



Terms and Conditions ABM Advanced Bearing Materials

1. Acknowledge and Acceptance

Acceptance is limited to the provisions contained in this order and this order shall be accepted by executing and returning to Buyer the acknowledgment copy of this order; provided, however, if Seller ships or delivers to Buyer any materials or performs any services covered by this order, without having first received Buyer's express written assent to a modification of or addition to the terms contained herein despite any language to the contrary in Seller's acknowledgment or confirmation, and such action by Seller shall constitute a waiver of any such language. Buyer's silence or its acceptance of any materials shipped or delivered or services performed, by Seller, shall in no event be deemed an acceptance by Buyer of terms contained in any acknowledgment, confirmation or other communication received from Seller at variance with the provisions of this order. If this order has been issued in response to Seller's offer to sell goods to Buyer, the terms of which offer are different from or in addition to any of the provisions of this order, then Buyer is only willing to proceed upon the terms of this order and acceptance of the offer is conditional on Seller's assent to the terms and provisions of this order.

2. Warranties

(a) Quality—Seller warrants that all materials and services covered by this order (1) shall be of good quality and workmanship and free from defects, latent or patent, (2) shall conform to the drawings, specifications, requirements, descriptions and samples furnished or specified by Buyer, including, without limitation, all quality assurance requirements delivered to Seller, and (3) shall be suitable and sufficient for the purpose for which intended.

(b) Patents—Seller warrants that the sale, resale or use of the material furnished hereunder will not infringe any patents or rights of another party (except insofar as such infringement necessarily arises from the use of plans and specifications furnished by Buyer), and Seller agrees to indemnify, defend, protect and save harmless Buyer and its successors, assigns, customers, and users of its materials from and against all claims and all damages and expenses (including, without limitation, all legal fees and expenses) resulting from any and all claims based on any such actual or alleged infringement.

3. Laws

Seller represents warrants and agrees that all materials covered by this order will be produced in compliance with all applicable statutes, rules, regulations and orders of Federal, state, and local governments or governmental authorities, including, without limitation, the Fair Labor Standards Act of 1958 and the Occupational Safety and Health Act of 1970.

4. Inspection

All materials covered by this order shall be received subject to Buyer's final inspection for approval or rejection, notwithstanding prior payment therefor, including the inspection during Buyer's production process. Seller will permit Buyer and Buyer's customers (including any government agency) access to Seller's facilities where the goods sold hereunder are manufactured, stored and tested and to all of Seller's records related thereto, and Buyer (and/or its customer) will be permitted to examine production and carry out tests and inspections at such facilities. In the event any material is found to be defective, fails to meet Buyer's specifications or requirements or is otherwise non-conforming, Buyer may at its option, in addition to all other rights and remedies available to it under applicable law, return such material to Seller, at Seller's expense, for credit or replacement. Nothing herein shall release Seller from the obligation to make full and adequate testing and inspection of goods sold hereunder. All goods and materials delivered by Seller shall be accompanied by a certification of compliance with all of Buyer's requirements and specifications.

5. Tools and Equipment

Unless otherwise specified in this purchase order, all special tools, dies and equipment used in the manufacture of the materials covered hereby shall be furnished by and at the expense of Seller. Such tools, dies and equipment shall be kept in good condition and from time to time when necessary, shall be replaced by Seller without expense to Buyer. Buyer shall have the option, however, at any time to buy from Seller all, or any part, of such tools, dies and equipment or replacements thereof, at the book value thereof based upon cost less depreciation as shown in Seller's books or accounts for tax purposes or as shown in Seller's books or accounts for other purposes, whichever value is lower, and thereby become the owner, and be entitled to the possession of the same. Seller shall not encumber, sell or otherwise dispose of such tools, dies or equipment without Buyer's written consent. Changes in tools, dies and equipment due to Buyer's change in design or specification will be paid for by Buyer only if expressly authorized in a written "Change Order" issued by Buyer.

Tools, dies and equipment furnished to Seller by Buyer or purchased from Seller by Buyer to perform this purchase order shall remain the property of Buyer, but Seller shall bear the risk of loss of and damage to such property, normal wear and tear excepted. Such property shall at all times be properly housed and maintained by Seller, shall be deemed to be personalty, shall be marked "Property of ABM Advanced Bearing Materials" by Seller, shall not be commingled with the property of Seller or with that of a third person, shall not be moved from Seller's premises without Buyer's prior written approval, shall not be used in connection with work not ordered by Buyer, and shall, upon request of Buyer, be immediately delivered to Buyer by Seller F.O.B. cars or trucks at Seller's plant, properly packed and marked in accordance with the requirement of the carrier selected by Buyer to transport such property or shall, upon request of Buyer, be immediately delivered to Buyer by Seller at any location designated by Buyer, in which event Buyer shall pay to Seller the cost of delivering such property at such location. Buyer shall have the right to enter onto Seller's premises at all reasonable times to inspect such property and Seller's records with respect thereto.

