



PURCHASE ORDER TERMS & CONDITIONS

Order Acceptance

- A. This Purchase order is limited to the terms and conditions contained on the face herein. Any additional or different terms proposed by Seller in any quotation, acknowledgement or any other documents are hereby deemed to be material alterations and notice of objection to them is hereby given. Any such proposed terms shall be void and the terms herein shall constitute the complete and exclusive statement of the terms and conditions of the contract between the parties.
- B. If this Order has been issued by Buyer in response to an offer and if any of the terms herein are additional to or different from any terms of such offer, then the issuance of this Order by Buyer shall constitute an acceptance of such offer subject to the express condition that Seller assent to such additional and different terms herein. Buyer and Seller agree that the terms and conditions printed herein are accepted in good faith by both parties as controlling and final terms and conditions, and further agree that there shall be no "battle of the forms" as described in Section 2-207 of the Uniform Commercial Code.

ENTIRE AGREEMENT

This Order consists of all terms contained on the face hereof, the specifications, documents and attachments referred to or attached hereto by Buyer together with the terms and conditions of purchase stated herein. This Order sets forth the entire agreement between the parties and is limited to the provisions contained herein. No amendments or modifications to its provisions will be binding upon Buyer unless in writing and signed by an authorized representative of Buyer's Purchasing Department.

PRICE

- A. The price(s) set forth on the face of our Purchase Orders are firm, or if no price appears thereon, then no higher than the last quoted or charged by Seller for the same goods or services. Unless otherwise provided herein, such prices include all costs for packing, insuring and transporting the goods ordered to Buyer's facility. Buyer shall not be liable for any taxes or governmental charges or fees with respect to this Purchase Order other than those which Seller is required by law to collect from Buyer. All such taxes and fees shall be stated separately on Seller's invoice.
- B. Seller agrees to extend to Buyer any price reductions necessary to give Buyer the benefit of the lowest and most favorable prices and terms offered or given by Seller to other purchasers of the goods and services described in this Purchase Order.

DELIVERY

- A. TIME IS OF THE ESSENCE OF THIS PURCHASE ORDER. If delivery is not made at the time specified, Buyer reserves the right to cancel the entire Order or that part of the Order not timely delivered, and to purchase elsewhere and hold Seller liable for all costs and damages incurred by Buyer. Seller shall not make any material commitment or production arrangement in excess of the amounts, or in advance of the time necessary to meet Buyer's delivery schedule for goods or services covered by this Purchase Order. Any excess commitments or arrangements shall be made at Seller's own risk. Buyer shall not be liable for goods shipped in advance of or in excess of scheduled deliveries.
- B. Seller assumes all risk of loss and damage to the goods until received and accepted by Buyer at its facility specified on the face of this Purchase Order. Thompson Tractor Co., Inc. FOB terms are Destination only unless specified differently on Purchase Order.

INSPECTION AND ACCEPTANCE

All goods and services sold hereunder shall be subject to inspection and acceptance by Buyer after delivery notwithstanding any payment. After receipt of the goods or services, Buyer shall have a reasonable time (which time shall not be less than ninety (90) days) within which to inspect prior to Buyer's acceptance thereof. Nonconforming goods shall be returned freight collect, and Seller shall be debited for the inbound transportation cost plus handling and packing expense.

WARRANTY

- A. Seller warrants title to the goods described on the face hereof and warrants further that all goods and services furnished: (i) will be in full conformance with the specifications, drawings, samples or other descriptions set forth or referred to on the face hereof; (ii) will perform as represented by Seller (even if such representations do not appear on the face hereof, notwithstanding the provisions of paragraph 2 hereof); (iii) will be new, merchantable and fit for the use intended by Buyer; (iv) will be free from defects in material, workmanship, manufacture and design (where design is Seller's responsibility). Seller's warranty shall be effective for a period of time as set forth on the face of this Purchase Order. If no such period is stated, the warranty shall be effective for a period of one (1) year from the date of acceptance by Buyer. This warranty will run to Buyer, its customers and users of its products.
- B. In addition to other remedies available at law or in equity, Buyer may, at its option, return to Seller for full credit any goods which do not meet the warranties specified herein or require correction or replacement of such goods or services, all at Seller's risk and expense. Packing and shipping shall be at Seller's cost.

