

**JBK Manufacturing & Development Co. (“Buyer”)  
Purchase Order Terms & Conditions**

**Equal Employment Opportunity – Seller will comply with Presidential Executive Order No. 11246 Section 202 Paragraphs 1 through 7.**

1. **CONTRACT.** This Purchase Order (“Order”) becomes a binding contract on the terms set forth herein when accepted by Seller either by acknowledgment or performance. Shipment of all or any portion of the goods or work covered by this Order shall be deemed acceptance by Seller. The contract resulting from acceptance of this Order shall be construed according to the laws of the state of Ohio. The Federal and State Courts of Ohio located respectively in Dayton, Ohio and Greene County. Ohio shall have exclusive jurisdiction over the parties to this Order for all controversies out of or in any way connected to this Order. The contract resulting from acceptance of this Order is non-assignable by the Seller without the prior written consent of the Buyer.
2. **COMPLIANCE WITH LAWS.** Seller agrees and warrants to Buyer that, in the performance hereof and in the sale, design, production, labeling, marking and shipment of articles specified hereunder that it has complied and will comply with any and all applicable laws, statutes, rules, regulation, ordinances and orders of the United States or any agency or of state or subdivision thereof. This includes all Federal Acquisition Regulations (FAR) and Departments of Defense Regulations (DFARS).
3. **PAYMENT.** Upon the submission by Seller of proper invoices, Seller shall be paid the prices stipulated in this Order for goods delivered and accepted or of services rendered and accepted, less adjustments for shortages, rejections, Buyer’s claims or otherwise as a specified in this Order.
4. **INSOLVENCY.** Buyer may forthwith cancel the contract resulting from the acceptance of this Order in the event of any of the following: insolvency of the Seller, the appointment of a receiver or trustee for Seller (provided such appointment is not vacated within (30) days from the date of such appointment), or the execution by Seller of an assignment for the benefit of creditors.
5. **REMEDIES.** The remedies herein shall be cumulative, and additional to any other or further remedies provided in law or equity. No waiver of a breach of any provision of the contract by acceptance of this Order shall constitute a waiver of any other breach of such provision.
6. **WARRANTY, OPTION TO CANCEL.** Seller warrants to Buyer that all goods, materials, work and services furnished pursuant to this Order will be merchantable and free from defect in design, material and workmanship, will conform to specifications, samples and descriptions in the Order or otherwise given to or by Buyer, will be suitable for any intended use of which Seller has been advised or which may be reasonably inferred from all circumstances, and that any services will be rendered in a workmanlike manner and be of a quality and standard acceptable in the trade.
7. **TERMINATION.**
  - (a) Buyer may terminate work under this Order in whole or in part at any time by written or telegraphic notice to the Seller. Such notice shall state the extent and effective date of such termination, and upon receipt thereof the Seller will, as and to the extent directed by the Buyer, stop work under this Order and the placement of further orders or subcontracts hereunder, terminate work under orders and subcontracts outstanding hereunder, and take any necessary action to protect property in the seller’s possession in which the Buyer has or may acquire an interest.
  - (b) If the parties cannot by negotiation agree within a reasonable time upon the amount of fair compensation to the Seller for such termination, the Buyer, in addition to making prompt payment of amounts due for articles delivered or services rendered prior to the effective date of termination, will pay to the Seller the following amounts without duplication:
    - (1) The contract price of all articles or services, which have been completed in accordance with this Order and not previously paid for.
    - (2) The actual costs incurred by the Seller which are properly allocable or apportionable under recognized commercial accounting practices to the terminated portion of this Order, including the cost of discharging liabilities which are so allocable and apportionable.
    - (3) The reasonable costs of the Seller in making settlement hereunder and in protecting the property in which the Buyer has or may acquire an interest. Payments made under this paragraph (b), exclusive of payments under sub-paragraph (3) shall not exceed the aggregate price specified in this Order, less payments otherwise made or to be made.
  - (c) With the consent of the Buyer, the Seller may retain, at an agreed price, or sell, at an approved price, any completed articles or any articles, materials, work in process or other things, the cost of which is allocable or apportionable to this Order under paragraph (b) (2) above, and will credit or pay the amounts so agreed or received as the Buyer directs. As directed by the Buyer, the Seller will transfer title to and make delivery of any such articles, materials and work.

8. **PACKAGING AND SHIPPING.**

- (a) All goods are to be suitably packed and/or otherwise prepared for the mode of shipment specified in the Order so as to prevent damage in transit;
- (b) F.O.B. point and cash discount terms must be shown on all invoices;
- (c) Transportation must be prepaid on all shipments to which a delivered price applies;
- (d) Charges for prepaid transportation must be substantiated by attaching the original paid freight bills to the invoice;
- (e) Seller shall properly mark each package with buyer's Order number. Order number and package numbers shall be shown on packing slip, bills of lading and invoices;
- (f) No charges for packing, package or drayage will be accepted except on express written agreement to such charges;
- (g) Drafts against the Buyer will not be honored, nor C.O.D. shipments accepted except by express written agreement to that effect.

