

SIFCO Forge Group
Division of SIFCO Industries, Inc.
STANDARD PURCHASE ORDER TERMS AND CONDITIONS

1. **DEFINITIONS.** The following definitions apply unless otherwise specifically stated:

“Articles” – Goods and services described in this Order.

“Buyer” – Legal entity issuing this Order.

“DFAR” – Department of Defense FAR Supplement.

“FAR” – The Federal Acquisitions Regulation.

“Government” – Government of the United States and its federal agencies.

“Order” – Purchase Order or Contract for services and/or supplies.

“Seller” – Legal entity providing goods and services.

2. **ORDERS.** These terms and conditions shall be part of Orders Buyer may issue to Seller from time to time. Each Order shall contain a description of the Articles and identify the specifications, drawings, quantities, prices, delivery schedule, terms and place of delivery. **Each such order must be signed by Buyer or other authorized procurement representative in order to be binding on Buyer.**

Orders need not be acknowledged unless an exception is taken. All exceptions, including, but not limited to price, delivery, terms, or conditions must be made to Buyer, in writing, within 15 days of Order date.

3. **AGREEMENT/ACCEPTANCE/MODIFICIATON.** An Order is Buyer’s offer to Seller and acceptance is expressly limited to its terms without additions, deletions, or other modifications. Seller’s commencement of performance, delivery of any supplies or services or acknowledgment of this Order shall conclusively evidence such acceptance. No change or modifications to this order (including any additional or different terms in Seller’s acceptance) shall be binding on Buyer unless agreed to in writing and signed by an authorized representative of Buyer.

4. **CHANGES.** Buyer may by written notice make changes within the general scope of any Order in any one or more of the following: (A) drawings, designs or specification; (B) method of shipping or packaging; (C) place of inspection, delivery or acceptance; (D) quantity; (E) delivery schedule; and (F) amount of Buyer-furnished property. Seller shall proceed immediately to perform this Order as changed. If any such change causes an increase or decrease in the cost of or the time required for the performance of any part of the work in this Order, Buyer and Seller will agree upon an equitable adjustment in the purchase price or delivery schedule or both. To qualify for adjustment consideration, any notice of intent by Seller to file a claim under this clause must be asserted within ten (10) days from the date of receipt by Seller of such written notice of change. Buyer may act upon any such claim at any time prior to final payment under this Order. Nothing in this clause shall excuse Seller from proceeding with the Order as changed.

5. **TERMINATION FOR CONVENIENCE.**

(A) The performance of work under this Order may be terminated, in whole or in part, by Buyer for its convenience in accordance with this provision. Termination of work shall be effected by delivery to Seller of a notice of termination specifying the extent to which performance of work under the Order is terminated, and the date upon which such termination becomes effective.

(B) After receipt of a notice of termination and except as otherwise directed by Buyer, Seller shall:

- (i) Stop work under the Order on the date and to the extent specified in the notice of termination;
- (ii) Place no further orders or suborders for materials, services, or facilities except as may be necessary for completion of such portions of the work under the Order that is not terminated;