CHANGES

Buyer may direct in writing changes to this Order. Equitable adjustments will be made in price or schedule where required. Any claims for adjustment shall be made by Seller in writing not later than thirty (30) days from the date of Seller's receipt of any such direction from Buyer. Seller shall not be excused from proceeding with a change prior to negotiation of any adjustment.

INTELLECTUAL PROPERTY INDEMNITY

Seller warrants that the goods purchased hereunder and the manufacture, sale and use thereof do not and will not infringe any third party patent, copyright, trademark, trade secret or other proprietary right ("Intellectual Property"). Seller agrees to defend, indemnify and hold harmless Buyer, its employees, agents, distributors, dealers, affiliates, customers and users from all liabilities, obligations, costs and expenses (including reasonable attorneys' fees and costs), claims or demands for actual or alleged infringement of any Intellectual Property arising from the purchase, use or sale of goods required by this Order, except to the extent that infringement or alleged infringement arises by reason of design for such goods furnished to Seller by Buyer.

INDEMNIFICATION

Seller agrees to defend, indemnify and hold harmless Buyer and its employees, agents, distributors, dealers, affiliates, customers and users from and against any and all claims, losses, suits, damages, liabilities, judgments, obligations, costs and expenses of every kind and nature (including attorneys' fees and costs) on account of or arising from personal injury (including death), or loss or damage to property, or otherwise arising directly or indirectly from the use, possession or ownership of the goods or equipment or from the services provided by or otherwise Seller pursuant to this Order or otherwise in connection with Seller's performance of this Order. Such indemnity shall apply whether an indemnitee is claimed to be passively, concurrently or actively negligent and regardless whether liability without fault is imposed on one of the indemnitees. These obligations shall survive the termination of this contract.

Seller expressly agrees that should any injury, death or damage occur to any employee of Seller during or arising from services performed by Seller, and such event results in a claim or suit being brought against Buyer or any agent, servant or employee that Seller shall fully and completely defend and indemnify and hold harmless Buyer, its agents, servants or employees, against any such claim or suit. The obligations of this indemnification are in excess of any obligation Seller may have under any workers compensation law.

Insurance

Seller agrees to maintain in effect insurance coverage with reputable insurance companies covering worker's compensation and employer liability (or other reasonable equivalent, such as excess employer's indemnity insurance or excess worker's compensation) excess insurance, auto liability, commercial general liability, including product liability/completed operations, all with such limits as are sufficient to protect Seller and Buyer from the liabilities insured against by such coverage. Seller shall assure and provide in writing that Buyer is an additional insured under Seller's insurance for

incidents occurring during or arising in any way from Seller's performance of this Order. Seller's insurance described herein shall be primary and not contributory with Buyer's insurance with respect to obligations resulting from the negligence of Seller. Seller's policy shall be required to contain a standard waiver of subrogation clause.

Seller shall be required to maintain, at its cost and expense, insurance with the following minimum requirements and shall provide Buyer with a Certificate of Insurance evidencing such coverage:

<u>General Liability</u>	
Each Occurrence	\$1,000,000
General Aggregate	\$2,000,000
Products/Completed Operations	\$1,000,000
And/or Professional Liability	\$1,000,000 (if applicable)
Automobile Liability	
Combined Single Limit	\$1,000,000
Workers Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Policy Limit	\$500,000
Each Employee	\$100,000

Buyer is to be listed as an Additional Insured on General Liability and Auto policies. Each such Certificate shall provide a 30-day notice of cancellation to Buyer. Buyer reserves the right to modify these requirements as deemed necessary for the risk presented to Buyer.

