



THE
FEDERAL
GROUP
USA

Supplier Purchase Order Terms And Conditions



Phone: 800.759.2658



Email: info@tfgusa.com



Web: www.tfgusa.com

1. Definitions. “Buyer” means The Federal Group USA, Inc. and the term “Seller,” means the individual, firm or corporation identified on the front of this Agreement from whom the goods have been ordered. “Deliverables” means the goods, materials, products, software, technical data, intellectual property, drawings, personal property, personnel, services or items identified and/or listed in the purchase order for Buyer’s internal use and resale. “Personal data” means any information that can identify a specific living individual.

2. Acceptance of Purchase Order. Purchase order constitutes Buyer’s offer to Seller and shall become a binding contract upon the terms and conditions stated in the purchase order upon acceptance by Seller by any expression of acceptance, or commencement of performance, whichever occurs first. Any terms and conditions proposed by Seller in acknowledging or accepting Buyer’s offer which are different from or in addition to the terms set forth in said purchase order shall not be binding upon Buyer and shall be void and of no effect, except to the extent expressly accepted in writing by Buyer’s authorized procurement representative(s).

3. Data. Seller acknowledges that it has in its possession all applicable specifications, drawings and documents (including, without limitation, statements of work) necessary to perform its obligations under the purchase order at the price and schedule stated on said purchase order or its attachments. All such documentation shall be deemed to be a part of the purchase order.

4. Packing and Shipping. Deliveries shall be made as specified on the purchase order without charge for packaging or storage unless otherwise agreed in writing by Buyer. Deliverables shall be suitably packed to secure the lowest transportation costs and in accordance with the requirements of the carriers of the releases or orders subject to the purchase order. Seller shall use the carrier(s) selected by Buyer if Buyer so requests. Buyer’s order numbers must be plainly marked on all packages, bills of lading and shipping orders. Buyer’s count or weight shall be conclusive. Seller shall not ship in advance of schedule or make partial shipment unless otherwise agreed in writing by Buyer. Risk of loss shall be retained by Seller until delivery of the Deliverables at the location specified on the purchase order. Delivery according to schedule is a major condition of the purchase order.

5. Premium Freight; Related Costs. (a) Seller pays all premium freight costs over normal freight costs if Seller needs to use an expedited shipping method to meet agreed upon delivery dates due to its own acts or omissions. Seller pays any costs incurred by Buyer, including costs charged by Buyer’s customer(s) to Buyer, as a result of Seller’s failure to comply with shipping or delivery requirements. (b) Buyer is not liable for premium freight costs, unless specifically agreed to in advance, in writing, by Buyer.

6. Taxes and Duties. The prices stated in the purchase order include all applicable taxes and duties, except state and local sales and use taxes, which by statute may be passed on to Buyer. Such sales and use taxes shall be separately itemized in Seller’s invoice. The purchase order shall include all related customs duty and import drawback rights, if any, including rights developed by substitution and rights, which may be acquired from Seller’s suppliers, which Seller shall transfer to Buyer. Seller agrees to inform Buyer of the existence of all such rights, and to supply such documents as may be required to obtain such drawbacks, unless waived in writing by Buyer. Seller agrees to certify to Buyer the country of origin for Deliverables delivered under the purchase order.

7. Payment and Prices. Unless different payment terms are expressly stated on the purchase order, payment terms shall be thirty (30) days from Buyer’s receipt of Seller’s correctly presented invoice. A “correctly presented” invoice will contain the purchase order number sent to the billing address on the purchase order. Seller represents that prices quoted to or paid by Buyer shall not exceed current prices charged to any other customer of Seller for deliverables which are the same or substantially similar to, and in the same or substantially similar quantities as the Deliverables. Seller shall refund, or Buyer may set off against subsequent invoices any amounts paid by Buyer in excess of such price(s).



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8. Set-off. Buyer shall always be entitled to set off any amount owing at any time from Seller to Buyer (or any of Buyer's affiliates and subsidiaries) against any amount payable at any time by Buyer (or any of its affiliates and subsidiaries) to Seller.