*The above instructions are subject to the terms on the face hereof and may be changed at any time upon notice to Seller.*

9. **AUDIT.** Seller's plant or books (or such part thereof as may be used in the performance of this contract) shall at all times be subject to inspection and audit.
10. **ADVERTISING.** Seller shall not without first obtaining the written consent of Buyer, in any manner, advertise or publish the fact that Seller had contracted to furnish Buyer the material herein ordered, and for failure to observe this provision, Buyer shall have the right to terminate the contract resulting from the acceptance of this Order without any obligations to accept deliveries after the date of termination or make further payment except for completed articles delivered prior to termination.
11. **TOOLS.** Unless otherwise herein agreed, Seller at its own expense shall furnish, keep in good condition and replace when necessary all dies, tools, gauges, fixtures and patterns necessary for the production of the material ordered. The cost of changes in the aforementioned items necessary to effect design or specification changes ordered by Buyer shall be paid for by Buyer. Buyer has the option, however, to take possession of and title to any dies, tools, gauges, fixtures and patterns that are special for the production of the material covered by this Order and shall pay to Seller the unamortized out of pocket cost to acquire or produce the same.
12. **CHANGE ORDERS.** Buyer reserves the right at any time to make changes in drawings and specifications as to any material and on any work covered by this Order. Buyer may also change the delivery schedule set forth hereon. If such changes cause a material increase or decrease in Seller's cost or time for performance of this Order, an equitable adjustment in the price or time for performance will be made and this Order will be modified in writing accordingly, provided any claim for adjustment must be made by the Seller within thirty (30) days after the date this change is ordered.
13. **INSPECTION AT SOURCE.** If it is indicated elsewhere on this Order that supplies to be furnished hereunder shall be subject to inspection by Buyer and/or Government inspectors upon the premises of the Seller, Seller, without additional cost, shall provide all reasonable facilities and assistance for the safety and convenience of such inspectors. At the time of inspections Seller shall make available to the inspectors copies of all drawings, specifications and processes, preservation and packaging data applicable to the articles ordered herein. Such inspection shall be deemed as preliminary only and all articles ordered hereunder shall be subject to final inspection and acceptance in Buyer's plant.
14. **CERTIFICATION.** Certification of material (chemical and physical composition) and specifications, as referenced, are required and where applicable, statement that papers are on file showing certified sources were used to accomplish special processes. Quantities shown on certifications must correspond with quantities shown on packing slips.
15. **ANALYSIS.** Three (3) copies of certified chemical and physical analysis are required. Original source of certified materials must be specified on each heat. One copy of the above analysis must accompany shipment.
16. **INSPECTION.** All material and/or equipment shall be received subject to Buyer's inspection and right of rejection. If material and/or equipment is found to be defective or not in conformity with the requirements of this Order, Buyer shall have the right, as it's sole discretion, to reject the same or to require Seller to replace defective or non-confirming material and/or equipment with satisfactory goods. If Buyer rejects the material and/or equipment or if Seller fails, when requested by Buyer, to proceed promptly with replacement or correction of defective or non-confirming goods, Buyer may terminate this Order for default or may repair or correct the goods and, in any event, may charge Seller with the cost of all damages thereby. Rejected defective or non-confirming material and/or equipment will be held by Buyer for Seller's instruction at Seller's risk and, if Seller so directs, shall be returned to Seller at Seller's expense. Unless Buyer notifies Seller to the contrary, no material and/or equipment rejected or returned to Seller as defective or non-confirming shall be replaced without a new Order. Payment for material and/or equipment on this Order prior to inspection shall not constitute acceptance thereof by Buyer.
17. **KEY CHARACTERISTIC(S).** The feature(s) of a material, process, or part whose variation has a significant influence on product fit, performance, service life, or manufacturability constitute key characteristics which Buyer considers integral to its Order.

