

The purchase order, together with these terms and conditions, and any attachments and exhibits, specifications, drawings, notes, instructions and other information, whether physically attached or incorporated by reference (collectively the "Purchase Order"), constitutes the entire and exclusive agreement between Eclipse Engineering Inc. ("Buyer") and the seller identified as the supplier in the Purchase Order, hereinafter referred to as "Seller", regarding the goods, materials and/or services to be purchased hereunder (G & S).

1. **OFFER AND ACCEPTANCE:** This Order constitutes an offer by Eclipse Engineering to purchase the goods or services described in this order (the "Goods") from the supplier identified ("Seller"). If Seller accepts this offer Eclipse Engineering Inc and Seller will have formed a contract on the terms and conditions set forth below. Seller may accept this order either by giving Eclipse Engineering written notice (electronic is acceptable) of seller's acceptance or by beginning performance of seller's obligation under this order. Eclipse Engineering hereby limits acceptance of this offer to the terms and conditions contained in this Order, and Eclipse Engineering hereby gives notice of objection to and rejection of any terms and conditions which add to or differ from those set forth in this Order. No waiver of or exception to any of the terms, conditions or provisions contained in this order shall be valid unless specifically agreed to in writing. No waiver of a breach of any provision of this order shall constitute a waiver of any other breach, or of such provision. This Order is expressly limited to the terms and conditions contained herein. Any additional or conflicting terms and conditions contained in any acknowledgment of this offer shall have no effect. Time is of the essence for all matters relating to Seller's performance of this agreement.

2. This Order and Seller's performance hereunder is to be construed and enforced according to the laws of the state of Colorado applicable to agreements wholly executed and wholly performed therein. Any action or proceeding brought by either party against the other arising out of or relating to this Agreement shall only be brought in a court of competent jurisdiction located in Weld County, Colorado. Buyer and Seller hereby irrevocably consent to the in-personam jurisdiction of such courts for purposes of any such action or proceeding. In the event any action or proceeding is brought by any party against any other party hereunder, the prevailing party, shall be entitled to recover reasonable attorneys' fees in any such action or proceeding, including appeals, if any, plus court costs and other expenses of litigation. BY ENTERING INTO THIS AGREEMENT, EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION BASED ON OR ARISING FROM THIS AGREEMENT.

3. Shipment of any part of this Order constitutes acceptance of this Order and its terms and conditions by Seller. Any goods or material delivered in excess (unless prior approval has been granted by Eclipse) of the amount called for on this Order or any defective material may be refused and returned at the expense of the Seller. (Except molded product which will follow industry standard, and CAN NOT EXCEED 10% of total quantity.)

4. If material is furnished by Buyer to Seller or designee of Seller in connection with this Order, Seller shall be solely responsible for all such material.

5. Seller shall not assign this Order or any part thereof, without consent of Buyer. Such consent shall not release Seller from its obligations and liabilities under this agreement.

6. This Order may be used in connection with purchase releases under separate written contract. In such cases, the contract terms shall prevail over inconsistent terms herein, unless otherwise specifically agreed upon in writing.

7. This Order may not be filled at higher prices than last quoted by Seller without notice to and acceptance by Buyer.

8. **DELIVERY -** Time is of the essence. Delivery is strictly in accordance with the schedule (dock date), quantity, and any other terms set forth in this Purchase Order. Seller will immediately notify Buyer if Seller's timely performance under the Purchase Order is delayed or is likely to be delayed. Buyer reserves the right to cancel, without liability, this Purchase Order in whole or in part if Seller should fail to make deliveries in accordance with the terms of this Purchase Order. Seller shall indemnify Buyer for any damages imposed originating from Seller's delivery breach. Buyer reserves the right to refuse shipments made before or after the date set forth in the Purchase Order. If all other option have been exhausted Eclipse may exercise the following: If the delivery of the Products is not completed on time, Buyer reserves the right, in addition to its other rights and remedies, and without liability, to terminate the Purchase Order as to items not yet shipped or services not yet rendered and to: (a) purchase substitute items or services elsewhere at the expense of Seller or (b) direct Seller to ship by the most expeditious means available at Seller's risk and expense.

9. **SHIPPING/PACKAGING -** Seller will preserve, pack, package and handle the goods so as to protect the goods from loss, damage, deterioration, moisture, foreign matter, or contamination. Unless otherwise specified, Seller shall comply with best commercial practices to ensure arrival at destination at the lowest transportation cost, in the absence of any specifications Buyer may provide. An itemized packing list is placed in each package and no charges are allowed for boxing, packing, or crating unless previously agreed upon.

11. **INSPECTION & ACCEPTANCE -** All G & S may be inspected, tested, and approved by Buyer, its customers, higher-tier contractors, and end users at all reasonable times and places. No inspection, tests, approval, design approval, or acceptance of the goods relieves Seller from responsibility for warranty, latent defects, fraud, or negligence. If the goods are defective or otherwise do not conform to the requirements of this Purchase Order, Buyer may, by written notice to Seller: (a) rescind this Purchase Order as to the goods or (b) reject and return the goods to Seller at Seller's risk and expense for refund/credit or require the delivery of replacements. If Buyer elects to reject nonconforming goods, Seller shall issue a return authorization number for all nonconforming goods within twenty-four (24) hours after Buyer's request, and such non-conforming goods are the property of the Seller. Delivery of replacements will be accompanied by a written notice specifying that such goods are replacements. If Seller fails to deliver required replacements promptly, Buyer may replace them with goods from another Seller and charge the Seller the cost thereof, including cover, and any incidental costs; or terminate this Purchase Order for cause. Acceptance of any part of the Purchase Order shall not bind the Buyer to accept any future G & S, and Buyer reserves the right to reject any goods or to revoke any previous acceptance and to cancel all or any part of the Purchase Order if Supplier fails to deliver all or any part of the goods or perform any of the

work in accordance with this Purchase Order. If Buyer performs any inspection (other than the standard inspection) after discovering defective or nonconforming goods, any additional inspection costs will be paid by Seller.