The certificate holder address should read as follows:

Thompson Tractor Co., Inc.
Attn: Buyer
2401 Pinson Highway
Birmingham, Alabama 35217

WAIVER OF SUBROGATION

To the extent injury or damage are sustained to employees or property of the Seller during the performance of services under this contract, Seller waives all right against Buyer, its agents, servants, employees, successor or other vendors for damages except such rights as Seller may have to the proceeds of its own insurance. Seller shall require its employees, agents or subcontractors to have similar waivers of subrogation in any agreements or contracts to perform services for Seller. It is expressly agreed that no insurer shall have any right of subrogation against Buyer, its agents, servants, employees, successors or other vendors for payments made under any policy of insurance insuring the Seller. Seller agrees to provide certifications of insurance from its insurance company or agent showing the existence of the Waiver of Subrogation clause.

TERMINATION FOR CONVENIENCE

- A. Buyer may terminate this Order, in whole or in part, at any time with or without cause, upon written notice to Seller. Upon receipt of such notice, Seller shall stop work immediately and terminate all orders and sub-contracts to the extent that they relate to the terminated work.
- B. There shall be no charges for terminating the Order with respect to standard goods. Any claim for termination charges for non-standard goods must be submitted to Buyer in writing within ten (10) days after receipt of the termination notice.
- C. Buyer's sole responsibility to Seller shall be to pay the contract price for such goods as have been delivered as of the time such termination is effective and to reimburse to Seller its actual costs of materials and direct labor expended by Seller as of the termination date in reasonable anticipation of its fulfillment of this Order which are not recoverable by Seller, provided that no allowance shall be made to Seller for any overhead or anticipated profit for undelivered goods. Buyer shall not be responsible for any commitments made by Seller in advance of those necessary to comply with the schedules set forth in this Order. Upon payment of Seller's claim, Buyer shall be entitled to all goods, materials and work in process paid for.

CANCELLATION FOR DEFAULT

- A. Buyer may cancel this Order immediately, in whole or in part, in the event Seller: (i) fails to make timely delivery, or (ii) breaches any other term or condition of this Order. Seller shall continue to supply any portion of this Order not canceled.
- B. In the event of such cancellation, at Buyer's request, Seller will transfer title to, and deliver to Buyer: (i) any completed goods; (ii) any partially completed items and (iii) all unique materials and tooling. Prices for partially completed goods and unique materials and tooling accepted shall be negotiated; however, in no event shall such prices exceed the Order price for said goods.
- C. Upon the happening of any event or condition which may, in Buyer's good faith judgment, impair Seller's ability to perform hereunder, Buyer may demand, in writing, adequate assurance of Seller's ability to continue performance of this Order. If Seller does not provide written adequate assurance within fifteen (15) days of receipt of Buyer's demand, Seller shall be deemed to have rejected continued performance hereunder and to have materially breached this Order. In such event, Buyer shall have no further liability hereunder.

CONFIDENTIAL INFORMATION

All information furnished or disclosed to Seller by Buyer in connection with this order which is identified as "Confidential" or "Proprietary" is received in confidence, shall remain the property of Buyer and shall not be disclosed to any third party without Buyer's written consent. Seller shall not use any such information for any purpose other than to perform this Order. If requested, Seller shall execute Buyer's Non-Disclosure Agreement before receipt of any such confidential information. Seller will return, upon demand, all such confidential information to Buyer upon completion by Seller of its obligations hereunder. The obligations of this paragraph shall survive expiration or termination of this Order.