- (iii) Terminate all orders and suborders to the extent that they relate to the performance of any work terminated by the notice of termination;
 - (iv) Assign to Buyer, in the manner, and to the extent directed by Buyer all the right, title and interest of Seller under the Orders or subcontracts so terminated;
 - (v) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts subject to the approval or ratification of Buyer to the extent Buyer may require, which approval or ratification shall be final for all the purposes of this section;
 - (vi) Transfer title and deliver in the manner, to the extent, and at the times directed by Buyer (1) work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the terminated by the notice of termination, and (2) the completed or partially completed plans, drawings, information, and other property which, if the Order had been completed, would be required to be furnished to Buyer;
 - (vii) Use its best efforts to sell in the manner, to the extent, at the time, and at the price or prices directed or authorized by Buyer, any property of the types referred to above; and provided however, that Seller (1) shall not be required to extend credit to any purchases, and (2) may acquire any such property under the conditions prescribed by and at a price or prices approved by Buyer; and provide further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by Buyer to Seller under this Order or shall otherwise be credited to the price or cost of the work covered by this Order or paid in such other manner as Buyer may direct;
 - (viii) Complete performance of such part of the work as shall not have been terminated by the notice of termination; and
 - (ix) Take such actions as may be necessary or as Buyer may direct for protection and preservation of the property related to this Order, which is in the possession of Seller and in which Buyer or Buyer's customer has or may acquire an interest.
- (C) After receipt of a notice of termination, Seller shall submit to Buyer its termination claim promptly, but not later than one (1) week from the effective date of termination. Settlement proposals for Seller's termination claim must be on the forms prescribed by Buyer unless otherwise agreed to by Buyer and Seller. Settlement proposals must be in the detail prescribed by such forms and must be accompanied by full and complete supporting documentation as required by Buyer.
- (D) In the event of failure of Seller and Buyer to agree upon the whole amount to be paid to Seller by reason of the termination of work pursuant to this section, Buyer shall pay to Seller the amounts determined by Buyer as follows, but without duplication of any amounts agreed upon in accordance with the Section:
- (i) For completed Goods or Services accepted by Buyer (or sold or acquired as provided above) and not previously paid for a sum equivalent to the aggregate price for such Goods or Services computed in accordance with the price or prices specified in the Order, appropriately adjusted for any saving of freight or other charges;
 - (ii) The cost of settling and paying claims arising out of the termination of work under Seller's subcontracts or orders as provided above, excluding the amounts paid or payable on account of supplies or materials delivered or Services unfurnished by Seller's subcontractors prior to the effective date of the notice of termination or work under this Order, which amount shall be included in the amount claimed under paragraph (i) above; and
 - (iii) A fair and reasonable sum as profit on the above amount; provided, however, that if it appears that Seller would have sustained a loss on the entire Order had it been completed, no profit shall be included or allowed under this subparagraph and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss;
 - (iv) Provided, however, that Buyer shall not be responsible for the payment of any consequential damages except as expressly set forth herein.

- (E) The total sum to be paid to Seller shall not exceed the total Order price reduced by the amount of payments otherwise made and as further reduced by the Order price of work not terminated. Except for normal spoilage and except to the extent that Buyer shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to Seller the fair value as determined by Buyer of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to Buyer or to a purchaser.
- (F) The obligation of Buyer to make any payments under this section shall be subject to deductions with respect to (i) all unliquidated advance or other payments on account theretofore made to Seller applicable to the terminated portion of this Order, (ii) any claim which Buyer may have against Seller, in connection with this Order or any other transaction with Seller, and (iii) the agreed price for, or the proceeds of sale of any materials, supplied, or other things retained by Seller or sold, and not otherwise recovered by or credited to Buyer.
- (G) If the termination hereunder is partial, Seller may file with Buyer a claim for an equitable adjustment in the price or prices specified in the Order for the work in connection with the continued portion not terminated by the notice of termination, and an appropriate equitable adjustment under this section must be asserted within two (2) weeks from the effective date of the termination notice.

6. STOP-WORK ORDER.

- (A) Buyer may by written order to Seller, require Seller to stop all, or any part, of the work called by this Purchase Order for a period not to exceed ninety (90) days after the stop-work order is delivered to Seller, and for any further period to which the parties may agree. Upon receipt of the stop-work order, Seller shall immediately comply with its terms and take all reasonable steps to mitigate costs allocable to the work covered by the Order.
- (B) If a stop-work order or any extension thereof expires, Seller shall not resume work without Buyer's written consent. Buyer shall make an equitable adjustment in the delivery schedule or purchase order price, or both.

7. TERMINATION FOR CAUSE.

- (A) (1) Buyer may, subject to paragraphs (C) and (D) below, by written notice of default to Seller, terminate this Order in whole or part if Seller fails to:
 - (i) Deliver the articles within the time specified in this Order or any extension.
 - (ii) Make progress, so as to endanger performance of this Order.
 - (iii) Comply with any other provision of the Order.
- (2) Buyer's rights to terminate this Order under the Subdivisions above may be exercised if Seller does not cure such failure within (10) days (or more if authorized in writing by Buyer) after receipt of the notice from Buyer specifying the failure.
- (B) If Buyer terminates this Order in whole or in part, it may acquire, under the terms and in the manner Buyer considers appropriate, Articles similar to those terminated, and Seller will be liable to Buyer for any excess costs for those Articles. However, Seller shall continue the items not terminated.
- (C) Seller shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of Seller. Examples of such causes include acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, and unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of Seller. Seller, however, must notify buyer in writing within 10 days of such occurrence.
- (D) If this Order is terminated for cause, Buyer may require Seller to transfer the title and deliver to Buyer, as directed by Buyer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (collectively referred to as "manufacturing materials" in this clause) that Seller has specifically produced or acquired for the terminated portion of this Order. Upon direction of Buyer, Seller shall also protect and preserve property in its possession in which Buyer has an interest.

