

Terms and Conditions: Purchasing

**PRICE ENGINEERING COMPANY, INC.
PURCHASING TERMS AND CONDITIONS**

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The terms and conditions set forth herein apply to all purchase orders submitted by Price Engineering, Inc. (hereinafter referred to as "PEC"), unless otherwise specified in a separate writing signed by PEC. The company providing goods and/or services pursuant to any purchase order is hereinafter referred to as "Seller."

1. EXPRESSLY CONDITIONAL OFFER. By signing and returning the acknowledgment receipt of this order prior to the specified delivery date (or by delivering the goods or performing the services called for by this order), Seller agrees to and accepts the terms and conditions contained in this order. THIS ORDER IS MADE EXPRESSLY CONDITIONAL ON SELLER'S ACCEPTANCE OF ALL THE TERMS AND CONDITIONS CONTAINED HEREIN. PEC HEREBY GIVES NOTICE OF ITS OBJECTION TO ANY AND ALL TERMS AND CONDITIONS CONTAINED IN ANY ACKNOWLEDGMENT, INVOICE OR OTHER DOCUMENT FROM SELLER THAT ARE ADDITIONAL TO, OR DIFFERENT FROM, THOSE CONTAINED HEREIN, AND PEC EXPRESSLY REJECTS ANY COUNTER-OFFER(S) PROPOSED BY SELLER. NO TERMS OR CONDITIONS EXCEPT THOSE CONTAINED HEREIN ARE ACCEPTED BY PEC. ANY STATEMENT BY SELLER IN ANY ACKNOWLEDGMENT OF THIS ORDER, OR IN ANY INVOICE OR OTHER DOCUMENT FROM SELLER, WHICH PROVIDES THAT SELLER'S ACCEPTANCE OF THIS ORDER IS MADE EXPRESSLY CONDITIONAL ON PEC'S ACCEPTANCE OF SELLER'S TERMS AND CONDITIONS, OR ANY OF THEM, IS HEREBY OBJECTED TO, AND IS EXPRESSLY REJECTED, BY PEC. THESE TERMS AND CONDITIONS SUPERCEDE ANY PRIOR UNDERSTANDINGS, AND SUPERCEDE ANY LATER DOCUMENTATION REGARDING THE SUBJECT MATTER OF THESE TERMS AND CONDITIONS UNLESS SIGNED BY PEC. ANY FAILURE TO RETURN THE ACKNOWLEDGMENT COPY OF THIS ORDER, OR ANY OTHER STATEMENT OR WRITING OF SELLER, SHALL NOT ALTER, ADD TO, OR OTHERWISE AFFECT THESE TERMS AND CONDITIONS.

2. DELIVERY. The terms of delivery are stated on the order issued herewith. Time is of the essence in Seller's performance of its delivery obligations hereunder. Deliveries of goods or services are to be made in such quantities and at such times specified herein, or if not specified, in such quantities and at times as are specified pursuant to PEC's written instructions. Shipments in greater or lesser quantity than ordered may be returned at Seller's expense unless written authorization as to such nonconforming shipment is issued by PEC. PEC's acceptance of late or nonconforming goods or services shall not constitute a waiver of PEC's right to insist upon strict compliance with the terms of delivery stated on the order issued herewith.

3. PRICE. The prices for the goods and/or services identified on the purchase order issued herewith may not be modified except by a writing executed by PEC and Seller. Pricing is inclusive of applicable taxes, transportation charges, insurance costs, and packaging, packing or returnable container costs, unless otherwise stated on the purchase order issued herewith. Any and all sales, use, excise or similar taxes to be paid by PEC must be itemized separately on the purchase order issued herewith and on invoices. Seller warrants that the prices of the goods or services sold to PEC under this order are not less favorable than those currently extended to any other customer for substantially similar or like goods or services in equal or less quantities. In the event Seller reduces its price for such goods or services during the term of this order, Seller agrees to reduce the prices hereof correspondingly.

4. PAYMENT TERMS. Unless otherwise specified by PEC, terms are 2%-10 days, Net 60 days. Duplicate invoices are required with the purchase order and packing list, and the order number must be clearly marked.

5. TAXES. Unless taxes are expressly shown with prices on this order, Seller shall indemnify and hold harmless PEC against the assessment or imposition of any excise, use or other tax (however designated) upon the production, sale or delivering of goods shipped hereunder or upon the performance of services rendered hereunder except to the extent prohibited by law.