6. Changes

Buyer may at any time make changes in this order, but if any such change would cause a delay in time for performance, or an increase in price, Seller shall notify Buyer immediately and such change shall be made only if authorized by a written "Change Order" issued by Buyer.

7. Payment

Except as otherwise provided in this order, all payments shall be net 60 days after final

acceptance by Buyer of the goods and/or services provided. Except for taxes specified on this purchase order, Seller's price shall be inclusive of, and Seller shall be responsible for, all taxes with respect to the manufacture and sale of the goods. All invoices shall identify the applicable purchase order.

8. Delivery

The time (or times, if delivery is to be in installments), method and place specified in this order for shipment or delivery are of the essence. All shipment shall be F.O.B. point of delivery.

9. Cancellation

Buyer may at any time cancel or suspend this order, or any part thereof, without cause, by five days written notice to Seller specifying the effective and the extent of such cancellation or suspension. Upon receipt of such notice, Seller will, to the extent directed by Buyer, immediately terminate all work on this purchase order and any contracts thereunder and generally take all actions reasonably designed to reduce its costs in connection with the work ordered hereunder. If Buyer cancels this purchase order without cause, Buyer shall reimburse Seller for Seller's reasonable expenses which are properly allocable to and result from such cancellation as determined according to generally accepted accounting practices. The amount of such reimbursement shall in no event exceed an amount equal to that part of the contract price allocable to the part of this purchase order which is cancelled.

10. Insecurity

If because Seller's financial condition or any other reason Buyer determines that there are reasonable grounds for insecurity in respect of Seller's performance hereunder, Buyer shall so notify Seller in writing. If within the time specified in such notice, Seller has not provided Buyer assurance acceptable to Buyer of Seller's willingness and ability to render such performance, Seller shall be deemed to be in default hereunder and Buyer may, in addition to all other remedies available to it, cancel this purchase order or any unexecuted portion thereof.

11. Risk of Loss

Damage or loss to the materials covered hereby shall be a Seller's risk until such materials are received by Buyer from the last carrier or shipper, unless otherwise acknowledged in writing by Buyer.

12. Design Rights

Buyer shall at all times have and retain title to all designs, drawings and specifications furnished by Buyer to Seller and intended for use with this order. Seller agrees to use such designs, drawings and specifications only in connection with this order and shall not disclose the same to any other person, firm or corporation, except government inspectors, without obtaining the prior written consent of Buyer.

13. Services

If Seller is to perform services for Buyer, Seller agrees to indemnify and save Buyer harmless from all liabilities, claims and losses arising from or out of the performance of such services. Seller also agrees to maintain and furnish Buyer with satisfactory evidence of adequate property damage, public liability and workers' compensation insurance and, if requested, name Buyer as an additional insured.

14. Remedies, Modification and Waiver

Seller shall indemnify, defend and hold Buyer harmless from and against any and all claims, losses, liabilities, costs and expenses (including costs of testing and inspection and attorney's fees and including consequential and incidental damages) arising out of any breach by Seller of any representation, warranty, or covenant herein, arising out of any act or omission of Seller or arising from or related to any goods or services provided by Seller to Buyer or Buyer's customers. In no event shall Buyer be liable for consequential or incidental damages. Remedies herein provided shall be cumulative and additional to any other remedies provided under applicable law. No modification or waiver of any provision hereof shall be binding upon Buyer unless contained in a writing signed by an officer of Buyer. A waiver of any right or obligation set forth herein on one occasion shall not be deemed a waiver of any other right or obligation or of the same right or obligation on any other occasion.

15. Non-Assignment

Seller shall not delegate its performance hereunder or assign its right to any payment not yet earned without Buyer's written consent. Seller shall require all of its vendors and subcontractors to comply with the terms of this purchase order.

16. Governing Law

The validity, construction and effect of the provisions of this purchase order, and the purchase and sale herein contemplated shall be governed by and construed according to the laws of the state described on the face hereof as the location of Buyer's office from which this purchase order originated.