- (E) Buyer shall pay Order price for completed Articles delivered and accepted. Seller and Buyer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. Buyer may withhold from these amounts any sum Buyer determines to be necessary to protect Buyer against loss because of outstanding liens or claims of former lienholders and Buyer's estimate of excess procurement costs due Buyer.
- (F) Buyer may by written notice terminate the entire Order, or any part thereof, for default in the following circumstance:
- (i) Sell consents to the appointment of a receiver, trustee, liquidator, assignee, custodian, sequestrator or similar official of Sellers or of all or a substantial part of its property, or Seller admits in writing its inability to pay its debts generally as they come due, or makes a general assignment for the benefit of creditors; or
 - (ii) Seller files a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in any bankruptcy or insolvency case or an answer admitting the material allegations of a petition filed against Seller in any such case, or an order for relief is entered against Seller in any such case, or Seller seeks relief by voluntary petition, answer or consent, under the provisions of any other now existing or future bankruptcy or other similar law providing for the reorganization or winding-up of the corporation, or providing for an agreement, composition, extension or adjustment with its creditors; or
 - (iii) And order, judgment or decree is entered in any proceeding by any court appointing, without the consent of Seller, a received, trustee, liquidator, assignee, sequestrator similar official of Seller or of all or any substantial part of its property, or sequestering all or any substantial part of the property of/Seller, and any such order, judgment or decree of appointment or sequestration remains in force un-dismissed, unstated or unvacated for a period of ten (10) days after the date of entry thereof; or
 - (iv) A petition against Seller in any bankruptcy or insolvency case in effect is filed and is not withdrawn or dismissed within ten (10) days thereafter.
- (G) In the event Seller enters into bankruptcy proceedings, whether voluntary or involuntary, Seller agrees to furnish written notification of the bankruptcy to Buyer within five days of the initiation of bankruptcy proceedings. The notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy was filed, a listing of all outstanding Orders from Buyer and a listing of all buyer –furnished property in Seller's possession.
- (H) The rights and remedies of Buyer in this clause are in addition to any other rights and remedies provided by law or under this contract.

8. BUYER-FURNISHED PROPERTY.

- (A) Seller shall not use, reproduce, appropriate or disclose to anyone other than Buyer, any material, samples, tooling, dies drawings, designs, specifications, software, technical information, customer information and other property or data furnished by Buyer; nor shall Seller use the same to produce or manufacture Articles other than those required hereunder without prior written authorization from Buyer.
- (B) Title to such Buyer-furnished property shall be and remain with Buyer at all times. Buyer does not guarantee the accuracy of any tooling or the quality or suitability of any material supplied by it. Seller shall bear the risk of loss, damage or destruction of the property furnished by Buyer and shall promptly replace or repair without expense to Buyer any property which is lost, damaged or destroyed unless such loss, damage or destruction is solely, directly and proximately caused by Buyer's negligence. All Buyer-furnished property, together with surplus materials, shall be returned to Buyer at termination or completion of this Order unless Buyer shall direct otherwise in writing.
- (C) When Buyer furnishes material, scrap allowance will not exceed 1%. Seller shall be responsible for the value of all scrap in excess of the allowable 1%, unless waived by Buyer in writing.

- (D) Where Buyer's data, designs or other information are furnished to Seller's suppliers for procurement of supplies or services by Seller for use in the performance of Buyer's Order, Seller shall insert the substance of this provision in its subcontracts. Seller acknowledges that any such data, designs or other information of Buyer are unique, and that Buyer may enforce its rights under this paragraph by specific performance.
- (E) Seller will pay all taxes and similar charges, which are legally imposed upon any tools or materials in Seller's possession, to which Buyer retains or acquires title.
- (F) Designs, tools, jigs, fixtures, templates, patterns and drawings (hereinafter collectively called "tools") furnished by Buyer and tools (except as provided in (b) hereof) made or acquired by Seller for performance of Buyer's order, the cost of which is separately quoted or amortized in the unit price, shall remain or become the property of Buyer. Such tools shall be used exclusively for production under Buyer's orders.
 - (i) Buyer shall not be obligated to reimburse Seller for the cost of any tools, unless specifically agreed to in writing by Buyer.
 - (ii) Seller will maintain the tools referred to in (i) above and will replace when necessary. Seller will not make any alterations in such tools without Buyer's specific written authorization.
 - (iii) Tools made or acquired by Seller for performance of Buyer's Order, the cost of which is chargeable to Buyer, shall be separately identified as directed by Buyer. Payment for such tools will not be made until acceptable Articles have been received and approved by Buyer and satisfactory evidence is received by Buyer that proper identification has been made.
- (G) Seller shall provide an annual accounting and physical inventory to Buyer of all buyer-furnished property provided to seller as a result of this Order. Such accounting shall be provided by Seller to Buyer within two (2) weeks after Buyer's request.
- (H) Seller agrees that a copy of this Order and any applicable attachments or supplements may be filed with any cognizant governmental agencies and agrees to execute required documents, including, without limitations, Uniform Commercial Code financing statements, and take other action as Buyer deems appropriate in order to protect Buyer's and Buyer's Customers' rights in Buyer-furnished property.