6. INSPECTION AND TESTS. All goods and services provided hereunder shall be subject to inspection and testing by PEC, PEC's agents and PEC's customer at all times and places, including during the period of manufacture and, if any inspection or test is made on Seller's premises, Seller, without additional charge, shall provide all reasonable facilities and assistance for the safety and convenience of PEC, PEC's customer, or PEC's agent. Failure of PEC to inspect, accept, reject or detect defects by inspection shall neither relieve Seller from responsibility for such goods or services that are not in accordance with the order requirements nor impose liabilities on PEC. PEC may reject all nonconforming goods and services within a reasonable period of time after delivery without regard to whether payment has been made, and Seller shall immediately reimburse PEC all amounts paid for such nonconforming goods or services. PEC may choose, at Seller's risk and expense, to either hold nonconforming goods pending Seller's instructions or ship them to Seller's address shown on the face of this order.

7. CHANGES. PEC may make changes to any services to be performed or to any goods to be sold hereunder, or in methods of shipment and packaging or in the time or place of delivery of any goods or services, but no such change shall be effective, nor shall PEC be obligated to pay any increase in compensation as a result of such change, unless such change is authorized in writing by PEC. In such event there will be made an equitable adjustment in price and time of

performance mutually satisfactory to PEC and to Seller, but any claim by Seller for an adjustment must be made in writing within ten (10) days after the receipt of such changes.

8. SHIPPING AND RISK OF LOSS. Unless otherwise stated on the purchase order issued herewith, Seller shall retain title to, and bear the risk of loss of, goods until the goods have been actually received by PEC, notwithstanding any agreement by PEC to pay transportation charges; provided, however, that PEC shall obtain title upon payment for the goods. All shipments must be packaged so as to permit efficient handling and to provide protection on shipment, and if tendered to a common carrier for delivery, must also conform to the packaging requirements applicable to such carrier. Seller shall indemnify PEC for any damage resulting from improper packaging thereof.

9. WARRANTIES. Seller warrants that (a) all goods and services provided hereunder will conform to all written proposals and descriptions relied upon by PEC, as well as all applicable specifications, instructions, labels, bills of material, drawings, quality control documentation, data and samples, furnished by PEC or furnished by Seller and relied upon by PEC, (b) all services shall be rendered in a good and workmanlike manner by skilled personnel, (c) all goods will be new, not refurbished or reconditioned, unless specifically approved in writing by PEC, (d) all goods shall be free from any defect in design, construction or manufacture, and shall be of good material and workmanship, and (e) all goods shall be merchantable and fit and sufficient for the particular purpose intended by PEC. Seller acknowledges that it is aware of and has been informed by PEC of PEC's intended use of such goods. The performance of all warranties set forth herein shall survive and be explicitly extended beyond delivery as to each good or service for a period of five (5) year from the date the goods are placed into service by PEC or, in the case of services, from the date the services are completed, unless a longer warranty period is called for in any writing, including, without limitation, specifications, drawings or proposals furnished by or to PEC. No action by PEC, including payment for, inspection of, or receipt of goods or services, shall constitute a waiver of any breach of warranty. If at any time within the applicable warranty period, goods or services are determined by PEC to fail the foregoing warranty, then in addition to any other available remedies, Seller shall immediately repair or replace (at PEC's option) any non-conforming goods or re-perform any services at no cost to PEC.

10. REMEDIES. PEC's remedies in the event of a breach of this agreement, or any breach of warranty hereunder, shall include, but not be limited to, recovery of all damages resulting in the ordinary course of events from Seller's breach as determined in any manner which is reasonable. PEC shall be entitled to recover consequential, as well as all incidental damages, including but not limited to general damages, lost profits, loss of business, expenses incurred by PEC as a result of liability to third parties, expenses reasonably incurred by PEC in disassembly, removal, re-assembly, or re-installation of the goods, repair of the goods, inspection and/or testing of the goods, transportation and storage, and any other reasonable expense incident to the breach. The remedies set forth herein are not exclusive, but are cumulative of all rights and remedies available to PEC in law or in equity, specifically including all rights and remedies available to PEC as set forth in the Uniform Commercial Code as adopted and interpreted in the State of Wisconsin.

