

1. **Applicability.** These terms and conditions of purchase (“Terms”) are the only terms which govern the purchase of the goods (“Goods”) and services (“Services”) by Vacuum Process Engineering, Inc. (“Buyer”) from the seller (“Seller”) named on the accompanying purchase order (“Purchase Order”, and together with these Terms, “Agreement”). Seller accepts the Purchase Order by written confirmation, such as email, received by Buyer; by commencing work on the Purchase Order in any manner, expressly conditioned on notice of such commencement of work received by Buyer; or by the delivery of the Goods or performance of the Services within the time for such delivery/performance as stated in the Purchase Order.
2. **Delivery Date.** Seller shall deliver the Goods in the quantities and pursuant to Buyer’s specifications and perform the Services pursuant to Buyer’s specifications on the date(s) specified in the Purchase Order or as otherwise agreed in writing by the parties (“Delivery Date”). If no Delivery Date is specified, Seller shall deliver the Goods and perform the Services within 20 business days of Seller’s receipt of the Purchase Order.
3. **Delivery Point.** Seller shall deliver all Goods to the address specified in the Purchase Order (“Delivery Point”) during Buyer’s normal business hours or as otherwise instructed by Buyer. Seller shall pack all Goods for shipment according to Buyer’s instructions or, if there are no instructions, in a commercially reasonable manner sufficient to ensure that the Goods are delivered in undamaged condition. Seller must provide Buyer prior written notice if it requires Buyer to return any packaging material. Any return of such packaging material shall be made at Seller’s risk of loss and expense.
4. **Time of Essence.** Seller acknowledges that time is of the essence with respect to Seller’s obligations, including all performance dates, timetables, project milestones and other requirements in this Agreement, or as otherwise agreed by the parties.
5. **Quantity.** No partial deliveries shall be made without written consent of Buyer. Over shipments are not acceptable without written consent of Buyer. Quantities received in excess of that shown on the Purchase Order may be rejected and returned at Seller’s risk and expense.
6. **Shipping Terms.** Delivery shall be made FOB Delivery Point. The Purchase Order number must appear on all shipping documents, invoices, correspondence and any other documents pertaining to the Purchase Order. Notwithstanding anything herein to the contrary, Seller will use a carrier and service level (e.g., ground, next day, second day, other) acceptable to Buyer. Buyer is not responsible for: (i) delivery costs and expenses incurred as a result of Seller’s failure to comply with Buyer’s shipping instructions such as use of an unauthorized carrier or of a service level that exceeds that specified; (ii) any delivery costs and/or expenses incurred by Seller in connection with the transport of items between Seller and any sub-tier suppliers and Buyer; and (iii) Buyer does not accept COD shipments unless specifically approved in advance in writing. COD shipments will be rejected at Seller’s expense.
7. **Title; Risk of Loss.** Title and risk of loss pass to Buyer upon delivery of the Goods at the Delivery Point.
8. **Price.** The price of the Goods and/or Services is the price stated in the Purchase Order (“Price”). Unless otherwise specified in the Purchase Order, the Price includes all packaging, handling, rigging, loading, unloading, crating, export, import and other transportation costs to the Delivery Point, insurance, customs duties and fees, and applicable taxes, including, but not limited to, all sales, use or excise taxes. All prices are firm. No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Buyer.
9. **Payment Terms.** Seller shall issue an invoice to Buyer on or any time after the completion of delivery of the Goods and completion of the performance of the Services and only in accordance with these Terms. Invoices will provide a line item breakdown setting forth applicable charges separating the cost of Goods and Services provided, and include: Buyer’s order number; contact names and telephone numbers; a detailed description of the Goods, including part number, quantity, unit purchase price, any other charges, Delivery Point, and Delivery Date; and a detailed description of the Service, including the individual performing the Service, dates performed, and time spent performing the Service. Buyer shall pay all properly invoiced amounts due to Seller within 45 business days after Buyer’s receipt of such invoice, except for any amounts disputed by Buyer in good faith. Any invoice received by Buyer 60 days after completion of delivery/performance will not be paid, and all invoices must be authorized through a valid Purchase Order. All payments hereunder must be in US dollars. Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller. In the event of a payment dispute, Buyer shall deliver a written statement to Seller no later than 5 business days prior to the date payment is due on the disputed invoice listing all disputed items and providing a reasonably detailed description of each disputed item. Amounts not so disputed are deemed accepted and must be paid, notwithstanding disputes on other items, within the period set forth in this Section. Seller shall continue performing its obligations under this Agreement notwithstanding any such dispute. The parties shall seek to resolve all such disputes expeditiously and in good faith.