9. QUALITY REQUIREMENT.

- (A) Seller shall provide and maintain a Quality System approved by SIFCO Quality/Procurement group. Seller shall provide, at no charge to Buyer, appropriate facilities reasonably necessary to allow Buyer/or customer to perform quality inspection activities hereunder.
- (B) Seller shall provide and maintain a Quality System acceptable to Buyer and in compliance with MIL-1-45208A or MIL-Q-9858A if so identified in this order. Seller agrees that, Buyer's authorized customer, purchasing, technical and quality assurance representatives and agents (including but not limited to DCAS and FAA representatives, as applicable) shall be entitled to enter the plant of Seller at all reasonable times for the purposes of maintaining liaison between Seller's quality control system and Buyer, for reviewing Seller's manufacturing and processing plans and records, and for conducting preliminary inspection and tests of the Articles. Seller also agrees that a similar provision giving Buyer the right to enter the plants of Seller's subcontractors and suppliers shall be included by Seller in its subcontracts relating to products. If required by Buyer, Seller shall provide, at no charge to Buyer, appropriate facilities reasonably necessary to allow the customer/Regulatory Agencies/Buyer/Government/and/or/FAA representatives to perform quality control/inspection activities hereunder. Records of all inspection, processing and test work by Seller shall be kept complete and be made available to Buyer during the effectiveness of this Agreement, the performance of any Orders hereunder and for such longer period as may be specified elsewhere herein or in any such Order.
- (C) All Articles are subject to final inspection and acceptance by Buyer at destination, notwithstanding any payment or prior inspection at source. The final inspection will be made within a reasonable time after receipt of the goods. Buyer shall notify Seller if any supplies delivered hereunder are rejected, and such supplies shall be held by Buyer or returned to Seller at Seller's risk and expense.
- (D) Inspection and test by SIFCO do not relieve Seller of responsibility for defects or other failures to meet this Order's requirement discovered before acceptance. Sellers providing machining operations shall be subject to first piece submittal to Buyer for inspection acceptance. Seller shall maintain inspection records for the balance of each lot, which shall be made available to Buyer upon request.

- (E) A \$450.00 charge for handling and re-inspection of all articles, which are found to be discrepant, may be charged to Seller. If the material is returned, all freight charges will be the responsibility of Seller. Further cost of any value added by Buyer will be the responsibility of Seller if the item furnished is found to be discrepant after processing has begun.
- (F) Buyer treats as preferred those Sellers who have implemented Quality programs, including third party accreditation.
- (G) Seller shall notify Buyer in writing of any product that may be nonconforming as a result of their processing. Seller shall be responsible for costs of nonconforming products negotiated with Buyer. Seller shall notify Buyer of changes in product and/or process definition and, where required, obtain approval from Buyer. Seller shall notify Buyer of any changes, which may affect the quality of the product including changes in ownership, senior management, and manufacturing location.
- (H) Raw material dimensional (size) tolerances provided as a Supplement to these terms and conditions must be adhered to. Any variance or exception from these standards must be approved in advance by Buyer in writing. In addition the following surface quality requirements apply to all bars and billets purchased by the SIFCO Forge Group: (i) condition all forging stock to minimize or eliminate all detrimental surface imperfections. The depth of grinding shall not exceed 1/32 inch for each inch of dimension up to a maximum of 1/2" inch. All conditioned areas shall be blended. The width of blend shall be at least 4x the depth of metal removed; (ii) the surface finish of the bars/billets and ground areas shall not exceed 500 RMS.
- (I) Under no circumstance is Seller permitted to use substitute material to replace defective articles or to repair or rework them by welding or otherwise without Buyer's prior written approval.
- (J) Seller's software Quality Program in supply of item(s) on this contract will be in compliance with the provisions of the revision of DOD-STD-2168 "Defense System Software Quality Program" in effect at the date of this contract, as applicable.

