



**Herndon**

**Products**

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**HERNDON PRODUCTS**  
**PURCHASE ORDER - TERMS AND CONDITIONS**

The following terms and conditions shall apply to all purchases of goods and services made by Herndon's O'Fallon Missouri & Kent Washington facilities from a Seller (or supplier), regardless of anything which may appear in the Seller's terms and conditions of sale:

**1. Purchase Order Requirements.**

- (a) Buyer shall identify to supplier within the Purchase Order any requirements for approval of product, processes and equipment as needed.
- (b) Buyer shall identify to supplier within the Purchase Order any requirements for qualification for personnel as needed.
- (c) Buyer shall identify to supplier within the Purchase Order the revision level of the product that is required. If PO has N/R (not required) as the revision, then older revisions are acceptable. If none is listed it shall be made per the latest design, drawing or technical data of the part number.
- (d) Buyer shall identify to supplier within the Purchase Order any special testing, inspection or verification that is required outside of Herndon's Lot Attribute Codes.
- (e) Supplier shall maintain a Quality Management System that as a minimum equals the requirements of ISO 9001. Suppliers of COTS (commercial-off-the-shelf) items do not require a QMS system.
- (f) Supplier shall maintain product records for a minimum of seven (7) years.
- (g) Supplier shall grant right of access to any and all facilities where work is being performed for the buyer or buyers customer.
- (h) Supplier shall notify buyer of any nonconforming product and obtain buyer approval prior to any shipment.
- (i) Supplier shall notify buyer of any changes in process definition, changes of suppliers, changes of location, changes of ownership or manufacturing name and location, and when required, obtain buyer approval.
- (j) Supplier shall flow down to supply chain all applicable requirements including customer requirements.

**2. Offer to Purchase.** Buyer offers to purchase the goods (the "Goods") and/or services (the "Services") (collectively, the "Purchase Items") of Seller described in the Purchase Order attached hereto (the "Order") and in any drawings, specifications, models or samples supplied by Seller or Buyer only on the following terms and conditions, which are a part of the Order.

**3. Acceptance.**

(a) **Manner and Effect of Acceptance.** Buyer shall not be bound by this Order until Buyer receives the acknowledgement copy of this Order executed by Seller or delivery or provision of any of the Purchase Items, and acceptance of the Order in either of these manners constitutes an acceptance of all the terms and conditions stated herein. Seller shall be bound by this Order and its terms and conditions when it executes and returns the acknowledgement or when it delivers to Buyer any of the Goods or renders for Buyer any of the Services.

(b) **Entire Agreement.** This Order shall constitute the entire agreement between Buyer and Seller and incorporates all of the representations, promises and statements made in connection with this purchase of the Purchase Items and the negotiation thereof. No such representation, promise or statement not contained herein shall be binding on the parties. THIS ORDER EXPRESSLY LIMITS ACCEPTANCE TO THE TERMS AND CONDITIONS STATED HEREIN, AND ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS, WHETHER IN A QUOTATION, ACKNOWLEDGMENT, ACCEPTANCE, INVOICE OR OTHERWISE ARE REJECTED AND SHALL NOT APPLY UNLESS EXPRESSLY ASSENTED TO IN WRITING BY AN AUTHORIZED REPRESENTATIVE OF BUYER, NOTWITHSTANDING ANY CONTRARY LANGUAGE PROPOSED BY

SELLER THAT THE ACCEPTANCE OR USE OF, OR PAYMENT FOR, THE PURCHASE ITEMS BY BUYER OR ANY OTHER ACT OR FAILURE TO ACT BY BUYER, CONSTITUTES ACCEPTANCE OF ANY DIFFERENT OR ADDITIONAL TERMS OR CONDITIONS. No contract shall exist except as herein provided.

4. **Amendments.** No agreement or understanding to modify this Order shall be binding upon Buyer unless in writing and signed by Buyer's authorized agent. All specifications, drawings and data submitted to Seller or to Buyer with this Order are hereby incorporated herein and made a part hereof.

5. **Changes.** Buyer shall have the right to make, exclusively by written change orders issued by Buyer's authorized representative, changes within the general scope of the contract relating to (a) the designs or specifications, (b) delivery schedules, (c) place of inspection, acceptance or delivery or (d) method of shipment or packaging. If any such change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment shall be made in the contract price or delivery schedule, or both. Any claim by Seller for adjustment under this clause shall be deemed waived unless asserted in writing within ten (10) days of receipt by Seller of notice of the change. Seller shall not suspend performance of this Order while Buyer and Seller are in the process of making such changes and any related adjustments.

6. **Delivery.**

(a) **Packaging and Shipping.** All Goods shall be prepared and packaged for shipment so as to prevent damage or deterioration and shall not contain any FOD. Seller shall not mix lots. packages shall be clearly marked with Buyer's purchase order number and contain two copies of a packing slip containing the Purchase Order and item number, an appropriate description of the Goods and with the part specification number, serial number, lot number (with full traceability to manufacturer's lot), cure date (as applicable), and quantity of items contained within each package. All associated documentation (e.g., certifications, test reports) must be included in the package. All shipments shall be FOB Buyer's destination, unless otherwise specified on the face of this Order.