10. **Inspection and Rejection of Nonconforming Goods and/or Services.** Buyer has the right to inspect (including, but not limited to, testing, at no additional charge or cost, and such inspection and testing may be performed by Buyer, its customers, representatives or regulatory authorities) the Goods and/or Services before, on and after the Delivery Date for a reasonable period of time. Seller's facilities, books, and records relating to this Agreement shall be subject to inspection by Buyer or its designee. Seller shall maintain complete, true and accurate records relating to the provision of the Goods and/or Services under this Agreement, including records of the time spent and materials used by Seller in providing the Goods and/or Services. If specific tests, inspection or witness points are included in the Purchase Order or at Buyer's request, the Goods shall not be shipped without an inspector's release or a written waiver with respect to each such point. Buyer's failure to inspect or reject or detect defects by inspection shall not relieve Seller from its responsibilities. Buyer, at its sole option, may inspect all or a sample of the Goods and/or Services, and may reject all or any portion of the Goods and/or Services if it determines the Goods and/or Services are nonconforming or defective. If Buyer rejects any portion of the Goods and/or Services, Buyer has the right, effective upon written notice to Seller, to: (i) rescind this Agreement in its entirety; (ii) accept the Goods and/or Services at a reasonably reduced price; or (iii) reject the Goods and/or Services and require replacement of the rejected Goods and/or Services. If Buyer requires replacement of the Goods and/or Services, Seller shall, at its expense, promptly within 10 business days replace the nonconforming or defective Goods and/or Services and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective Goods and the delivery of replacement Goods and/or Services. If Seller fails to timely deliver replacement Goods and/or Services, Buyer may replace them with goods and/or services from a third party and charge Seller the cost thereof and terminate this Agreement for cause pursuant to Section 15. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller's obligations under this Agreement, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions. For any repairs or replacements, Seller, at its cost and expense, shall perform any tests requested by Buyer to verify conformance to this Purchase Order.

11. **Change Orders.** Buyer may at any time, by written instructions and/or drawings issued to Seller (each a "Change Order"), order changes to the Goods and/or Services. Seller shall within 5 business days of receipt of a Change Order submit to Buyer a firm cost proposal for the Change Order. If Buyer accepts such cost proposal, Seller shall proceed with the changes subject to the cost proposal and the terms and conditions of this Agreement. Seller acknowledges that a Change Order may or may not entitle Seller to an adjustment in Seller's compensation or the performance deadlines under this Agreement.