10. INSURANCE.

- (A) Seller agrees to secure and carry as a minimum the following insurance covering all work to be performed under this Order:
 - (i) General liability insurance in which the limit of liability will be as follows:
 - 1. Bodily injury and property damage – each occurrence \$1,000,000,
 - 2. General aggregate limit (other than products and completed operations) - \$2,000,000,
 - 3. Products and completed operations aggregate - \$2,000,000,
 - 4. Personal injury and advertising injury - \$1,000,000,
 - (ii) Workers' Compensation insurance in which the limits of liability will be as follows:
 - 1. Workers' Compensation – statutory coverage
 - 2. Employers' liability including Ohio Stop Gap - \$1,000,000,
 - 3. Bodily injury \$1,000,000, each accident,
 - 4. Bodily injury by disease \$1,000,000, policy limit,
 - 5. Bodily injury by disease \$1,000,000, each employee;
 - (iii) Commercial automobile insurance in which the limits of liability will be - \$1,000,000 each accident;
 - (iv) Commercial umbrella insurance in which the limits of liability will be - \$3,000,000 each occurrence/aggregate;
 - (v) Contractual liability insurance sufficient in scope of coverage and amount (in Buyer's reasonable discretion) to cover the liabilities herein assumed by Seller.

(B) All such insurance shall be issued by companies with a financial rating of at least A-6 and authorized to do business under the laws of the applicable governmental authority for the place in which Seller is located, shall be in form satisfactory to Buyer, and shall contain a provision prohibiting cancellation except upon at least thirty (30) day's prior notice to Buyer. All such insurance policies will be primary in the event of a loss arising out of Seller's performance of work. Certified copies of said policies or certificates evidencing such insurance naming Buyer as an additional insured shall be provided to Buyer upon request within 30 days after the date of this Order and within a reasonable time after any renewals or changes to such policies are issued. Any failure of Buyer to request evidence of such coverage shall in no way reduce or affect Seller's obligation to name Buyer as an additional insured.

11. **WARRANTY.** Except for latent defects and notwithstanding inspection and acceptance by Buyer of Articles furnished under this Order or any condition of this Order concerning the conclusiveness thereof, Seller warrants that all Articles delivered under an Order will be free from defects in material and workmanship; merchantable; will conform to applicable descriptions, specifications and drawings; and to the extent such Articles are not manufactured pursuant to detailed design by Buyer, will be free from defects in design and fit for the intended purposes. Seller's warranties shall be enforceable against Seller by Buyer's customers as well as Buyer. Any defective Articles will be returned to Seller at Seller's expense for repair or replacement or for credit at Buyer's option. If Buyer finds it impractical to return defective Articles, it may perform necessary repairs at its own facility and charge the reasonable cost thereof to Seller.
12. **PATENT PROTECTION / INDEMNITY.** Seller shall defend, at Seller's expense, Buyer, its successor and assigns, and users of the products of Buyer, and indemnify and hold them harmless of, from and against any and all costs, liabilities, damages, losses, expenses (including attorney's fees) arising out of claims that the products, materials, or services furnished by Seller under this Order infringe any United States Patent, copyright or invention rights and/or trade secrets under common law, and with respect to any and all suits, controversies, demands, costs, damages, losses and liabilities (including attorney's fees) arising out of any such claims, whether against Buyer or against those selling or using the goods and services covered by this Order; provided, however, the foregoing shall not apply to any infringement resulting from Seller's use of a patented invention required to comply with the written instructions of Buyer if such patented invention is not normally utilized by Seller.
13. **QUANTITY RECONCILIATION/ADJUSTMENTS.** All Articles shipped to outside process sources must be count verified by that source upon receipt of Articles. Any discrepancies in count must be reported to Buyer, in writing, within 2 days of receipt and prior to outside source commencing work. Shortages that arise after the Articles have been processed will be the responsibility of Seller. All scrap Articles must be returned to Buyer for verification. Failure to adhere to this procedure will result in adjustments to Seller's invoice.
14. **PAYMENT, DISCOUNT AND PRICES.**
(A) Payment by Buyer will be made per terms shown on Orders from the date Articles are delivered and accepted and an acceptable invoice is received, whichever is later. Any payment discounts will be calculated from the same date. Discount terms shall be clearly stated on the face of each invoice.

