

## Essex Industries Inc and Related Companies – Purchase Order Terms and Conditions

1. **FOUNDATIONS.** These Purchase Order Terms and Conditions and any specifications, drawings and additional terms and conditions which may be incorporated by specific reference or appended hereto by Essex are part of this Purchase Order. **Acceptance of this Purchase Order is expressly limited to the terms and conditions hereof. By accepting this Purchase Order, Seller agrees (i) that this Purchase Order constitutes the final written expression of all of the terms and conditions of the agreement between Seller and Essex and is a complete and exclusive statement of those terms and conditions; and (ii) to ship and/or deliver the goods and/or perform the services covered by this Purchase Order at the prices and on the terms appearing on this Purchase Order. If any Seller acknowledgment, invoice or other document contains any term or condition in addition to or different than any of the terms or conditions of this Purchase Order, each such additional or different term or condition is hereby specifically rejected and Seller agrees that the terms of this Purchase Order govern and control. No change in or modification to any of the terms or provisions of this Purchase Order shall be binding on Essex unless agreed to in writing by Essex's duly authorized representative specifically referring to such change or modification.** Seller agrees that failure to notify Essex of any objection Seller may have to any of the terms or conditions of this Purchase Order within five (5) calendar days after receipt by Seller of this Purchase Order shall constitute acceptance of this Purchase Order and Seller shall be obligated to perform according to its terms. Such objection, if any, must be in writing and specify the grounds on which it is made and Seller shall not be deemed to have objected to any of the terms and conditions of this Purchase Order by sending a form or invoice containing terms or conditions which vary from any of the terms or conditions of this Purchase Order.

2. **PERFORMANCE AND DELIVERY.** Time is of the essence. If delivery of the goods or performance of the services called for by this Purchase Order is not completed by the time scheduled, Essex reserves the right, without liability, to cancel this Purchase Order by notice to Seller and to arrange for completion and/or purchase of substitute goods or services elsewhere and to charge Seller with any loss or additional costs or expenses incurred. Risk of loss of or damage to any goods called for by this Purchase Order shall remain with Seller until actual delivery of such goods to Essex. All such goods shall, at Seller's expense, be suitably packed, marked, loaded and shipped in accordance with the requirements of the applicable common carrier(s). Seller shall make no shipment of nonconforming goods, as an accommodation or otherwise, unless first authorized in writing by Essex. Goods delivered and services performed (whether or not paid for) are subject to inspection, testing and approval by Essex before acceptance. If after delivery or performance Essex finds any of the goods or services called for by this Purchase Order to be nonconforming, defective, of inferior quality or workmanship or not as warranted or guaranteed, Essex may at its election reject and return such goods, or reject such services, in whole or in part, at Seller's expense. Payment for any goods or services prior to final inspection by Essex shall not constitute their acceptance by Essex.

3. **WARRANTIES.** Seller warrants that all goods and services covered by this Purchase Order: (i) will be as described in this Purchase Order and in any quotation of Seller referenced herein or attached hereto and will conform to all specifications and drawings provided by or through Essex or the specifications, drawings and/or samples supplied by Seller; (ii) will be merchantable, free of all liens and of good material and workmanship, free from all defects (including, without limitation, defects in labor, materials and fabrication); (iii) will be fit for the particular purposes for which same are required by Essex (which purposes are known to Seller and Seller acknowledges that Essex is relying upon Seller's skill and judgment to furnish suitable goods and services); and (iv) will be manufactured, performed and/or delivered in compliance with all applicable federal, state, local and other laws, rules and regulations. Essex's release or approval of data or drawings will not relieve Seller from any warranty hereunder. These warranties shall run to Essex and its customers.

