



TERMS AND CONDITIONS

1. **ACCEPTANCE** – Seller agrees to accept or reject this order and to give date of shipment and/or commencement of work or services hereunder, promptly. When this order is accepted by Seller, expressly or impliedly, such acceptance shall be subject to all the terms and conditions of this order, of which Seller admits having notice and with which Seller agrees to comply.
2. **ROUTING** – Seller agrees to pay all excess charges resulting from failure to ship and route by the cheapest way or as instructed by Buyer and to reimburse Buyer to any such charges paid by Buyer.
3. **QUALITY-QUANTITY** – All articles, materials and/or supplies delivered to, and all work done for, Buyer hereunder, shall be exactly as specified by Buyer and shall be subject to inspection, approved and/or rejection by Buyer. Items not conforming to specifications and rejected by Buyer in whole or in part may be returned to Seller at Seller's risk and expense, or may be held for disposition by Buyer after notice to Seller at Seller's risk or expense.
4. **DISCOUNT** – Discount terms named are based upon the assumption that invoices will be in Taylor Devices Possession within three (3) days from date of shipment; otherwise, we will assume that the discount in to be calculated from the date the invoice was received, allowing three days for transmission.
5. **DRAFTS** – No drafts for purchases made will be honored unless provided for this agreement.
6. **BOXING AND CARTAGE CHARGES** – No charges will be allowed for carting, boxing, or crating unless approved by Buyer in writing.
7. **WARRANTY** – Seller represents, guarantees, and warrants to Buyer: -
 - (a) That any articles, machines, products and/or material, covered by this order will be fit for the uses for which they are intended and which they are normally put and for any special use known by Seller to be contemplated by Buyer.
 - (b) That any articles, machines, products and/or materials, covered by this order, shall not infringe any patent not owned or controlled by Seller and that neither the normally anticipated use thereof by Buyer nor any special method of using same, known by Seller to be contemplated by Buyer will infringe any patent.
 - (c) That Seller shall indemnify Buyer and/or any of its subsidiary and/or associated corporations against and hold it and them free and harmless from any loss,, damage and/or expense (including legal expenses) resulting from or arising out of any claims of patent infringement and/or from patent litigation, based upon any alleged patent infringement covered by paragraph (b) of this clause 7.
 - (d) That Seller shall, upon request by Buyer, take over the defense of any such patent suit against Buyer and/or its subsidiary and /or associated corporations without cost or expense to Buyer, it being understood however, that Buyer may retain its own counsel and participate in any such patent litigation for the further protection of Buyer's interests.

These warranties are in addition to and shall not be construed as restricting or limiting any warranties of Seller, expressed or implied, which are provided by law or caused by operation of law
8. **CANCELLATION** – Buyer reserves the right to cancel this order or any portion of same, with no liability on the Buyer's part, if delivery is not make when and as specified, time being of the essence in this agreement.

9. **STOP WORK ORDER** – The Buyer may, at any time, by written order to Seller, require Seller to stop all or part of the work called for by this Order for a period of ninety (90) days after the Order is issued to Seller. Within ninety (90) days after a "Stop Work Order" is delivered to Seller, or within any extension of the period to which the parties have agreed, Buyer shall either: (1) cancel the "Stop Work Order" and direct Seller to resume work, in which event Seller shall receive an equitable adjustment, provided a claim for such an adjustment shall be submitted by Seller within thirty (30) days after the end of the period of work stoppage; or (2) terminate the work and this Order or part thereof.
10. **FORCE MAJEURE** – Neither Seller nor Buyer shall be liable for any failure or delay in performing its obligations hereunder, or for any loss or damage resulting there from, due to: (1) acts of God, war, riot, embargos, acts of civil or military authorities, fire, flood, accidents, strikes, epidemics, or unusually severe weather affecting either party; (2) causes beyond their control and which are not foreseeable or causes beyond the reasonable control of their subcontractors which are not foreseeable.
11. **TERMINATION OF CONVENIENCE** – Buyer may, at its option, terminate this Order, in whole or in part, for Buyer's convenience, by written, fax, e-mail or telegraphic notice to Seller. Upon termination hereunder, Seller shall (1) forthwith stop work under this Order on the terminated portion thereof and place no further orders or lower-tier subcontracts hereunder, (2) terminate or, if so directed by Buyer, assign to Buyer, orders or subcontracts outstanding hereunder, and (3) take any necessary action to protect property in Seller's possession in which Buyer has or may acquire an interest, and direct subcontractors to do the same. Within thirty (30) days after receipt of such notice or termination, Seller will prepare and submit to Buyer in writing its claim for reimbursement of costs resulting from the termination. Such claim shall include termination costs, if any, from lower-tier subcontractors and, is to be in accordance with the requirements of Buyer hereinafter set forth. If the parties cannot agree within a reasonable time upon the amount of fair compensation to Seller for Seller's performance of the terminated Order, Buyer will pay Seller, without duplication:
- (a) The Order price for articles that have been completed and delivered to Buyer or otherwise disposed of as Buyer may direct. In the event the Order price includes packaging and transportation costs and the completed articles have not been packaged and transported at the time of termination, an equitable adjustment will be made to the Order price for such articles.
 - (b) The actual costs incurred by Seller prior to termination which are properly allocable or apportionable, under good commercial accounting practices consistent with Seller's usual accounting procedures, to the terminated portion of this Order other than articles whose price is paid under subparagraph (a), except that when the Order provides for progress payments, settlement of Seller's costs shall be on the basis of actual progress made through the termination date. Notwithstanding the provisions of this subparagraph (b), if this Order provides for fixed hourly rates, Buyer shall pay Seller without duplication the hourly rates fixed in the Order times the number of hours actually expended in conformity with the provisions of this Order.
 - (c) Reasonable expenses actually incurred by Seller in settling Seller's terminated orders and subcontracts hereunder, as approved by Buyer, and in protecting property in which Buyer has or may have an interest.