(b) **Risk of Loss.** All risk of loss or damage to Goods, if any, shall remain with Seller until receipt by Buyer of conforming Goods, if any, at the required destination. Title to, and risk of loss of, the Goods, if any, to be delivered hereunder shall, unless otherwise provided herein and subject to Buyer's rights of rejection and other remedies, pass from Seller to Buyer upon delivery of the Goods, if any, to Buyer's destination.

(c) **Time is of the Essence.** Time is of the essence with respect to delivery of all of the Goods and with respect to the rendering of all of the Services, which shall be provided on the dates stated on the face of this Order.

7. **Quantity.** The specific quantity of Goods, if any, ordered by Buyer must be delivered, and the specific quantity of Services, if any, ordered by Buyer must be rendered in full and may be changed only with Buyer's prior written consent. Normal industry quantity tolerances, if applicable, will be accepted; provided, however, that Buyer will not be bound to pay for any Goods delivered, or Services rendered, in excess of quantities ordered.

8. **Inspection.** Purchase Items purchased hereunder are subject to inspection and test at all times and all places by Buyer, its customers, and regulatory authorities. Buyer reserves the right to reject, or revoke acceptance of, Purchase Items which are not in accordance with the instructions, specifications, samples, drawings and data or Seller's warranty (express or implied), and any such Goods, if any, and will be held for Seller's instructions at Seller's risk and, if Seller so instructs, will be returned at Seller's expense. If inspection discloses that part of the Purchase Items received were defective or not in accordance with Buyer's specifications, Buyer shall have the right to cancel any unshipped or un-rendered portion of this Order, without prejudice to its remedies in connection with the defective or nonconforming Purchase Items received. Payment for Purchase Items prior to inspection, even if such prior payment was made to obtain a discount, shall not constitute acceptance thereof and shall be without prejudice to any and all claims that Buyer may have against Seller. Acceptance of all or any part of the Purchase Items shall not be deemed to be a waiver of Buyer's right either to cancel or to return all or any portion of the Purchase Items because of failure to conform to this Order, or by reason of defects, latent or patent, or other breach of warranty.

9. **Invoices and Payments.** All Goods purchased hereunder are for resale and no sales or use taxes shall be applied. All invoices must be issued in duplicate and sent to the billing address indicated in the Order for each shipment under this Order at the time of shipment. All invoices shall contain the Order number, description, part specification number, and quantity. Any cash discounts shall run from the date of receipt of the Purchase Items by Buyer or from the date of receipt of the invoice, whichever is later. Unless otherwise specified, payment shall be made 60 days from receipt of the Purchase Items and receipt of the invoice and shipping documents, whichever is later. Payment of Seller's invoices is subject to adjustment for shortages or defective goods and any right of setoff Buyer might have.

10. **Certificate of Conformance and Test Reports** All deliveries must include a certificate of conformance to manufacturer's, government's, and/or customer's specifications using, when requested by Buyer, the language in Federal Acquisition Regulation clause 52.246-15(d). When specified by Buyer, Seller shall submit with each delivery results of all tests required by the procurement specification and all applicable part drawings. When part size or configuration prohibits

conventional testing, the Seller shall use test coupons of the same material and lot to generate test results. If coupon samples are not adequate, Seller shall indicate on test report "Unable to Test" for the applicable specification. All cadmium plated parts shall meet the requirements of SAE AMS QQ-P-416 current revision unless otherwise specified. Seller shall maintain copies of certificates of conformance and test reports on file for a minimum of 7 years unless otherwise stated within the contract.

**11. Warranties.**

(a) **Quality of the Purchase Items.** By accepting this Order, Seller expressly warrants that all Purchase Items furnished hereunder will be in exact conformity with this Order and with any other description, specification, drawing, data or sample supplied by Seller or Buyer, shall be free from defects in material and workmanship, including latent defects, shall be free of any and all liens and encumbrances and shall be merchantable and fit for their intended purpose. All Services, if any, furnished hereunder will be performed by properly trained and supervised personnel and in accordance with high quality professional and industry standards. If any Purchase Item is found to be defective in material or workmanship or otherwise not in exact conformity with this Order and with any other description, specification, drawing, data or sample supplied by Seller or Buyer, Seller agrees on receipt of notice of defect or nonconformity from Buyer, to promptly cure such defect or nonconformity. Buyer shall have the right, in addition to any other rights which it may have hereunder or by law or equity, to reject and return any such Purchase Item or to cure any defect or nonconformity at Seller's expense. Seller shall bear risks and cost after notice of rejection.