4. **FURNISHED ITEMS.** Essex may furnish, for use by Seller under this Purchase Order, materials, parts, tooling, engineering data and similar items ("Essex Items"), in quantities designated by Essex. Essex Items will be furnished either without cost to Seller, or at Essex's cost and under terms of payment appearing in this Purchase Order. If furnished without charge, the value of Essex Items will not be included in the sale price hereof. With respect to all Essex Items, Seller will (i) keep them segregated from Seller's other assets and property and conspicuously marked to show that they are owned by Essex; (ii) maintain a complete and current inventory thereof; and (iii) where not incorporated as part of the goods being purchased under this Purchase Order, upon termination or completion hereof, return them to Essex in good condition, subject to ordinary wear and tear and normal manufacturing losses. Seller assumes all risks of loss of or damage to all Essex Items while in Seller's custody or control. Except as provided in the next succeeding sentence, any special tooling and equipment specified in or made or acquired by Seller for this Purchase Order will become the property of Essex, be marked as required by this Section, and be delivered to or as directed by Essex upon termination or completion of this Purchase Order. When charges paid by Essex for certain types of special tooling such as extrusion or forging dies do not by the terms of this Purchase Order convey title to Essex, Essex will have exclusive rights in such tooling for the duration of its existence or until otherwise disposed of by mutual written agreement. Proceeds of scrap generated hereunder will accrue to Seller and are reflected as such in prices quoted.

5. **OWNERSHIP RIGHTS AND CONFIDENTIALITY.** Seller acknowledges that all documents and information supplied by or on behalf of Essex for use hereunder and relating to Essex, its operations or any of its products, data, parts, equipment, tools designs, drawings, property, and other items, including the Essex Items, furnished or disclosed to Seller in connection with this Purchase Order (collectively, "Proprietary Information") are strictly confidential and constitute the property of Essex. Seller further acknowledges that the use of disclosure of such Proprietary Information, other than in the course and scope of Seller's performance under this Purchase Order, will be contrary to the best interests of Essex and will harm and damage Essex and its business. Accordingly, Seller agrees not to use, take or retain for itself, or to disclose to others, any such Proprietary Information, either during the term of its performance hereunder or after, except as required for Seller's performance or as expressly consented to by Essex. Absent prior, written consent by Essex, Seller shall not, in any manner advertise or release for publication any statement mentioning Essex or the fact that Seller has furnished or contracted to furnish goods or services to Essex.

6. **INSURANCE.** Seller shall carry, at its expense, sufficient insurance on all goods ordered pursuant to this Purchase Order and all Essex Items in its possession prior to delivery to Essex. If Seller is to provide any services under this Purchase Order, then Seller, at its expense, shall at all times carry adequate liability insurance and other insurance of a kind and in an amount generally carried by businesses engaged in the same or similar businesses similarly situated. At Essex's request, Seller shall provide Essex evidence that such insurance coverages are being maintained and are in full force and effect.

7. **CHANGES.** Essex may at any time, by written notice or order, make changes in or additions to the drawings and/or specifications, issue additional instructions, require additional work or direct the suspension, delay or omission of work ordered hereunder. If any such change causes a variation in the cost of performance or the time required for performance, Seller will notify Essex within ten (10) days of the receipt of the change to obtain an equitable written adjustment. Pending such adjustment, Seller will proceed in accordance with such change notice or order.

8. **PAYMENT.** Unless otherwise stated herein, payment terms shall be net thirty (30) days after the later to occur of (i) receipt by Essex of a proper invoice from Seller; and (ii) acceptance of delivered goods or services; provided, however, invoices for special tooling will be paid after receipt of first acceptable item made therewith. All claims for money due or to become due from Essex to Seller hereunder shall be subject to deduction or set-off by Essex for any amount owing at any time by Seller to Essex.

9. ASSIGNMENT. Seller shall not assign, in whole or in part, any of its rights, interests or obligations under this Purchase Order without the prior written consent of Essex, and no purported assignment by Seller shall be binding on Essex without such written consent. Seller will notify Essex of its intent to subcontract for the design or procurement of the whole or any major component of any of the goods or services to be provided under this Purchase Order, specifying the work to be subcontracted, the subcontractor's name and the terms and conditions upon which such subcontract will be effected. If within ten (10) business days after receipt of any such notice Essex has not notified Seller of its objection to such subcontract or any of the terms or conditions of such subcontract, Essex will have been deemed to have consented to such subcontract on the terms and conditions provided in the notice to Essex.

10. TAXES. Except as otherwise provided in this Purchase Order, the contract price includes all applicable federal, state and local duties or sales, use, excise, value added or similar taxes, if any.