9. Warranty. Seller warrants that all Deliverables will conform to applicable specifications, drawings, descriptions, and samples, and will be of new manufacture, good workmanship and materials, and free from design defect, claim, encumbrance or lien, and be suitable for the purpose intended by Buyer. Seller warrants that it has full title, right, power and authority to enter into the purchase order and perform its obligations under the purchase order. Seller warrants that Deliverables that are services shall be performed in a professional and workmanlike manner. If the Deliverables delivered under the purchase order do not meet the warranties specified in the purchase order or other applicable warranties, Buyer may, at its option, return at Seller's expense, the defective or nonconforming Deliverables for credit, refund or set-off, or require Seller to correct or replace, at no cost to Buyer, any defective or nonconforming Deliverables, including, without limitation, re-perform any Deliverables that are services. Return shipping to Buyer of corrected or replacement Deliverables shall be at Seller's expense. Deliverables required to be corrected or replaced (including, without limitation, the re-performance of any Deliverables that are services) shall be subject to this Section 8 and Section 9 (Inspection) in the same manner and to the same extent as Deliverables originally delivered under the purchase order. Seller's warranties shall run to Buyer, its affiliates, subsidiaries, customers or users of the Deliverables and shall not be deemed to be exclusive of any other remedy at law or in equity available to Buyer, its affiliates, subsidiaries, customers or users of the Deliverables. Buyer's inspection, approval, acceptance, use of, or payment for all or any part of the Deliverables shall in no way affect its warranty rights. Seller shall at its expense indemnify, defend and hold harmless, Buyer, its directors, officers, employees, affiliates, subsidiaries, agents, customers and end users, from any and all loss, damages or liability (including, without limitation, reasonable legal fees and costs) arising out of or resulting in any way from any defect in the Deliverables, or from any act or omission of Seller, its agents, employees or permitted subcontractors in connection with the Deliverables. This indemnification shall be in addition to Seller's warranty obligations. Seller warrants that it has full right, title and interest in, and full title, power and authority to use any Personal Data it uses, provides or supplies in connection with the performance of the purchase order and shall be fully and solely liable for any third party claims arising out of or relating to any violation of law in connection with the Personal Data subject to the purchase order, breach of the purchase order in connection with the Personal Data subject to the purchase order, intentional and/or negligent handling of the Personal Data subject to the purchase order by Seller. For purposes of this Section 9 (Warranty), Personal Data shall be deemed Deliverables.

10. Inspection. All material shall be received subject to Buyer's inspection and rejection. Defective material will, at Buyer's option, either be held for Seller's instruction and at Seller's risk or returned at Seller's expense. Material returned as defective shall not be replaced without a new order. Payment for material prior to inspection shall not constitute an acceptance thereof. Written notice of defects shall be given by Buyer to Seller within a reasonable time after delivery to Buyer. The Deliverables may be inspected and/or tested by Buyer at any time, place and stage of production or distribution, and if at Seller's premises, Seller, without additional charge, shall provide all reasonable facilities and assistance required for safe and convenient inspection and testing. The initial inspection of the order will be paid for by the Buyer. Any re-inspection fees due to a failed first inspection and rush, weekend or holiday booking fees due to a booking cancellation or delay will be charged back to the Supplier by the Buyer. The foregoing shall not relieve Seller of its obligation to permit Buyer full and adequate inspection and testing away from Seller's premises. Buyer may base rejection of any or all Deliverables on inspection by sampling or any other reason permitted by Article 2 of the Uniform Commercial Code. Payment shall not constitute Buyer's acceptance of the Deliverables nor impair Buyer's right to inspect and/or test the Deliverables or exercise any of its remedies. Upon notice of rejection of defective Deliverables, risk of loss of such Deliverables shall be upon Seller until redelivery, if any, to Buyer. Rejected Deliverables may be returned to Seller or held by Buyer, both at Seller's risk and expense, subject to Seller's disposal instructions.