12. **Warranties.** Seller represents and warrants to Buyer that all Goods will: (i) be free from any defects in workmanship, material and design; (ii) conform to applicable specifications, drawings, designs, samples, descriptions and other requirements specified by Buyer; (iii) be fit for their intended purpose and operate as intended; (iv) be new and of merchantable quality, not used, rebuilt or made of refurbished material unless approved in writing by Buyer; (v) be free and clear of all liens, security interests or other encumbrances; and (vi) not infringe or misappropriate any third party's intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by Buyer and expiration/termination of this Agreement. Manufacturer warranties are passed through to Buyer. Seller represents and warrants to Buyer that: (i) its personnel are properly licensed, certified or accredited as required by applicable law, and it shall perform the Services using personnel of required skill, experience, training and qualifications, and in a timely, professional, safe and workmanlike manner in accordance with industry standards and best practices for similar services and shall devote adequate resources to meet its obligations under this Agreement; (ii) any Services and/or Goods provided conform to Buyer's specifications, the requirements of all applicable industry, accreditation and regulatory standards and all applicable laws, regulations and ordinances; (iii) it maintains all licenses, leases, agreements, contracts, permits, approvals, consents and certifications necessary to do business in the state where any Service is being provided; and (iv) it will upon request provide Buyer with a copy of those licenses, leases, agreements, contracts, permits, approvals, consents and certifications and will immediately inform Buyer upon any licenses, leases, agreements, contracts, permits, approvals, consents and certifications becoming terminated, void or otherwise ineffective. The warranties set forth in this Section are cumulative and in addition to any other warranty and remedy provided by this Agreement, law or equity.

13. **Indemnification.** Seller shall, at its expense, defend, indemnify, and hold harmless Buyer and its successors and assigns and its/their respective officers, directors, employees, shareholders, agents, and representatives (collectively, "Indemnitees") against any and all loss, injury, death, damage (whether actual, punitive, consequential or otherwise), liability, claim, deficiency, action, suit, proceeding, judgment, interest, award, penalty, fine, cost or expense, including attorney, fees, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "Losses") arising out of or occurring in connection with the Goods and/or Services purchased from Seller or Seller's negligence, willful misconduct or breach of this Agreement. In addition, Seller shall indemnify, defend, release and hold harmless the Indemnitees from and against any claims and Losses arising out of employment, immigration or labor claims or proceedings initiated by Seller personnel against or involving Buyer. Seller shall not enter into any settlement without Buyer's prior written consent. Without limiting the generality of the foregoing, for the avoidance of doubt, the foregoing indemnification obligation, includes, but is not limited to: (i) the delivery or installation of any Goods, any defect in any Goods, or Seller's failure to warn or inform Buyer about any

Goods or use of any Goods, whether or not the conduct by Seller (including Seller's officers, directors, agents, employees, and representatives) or any of Seller's sub-tier suppliers or subcontractors was tortious and whether or not Buyer's tortious conduct or acts or omissions contributed to the damage; (ii) any breach by Seller of the Purchase Order or these Terms; (iii) third party claims of any kind, whether based upon negligence, strict liability, or otherwise, arising out of or connected in any manner to Seller's acts or omissions in breach of the Purchase Order or these Terms; and (iv) the failure of Seller to cause any liens or stop notices or other encumbrances of any nature to be fully discharged. The indemnification shall not apply to death, injuries, loss, damage, or destruction caused by the willful acts or sole negligence of Buyer, including its officers, directors, agents, employees, and representatives.

14. Insurance. During the term of this Agreement and for a period of 4 years thereafter (i.e., 4 years from the date of delivery of the Goods or performance of the Services), Seller shall, at its own expense, maintain and carry appropriate insurance in full force and effect, with financially sound and reputable insurers, which includes, but is not limited to: commercial general/public liability (including products liability and completed operations liability); workers' compensation insurance and all other insurance required by statute, and coverage shall include employers' liability; business automobile liability insurance covering hired, owned and non-owned vehicles; and errors and omissions insurance. Upon Buyer's request, Seller shall provide Buyer with a certificate of insurance from Seller's insurer evidencing the insurance coverage specified in these Terms. The certificate of insurance shall name Buyer as an additional insured. Seller shall provide Buyer with 30 days' advance written notice in the event of a cancellation or material change in Seller's insurance policy. Except where prohibited by law, Seller shall require its insurer to waive all rights of subrogation against Buyer's insurers and Buyer. Nothing in this Agreement shall exclude or limit (i) Seller's liability under this Agreement, or (ii) Seller's liability for fraud, personal injury or death caused by its negligence or willful misconduct.