Payments under this clause, including all payments made under this Order prior to the termination, shall in no event exceed the aggregate price specified in this Order. Seller will transfer title to and deliver on Buyer's instructions any property the cost of which is reimbursed under (b) above or with Buyer's approval, may retain the same at an agreed price or sell at any approved price and credit or pay the amount so agreed or received as Buyer directs. Buyer may audit all elements of any termination claim including all elements of claims submitted under any orders and subcontracts that Seller has terminated in accordance with this clause. In no event will Seller or its subcontractors or suppliers be entitled to reimbursement for any cost incurred subsequent to the effective date of termination except for those allowed by subparagraph (c) above, nor shall Seller or its subcontractors or suppliers be allowed to recover any cost incurred prior to termination unless such cost was allocated to this Order in accordance

with usual and customary accounting procedures applicable in the absence of termination of orders. Specifically, but not exclusively, no recovery will be allowed of any amounts representing anticipatory profits, unabsorbed administrative expenses, or other overhead costs, or continuing costs.

12. TERMINATION OF DEFAULT –

- (a) Buyer may terminate all or any part of this Order if Seller breaches any of the terms hereof including warranties or fails to make progress so as to endanger performance of this Order in accordance with its terms. Termination hereunder shall be effected by written notice to Seller.
- (b) In the event Buyer terminates this Order in whole or in part as provided hereinabove, Buyer may procure, upon such terms and in such manner as Buyer deems appropriate, supplies or services similar to those so terminated, and Seller shall be liable to Buyer for any excess costs for such similar supplies or services, provided that Seller shall continue the performance of this Order to the extent not terminated under the provisions of this clause.
- (c) Except with respect to defaults of subcontractors at any tier, Seller shall not be liable for excess costs if the failure to perform the Order arises out of causes beyond the control and without the fault or negligence of Seller. If the failure to perform is caused by the default of a subcontractor at any tier, and if such default arises out of causes beyond the control of both Seller and the subcontractor, and without the fault or negligence of either of them, Seller shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Seller to meet the required delivery schedule.
- (d) If this Order is terminated for default, Buyer may require Seller to transfer to Buyer title and possession in the manner and to the extent directed by Buyer of (1) any completed items, and (2) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings,

13. PROPRIETARY INFORMATION –

- (a) Seller shall not, during the term of this Order, and for a period of five (5) years thereafter, divulge to anyone other than Buyer (or such other persons as Buyer designates in writing); or, except in the performance of this Order, make use of information or knowledge relating to details of Buyer's business or that of its subsidiaries, suppliers, or customers, of any other confidential or proprietary information of Buyer or its subsidiaries, suppliers, or customers which Seller shall have obtained because of this Order. Seller shall take all reasonable measures to protect such confidential or proprietary information, which measures shall be at least equal to those with which Seller protects its own confidential or proprietary information. All proprietary rights embodied in designs, tools, patterns, drawings, information data, and equipment supplied by Buyer under this Order are reserved to Buyer and their use is restricted to the work to be performed hereunder. Seller agrees to retain in confidence and return to Buyer on completion of the Order all designs, drawings, specifications, and technical information of every kind belonging to Buyer and furnished to Seller in connection with this Order.