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11. Default. Buyer may, by written notice to Seller, cancel the purchase order or any release or order subject to the purchase order for default, (a) if Seller fails to deliver the Deliverables strictly within the time specified in the purchase order, or if no time is specified, within a reasonable time; (b) if the Deliverables delivered do not conform to the purchase order or if Seller fails to perform any of the other provisions of the purchase order, or so fails to make progress as to endanger performance of the purchase order in accordance with its terms; or (c) if Seller's financial condition shall at any time become unsatisfactory to Buyer. Upon such cancellation, Buyer shall not be liable to Seller for any amount. Seller will deliver to Buyer any of the Deliverables for which Buyer shall make written request prior to or upon cancellation, for which Buyer will pay Seller the fair value of any such Deliverables so requested and delivered. Buyer may pursue any remedies available at law or in equity and Seller shall be liable to Buyer for any and all damages suffered by Buyer by reason of Seller's default. Seller shall cooperate with any transition of the delivery of the Deliverables as reasonably requested by Buyer.

12. Change Orders. Buyer shall have the right by written notice to change the terms of the purchase order, the drawings, specifications or other descriptions, the time, method or place of delivery or the method of shipment or packaging or to suspend delivery of the Deliverables. Upon receipt of such notice, Seller shall proceed promptly to make such changes. If any such change causes a change in the cost of the Deliverables or in the time required for performance, Seller shall provide prompt notice to Buyer of any such change and an equitable adjustment shall be negotiated promptly and the purchase order shall be modified in writing accordingly.

13. Discontinued Product. Seller will provide Buyer with one hundred eighty (180) days' notice of Product discontinuation. Buyer may submit orders or "last buys" for such discontinued items during such one hundred eighty (180) day period, and Buyer must take delivery of the ordered items within ninety (90) days from the last date of availability per the notice date. Such orders may not be rescheduled or canceled. If Seller receives Product or raw material discontinuation notices from its suppliers of less than one hundred and eighty (180) days, Seller shall immediately notify Buyer. Buyer may submit orders or "last buys" for such discontinued items within the timeframes specified in this Article 13.

14. Title. Title to and the right of immediate possession of all articles, tooling, equipment, software, or materials furnished to Seller or paid for by Buyer directly or indirectly for use by Seller in connection with the purchase order shall be and remain in Buyer. Seller shall be (a) responsible on a replacement cost basis for all loss or damage to such articles, tooling, equipment, software or materials while in its possession and insure its risk in this respect with adequate all risk property insurance; (b) clearly mark the same as belonging to Buyer, keep it segregated in Seller's facility and treat it confidentially as provided in the purchase order; (c) keep the same in good operating condition; and (d) use the same exclusively in connection with the delivery of the Deliverables for the purchase order and not for any production of larger quantities than specified or in advance of normal production schedules, except with Buyer's prior written consent. Articles, tooling, equipment, software, or materials furnished to Seller shall not include government-furnished items of this sort. Upon completion of the purchase order, all articles, tooling, equipment, software, or materials furnished to Seller or paid for by Buyer shall be disposed of by Seller at Seller's expense as Buyer directs in writing. With the exception of software not specifically developed for Buyer under the purchase order, (i) all Deliverables shall be the sole and exclusive property of the Buyer, and where applicable, shall be considered "works made for hire" under the U.S. Copyright Act (Title 17, United States Code), and all intellectual property, proprietary and industrial rights associated with Deliverables shall be owned exclusively by Buyer; (ii) by the purchase order, Seller assigns to Buyer for no additional consideration all such rights to the Deliverables, including the right to any extensions and renewals of such rights; and (iii) if requested by Buyer, Seller shall, without additional consideration, sign a separate written assignment of such rights to Buyer or any other document necessary for Buyer to establish, maintain or enforce such rights in the Deliverables.