15. Termination. If Seller becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy or insolvency, receivership, reorganization, or assignment for the benefit of creditors ("Bankruptcy Event"), then Buyer may terminate this Agreement upon written notice to Seller. In addition to any remedies that may be provided under these Terms or applicable law, Buyer may terminate this Agreement with immediate effect upon written notice to Seller, either before or after the acceptance of the Goods or Seller's performance of the Services, if Seller has not performed or complied with any of these Terms, in whole or in part. Without limiting the generality of the foregoing, Buyer may cancel a Purchase Order, in whole or in part, via written or electronic communication, if Seller: (i) fails to deliver Goods or Services in accordance with specified delivery times, requirements, or other specifications or provisions of Buyer; (ii) fails to replace or correct defective Goods or Services as Buyer requires; (iii) breaches or terminates any other obligation, agreement, contract, representation or warranty, written or oral, between the parties; or (iv) there is a material change in control or ownership of Seller or its assets. Upon such termination/cancellation, Buyer shall have the right to procure substitute Goods and Services, and Seller shall be liable to Buyer for any and all Losses, damages, penalties, and excess cost incurred by Buyer caused by Seller's failure to execute the requirements of the Purchase Order and Terms. Buyer may suspend or terminate a Purchase Order, in whole or in part, for its sole convenience, including, but not limited to, a rejection of Seller's cost estimate for a Change Order request submitted by Buyer, via written or electronic communication. Suspension or termination shall be effective upon receipt of the notice by Seller or its representative. Upon such notice, Seller shall, at the time specified by Buyer, or upon receipt if not specified, stop work and suspend or terminate outstanding orders under the Purchase Order, place no further subcontracts/orders related to the terminated portion, terminate, or if requested by Buyer assign, all subcontracts/orders to the extent they relate to work terminated, protect all property in which Buyer has or may acquire an interest, transfer title and make delivery to Buyer of all Goods, equipment, items, materials, or other property held or acquired by Seller in connection with the suspended or terminated portion(s) of the Purchase Order, and deliver all completed work, work in process, designs, drawings, specifications, documentation and material required and/or produced in connection with such work. Buyer's maximum liability for items related to suspension or termination shall be payment for the Goods received and accepted and Services accepted by Buyer prior to the termination. No cancellation, restocking, or other charges shall be paid by Buyer.

16. Confidential Information. Proprietary or confidential information of Buyer means all information disclosed to Seller by Buyer (whether orally or in writing or through any means, media, form, person or entity and whether or not marked, designated or otherwise identified as "confidential" or "proprietary"), or developed by Seller that is based on, incorporates, constitutes, or is derived from any of the following Buyer property (including the property of Buyer's customers): samples, schematics, drawings, designs, plans, specifications, patterns, tools, equipment, manuals, documents, materials, data, computer software, customer lists, pricing, discounts or rebates, forecasts, and other technical, business, financial, customer, know-how, trade secret, trademark, copyright and other intellectual property information; information that by its nature Seller should reasonably understand to be confidential or proprietary; and the terms and existence of the Purchase Order ("Confidential Information"). Confidential Information shall remain Buyer's personal property. Confidential Information is solely for the benefit of Buyer and may not be disclosed, copied or used unless expressly authorized in advance by Buyer in writing. All intellectual property that is protectable shall be considered work(s) made for hire for Buyer. If by operation of law any such intellectual property is not

owned in its entirety by Buyer automatically upon creation, Seller hereby transfers and assigns to Buyer the entire right, title and interest to such intellectual property. Seller further agrees to enter into and execute any documents that may be required to transfer or assign ownership in and to any such intellectual property to Buyer. Seller will use reasonable care to protect the confidentiality of Buyer Confidential Information, and in any event, will use at least that degree of care that Seller uses to protect its own confidential and proprietary information. If Seller determines that it must consult with third parties, for the purpose of delivering Goods or Services to Buyer, Seller will ensure that such third parties have entered into an agreement with Seller, which protects Buyer's interests in the same manner set forth in this Agreement. Upon Buyer's request, Seller shall promptly return all documents and other materials received or derived from Buyer and any copies thereof and any notes of Seller containing Buyer's Confidential Information, and upon Buyer's request, destroy any of the Confidential Information in Seller's possession, and confirm such to Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section.

