

## THE EMMES CORPORATION TERMS AND CONDITIONS

1. **ACCEPTANCE.** This purchase order will become a binding contract when it is accepted either by written acknowledgement or by performance.
2. **INSPECTION.** Notwithstanding our prior payment and/or inspection, all shipments of goods and/or services rendered hereunder will be subject to this purchase order. All items found to be defective as to material, workmanship, or manufacture will be repaired or replaced by the Seller without expense to EMMES or, at EMMES's option, the Seller will refund the price on all such defective items.
3. **WARRANTY.** The Seller warrants the material furnished hereunder (a) to be free from defects in title, labor, material, or fabrication; (b) to conform to applicable specifications, drawings, samples, or other descriptions given; (c) to be suitable for the purpose intended; and (d) to be Merchantable quality. The Seller further warrants that material of the Seller's design will be free from defects in design. This warranty shall apply to EMMES and to EMMES' successors, assignees, and customers.
4. **CANCELLATION.** EMMES reserves the right to cancel this order, or any unfilled portion thereof, for cause if shipment is not made as promised, if goods are not according to specifications or if the Seller defaults or fails to perform any provisions of this order. EMMES shall have the right to cancel this order for cause in the event that
  - a. The Seller ceases to continue operations in the normal course of business;
  - b. The Seller files a petition in bankruptcy or seeks relief under any of the provisions of the Federal Bankruptcy Act or of any state insolvency statute;
  - c. Such a petition is filed against the Seller and remains in dismissal for a period of 30 days;
  - d. A receiver or trustee is appointed for the Seller and such appointment is not vacated within 30 days from the date thereof; or
  - e. The Seller makes an assignment for the benefit of creditors.

In addition, EMMES reserves the right to cancel this order for convenience at any time by providing Seller with written notice of cancellation. In the event of cancellation for convenience, Seller shall be paid for any product shipped and accepted. Upon cancellation, Seller agrees to refund to EMMES all advance payments (if any) made to Seller for which product will not be delivered.
5. **INVOICES AND DISCOUNT DATE.** The Seller shall provide a duplicate invoice, citing the applicable purchase order number. All invoices will be addressed to EMMES. "Accounts Payable." The invoice shall indicate separate charges for taxable items, sales tax, labor, freight, and handling. The date to be used as the basis for any cash discount calculation is the date when the material or acceptable invoice is received, whichever is later. If the date falls within the first 15 days of any month, the discount will be taken when payment is made by the 25<sup>th</sup> of the said month. When the date falls between the 16<sup>th</sup> and the end of any month, the discount will be taken when payment is made by the 10<sup>th</sup> of the following month.
6. **PATENTS AND COPYRIGHTS.** The Seller agrees to defend, indemnify, and hold harmless EMMES against all liability for actual or alleged infringement of any patent, trademark, copyright, or similar right by the materials or articles called hereunder.
7. **MATERIALS FURNISHED.** When EMMES furnishes materials, the invoice for final parts must contain the statement "All material furnished on this purchase order has been returned in the form of parts or unused material expect that which became normal industrial waste or was replaced at the Seller's expense". The Seller will be responsible for the use of reasonable care in safeguarding materials furnished by EMMES.
8. **RESPONSIBILITY FOR SUPPLIES.** The Seller shall retain title and be responsible for loss or damage to the supplies covered by this purchase order until said supplies are delivered at the designated free-on-board point. Upon delivery at the designated free-on-board point, the responsibility for loss or damage and title to the supplies by this purchase order shall vest in EMMES.
9. **PACKING.** All items are to be packed in suitable containers for protection in shipment and storage.
10. **EXCESS AND EARLY SHIPMENTS.** Only over-shipments that are caused by conditions of loading, shipping, or packing or by allowances in manufacturing processes and that do not exceed 5% of the quantity called for will be accepted. In all other cases, the quantity shown is to be delivered net and no excess will be accepted. Unauthorized advance shipments are returnable to the Seller's expense.
11. **ASSIGNMENT.** The proceeds of this order may be assigned, but the assignee's rights shall be subject to set off for any present or future claims EMMES may have against the Seller arising from any source. The Seller agrees not to delegate duties under this contract without EMMES' prior written consent. This prohibition of delegation extends to all delegations that may lawfully be prohibited by this purchase order.
12. **GOVERNING LAWS.** The interpretation, rights, and obligations of the parties under this purchase order will be governed by the laws of the State of Maryland.
13. **THE OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA).** The Seller certifies that materials and services supplied are provided in compliance with OSHA and applicable regulations.

14. **Y2K COMPLIANCE.** The Seller certifies that product(s) are Y2K compliant per Federal Acquisition Regulation

39.106. "Y2K compliant" means with respect to information technology, that the information technology accurately and sequencing from, into, and between the 20<sup>u</sup> and 21<sup>o</sup> centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology, used in combination with the information technology being acquired, properly exchanges date/time data with it.

15. **INDEMNIFICATION**

The Seller agrees to defend, indemnify and hold harmless EMMES from and against all claims, action or causes of action, liabilities including attorney's fees and costs arising from the defense of any claim, resulting from any act taken or committed by the Seller pursuant to the performance of obligations hereunder. The Seller agrees to defend, indemnify and hold harmless EMMES for any claim, action, cause of action and liabilities, which may be asserted by third parties arising out of the performance of obligations pursuant to this Purchase Order, except for the willful misconduct or gross negligence of EMMES.

16. **CONDITIONS APPLICABLE TO ORDERS PLACED UNDER GOVERNMENT CONTRACT OR SUBCONTRACT.** When a United States Government Contract and Subcontract number appears on the face of the purchase order, the Seller agrees to comply with

- a. The Fair Labor Standards Act, the Walsh-Healey Act, the Contract Work Hours and Safety Standards Act, the Vinson-Trammel/ Act, the Royalty Adjustment Act, the Federal Water Pollution Control Act, the Espionage Act, Executive Order 11598, and all relevant acts and orders for equal employment opportunity, and all applicable amendments, regulations, rulings, and interpretations thereof
- b. All laws, government regulations, and Executive Orders, when applicable, pertaining to the use of convict labor, employment of aliens, wages and hours, plant protection renegotiations and discrimination, and the listing of employment openings with the State Employment Service; and

c. The following clauses of the Federal Acquisition Regulations:

52.202-1	Definitions
52.203-1	Officials Not to Benefit
52.203-5	Covenant Against Contingent Fees
52.204-2	Security Requirements
52.209-6	Protecting the Government's Interest When Subcontracting with contractors Debarred, Suspended, or Proposed for Debarment
52215-2	Examination of Records by Comptroller General
52.220-1	Preference for Labor Surplus Areas Concerns
52.222-1	Notice to the Government of Labor Disputes
52.222-3	Convict Labor
52.222-21	Prohibition of Segregated Facilities
52.222-25	Affirmative Action Compliance
52.222-26	Equal Opportunity
52.222-35	Affirmative Action for Disabled Veterans and Veterans and Veterans of the Vietnam Era
52.222-36	Affirmative Action for Workers with Disabilities
52.223-2	Clean Air and Water
52.225-3	Buy American Act
52.225-7	Balance of Payments Program
52.227-1	Authorization and Consent
52.249-1	Termination

Text of the above clauses will be made available upon request or can be reviewed at <http://www.arnet.gov/far>.