Notwithstanding the foregoing, Seller shall have no obligation with respect to any confidential or proprietary information which (1) was written record in Seller's files prior to its first receipt from Buyer (2) is at the date hereof, or at any time hereafter becomes a matter of public knowledge or literature by means other than the act, omission, or fault of Seller (3) is at any time lawfully received by Seller from a third person under circumstances permitting its disclosure.

- (b) No private data or proprietary designs, ideas, or information of Seller is to be provided to Buyer. Buyer accepts no obligation of confidence to Seller with respect to ideas, data, information, or designs divulged by Seller or equipment, operations, or designs witnessed by Buyer at Seller's plant. However, this provision shall not constitute any form of license hereunder if there is a validly issued patent in effect. Seller authorizes Buyer to reproduce Seller's copyrighted material, at no cost to

Buyer, for the purpose of including such material in documents provided to Buyer's customers, or prospective customers, in the normal course of Buyer's business. In the absence of further written agreement duly signed by both parties to this Order, all information which passes from Seller to Buyer shall be treated as non-confidential, including material provided in written form and marked by the originator as being confidential or private.

14. **ADVERTISING** – Seller shall not, without first obtaining the written consent of Buyer, in any manner advertise or publish the fact that Seller has furnished or contracted to furnish to Buyer the articles herein ordered manner advertise or publish the fact that Seller has furnished or contracted to furnish to Buyer the articles herein ordered.
15. **PRECAUTIONS, INDEMNITY, AND INSURANCE** – Seller will defend Buyer at Seller's expense from any suit or action, criminal or civil, arising out of Seller's performance, or that of its officers, directors, employees or agents. Seller will procure and carry:
 - (a) Automobile liability insurance protecting the Seller from automobile bodily injury, property damage liability with limits of at least \$1,000,000 per person, \$1,000,000 per occurrence for bodily injury, and \$1,000,000 per occurrence for property damage.
 - (b) A broad form comprehensive general liability insurance policy which includes property damage and contractual and products liability endorsement with limits no lower than \$1,000,000. Such policy shall be on an Occurrence Form.
 - (c) Professional liability coverage with a limit no less than \$1,000,000, if this Order is for Engineering or other Professional Service,
 - (d) Such insurance of employees as may be required by any Workers' Compensation act or other law, regulation or ordinance that may apply in the circumstances and shall, at Buyer's request, furnish certificates of such insurance to Buyer

For (a) and (b) above, such policies shall name Buyer as additional insured when requested by Buyer.

At Buyer's request, Seller shall furnish to Buyer certificates of insurance setting forth the amount(s) of coverage, policy number(s) and date(s) of expiration for insurance maintained by Seller and, if further requested by Buyer, such certificates will provide that Buyer shall receive thirty (30) days' prior written notification from the insurer of any termination or reduction in the amount or scope of coverage's. Seller's purchase of appropriate insurance coverage or the furnishing of certificates of insurance shall not release Seller of its obligations or liabilities under this order. In the event of Seller's breach of this provision, Buyer shall have the right to cancel the undelivered portion of any goods or services covered by this Order and shall not be required to make further payments except for conforming goods delivered or services rendered prior to cancellation.

If Seller's work under this Order involves operations by Seller on Buyer's premises, Seller agrees to take all proper precautions in its operations against the occurrence of injury to any person or damage to property, and to be responsible for and to hold Buyer harmless from all loss and any claim by reason of injury, including death, to any person or damage to property in connection with such work, and from all fines, penalties, or loss incurred by reason of failure to comply with this clause.

16. **ASSIGNMENT** – Seller will not assign or transfer this Order, in whole or in part, nor any payments due or to become due hereunder, without the prior written consent of the Buyer. In the event written consent is granted, Seller shall promptly supply Buyer two copies of any such assignment. Payment to an assignee of any claim hereunder shall be subject to set-off or recoupment for any present or future claims which Buyer may have against Seller.
17. **BILL OF LADING** – original to be sent to plant designated on face of order
18. **ALL PACKAGES** – Must show this order number.

