



Purchase Order Terms and Conditions



**WORLD AUTHORITY
IN ADVANCED TECHNOLOGY FOR
MAGNETIC, VIBRATORY AND
METAL DETECTION APPLICATIONS**

ERIEZ MANUFACTURING CO.

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Manufacturing Facilities in:

AUSTRALIA ■ BRAZIL ■ CANADA ■ CHINA ■ INDIA ■ JAPAN
MEXICO ■ SOUTH AFRICA ■ UNITED KINGDOM ■ UNITED STATES

1. Contract Formation.

This purchase order is an offer to purchase goods and/or services from the Seller by Eriez Manufacturing Company ("Buyer"). This purchase order does not constitute an acceptance by Buyer of any offer, any quotation, or any proposal from Seller. Buyer shall not be bound by this purchase order until Seller executes and returns to Buyer the acknowledgment copy of this purchase order which shall constitute acceptance of the offer set forth in this purchase order. Seller shall be bound by this purchase order when: (1) Seller executes and returns the acknowledgment copy of this purchase order; (2) Seller otherwise communicates to Buyer in writing its acceptance of this purchase order; or (3) Seller delivers to Buyer any of the goods, or renders to Buyer any of the services, identified in this purchase order. This purchase order expressly limits acceptance to the terms and conditions stated herein, and any additional or different terms proposed by the Seller are rejected unless expressly assented to in writing by Buyer. Buyer expressly objects to any terms contained in any of Seller's documents which are different from, or additional to, the terms of this purchase order. Buyer's execution of any document issued by Seller shall constitute only an acknowledgment of the receipt thereof, and shall not be construed as an acceptance of any of the terms therein. No contract shall exist between Buyer and Seller except as provided in this purchase order.

2. Entire Agreement.

The parties agree that this purchase order, including the terms and conditions on the face and reverse side hereof, together with any documents attached hereto or incorporated herein by reference, contains the complete and final contract (the "Contract") between Buyer and Seller. This purchase order supersedes all prior understandings, agreements and negotiations between the Buyer and Seller with respect to the subject matter hereof.

3. Amendments.

The Contract may not be amended or otherwise modified except by a writing which is executed by Buyer. Any acknowledgment form or other document of Seller containing terms and conditions shall not have the effect of modifying the terms and conditions of this purchase order, even if signed by Buyer, and such documents are hereby specifically rejected. Buyer shall consider a request by Seller for an amendment only if such request is in writing and is directed to specific paragraphs in this purchase order. No such amendment shall be binding upon Buyer unless specifically accepted in writing by Buyer.

4. Change Orders.

The Buyer reserves the right to make, at any time, written change orders with respect to any one or more of the following: (1) specifications, drawings, and data incorporated into the Contract; (2) methods of shipment or packing; (3) place of delivery; (4) time of delivery; (5) manner of delivery; and (6) quantities. If any such change order causes an increase or decrease in the cost of, or the time required for, performance of the Contract, an equitable adjustment shall be made in the contract price or delivery schedule, or both. Any claim by Seller for an adjustment under this Paragraph 4 must be approved by the Buyer in writing before the Seller proceeds in accordance with such change order. If Seller proceeds in accordance with the change order without having first obtained Buyer's written consent to an adjustment, Seller shall be deemed to have waived any claim for an adjustment and Buyer shall not be obligated to make or honor any adjustment relating to the change order in question.

5. Price.

(a) Prices stated in this purchase order shall apply to all deliveries to be made or services to be rendered hereunder. Buyer shall have no obligation to pay invoices for goods or services at any increased price unless such increased price shall have been consented to in writing by the Buyer. The price set forth in this purchase order is the entire price for the goods and/or services in question. Unless specifically otherwise set forth in this purchase order, such price includes all shipping, postage, handling, packaging, containers, drayage and any other materials or services provided in connection with the performance of the Contract by Seller. Except as is otherwise provided in this purchase order, Buyer shall not be obligated to pay any fees or charges of any nature whatsoever which are in addition to the purchase price.

(b) Except as is otherwise provided in this purchase order, the purchase price includes all applicable federal, state and local taxes, including (without limitation) sales taxes. Seller shall be solely responsible for the payment of any such taxes.

(c) If a price discount is applicable for prompt payment, the discount period shall begin on the later of: (1) the date of Buyer's receipt of the Seller's invoice; or (2) the date of the Buyer's receipt of the goods and/or services which are the subject of the purchase order.