INVENTIONS AND PROPRIETARY RIGHTS

Seller agrees to promptly disclose to Buyer all ideas, inventions, discoveries and improvements that are made, conceived, compiled or reduced to practice by Seller, solely or jointly with others, that are related to the performance of, or arising out of, or are paid for by Buyer in connections with this Agreement (“New Developments”). Seller further agrees to assign to Buyer all right, title and interest to all such New Developments. Seller understands and agrees that all New Developments which are subject to copyright protection under the United States Copyright Act of 1976, as amended, shall be considered “works made for hire” within the meaning of Section 101 of the Copyright Act and that such works constitute and contain valuable proprietary assets and trade secrets of Buyer. In the event that, notwithstanding the foregoing, title to and ownership of any New Development initially vests in Seller, Seller agrees to execute, at Buyer’s request, all documents as may be necessary to grant, transfer and assign all such title and ownership thereof to Buyer. Seller agrees to obtain written assurances from its employees and contract personnel of their agreement to the terms hereof.

ASSIGNMENT AND SUBCONTRACTING

Seller shall not delegate or subcontract any duties, nor assign any rights or claims under this Order without the prior written consent of Buyer.

COMPLIANCE WITH LAWS

Seller guarantees that all goods delivered hereunder are produced, packed, labeled and shipped in compliance with all applicable laws. Seller agrees to comply with all Federal, State, County and local laws, rules, codes, executive orders and regulations (the “Laws”) applicable to its provision of materials and services hereunder. Seller agrees to hold harmless Buyer and its employees, agents, affiliates, customers and users from any liability arising from Seller’s failure to comply with such Laws.

As part of these terms and conditions, Thompson Tractor Co., requires all Vendors, their employees and subcontractors to ensure they are compliant with the Immigration Reform and Control Act of 1986, as amended. Seller will not employ on any Thompson job any undocumented or otherwise illegal employee. Seller accepts full responsibility for compliance with all laws regarding employee identity and verification including all I-9 registration requirements.

GOVERNING LAW

This Order shall be interpreted in accordance with and governed by the laws of the State of Alabama, excluding its conflict of law rules. Any litigation arising out of this Order shall be brought in the state or federal courts located in Jefferson County, Alabama and the parties consent to the jurisdiction over them by such courts.

RIGHTS AND REMEDIES

All rights and remedies of Buyer specifically set forth in this Order shall be in addition to any other or further rights and remedies provided at law or in equity. Failure of Buyer to insist upon strict performance of any term or condition of this Order shall not be deemed to be a waiver of Buyer's rights and remedies.

SETOFFS

All claims for money due or to become due from Buyer shall be subject to setoff by Buyer by reason of any counterclaim arising out of this or any other transaction with Seller.

BUYER'S PROPERTY

All property and material furnished to Seller by Buyer or specifically paid for by Buyer shall be used only in the performance of this Order and shall remain the property of Buyer. Such property shall be held at Seller's sole risk and shall be kept insured by Seller at Seller's expense in an amount equal to the replacement cost with loss payable to Buyer. Such property shall be delivered in good condition, normal wear and tear excepted, to Buyer, FOB Destination, immediately upon request by Buyer.

EEO CLAUSE

Equal Employment Opportunity Clause

An applicable, Executive Order 11246 (as amended) Section 402 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (as amended), Section 503 of the Rehabilitation Act of 1973 (as amended), and Section 61-250.5 (a) and Public Law 95-507 contain required contract clauses relative to equal employment opportunity and are incorporated herein by specific reference at 41 C.F.R. § § 60-1.4 (a,d), 60-4.3, 60-250.5 (a), 60-300.5 (a) and 60-741.5 (a).

Executive Order 13495 contains required contract clause relative to "Nondisplacement of Qualified Workers" and has been incorporated herein by specific reference.

Executive Order 13496 contains required contract clause regarding notice of employee rights under the Federal labor laws including the National Labor Relations Act and has been incorporated herein by specific reference to 29 C.F.R. Part 471, Appendix A to Subpart A.

FAR 52.222-54, Employment Eligibility Verification, contains required contract clause regarding use of E-Verify on new hires and employees assigned to the contract and has been incorporated herein by specific reference.

Please be advised that, to the extent applicable, your company is required to comply with these provisions.