11. TITLE. Seller warrants good title to all goods sold and services supplied, free and clear of any liens or encumbrances. Seller warrants that all goods (and PEC's use thereof) and services shall not infringe on any patent, copyright, trade secret, trade name, trademark or service mark, or other intellectual property right of any party. All materials, and any inventions (whether or not patentable), works of authorship, trade secrets, ideas, concepts, trade names and trade or service marks (collectively "inventions") created or prepared by Seller in the delivery of goods or services hereunder, are works made for hire and shall belong exclusively to PEC, and Seller hereby assigns all such inventions to PEC and its assigns. PEC shall have the right, at PEC's option and expense, to seek protection by obtaining patents, copyright registrations, trademark registrations, and/or other recordings, registrations, and filings related to proprietary or intellectual property rights. Seller agrees as no charge to PEC to execute, and to cause its employees to execute, such documents including such further assignments, applications, and conveyances and to supply such information as PEC shall request, in order to permit PEC to protect, perfect, register, record and maintain its rights in the inventions and effective ownership of them throughout the world. Unless otherwise agreed in writing, all information, tools, equipment or material furnished to Seller by PEC or specially paid for by PEC, and any replacement thereof, or any materials affixed or attached thereto, shall be and remain PEC's personal property. Such property shall be plainly marked or otherwise adequately identified by Seller as PEC's property and shall be safely stored separate and apart from Seller's property. Such property, while in Seller's custody or control, shall be held at Seller's risk, shall be kept insured by Seller at Seller's expense in an amount equal to the replacement cost with loss payable to PEC and shall be subject to removal at PEC's written request, in which event Seller shall prepare such property for shipment and redeliver to PEC in the same condition as originally received by Seller all at Seller's expense.

12. INDEMNIFICATION. SELLER SHALL, AT ITS OWN EXPENSE, INDEMNIFY PEC AND PEC'S AFFILIATES AND SUBSIDIARIES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, REPRESENTATIVES AND EMPLOYEES, AGAINST ALL DAMAGES, LIABILITIES, CLAIMS, LOSSES AND EXPENSES (INCLUDING

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ATTORNEYS' FEES) (COLLECTIVELY, "CLAIMS") ARISING OUT OF OR RESULTING IN ANY WAY (a) FROM ANY DEFECT IN THE GOODS OR SERVICES PURCHASED HEREUNDER, (b) FROM ANY ACT OR OMISSION OF SELLER, ITS AGENTS, EMPLOYEES OR SUB-CONTRACTORS, EXCEPT TO THE EXTENT CAUSED BY PEC'S SOLE NEGLIGENCE, (c) BY REASON OF ANY CLAIMED OR ACTUAL VIOLATION OF ANY APPLICABLE LOCAL, STATE OR FEDERAL LAW, ORDER OR REGULATION, OR (d) BY VIRTUE OF ANY CLAIMED INFRINGEMENT OF PATENTS, COPYRIGHTS, TRADE SECRETS, TRADE NAMES, TRADE-MARKS, SERVICE MARKS, OR OTHER INTELLECTUAL PROPERTY RIGHT IN CONNECTION WITH GOODS OR SERVICES SUPPLIED BY SELLER. PEC MAY, AT ITS SOLE ELECTION, DEFEND ANY CLAIM WITH COUNSEL OF ITS OWN CHOOSING OR TENDER DEFENSE OF ANY SUCH CLAIM TO SELLER. IN EITHER CASE, SELLER SHALL PAY ALL ATTORNEYS' FEES AND EXPENSES INCURRED IN CONNECTION WITH SUCH CLAIM. THIS INDEMNITY SHALL APPLY WITHOUT REGARD TO WHETHER THE CLAIM IS BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT.

13. INSURANCE. Seller shall maintain such commercial liability insurance, including products liability, completed operations, contractors liability and protective liability, automobile liability insurance (including non-owned automobile liability) and workers compensation and employer's liability insurance as will adequately protect PEC against such damage, liabilities, claims, losses, and expenses (including attorneys' fees). Seller agrees to submit certificates of insurance, evidencing its insurance coverage when requested by PEC.

14. FORCE MAJEURE. Strikes, fires, floods, accidents, acts of God, labor disputes or other causes beyond the control of PEC, or cancellations or modifications of contracts between PEC and third parties, which affect PEC's ability to receive and use, or PEC's need for, the goods or services ordered shall constitute valid grounds for suspension of shipment upon this order, upon notification to the Seller by electronic mail, teletype or letter and without penalty to the PEC.

15. COMPLIANCE WITH LAW. All goods and services shall comply with all applicable local, state and federal laws and executive orders and regulations issued pursuant thereto.