6. Payment.

Unless otherwise provided in this purchase order, payment shall not be due until thirty (30) days following: (1) in the case of goods, delivery and acceptance of the goods; and (2) in the case of services, complete performance of the services.

7. Delivery.

Time of delivery and time of performance by the Seller is of the essence. Unless otherwise specified in this purchase order, delivery of all goods shall be F.O.B. Buyer's factory in Erie, PA. Seller shall be responsible for arranging transportation of the goods and the insuring of the goods while in transit and prior to acceptance of the goods by Buyer. Seller shall be solely responsible for the cost of such transportation and insurance. If the delivery of the goods is not made at the times specified in this purchase order, or the rendering of services is not completed at the times specified in this purchase order, Buyer reserves the right, without liability, and in addition to its other rights and remedies, to take either or both of the following actions: (1) direct expedited routings of the goods (the difference in cost between the expedited routing and the purchase order routing shall be paid by Seller); and/or (2) terminate the Contract as provided in Paragraph 15, below. If Buyer terminates the Contract, Buyer may, at its option, purchase substitute goods or services elsewhere and charge the Seller with any losses and expenses incurred by Buyer in connection therewith. Buyer will have no liability for payment for goods delivered to Buyer which are in excess of quantities specified in the Contract and the applicable delivery schedules. Such goods shall be subject to rejection and return at Seller's expense, including (but not limited to) transportation charges both ways. The foregoing remedies are in addition to, and not in lieu of or in limitation of, any other rights and/or remedies Buyer may have under applicable law or under the terms of the Contract.

8. Inspection and Acceptance of Goods.

(a) Except as is otherwise provided in this purchase order, final inspection and acceptance of goods shall be made as promptly as practical after delivery. Notwithstanding the foregoing, the failure of Buyer to promptly inspect and accept or reject goods, or to detect defects by inspection, shall not: (1) relieve Seller of any liability for the failure of the goods to conform to the requirements of the Contract; and (2) result in the imposition of any liability whatsoever upon Buyer.

(b) In the event that any goods are defective in design, materials or workmanship, or otherwise not in conformity with the requirements of the Contract, Buyer shall have the right to: (1) reject the goods and, in accordance with Paragraph 15, below, terminate the Contract for default as to the rejected goods; (2) reject the goods and require correction by the Seller; (3) reject the goods and return the goods to Seller at Seller's expense; (4) accept the goods and deduct from the amount due Seller the cost of remedying the defects; and/or (5) accept the goods and deduct from the amount due the Seller the greater of (i) any damages incurred by Buyer as a result of the defect or non-conformity in question, or (ii) the difference in value of the goods as delivered and the purchase price under the Contract. If Buyer elects to reject the goods and require their correction, Seller shall at no expense to Buyer promptly correct or replace them with goods conforming to the requirements of the Contract in accordance with Buyer's instructions. If Seller fails to do so promptly Buyer may either: (1) replace or correct such goods and charge Seller the costs incurred to do so; or (2) terminate the Contract for default in accordance with Paragraph 15, below.

(c) Acceptance of all or part of the goods shall not be deemed to be a waiver of Buyer's right to revoke acceptance, to reject the goods, and to return all or any portion of the goods because of a failure of the goods to conform to the requirements of the Contract (including, but not limited to, any breach of warranty).

(d) Seller shall be solely responsible for the cost of returning any rejected goods to the Seller, including (but not limited to) handling and transportation charges.

(e) Buyer shall not be liable for failure to accept any part of the goods, if such failure is the result of any cause beyond the control of Buyer. Such causes include (but are not limited to): (1) fires; (2) floods; (3) Acts of God; (4) strikes; (5) differences with employees; (6) casualties; (7) delays in transportation; (8) shortages of transport; (9) inability to obtain necessary materials or machinery; and/or (10) total or partial shutdown of Buyer's plant for any cause.

(f) Payment for any goods shall not constitute acceptance of the goods.

(g) The remedies of the Buyer which are set forth in this Paragraph 8 are in addition to, and not in lieu of or in limitation of, any other rights and/or remedies which Buyer may have under applicable law or under the terms of the Contract.