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15. Intellectual Property and Proprietary Rights. Seller shall at its expense indemnify, defend and hold harmless, Buyer, its directors, officers, employees, affiliates, subsidiaries, agents, customers and end users, from any and all loss, damages or liability (including, without limitation, reasonable legal fees and costs) for or on account of, or resulting from, any claim of infringement of any existing or future copyrights, patents, or trademarks, misappropriation of any trade secrets, or violation of any other intellectual, proprietary or industrial rights, with respect to any of the Deliverables. The fact that Buyer furnishes specifications to Seller with respect to any of the Deliverables shall neither relieve the Seller from its obligations under the purchase order nor limit Seller's liability in connection with the Deliverables, nor constitute an undertaking by Buyer to hold Seller harmless against any such claim which arises out of compliance with the specifications.

16. Confidential Information. Seller shall not disclose to any third party or use any confidential information of Buyer's concerning the purchase order or other material intended for use in connection with the purchase order without Buyer's prior written consent. Any knowledge or information which Seller may disclose to Buyer in connection with the purchase of any of the Deliverables shall not, unless Buyer otherwise specifically agrees in writing, be deemed to be confidential information and shall be acquired free from any restriction as part of the consideration for the purchase order. For purposes of this Section 16 (Confidential Information), any Personal Data supplied or provided by Buyer shall be deemed confidential information of Buyer and Seller shall treat it in accordance with the provisions of this Section.

17. Termination. At any time, Buyer, at its option, may terminate this order for convenience in whole or in part by written notice. A stop work order or any other form of written notice requiring Seller to immediately cease performance under the purchase order shall obligate Seller to immediately stop work and take any actions necessary to mitigate the impact of such notice. If Buyer does not give Seller written notice to resume work within twenty (20) days after its initial stop work order, the purchase order shall then be deemed terminated for Buyer's convenience as of the twenty-first (21st) day after the initial stop work order. Any claim of Seller shall not exceed reasonable demonstrated costs it has incurred in performance of the purchase order prior to notice of termination and shall in no event exceed the total amount of the purchase order. Buyer shall remit to Seller any payment due to Seller for documentable and reasonable costs incurred before receipt of Buyer's notice of termination in performance of the purchase order.

18. Compliance with Law. Each party shall comply with all applicable law, including without limitation, government export control, and privacy and data protection laws.

19. Delays. Whenever an actual or potential labor dispute or other event beyond the reasonable control and without the fault or negligence of the Seller is delaying or threatens to delay the timely delivery of the Deliverables, Seller shall immediately give written notice of delay, including all relevant information regarding the delay, to Buyer. In addition, Seller shall take all reasonable steps to avoid or remove the cause of such delay and mitigate the harm of such delay to Buyer and will resume performance (if suspended) as soon as the cause of delay is removed. In the event the Seller's performance is delayed or is expected to be delayed by more than five (5) business days, the Buyer upon written notice to Seller may terminate the purchase order for its convenience.

20. Assignment and Subcontract. Neither the purchase order nor any duty or right under the purchase order shall be delegated, assigned or subcontracted without the prior written consent of Buyer. Any assignment not made in accordance with the terms and conditions of this Section is void and of no effect.

21. Advertising. Seller shall not, without the prior written consent of Buyer, in any manner advertise or publish the fact that Seller has contracted to furnish Buyer the Deliverables under the purchase order.



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22. Indemnification and Insurance. A. To the fullest extent permitted by law, Seller agrees to indemnify, save harmless and defend Buyer and its affiliated companies, their directors, officers, employees, agents and customers ("Indemnitees") from and against any loss, liabilities, costs, expenses, suits, actions, claims and all other obligations, including without limitation, all judgments rendered against, amounts paid in settlement by and all fines and penalties imposed upon Indemnitees and all attorneys' fees and any other cost of litigation ("Liabilities") arising out of injuries to persons, including death, or damage to property caused by Seller, its employees, agents, subcontractors, or Seller's breach of this Agreement, or in any way attributable to the performance of the Goods, including without limitation, breach of warranty or product liability, except that Seller's obligation to indemnify Buyer shall not apply to any liabilities solely arising from Buyer's negligence. Seller agrees to indemnify, save harmless and defend Indemnitees from and against all Liabilities arising out of actual or alleged infringement of any patent, trademark, copyright, or other intellectual property rights, relative to the Goods, including infringement arising out of specifications supplied by the Buyer, or any actual or alleged counterfeiting or unfair competition relative to the Goods, or any actual or alleged violations of the trademark, patent, customs, or copyright laws and regulations of the United States or any state(s) within the United States or any other country relative to the Goods. B. Seller shall maintain such public liability insurance, including products liability, completed operations, contractors liability and protective liability, automobile liability insurance (including non-owned automobile liability) and Workmen's Compensation, and employer's liability insurance as will adequately protect Buyer against such damage, liabilities, claims, losses and expenses (including attorneys' fees). Seller agrees to submit certificates of insurance, evidencing its insurance coverage when requested by Buyer.