This Section does not apply to information that Seller can prove by contemporaneous documentation is: (i) in the public domain; (ii) known to Seller at the time of disclosure with no obligation of confidentiality; or (iii) rightfully obtained by Seller on a non-confidential basis from a third party.

Buyer's property furnished by Buyer to Seller shall be accepted by Seller "AS IS" with all faults and without any warranty whatsoever, express or implied, shall be used by Seller at its own risk, and shall be subject to removal at Buyer's written request. Seller shall: (i) keep Buyer's property free of encumbrances; (ii) plainly mark or otherwise adequately identify it is owned by Buyer; (iii) unless otherwise agreed to by Buyer in writing, store it separately and apart from Seller's and third party owned property under Seller's control; (iv) maintain it properly, including corrosion/erosion prevention, and in compliance with any handling and storage requirements provided by Buyer, or that accompanied it when delivered to Seller; (v) supervise its use and train Buyer, including providing relevant reference manuals, booklets, pamphlets, general arrangement drawings and other drawings, wiring diagrams, operating and maintenance instructions and runs, manufacturer's literature, and other training materials, and Seller shall make itself available in person and via telephone during normal business hours for purchasing, training and consultation, at no additional cost to Buyer; and (vi) use it only to meet Buyer's orders. Buyer does not grant Seller any license whatsoever with respect to Buyer's property and Confidential Information.

17. Force Majeure. Neither party shall be liable to the other for any delay or failure in performing its obligations under this Agreement to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable ("Force Majeure Event"). Force Majeure Events include, but are not limited to, acts of God or the public enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, war, invasion, hostilities, terrorist acts, riots, strike, embargoes or industrial disturbances. Seller's economic hardship or changes in market conditions are not considered Force Majeure Events. Seller shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized and resume performance under this Agreement. If a Force Majeure Event prevents Seller from carrying out its obligations under this Agreement for a continuous period of more than 90 business days, Buyer may terminate this Agreement immediately by giving written notice to Seller.

18. Assignment. Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under this Agreement without the prior written consent of Buyer. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve Seller of any of its obligations hereunder.

19. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. Neither party is responsible for taxes on the other party's income or the income of the other party's personnel or subcontractors. If Buyer is legally required to withhold taxes for which Seller is responsible, Buyer shall deduct such taxes from payment to Seller.

20. Governing Law. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than those of the State of California. The parties consent to the exclusive jurisdiction of the state or federal courts in Sacramento County, California.

21. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

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22. Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement.

23. Amendment and Modification. These Terms may only be amended or modified in a writing titled Amendment to Buyer's Terms and Conditions stating specifically that it amends these Terms and is signed by an authorized representative of each party. These Terms prevail over any of Seller's general terms and conditions of sale regardless of whether or when Seller has submitted its sales confirmation or such terms and regardless of whether the Purchase Order references Seller's terms and conditions. The Purchase Order incorporates by reference all terms of the Uniform Commercial Code providing protection for Buyer. Buyer and Seller agree that Seller is deemed to have signed these Terms. These Terms expressly limit Seller's acceptance to these Terms. Notwithstanding anything herein to the contrary or the Purchase Order, this Agreement does not incorporate Seller's terms and conditions, quotation, contract or invoice documents.

24. Waiver. No waiver by Buyer of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Buyer.

25. Awareness. The supplier shall ensure that their personnel are aware of their contribution to product or service conformity, their contribution to product safety, and the importance of ethical behavior.