9. Title and Risk of Loss.

Unless otherwise provided in this purchase order, title and risk of loss with respect to goods to be furnished pursuant to this Contract shall remain with Seller until actual delivery of the goods to, and acceptance thereof by, the Buyer, at which time title and risk of loss will pass to Buyer.

10. Seller's Warranties.

Seller warrants that it shall have good and marketable title to all goods furnished pursuant to the Contract and that such goods shall be delivered to Buyer free and clear from all liens and encumbrances. Seller further warrants that all goods furnished pursuant to the Contract shall be free from defects in material and workmanship and shall be in conformity with the requirements of the Contract. Seller further warrants that such goods shall be merchantable and fit for the purpose for which they are purchased and shall be free from defects in design. Buyer's approval of Seller's design shall not be construed to relieve Seller of this warranty. Seller agrees that the warranties set forth in this Paragraph 10 shall survive acceptance of the goods. Said warranties shall be in addition to, and not in limitation or replacement of: (1) any warranties of additional scope given by Seller to Buyer, which warranties of additional scope are incorporated by reference in the Contract; and (2) any warranties which may exist as a matter of law. None of the warranties set forth in this Paragraph 10 and no other implied or express warranties shall be deemed disclaimed, limited or excluded unless evidenced by an amendment to the Contract executed by the Buyer in accordance with the provisions of Paragraph 3, above. In the event of a breach of any of the foregoing warranties, Buyer shall have such remedies as are provided under this Contract and as are provided by law. Any remedies specified in the Contract for a breach of warranty shall be in addition to, and shall not be in lieu of or otherwise limit, any remedy which Buyer may have under applicable law, including (without limitation) claims for damages.

11. Confidentiality of Information.

(a) All information disclosed by Buyer to Seller in connection with the negotiation, execution and performance of the Contract (the "Confidential Information") shall be considered confidential to Buyer. Confidential Information includes, but is not limited to: (1) technical information (including, but not limited to, designs, blueprints, specifications and engineering data); and (2) business information relating to Buyer (including, but not limited to, the existence, terms and conditions of the Contract, the intended use of the goods and services covered by the Contract, the business plans of the Buyer, information relating to customers of the Buyer, and so forth). Seller shall: (1) hold all Confidential Information in strict confidence; (2) take all necessary and appropriate precautions to maintain the confidentiality of the Confidential Information; and (3) use the Confidential Information solely for the purpose of fulfilling Seller's obligations under the Contract. Seller shall require its employees, agents, representatives and subcontractors to maintain the confidentiality of the Confidential Information. Seller shall be liable to Buyer for any breach of such obligations by Seller's employees, agents, representatives and subcontractors.

(b) Unless otherwise agreed by the Seller and Buyer in writing, any information which the Seller has disclosed or may hereafter disclose to the Buyer in connection with the negotiation, execution and performance of the Contract shall not be deemed to be confidential or proprietary information to Seller, and Buyer may use such information without restriction.

12. Indemnifications.

Seller agrees to defend, indemnify and save harmless Buyer, its officers, agents, successors, assigns and customers against all claims, demands, damages, costs, expenses, attorneys' fees or liability of any kind which arise from, or are related in any way to: (1) the actual or alleged infringement of any trade name, trademark, copyright or patent, or the misappropriation of any trade secrets or confidential information arising in connection with the possession, sale or use of the goods delivered, or services rendered, to Buyer under the Contract; (2) injuries or damages to any person or property arising from the performance of services for Buyer, if the Contract calls for the performance of such services; (3) the performance of the Contract by Buyer or any agent or subcontractor of Buyer; and/ or (4) the claims of third parties relating to or arising in connection with services performed and/or the goods delivered under the Contract. Seller further agrees, upon receipt of notification from Buyer, to promptly assume full responsibility for the defense of any and all such claims, suits, actions or proceedings for which Seller is obligated to provide indemnification under this Paragraph 12.

13. Insurance.

If the Contract covers the performance of services for Buyer, Seller agrees to maintain insurance coverages in the following minimum amounts: (1) workers compensation - statutory limits for the state(s) in which the services are to be performed; (2) general public liability - \$1,000,000 /\$3,000,000; (3) automobile liability - \$50,000 / \$100,000; and (4) property damage - \$50,000. Upon Buyer's request, Seller shall furnish evidence of such coverages to Buyer in such form as is satisfactory to Buyer. Compliance by Seller with the foregoing insurance requirements shall not affect or limit Seller's obligations to indemnify Buyer under Paragraph 12, above.