19. **SPECIAL TOOLS** – If prices are stated separately for dies, tools, and/or patterns acquired by Seller for the purpose of filling this Order, such dies, tools, and/or patterns shall be properly identified by Seller as such. When this Order has been completed, such tools shall be disposed of as Buyer may direct.
20. **SERVICES** – When this order and the acceptance thereof requires any work and/or services to be performed.
- (a) Seller agrees to perform said work and/or services strictly as an independent contractor
 - (b) Seller agrees to accept exclusive liability for all payroll taxes and/or contributions payable under the Federal Insurance Contributions Act. The Federal Unemployment Tax Act, and any applicable State unemployment insurance or compensation laws and any amendments to each of these laws, measured by wages paid to Seller's employees and the employees of any sub-contractor of Seller with respect to employment of said employees in or in connection with the prosecution and completion of the work to be performed hereunder; and Seller further agrees to hold Buyer harmless and free from the payment of such payroll taxes and/or contributions and to indemnify Buyer against and loss that may result from Seller's failure to comply with such laws and any amendments thereto.
 - (c) Seller further agrees to execute any and all statement, applications and agreements which may be necessary fully and completely to comply with all rules and regulations of the Federal and State authorities respectively charged with the administration and enforcement of such laws.
 - (d) Seller further covenants and agrees to indemnify Buyer and to hold Buyer free and harmless from any and all claims, demands, loss, damage and/or expense (including attorneys' fees and other legal expenses) arising out of or in any manner resulting from the acts of omissions of Seller or the acts or omissions of Seller's servants, agents, and/or employees. Seller further agrees to keep in full force and effect during the term of this agreement adequate public liability, property damage and compensation insurance.
- Before performing or attempting to perform any services or work under this agreement, Seller agrees to deliver to Buyer a certificate or certificates from the insurance company or companies covering said risks, which certificates shall provide that such insurance shall not be cancelled by the insurance company or companies until Buyer is notified in writing that such coverage is to be cancelled.
21. Seller guarantees that no article covered by this order when shipped or delivered by Seller shall be (a) adulterated or misbranded within the meaning of the Federal Food Drug and Cosmetic Act, as amended to date, to the extent said Act is then effective and applicable or an article which may not, under the provisions of said Act, be then introduced into interstate commerce, or (b) adulterated or misbranded within the meaning of any identical or substantially similar state or municipal law on the subject, to the extent said law is then effective and applicable.
22. If this order is placed under an existing contract between Seller and Buyer, any terms of this order, which are inconsistent with the contract, shall not be applicable.
23. During performance on this order, your Q.C. inspection and/or manufacturing processes are subject to review, verification and analysis by authorized Taylor Devices representatives, Taylor Devices Customers, and/or Government Representatives.
24. **ENTIRE AGREEMENT** – These terms and those on the face of the Order in which this form is referenced and any specifications or drawings incorporated constitute the entire agreement of the parties and supersede all previous oral or written representations, agreements, and commitments.

25. All vendors and subcontractors will comply with all the provisions of the Equal Opportunity Executive Order 11246 (Affirmative Action) of September 28, 1965, as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

Procurement Quality Requirements

1. **Record Retention** – Seller shall retain objective evidence of the quality of any items supplied (manufacturing, assembly, inspection, physical/chemical test reports, test and special process records and material certification records) until directed otherwise by Buyer. Under no circumstances should these records be destroyed without the prior written approval of Buyer. Records shall be made available to Buyer upon request.
2. **Nonconformance System** – Seller shall establish and maintain a documented nonconformance system to ensure that product that does not conform to specified requirements is prevented from unintended use or delivery. This system shall provide for identification, documentation, evaluation, segregation to the extent practical, disposition and for notification of nonconforming product to Buyer. The responsibility for review and authority for disposition of nonconforming product shall be defined by Buyer. Seller shall ship hardware with an open nonconformance only with prior written approval from Buyer.
3. **Sub-tier Flow Down** – Seller shall ensure that all applicable technical and quality requirements, including any key characteristics, are flowed down to sub-tier suppliers, Sellers, and manufacturers through Seller procurement documents. Seller is responsible to evaluate and approve sub-tier suppliers to ensure their capability to produce quality product and maintain process control, unless directed by Buyer to use a specific supplier source. Flow down to a sub-tier supplier shall include applicable quality system provisions, relevant drawings, specifications, documentation and certification requirements. Sub-tier supplier compliance and conformance to Buyer’s contractual requirements is the responsibility of Seller.
4. **Proposed Changes** – Seller shall provide in writing advance notification to Buyer of any change(s) to tooling, facilities, materials or processes at Seller’s or Seller’s sub-tier’s facility that could affect Buyer’s contracted product. This includes, but is not limited to, fabrication, assembly, handling, testing, facility relocation or introduction of a new sub-tier supplier.

DFAR

DFAR Clauses & Approved Countries List for purchasing material DPAP (DOD) web site - <http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>

UNLESS OTHERWISE ACCEPTED DURING THE QUOTING PROCESS, ALL METALS PROVIDED UNDER THIS P.O. SHALL ADHERE TO THE REQUIREMENTS OF DFARS 252.225-7009 “RESTRICTION ON ACQUISITION OF CERTAIN ARTICLES CONTAINING SPECIALTY METALS”