By accepting this order, Seller agrees to comply with all provisions of the Code of Federal Regulations (41 CFR, Chapter 60) Executive Order 11246, as amended, and the rules, regulations and relevant orders of the Secretary of Labor. Without limiting the generality of the foregoing, the contract provisions set forth in Section 202 of Executive Order 11246 (equal opportunity), as amended, and the regulations promulgated thereunder (41 CFR Part 60-1), and the provisions, representations or agreements contained in Executive Order 11701 (employment of veterans), as amended and the regulations promulgated thereunder (41 CFR Part 60-250 and 41 CFR Part 61-250) Executive Order 11758 (employment of the handicapped), as amended, and the regulations promulgated thereunder (41 CFR Part 60-741) and Executive Order 11625 (utilization of minority business enterprises) as amended, and the regulations promulgated thereunder (41 CFR Chapter 1-1-1310) to the extent same are applicable to Buyer's order, are incorporated by reference herein as if fully rewritten with respect thereto. Seller agrees, upon request, to furnish Buyer a certification of compliance with such Executive Orders in such form as Buyer may require.



Provisions applicable to Orders Placed under Government Contract

- a) This Purchase Order is subject to the terms and conditions of Federal Acquisition Regulation ("FAR") and Department of Defense FAR Supplement („DFAR“) and all clauses and provisions in full text or incorporated by reference herein. The FAR and DFAR clauses referenced below and throughout this Purchase Order are modified to the extent indicated, and are incorporated herein by reference with the same force and effect as though set forth at length.
- (b) Where appropriate to accomplish the purposes of the FAR and DFAR and thereby creating a legal relationship between Buyer and Seller similar or identical to but not dependent on those intended to be created by said regulations between the Government and „a Contractor“, the following changes are applicable to all the referenced FAR and DFAR clauses in this Subcontract.
- (1) The term „Contract“ means this „Purchase Order;“
- (2) The term „Subcontract“ or „Subcontractor“ means „LowerTier Purchase Order“ or „LowerTier Seller;“
- (3) The term „Contractor“ means „Seller;“
- (4) The term „Contracting Officer“ means the Buyer’s duly authorized contractual representative unless otherwise indicated; and
- (5) The term „Government“ means „Buyer“ unless otherwise indicated.
- (c) The changes set forth in Section (b) above shall not apply (1) in the phrases „Government Property“, „Government-Owned Property“, „Government Equipment“ and „Government-Owned Equipment“; (2) when a right, act, authorization or obligation can be granted or performed only by the Government or the Agency Contracting Officer or his duly authorized representative; (3) when title to or rights in property or data rights is to be transferred to the Government; (4) where specifically modified as noted below, and (5) wherever the clauses set forth below explicitly state that the meaning shall remain unchanged in subcontracts issued under the Government Prime Contract.
- (d) The FAR and DFAR clauses incorporated herein are those in effect on the dates specified in this Purchase Order, or if no date is specified, those in effect on the effective date of this Purchase Order.
- (e) This Purchase Order incorporates the following FAR and DFAR clauses by reference:
- FAR Clauses:**
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| 52.203-3 | Gratuities (APR 1984) |
| 52.203-6 | Restrictions on Subcontractor Sales to the Government (JUL 1995) |
| 52.203-7 | Anti-Kickback Procedures (JUL 1995) |
| 52.211-15 | Defense Priority and Allocation Requirements (SEP 1990) |
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| 52.219-8 | Utilization of Small, Business Concerns (May 2004) |
| 52.219-9 | Small Business Subcontracting Plan (JAN 2002) |
| 52.222-21 | Prohibition of Segregated Facilities (FEB 1999) |
| 52.222-26 | Equal Opportunity (APR 2002) |
| 52.222-35 | Equal Opportunity for Special Disabled Veterans, Veterans, Vietnam Era, and Other Eligible Veterans (DEC 2001) |
| 52.222-36 | Affirmative Action for Workers with Disabilities (JUN 1998) |
| 52.222-37 | Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) |
| 52.225-8 | Duty-Free Entry (FEB 2000) |
| 52.225-13 | Restriction on Certain Foreign Purchases (DEC 2003) |
| 52.227-1 | Authorization and Consent (JUL 1995) |
| 52.227-2 | Notice and Assistance Regarding Patent and Copyright Infringement (AUG 1996) |
| 52.244-6 | Subcontracts for Commercial Items (JUL 2004) |
| 52.247-64 | Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) |
- DFARS Clauses:**
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| 252.225-7001 | Buy American Act and Balance of Payments Program (APR 2003) |
| 252.225-7014 | Preference for Domestic Specialty Metals, Alternate I (10 U.S.C. 2241) (By accepting this Purchase Order, Seller certifies that all delivered items are domestic end products as defined by this DFAR clause) |
| 252.226-7001 | Utilization of Indian Organizations and Indian-Owned Economic Enterprises (OCT 2003) |
| 252.244-7000 | Subcontracts for Commercial Items and Commercial Components (DOD Contracts) (MAR 2000) |
| 252.247-7023 | Transportation of Supplies by Sea (MAY 2002) (10 U.S.C. 2631) |
| 252.247-7024.1 | Notification of Transportation of Supplies by Sea (MAR 2000) (10 U.S.C. 2631). |