14. Termination by Buyer for Convenience.

Buyer may, for the convenience of Buyer and at Buyer's sole option and discretion, terminate the Contract, in whole or in part, by written notice of termination. Upon receipt of such notice, Seller shall terminate, pursuant to the notice, the work started under the Contract. Seller will promptly advise Buyer of: (1) the quantities of work in process and material on hand or purchased specifically for the Contract prior to termination; and (2) the most favorable disposition that Seller can make thereof. Seller shall comply with Buyer's instructions regarding disposition of such work and material. Unless otherwise directed by Buyer, finished work shall be delivered to Buyer by Seller in accordance with the terms of the Contract. Within thirty (30) days after receipt of the notice of termination, Seller shall submit its claims, if any, relating to the termination. Buyer shall have the right to verify such claims at any reasonable time by inspecting and auditing the records, facilities, work or materials of Seller relating to the Contract. In the event of a timely claim, Buyer shall pay Seller: (1) the purchase order price, pro rata, for finished work; and (2) the cost to Seller (excluding profit, overhead or losses) of work in process and raw material, based on any audit Buyer may conduct and generally accepted accounting principles. Such amount shall be reduced by the following: (1) the reasonable value or cost (whichever is higher) of any items used or sold by Seller without Buyer's consent; (2) the value of any defective, damaged or destroyed work or material; and (3) the amount received, or which may reasonably be expected to be received, by Seller for usable and/or saleable raw materials or work in process which can be used or disposed of by Seller in a commercially reasonable manner in mitigation of its claim. Buyer shall make no payment for finished work, work in process or raw material fabricated or procured by Seller in excess of Buyer's written releases. Payment as provided under this Paragraph 14 shall constitute Buyer's only liability in the event the Contract is terminated under this Paragraph 14. Seller's acceptance of such payment shall constitute acknowledgment that Buyer has fully discharged such liability. In no event shall Buyer be responsible for any lost profits, loss of use of capital, or any other form of direct, indirect, incidental or consequential damages with respect to any termination of the Contract pursuant to this Paragraph 14. Except as otherwise provided in Paragraph 15, below, the provisions of this Paragraph 14 shall not apply to any termination by Buyer for default by Seller or for any other cause allowed by law or under the Contract.

15. Termination For Default.

Buyer may terminate for default all or any part of the undelivered portion of the Contract if Seller: (1) does not make timely delivery of conforming goods as specified in the Contract; (2) materially breaches any of the terms and conditions of the Contract; or (3) so fails to make timely progress as to make it unlikely that Seller will be able to perform under the Contract. In addition, Buyer may terminate the Contract if any of the following events occur: (1) insolvency of Seller; (2) appointment of a receiver or trustee for Seller; or (3) execution by Seller of an assignment for the benefit of creditors. The exercise by Buyer of the right of termination hereunder shall not result in any liability to Buyer nor have the effect of waiving any remedies or damages to which Buyer might otherwise be entitled. The remedies set forth in this Paragraph 15 are in addition to, and not in lieu of or in limitation of, any other rights and/or remedies Buyer may have under applicable law or under the terms of the Contract. In the event that a court of competent jurisdiction should determine that Buyer wrongfully terminated the Contract for default by the Seller, such termination shall be deemed to be a termination for convenience by Buyer pursuant to Paragraph 14, above, and the liability of Buyer therefor shall be limited as provided in Paragraph 14, above.

16. Compliance With Applicable Laws.

Seller agrees that, in the performance of the Contract, it will comply with all applicable laws, regulations and orders of the United States or of any state or political subdivision. Without limiting the generality of the foregoing, Seller agrees that it will include the following statement on all invoices: "Seller represents that, with respect to the production of the goods covered by this invoice, it has fully complied with all provisions of the Fair Labor Standards Act of 1938, as amended." The Seller further agrees that the representations and provisions required by Section 202 of Executive Order No. 11246 of September 24, 1965, as to nondiscrimination in employment, are hereby incorporated in, and made a part of the Contract, by reference.

17. No Waiver.

No waiver of any right of the Buyer under the Contract or under law shall be effective unless executed in writing by Buyer. Buyer's failure or delay in enforcing strict compliance with any provision of the Contract shall not be construed as a waiver of such provision or right. The obligations of Seller with respect to any such provision or right shall continue in full force and effect, and may subsequently be enforced by Buyer at any time.