11. INDEMNIFICATION. Seller shall indemnify, defend and hold harmless Essex and its affiliates and their respective directors, officers, employees and agents and the successors and assigns of each of the foregoing (collectively, "Indemnitees"), from and against any and all claims, demands, actions, suits, liabilities, damages, settlements, losses, costs and expenses, including, but not limited to, attorneys' fees and expenses, incurred by or asserted against any of the Indemnitees arising out of or in any way relating to (i) any breach by Seller of any term or provision of this Purchase Order (including any breach of any representation or warranty made by Seller in this Purchase Order); (ii) any act, omission, misrepresentation, conduct, negligence or product liability on the part of Seller or any of Seller's directors, officers, employees or agents; or (iii) any infringement or claim of infringement of any patent, copyright, trademark, trade secret or other intellectual property right by reason of the production, use, performance or sale of any of the goods and/or services, or any component or product included in such goods and/or services, furnished hereunder.

12. AUDIT RIGHTS. Essex and its agents, shall have the right, upon reasonable notice and during Seller's normal business hours, to audit and inspect the books and records of Seller and any facilities of Seller engaged in the performance of this Purchase Order. Seller will cause a like provision to be included in all subcontracts permitted hereunder.

13. RIGHT TO TERMINATE. Essex may, at any time, terminate this Purchase Order in whole or in part by written notice or verbal notice confirmed in writing. If Essex terminates for convenience, Essex will reimburse Seller the actual costs, not in excess of the contract price of this Purchase Order, which were incurred by Seller in good faith in connection with this Purchase Order prior to notice of termination, less the cost of any goods that Seller can reasonably use for a third party. If any of the following events occur, Essex may terminate this Purchase Order and incur no costs: (i) any default or breach by Seller under this Purchase Order, including, without limitation, a breach of any warranty, express or implied, with respect to any of the goods; (ii) a failure, in the opinion of Essex, on Seller's part to make progress in the work under this Purchase Order so as to endanger its performance; (iii) Seller ceases to conduct its operations in the normal course of business; (iv) Seller becomes insolvent, makes or attempts to make an assignment for the benefit of creditors, has a receiver appointed for it or commences or has commenced against it any proceeding seeking relief under any bankruptcy, insolvency, receivership, liquidation or similar law.

14. SEVERABILITY. If any part of this Purchase Order shall be held to be illegal, void or unenforceable, the remaining portions shall remain in full force and effect. The failure of Essex in any one or more instances to insist upon the performance of any of the terms or conditions hereof or to exercise any right hereunder, shall not be construed as a waiver of any of the other terms or conditions of this Purchase Order, the right to enforce the future performance of any term or condition or the future exercise of any other rights herein. The remedies provided for herein shall be cumulative and in addition to any other remedies provided by law or in equity.

15. GOVERNING LAW. If this Purchase Order is issued under a contract with the U.S. Government, this Purchase Order and all matters relating to or arising out of it shall be construed and governed according to the federal common law of government contracts as

enunciated and applied by federal judicial bodies, boards of contract appeals and quasi-judicial agencies of the federal government. The substantive law of the State of Missouri shall apply to all other matters to which the federal common law of government contracts does not apply.

16. CERTIFICATIONS. Seller shall maintain and make available to Essex upon its request, evidence of certificates of Seller's equipment, processes and/or personnel and those of Seller's subcontractors to the extent required by specifications or drawings governing the manufacture of goods or performance of services ordered hereunder. In addition, Seller certifies that (i) if it has participated in a contract subject to the Equal Opportunity clause in the Purchase Order, or applicable Executive Orders, it has filed all required compliance reports; (ii) any end products supplied hereunder are domestic end products as defined in FAR 52.225-3 and DFAR 252.225-7001; (iii) any cost or pricing data submitted for or with respect to this Purchase Order is accurate, complete and current as of the date submitted; (iv) it will provide information and certifications regarding Seller's goods or services as reasonably requested by Essex; and (v) neither Seller nor its principles are debarred, suspended or proposed for debarment or suspension by the U.S. Government.