(B) Seller warrants and represents that Article's price in this Order does not exceed the contract price for the same or similar articles to any other customer during the term of the Order.
15. **INVOICING, PACKING AND SHIPPING.**
(A) Separate invoices are required for each Order and must be sent to SIFCO Forge Group, Attn: Accounts Payable, 970 East 64th Street, Cleveland, Ohio 44103.

(B) All invoices must be in English. Invoices for Articles must include the following:
(i) Purchase order number;
(ii) Seller invoice number and date;
(iii) Payment terms;
(iv) Purchase price and supporting detail as required by purchase order;
(v) Packing slip number;
(vi) Shipping date;

- (vii) Name of Seller;
 - (viii) Billing Name and Address;
 - (ix) Delivery terms (e.g. FOB, DDP);
 - (x) Complete description of the Goods, including name, part number, serial number, quantity, weights and measures and any other identify markings;
- (C) Invoices are to be the same unit of measure as listed in the Order. An invoice should not contain items ordered on more than one Order.
- (D) Single item containers will be identified with Order number, part number, and quantity. When multiple Orders or items are combined in one container, they must be separately packaged inside the container and the packages identified as to Order number, part number and quantity.
- (E) Separate packing lists are required for each Order and must accompany each shipment. The location of the packing slip must be clearly marked on the container.
- (F) Premium transportation will be paid by Buyer only when specifically authorized. Seller shall not prepay, insure or declare value of any shipment made F.O.B. shipping point.
- (G) Seller to comply with shipping instructions as stated on Orders.

16. DELIVERY.

- (A) Seller shall be responsible for the Articles covered by an Order until they are delivered at the designated F.O.B. point. Seller shall not subcontract or manufacture in advance of reasonable flow time, or deliver any Articles in advance of requested delivery schedule. If Articles are received more than five (5) days ahead of schedule, Buyer reserves the right to: refuse delivery or keep the Articles and make payment as if the delivery was made per the delivery schedule.
- (B) Shipments Originating and/or Terminating Outside the United States – Unless otherwise specified in the Order, all shipments which originate outside the United States and terminate in the United States or outside the United States shall be delivered “Delivery Duty Paid” (DDP), buyer’s designated destination. The term “DDP” and the rights and obligations of Buyer and Seller will be as defined by Incoterms 2000, the ICC Official Rules for the Interpretation of Trade Terms.
- (C) Should Seller experience or anticipate any delay in performing this Order, whether or not such delay is excusable under the Termination for Cause clause, (Item 6), Seller shall immediately notify Buyer of such delay, its expected duration and the reasons thereof. Neither such notification nor an acknowledgment by Buyer shall constitute a waiver of the Order’s delivery schedule. The delivery schedule shall not be modified unless the parties do so in writing. Seller shall be liable for any direct or consequential damages resulting from a delay unless the delay is waived by Buyer.
- (D) Partial shipments can only be made with Buyers approval. If unapproved partial shipment is made, Buyer, at his option may: (i) return item(s), (ii) and withhold invoice payment until the total order has been received or (iii) process the material and charge the supplier for any additional set-up cost incurred, plus \$500.00 for additional material handling and invoice processing.
- (E) A minimum and maximum weight tolerance is provided on each Order for raw material. All overages and under weight shipments of more the 10% must be communicated to Buyer prior to shipment for disposition. Failure to comply with this Order provision can result in over shipments being returned at Seller’s expense.
- (F) Any delivery forecasts provided by Buyer to Seller relative to this Order is for planning purposes only and shall be provided without any obligation or liability on Buyer’s part. Such delivery forecasts shall not relieve, modify, or otherwise alter Seller’s obligations to meet the required delivery dates or quantity requirements set forth in this Order.