16. DEFAULT AND TERMINATION. (a) PEC may cancel this order, in whole or in part, by written or oral notice if at any time PEC concludes in good faith that Seller has defaulted in performance, breaches any express or implied warranty hereunder, or fails to make progress in the work as to endanger performance by Seller. In the event of cancellation, PEC shall have, in addition to its other remedies, the right to purchase elsewhere and charge Seller with any loss incurred. In the event of the institution of any proceedings by or against either party in bankruptcy or insolvency or under any provisions of the United States Bankruptcy Code or for appointment of receiver or trustee or an assignment for the benefit of creditors of either party, the other party may terminate this order without further cost or liability. PEC may at any time in its sole discretion terminate this order, in whole or in part, upon written notice to Seller. Seller shall immediately cease all production of such goods and rendering of all such services. In the event of such termination by PEC, Seller shall use reasonable commercial efforts to find a substitute purchaser of the goods already produced. To the extent such attempted cover by Seller is unsuccessful; Seller shall be entitled as its exclusive remedy to a reasonable termination charge consisting of a percentage of the order price reflecting the percentage of the work actually performed prior to the termination, except that such costs shall not include lost profits. Title to any work-in-process shall vest in PEC upon payment.

17. CONFIDENTIALITY. Seller shall treat all proposals, specifications, designs, drawings and other non-public information provided by PEC as confidential, including but not limited to, the existence of and terms of this order

and the relationship between PEC and Seller hereunder, to take all measures to protect the confidentiality of such information that Seller would take to protect its own confidential information, and not to make use of or disclose the same at any time except in performance of this order. In addition, Seller shall take appropriate steps to ensure that Seller's employees, agents and contractors to whom disclosures are made treat such information as confidential. Seller shall not use PEC's name in any way, including without limitation a general or sample listing of Seller's customers, without PEC's prior written consent. Any violation of this paragraph shall be deemed a material breach of this order.

18. MISCELLANEOUS. This order and any payments to be made hereunder may not be assigned or transferred by Seller without prior written approval by PEC. No invoices may be rendered by other than the Seller without the written permission of PEC. All claims for monies due or to become due from the purchase of goods or services hereunder shall be subject to deduction by PEC for any setoff or counterclaim arising out of this or any other orders with the Seller, whether such setoff or counterclaim arose before or after any such assignment by Seller. Any attempted assignment or other transfer by Seller in violation of this provision shall be void. The invalidity, in whole or in part, of any provisions hereof shall not affect the validity of any other provision. The terms of this order shall be governed by the laws of the State of Wisconsin, without regard to conflicts of laws principles. No waiver by a party of any of the covenants/terms or conditions of this order shall be effective unless set forth in writing by such party and delivered to the other party, and such waiver shall be effective only for the time and to the extent therein and shall not be deemed a waiver of any other breach. No omission or act (other than the delivery of the foregoing written waiver) by a party shall constitute or be deemed to constitute a waiver of any default in the performance of, or breach of, any agreement, duty, responsibility, representation, warranty or covenant of the other party contained in this order. This order may be amended only by writing executed by each of the parties. PEC AND SELLER HEREBY SUBMIT TO THE NON EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN AND OF ANY WISCONSIN STATE COURT SITTING IN WAUKESHA, WISCONSIN FOR PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS ORDER. THE PARTIES HERE TO IRREVOCABLY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH THEY MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

19. SERIAL AND LOT CONTROL TRACKING. Seller is solely responsible for tracking all lot and serial number controlled items included in any assembly sold to PEC. Shipment of any such assembly must be accompanied by all of such tracking information, including, but not limited to, lot and/or serial numbers, and dates of receipt. If Seller fails to provide such tracking information as required, Seller will warrant the entirety of such Goods, including any and all subcomponents thereof, as set forth in Section 8 above.

20. QUALITY REPORTING. Seller will provide PEC prior to each shipment with Certificates of Conformance and any other quality control documentation as required by PEC for the applicable goods. Initial shipments of goods that are manufactured in accordance with specifications and/or drawings provided by PEC must be accompanied in all instances by Dimensional First Article Reports. Goods that are shipped as assemblies which consist of components identified by PEC must be accompanied by Process Inspection Reports, Quality Control Documentation, Final Inspection and Test Records. Failure to provide documentation as required in this Section shall be deemed a material breach of this agreement.