18. Performance By Seller.

This purchase order is issued to Seller in reliance upon Seller's personal performance, and Seller agrees not to assign the Contract or to delegate the performance of its duties without the prior written consent of Buyer. Any such assignment or delegation which is attempted without the prior written consent of Buyer shall be void, and shall constitute a material breach of the Seller's obligations under the Contract.

19. Work On Buyer's Premises.

If Seller's work under the Contract involves performance of work by Seller on the premises of Buyer, Seller shall take all necessary precautions to prevent: (1) the occurrence of any personal injury, including (without limitation) injury to employees of Buyer or Seller or to third parties; and (2) property damage. The Seller shall defend and indemnify Buyer against all claims which arise out of, or in any way relate to, any alleged act or omission of the Seller, its agents, employees, or subcontractors in the performance of such work. Seller shall maintain such worker's compensation, public liability and property damage insurance and employers liability and comprehensive insurance as is reasonably necessary to protect Buyer from risk and from any claims. Upon the request of Buyer, Seller shall cause Buyer to be named as an additional insured under such insurance policies. The provisions of this Paragraph 19 are in addition to, and not in lieu of, the provisions of Paragraphs 12 and 13, above.

20. Buyer's Property.

Unless otherwise agreed by the Buyer and the Seller in writing, the following items (collectively, the "Buyer's Property") shall be, and shall remain, the personal property of the Buyer: (1) all tools, equipment, patterns, fixtures, drawings or materials of every description furnished to Seller by Buyer or specifically paid for by Buyer, and any replacements thereof; (2) all "Special Tooling" as defined below, and any replacements thereof; (3) all copyrights in all plans and/or drawings furnished to Seller by Buyer; and (4) all trade secrets, intellectual property and other proprietary rights encompassed within the "Confidential Information," as defined in Paragraph 11, above. The Buyer's Property, and whenever practical each individual item of the Buyer's Property, shall be plainly marked and identified by Seller as property of Buyer and shall be safely stored separate and apart from Seller's property. Seller shall not substitute any property for Buyer's Property and shall not use Buyer's Property except in filling Buyer's orders. Buyer's Property, while in Seller's custody or control, shall: (1) be held at Seller's risk; (2) be kept insured by Seller at Seller's expense in an amount equal to the replacement cost thereof, with loss payable to Buyer, and (3) be subject to removal at Buyer's request. In the event of removal, Seller shall prepare Buyer's Property for shipment and redeliver it to Buyer in the same condition as originally received by Seller, reasonable wear and tear expected. Seller shall permit Buyer to enter Seller's facilities at any time during Seller's hours of operation to retrieve and remove any property of Buyer. The term "Special Tooling" as used in this Paragraph 20 means all jigs, dies, fixtures, molds, patterns, special cutting tools, special gauges, special test equipment, other special equipment and manufacturing aids, and drawings and any replacements of the foregoing, acquired or manufactured or used in the performance of the Contract, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the production of the goods to be produced under, or the performance of the services of the type required by, the Contract. The term does not include: (1) items of tooling or equipment heretofore acquired by Seller, or replacements thereof, whether or not altered or adapted for use in the performance of the Contract; (2) consumable small tools; or (3) general or special machine tools or similar capital items.

21. Independent Contractors.

The Buyer and Seller are strictly independent contractors with respect to one another, and nothing in the Contract shall be construed as rendering a party the partner, joint venturer, agent and/or employee of the other party.

22. Governing Law; Forum.

The Contract and the relationship between the parties shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania, excluding any choice of law provisions which would direct the application of the laws of a different jurisdiction. Any litigation arising from or relating to the Contract, or the breach thereof, shall be brought and decided exclusively in the state or federal courts located in Erie County, Pennsylvania. Buyer and Seller hereby agree to submit to the personal jurisdiction of such courts for these matters. The United Nations Convention on the International Sale of Goods, the 1974 Convention on the Limitation Period in the International Sale of Goods and the Protocol amending the 1974 Convention shall not apply to the Contract.

23. Recovery of Expenses.

The Buyer shall have the right to recover from the Seller all costs and expenses (including, but not limited to, attorneys' fees) incurred by the Buyer in enforcing the provisions of the Contract.