18. **DELIVERY SCHEDULES.** Deliveries are to be made both in quantities and at times set forth in this Order or as specified by the Buyer. Buyer will have no liability for payment of material or items delivered to Buyer which are in excess of the quantities specified in delivery schedule. Buyer may from time to time change delivery schedules or direct temporary suspension of scheduled shipments.
19. **EXCUSABLE DELAYS.** Seller shall not be liable for delays or defaults in deliveries due to causes beyond its control and without its fault or negligences. If at any time Seller has reason to believe that deliveries will not be made as scheduled, written notice setting forth the cause of the anticipated delay will be given immediately to Buyer.
20. **BUYERS DESIGN.** Seller agrees that it will keep confidential and will not disclose to any other party the features of any equipment, tools, patterns, designs, drawings, engineering data or other technical or proprietary information furnished by the Buyer and that it will use such items and or information only in the production of goods or the rendering of services under this Order or other Orders from Buyer. Seller shall return all such items and/or information (including all copies thereof) or make such other disposition thereof as may be directed by Buyer.
21. **DRAWINGS AND SECRECY AGREEMENT.** Drawings may be retained by the Seller for future reference but only in connection with Buyer's Orders. Seller agrees to be responsible in matters within its control for the safe guarding of all secret, confidential or restricted matters disclosed or developed in the work performed in connection with this Purchase Order, and Seller agrees not to permit aliens or other unauthorized persons to have access to any plans or specifications used in this connection without first obtaining the written consent of the appropriate Department of the Armed Forces.
22. **INDEMNITY.**
- (a) **Patent.** Seller agrees to defend, indemnify and hold harmless Buyer and its directors, officers, employees and agents, against any and all liabilities, losses, damages, penalties, causes of action, costs and expenses, including but not limited to attorney's fees, for any asserted trademark, copyright or patent infringement or claim thereof arising from the manufacture, use or sale of any goods delivered or services rendered as a result of the Order.
  - (b) **Premises.** In the event Seller, its employees, agents or subcontractors enter premises owned or occupied by or under the control of Buyer, for purposes of delivery, pick-up, loading, unloading, or otherwise in the performance of this Order, Seller agrees that it will defend, indemnify and hold harmless Buyer and its directors, officers, employees and agents, against any and all liabilities, losses, damages, penalties, claims, causes of action, costs and expenses, including but not limited to attorney's fees, by reason of property damage or personal injury to any party and of whatever nature or kind arising out of, as a result of, or in connection with such performances occasioned in whole or in part by the actions or omissions of Seller, its employees, agents or subcontractors. Seller agrees that it and its agents and subcontractors will maintain public liability and property insurance covering the obligations set forth above, will maintain proper worker's compensation insurance and/or coverage of all employees delivering or performing any Order, and upon demand will furnish Buyer evidence thereof, all in form, companies and amounts from time to time reasonably satisfactory to buyer. Seller will keep the premises of Buyer and its customers free of liens of any sort arising out of or relating to the Order.
  - (c) **Product.** Seller agrees to defend, indemnify and hold harmless Buyer and its directors, officers, employees and agents, against any and all liabilities, losses, damages, penalties, claims, causes of action, costs and expenses, including but not limited to attorney's fees arising out of, related to, or a result of any claim or allegation that goods sold or services rendered by Seller to Buyer pursuant to this Order are the cause or potential cause of any damage or injury whatsoever to any party or person, including but not limited to claims of breach of warranty or a defect of any sort or kind.
  - (d) **Design, Drawing.** Seller agrees to defend, indemnify and hold harmless Buyer and its directors, officers, employees and agents against any and all liabilities, losses, damages, penalties, cause of action, costs and expenses, including but not limited to attorney's fees arising out of or related to any breach or violation by Sellers of its covenants under paragraphs 22 and 23 of this Order.

23. **EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION.**

- (a) The Equal Opportunity Clause (if this contract exceeds or will exceed \$10,000).

During the performance of this contract, Contractor agrees to be bound by the following provisions as contained in Section 202 of Executive Order 11246, as amended to wit:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- (3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers representative of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The Contractor will comply with all provisions of Executive Order NO. 11246 of September, 1965, and of the rules, regulations, and orders of the Secretary of Labor.
- (5) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto and will permit access to his books, records and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- (6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract, or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized by Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulations, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The Contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Sections 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for nonconformance. Provided, however, that in event the Contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

(b) Veterans Employment Clause (if this contract is for \$10,000 or more)

Contractor agrees to abide by and comply with the provisions of the Affirmative Action Clause, Section 60-250.4 of 41 CFR unless exempted as therein provided and which provisions are incorporated herein by reference to the same extent as through set forth herein in full.

(c) Executive Order 11758 – Employment of Handicapped Persons (if this contract is for \$2500 or more)

Contractor agrees that it will abide by and comply with the provisions of the Affirmative Action Clause, Section 60-741.4 of 21 CFR (41 Fed. Reg. 16150, April 16, 1976). Affirmative Action for Handicapped Workers (which provisions) are incorporated herein by reference to the same extent as though set forth in full.

24. **INSPECTION SYSTEM REQUIREMENTS.** MIL-I-45206A Applies to this Order.