- 17. ASSIGNMENT.**
(A) Upon written notice to Seller, Buyer may assign this Order or any interest hereunder, without recourse.
(B) Performance of this Order shall not be assigned or delegated by Seller in whole or in part without the prior written consent of Buyer.
- 18. CLEARANCE OF MATERIAL INTENDED FOR PUBLIC RELEASE.** No news release, including photographs and films, advertisement, public announcement, denial or confirmation of same, or any part of the subject matter of an Order shall be made without prior written approval of Buyer.
- 19. SETOFF AND WITHOLDING.** Buyer may set off an amount due from Seller, whether or not under this Order, against any amount due Seller hereunder. Buyer may withhold from payment to Seller an amount sufficient to reimburse Buyer for any loss, damage, expense, cost or liability relating to Seller's alleged or actual failure to comply with any requirements of this Order or any other Order issued by Buyer to Seller.
- 20. DRAWINGS.** Seller may make no drawing changes without Buyer's prior written approval. Seller will provide updated drawings to the new configuration with explanation as to how the changes incorporated differ from the previous configuration on all changes.
- 21. DISPUTES.**
(A) In the event the parties hereto have a dispute under the contract concerning any questions of law or fact and such dispute cannot be settled between the parties, either party hereto may avail themselves to whatever remedies may be available to them at law or in equity in accordance with Item 27.
(B) Pending final decision of any dispute hereunder, Seller shall proceed with performance of the Order. If the dispute arises out of a difference in interpretation between the parties as to the performance requirements of the Order, then Seller shall continue performance with the interpretation of performance as determined by Buyer.
- 22. ATTORNEY FEE.** If Buyer brings a successful action or asserts a successful counterclaim for enforcement of the terms and conditions of this Order, Seller agrees that Buyer shall be entitled to an award of its reasonable attorney's fees and court costs associated with such enforcement or counterclaim proceedings.
- 23. GRATUITIES.**
(A) Seller (nor any agent or representative of Seller) will not offer gratuities to any employee of Buyer (Buyer may accept common courtesies, sales promotions, business related meals, entertainment, gifts or favors when the value involved is not significant and clearly will not place Buyer under any obligation to Seller). Failure of Seller to honor this commitment may, at Buyers options, result in termination of one or more Orders per Termination for Cause.
(B) This Order is subject to the Anti-Kickback Act of 1986, which prohibits any person from providing or offering, or attempting to offer kickbacks or soliciting or accepting kickbacks. Seller shall have and follow procedures designed to prevent and detect possible violations, shall report in writing any violations to the SIFCO Forge Group, General Manager, and shall cooperate fully with any federal agency investigating a possible violation. The substance of this clause shall be included in all subcontracts issued under this Order. By acceptance of any Order with these terms and conditions, Seller (Subcontractor) hereby certifies that it has not paid kickbacks.
(C) Seller warrants that it is in full compliance with the provisions of the Anti-Kickback Law, and any other federal procurement laws, and shall indemnify and hold buyer harmless from any liability Buyer may incur resulting from Seller's failure in such compliance.
- 24. COMPLIANCE WITH LAWS.**
(A) Seller shall comply with all federal, state, and local laws, executive regulations and orders. Seller shall produce the Articles in compliance with all requirements of The Fair Labor Standards Act as amended. Seller shall indemnify and hold Buyer harmless to the full extent of any loss, damage or expense, including lost profit, attorneys fees and court costs, for any failure or alleged failure of Seller to comply with the requirements of this paragraph.
(B) Seller hereby certified that any Goods called for by this Order that are manufactured in the United States have been or will be produced in compliance with the Fair Labor Standards Act of 1938 (29U.S.C. paragraph 201-219) and, insofar as applicable to this Order, the Walsh-Healy Public Contracts Act (41 U.S.C. paragraph 35-45) and the Work Hours Act of 1962 (40 U.S.C. paragraph 327-332), and any amendments thereto, as well as

with the provisions of any other federal law with respect to labor relations, minimum wages and hours of employment, now in effect or hereafter enacted, and with any and all rules and regulations issued under each and every such act. Seller agrees that this certification may be considered as the certificate contemplated by the amendment dated October 26, 2949, to the Fair Labor Standards Act of 1938.

25. INDEMNIFICATION.

(A) In addition to the other indemnification provisions set forth herein, Seller covenants and agrees to defend, indemnify, protect, and hold harmless Buyer, its officers, directors, employees and agents (“Indemnified Person”) from and against any liability, claim of liability allegation, judgment, cost expense (including reasonable attorneys fees), cause of action, loss, or damage whatsoever, including, without limitation, death or injury to any person or damage to any property, resulting from or arising out of Seller’s performance under this Order, howsoever arising, including, without limitations, by reason of negligence, breach of warranty, defect in design, material, workmanship or Service, or strict liability, unless caused by the sole negligence of the Indemnified Person. In the event Buyer should bring an action for enforcement of this indemnification provision, Seller agrees that Buyer shall be entitled to be awarded its reasonable attorneys’ fees and costs if Buyer prevails in such proceeding.