10. **WARRANTY**- Seller expressly warrants that all goods and services covered by this order will conform to buyer's specifications, instructions, drawings, data, samples, and other descriptions: will be merchantable: will be of good material and workmanship and free from defects: will meet all specifications, drawing or other technical requirements within the order, and will be delivered free from any security interest and any lien or encumbrance. These warranties are in addition to all other express, implied and statutory warranties. None of the remedies available to buyer for breach of any of the foregoing warranties may be limited except to the extent and in a manner agreed upon by buyer in a separate contract specifically designating such limitation and signed by an authorized representative of buyer. Payment for, inspection of, and receipt of goods or services shall not constitute a waiver of any breach of warranty.

11. **CANCELLATION OF ORDER**: Buyer may cancel this Order in part or in its entirety prior to delivery by Seller. In the event of such cancellation, Seller shall immediately stop work and shall cause any and all of its suppliers and subcontractors to immediately cease work. Subject to terms of this Order, Seller shall be paid a percentage of the Order price reflecting the percentage of the work performed prior to notice of termination, plus reasonable charges resulting from the cancellation that Seller can demonstrate to the reasonable satisfaction of Buyer using its standard record keeping system. Seller shall not be paid for any work performed or costs incurred which reasonably could have been avoided. Additionally buyer can terminate if any of the following occur: - Buyer shall have the right to terminate Purchase Order, in whole or part, at any time, if Seller: (a) fails to make any delivery in accordance with agreed delivery date, (b) fails to observe or comply with any of the instructions, terms, conditions, or warranties applicable to Purchase Order, (c) fails to make progress so as to endanger full and timely performance of the Purchase Order or failure to provide Buyer, upon request, with reasonable assurances of future performance, or (d) is subjected to any proceedings by or against it in bankruptcy or insolvency, for appointment of a receiver or trustee, or for an assignment for benefit of its creditors. In the event of a termination of such default,

12. **INVOICE/PAYMENT** - Unless otherwise agreed to in writing by the parties, an invoice is not issued prior to shipment of goods. Invoices are forwarded to Buyer's address (2 copies on Seller's own form) and no payment is made if Buyer has not received an invoice as defined herein. Invoices must reference this Purchase Order number, listing a description of G & S provided and as applicable, part number, applicable quantities and the unit and total prices. Payment of an invoice does not constitute acceptance of the G & S and is subject to appropriate adjustment should Seller fail to meet the requirements of the Purchase Order. All payments are subject to adjustment for shortage or rejection of materials provided. In any case where transportation is billed, billing must be accompanied by carrier's invoice marked "paid". If Buyer has a claim against Seller resulting from this Purchase Order or any other transaction, Buyer may deduct or set-off disputed amounts from Seller's claims for

13. **FORCE MAJEURE**: Neither party shall be liable for delays or defaults due to acts of God, acts of government authority, acts of public enemy, war, fires, floods, epidemics, strikes, labor troubles, or causes or contingencies reasonably beyond its control, but this paragraph shall not prevent Buyer from canceling in accordance with paragraph 11 hereof.

14. **INDEMNIFICATION** - Seller, its parents and affiliates agrees to indemnify and hold harmless Buyer, officers, employees, agents and customers, from and against any and all claims or liability (other than liability solely due to the negligence of Buyer), including reasonable attorneys' fees, arising out of or resulting in any way from any defect in the G & S provided hereunder or from act or omission of Seller, its agents, employees or subcontractors, including but not limited to: (a) the negligence or willful misconduct of the Seller, its agents or employees, (b) any claim for bodily injury or death, damage to property or any claim by an employee or subcontractor of Seller for wages and benefits, which occur in connection with the performance by Seller, and (c) alleged violation or infringement of any third party's patent, copyright, trademark, trade secret or any other proprietary rights, unless the G & S are of Buyer's design or formulas. Seller's obligation to indemnify Buyer shall survive the expiration or termination of the Purchase Order by either party for any reason.

15. **LIMITATION ON LIABILITY/STATUTE OF LIMITATIONS** - Buyer shall not be liable for lost profits, special, indirect, punitive, incidental or consequential damages, or penalties of any kind. Buyer's liability on any claim arising out of, in connection with, or resulting from this order or from performance or breach hereof shall in no case exceed the price allocable to the G & S or unit thereof giving rise to the claim. Seller must commence any action against buyer arising from this order within one year from date the cause of action accrues.

16. **ENTIRE AGREEMENT** - This Purchase Order contains the entire agreement of the parties relating to the purchase of G & S, regardless of any inconsistent or additional terms in any other document, and supersedes all previous understandings, negotiations and proposals and may not be amended or discharged except in writing approved by both parties.