicable to it as an independent contractor and employer of its personnel in accordance with all laws, including exclusive liability for payroll taxes, workers' compensation, and contributions for unemployment insurance, old age pensions, or annuities. If Buyer pays any of said taxes or contributions, Seller shall promptly reimburse Buyer for same. Subject to the requirements set forth in this Agreement, the provision and performance of all Supplies shall be under the exclusive control and direction of Seller.