(B) Seller agrees in any instance where any claims, suites, action or legal proceedings, are brought against Seller and in any way affect Buyer’s interest under their Order or otherwise, that;

(i) Seller shall notify Buyer in a timely manner (not to exceed five (5) business days) after learning of any actual or threatened claims, suites, actions or legal proceedings, and shall not at any time consummate any settlement without Buyer’s prior written consent;

(ii) Without releasing any obligation, liability or undertaking of Seller to indemnify Buyer hereunder, Buyer shall have the right to:

1. Cooperate in the defense of such claim;
2. With permission of the court, intervene in any such action; and
3. Supersede Seller in the defense of any such claim.

26. **OCCUPATIONAL SAFETY AND HEALTH ACT.** Seller certifies it is in compliance with the provisions of OSHA. If the Articles purchased herein are considered toxic or hazardous as defined in Section 1910.1000 of General Industrial Stands, two copies of the material safety data sheet must be submitted to Buyer prior to shipment of the articles.

27. **APPLICABLE LAW AND VENUE.** This Agreement and an Order issued hereunder are to be governed by and construed exclusively under the laws of the State of Ohio, U.S.A. Both Buyer and Seller hereby submit to the exclusive jurisdiction and venue of the Courts of General Jurisdiction of the State of Ohio in the County of Cuyahoga. Buyer and Seller hereby agree that the above sets forth the sole and exclusive jurisdiction and venue in which any lawsuit involving this contract may be filed.

28. **EQUAL OPPORTUNITY AND AFFIMATIVE ACTION.** Seller will comply with the following sections of the Code of Federal regulations: 48 C.F.R. section 52.222-26 (“Equal Opportunity”) 48 C.F.R. section 52.222-35 (“Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans”); and 48 C.F.R. section 52.222-36 (“Affirmative Action for Workers with Disabilities”), Executive Order 13201 (“Notification of Employee Rights Concerning Union Dues and Fees), as the same may be amended from time to time, to the extent that such sections are applicable to Seller’s performance under this Order.

29. **ETHICAL PRACTICES.** Seller shall not recruit or induce Buyer’s permanent employees whose area of direct responsibility is related to this Order to become employees of Seller during the term of this Order or for a period of six (6) months thereafter.

30. **PARTIAL INVALIDITY WAIVER.** If any provisions of these terms and conditions or an Order hereunder, is or become void or unenforceable, the other provisions shall remain valid and enforceable. Waiver of one provision of these Terms and Conditions by Buyer shall in no way act as a waiver of any other provisions herein.

31. **ORDER OF PRECEDENCE.** In the event of any inconsistency among the provisions of an Order hereunder, such inconsistency shall be resolved by giving precedence in the following sequence: (A) provisions typed on the face of the Order, (B) these Terms and Conditions, (C) other documents, exhibits and attachments provided by Buyer and (D) the specifications provided to Seller by Buyer.

32. **PATENT RIGHTS.** Seller agrees to assign and assigns to Buyer an interest Seller may have in inventions conceived by Buyer and reduced to practice by Seller using funds provided by Buyer under this Order. Seller hereby agrees to grant and grants to Buyer a worldwide irrevocable, non-exclusive, royalty-free license to make, use and sell any invention conceived or first actually reduced to practice in the course of or under the Order.
33. **CONDIITONS APPLICABLE IF GOVERNMENT CONTRACT NUMBER APPEARS IN THE ORDER.** If this Order contains a Government contract number, FAR Part 15 & 52 and DFAR Part 252 are incorporated herein and made a part hereof to the extent that they apply to the Government contract and take precedent to the extent they conflict with any other terms herein.
34. **CUMULATIVE REMEDIES.** The rights and remedies herein reserved to Buyer shall be cumulative and additional to any other or further rights and remedies provided in law or equity.
35. **SURVIVAL.** Seller agrees that the Warranty (11), Patent Protection/Indemnity (12), Delivery (16) Setoff and Withholding (10), Gratuities (23), Compliance with Laws (24), Indemnification (25), Applicable Law and Venue (27), Patent Rights (32) and Survival (35), of this Order and all provisions which relate to claims which may be made by Buyer under this Order shall survive and continue in full force and effect upon the termination of this Order.
36. **NO WAIVER.** Buyer's failure to seek remedy for any breach by Seller or Buyer's failure to insist on performance of any of the terms or conditions herein or exercise any right or privilege hereunder shall not thereafter be deemed a waiver for any such terms, conditions, or privileges or any other terms, conditions, or privileges whether of the same or similar type.
37. **ENTIRE AGREEMENT.** This Order constitutes the entire agreement between Buyer and seller and supersedes all prior oral and written agreements, course of performance, communications and negotiations between the parties with respect to the subject matter herein.