23. Hazardous Chemicals and Hazardous Materials. Prior to shipment or transfer of any hazardous chemical(s), as defined by regulations promulgated pursuant to the Occupational Health and Safety Act ("OSHA"), Seller shall provide Buyer with a complete, up-to-date Material Safety Data Sheet and shall properly mark such hazardous chemical(s) with a label satisfying the requirements of OSHA's Hazard Communication Standards. Any shipment or transfer by Seller of any hazardous material(s) (as defined by regulations promulgated by the U.S. Department of Transportation ("DOT")), shall be conducted consistent with the requirements of DOT regulations and any and all applicable laws and regulations.

24. Relationship of Parties. The Seller and Buyer are independent contractors. Nothing in the purchase order shall be deemed to create a partnership, joint venture, franchise, employment, or agency relationship between the parties. Neither party shall have the power or authority to bind or obligate the other party.

25. Disputes. Except as otherwise specifically provided in an order, any dispute concerning a question of fact and/or law arising under said order which is not disposed of by agreement of the parties shall be decided by a court of competent jurisdiction. Pending settlement or final decision of any such dispute, Seller shall proceed diligently with the performance of said order in accordance with the directions of the Buyer.

26. Waiver. Any failure or delay by either party in exercising any right or remedy will not constitute a waiver.

27. Entire Agreement. Unless another agreement expressly references and incorporates the purchase order into such agreement (or otherwise makes the purchase order supplementary to such agreement) and such agreement provides for an order of precedence, the purchase order, constitutes the entire agreement and exclusive statement of the terms between the parties with respect to the purchase and sale of the Deliverables under the purchase order and terminates and supersedes all previous negotiations, communications, representations, or agreements between the parties. No alteration, modification or amendment of any of the provisions in the purchase order shall be binding unless in writing and signed by Buyer's authorized procurement representative(s). If any provision of the purchase order is held to be illegal, invalid or unenforceable by a court of competent jurisdiction, all other provisions shall remain in full force and effect.



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28. Force Majeure. Neither Buyer nor Seller shall be liable to the other for delays in the performance of or completion of this Agreement if notice of such delay is provided as required in Article 19 and if such delay is caused by strikes, riots, wars, government regulations, acts of God, fire, flood or other similar causes beyond its control; provided, however, if such delay exceeds 30 days, the other party shall have the option, exercisable by written notice, to cancel the purchase order. Whenever any occurrence (e.g., an event of Force Majeure or a filing under a bankruptcy law) is delaying or threatens to delay either party's timely performance under the purchase order, that party shall promptly give notice thereof, including all relevant information with respect thereto, to the other party.

29. Governing Law. The purchase order shall be governed by the laws of the State of Michigan, without giving effect to conflicts of law principles. The United Nations Convention on Contracts for the International Sale of Goods and Articles 3 through 9 inclusive of the Uniform Commercial Code shall not apply to the purchase order.

30. Survival. Any provision in the purchase order which, by its nature, would reasonably be expected to be performed after the termination of the purchase order shall survive and be enforceable after such termination.

31. Limitation of Liability. In no event shall Buyer be liable to Seller for anticipated profits or for incidental or consequential damages. Buyer's liability for a claim of any kind for any loss or damage arising out of or in connection with or resulting from this Agreement, or from any performance or breach, shall in no case exceed the price allocable to the Goods or unit, which directly gives rise to the claim.