(b) **Warranty against Intellectual Property Infringement.** Seller warrants that the sale and use of the Goods furnished hereunder or use of any deliverables or other information or materials provided with Services provided hereunder ("Deliverables") will not infringe upon or dilute, as applicable, any U.S. or foreign patent, copyright, trademark, trade name or other intellectual property right, or misappropriate any trade secret. In the event any claim of infringement, dilution, misappropriation or unfair competition is made, Buyer shall have, in addition to its other rights and remedies, the right to cancel delivery of any Goods and/or Deliverables to which the claim relates and to return to Seller for full credit or refund any such Goods and/or Deliverables previously delivered. Seller's obligations hereunder shall survive acceptance of the Goods and/or Deliverables and payment therefore by Buyer.

**12. Indemnification.** Seller agrees to defend, indemnify, save and hold harmless Buyer, its agents, employees, successors and assigns and Buyer's customers, from and against any and all liabilities, obligations, suits, claims, losses, damages, penalties, injuries, actions, costs and expenses (including reasonable attorneys' fees incurred in investigating and defending same) of whatsoever kind and nature, whether incurred by Buyer or alleged by others, in contract or tort (including, without in any way limiting the generality of the foregoing, strict liability in tort) or otherwise, arising in whole or in part out of a breach of any of Seller's warranties, breach of contract, negligence, allegedly defective material, workmanship or services, or out of any act or omission of Seller, its employees, agents or subcontractors. Seller's obligations hereunder shall survive acceptance of the Goods and/or Deliverables and payment therefore by Buyer.

**13. Price.** Buyer shall not be billed at prices higher than stated on this Order unless authorized by a Purchase Order Change Notice issued and signed by Buyer.

**14. Compliance with Laws.** In the performance of this Order, Seller represents and warrants that it has complied, and hereby agrees to continue to comply during the performance of this Order, with all applicable federal, state and local laws, statutes, rules, regulations, orders and ordinances now or hereafter in effect, including without limitation all of the provisions of the Fair Labor Standards Act of 1938, as amended, all of the requirements of the Occupational Safety and Health Act of 1970, federal laws, rules and regulations applicable to subcontractors of government contractors (if the Federal Government is the ultimate customer), and warrants that all Purchase Items described in this Order, and their use, will comply with all such laws, regulations, orders and ordinances. During the performance of Services under this Agreement, Seller shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin.

**15. Remedies Upon Seller's Default.** If Buyer cancels this Order following Seller's failure to make deliveries when required hereunder or following any other default by Seller of any of its obligations hereunder, Buyer shall be entitled to payment from Seller for any and all damages (including, but not limited to, direct, consequential and special damages), including lost profits, attorneys' fees incurred relative to such failure or default and any additional expense incurred by Buyer in procuring substitute goods, resulting from such cancellation for default.

**16. Termination.**

(a) **Buyer's Right of Termination.** Buyer shall have the right to terminate this Order or any part thereof at any time by providing notice of termination and the reasons therefore to Seller.

(i) **Termination For Convenience without Cause.** Buyer may terminate the Order, in whole or in part, for its convenience without cause. In the event of such termination, Seller shall be paid a percentage of the Order price reflecting

the percentage of the work performed prior to the notice of termination, plus reasonable charges the Seller can demonstrate to the satisfaction of the Buyer, using Seller's standard record keeping system, have resulted from the termination, in a total amount not to exceed, in any case, the remaining payments that would have been made under this Order. Any claim by Seller due to such a termination must be submitted to Buyer within sixty (60) days after the effective date of termination.

(ii) **Termination For Cause.** If (A) Seller fails to make delivery of Goods or to perform Services within the time specified on the Order, or any written extension thereof; (B) Seller breaches any term, provision, warranty, representation, obligation or condition of this Order; (C) Seller ceases to conduct its operations in the normal course of business (including inability to meet its obligations as they mature); (D) any proceeding under the bankruptcy or insolvency laws is brought by or against Seller; (E) a receiver for Seller is appointed or applied for; or (F) an assignment for the benefit of creditors is made by Seller, Buyer may, without limiting any other right or remedy provided by this Order or by law or at equity, terminate this Agreement, in whole or in part, by written notice to Seller, without liability except for Goods previously delivered and accepted by Buyer and Services previously rendered by Seller to Buyer. In the event of termination for cause, Buyer may produce, purchase or otherwise acquire Purchase Items elsewhere on such terms or in such manner as Buyer may deem appropriate, and Seller shall be liable to Buyer for any excess cost or other expenses incurred by Buyer. If, after termination, it is determined that Buyer did not have proper cause for the termination or that any default by the Seller was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for convenience without cause pursuant to paragraph (i), above.

(b) **Effect of Termination.** Upon the termination of this Order, in whole or in part, by Buyer for any reason, with or without cause, Seller shall immediately (i) stop all work hereunder, (ii) cause any of its suppliers or subcontractors to cease work and (iii) preserve and protect work in progress and materials on hand purchased for or committed to this Order in its own and in its suppliers' or subcontractors' plants pending Buyer's instructions. Seller shall not be paid for any costs incurred by Seller's suppliers or subcontractors which Seller could reasonably have avoided. Buyer shall not owe Seller any lost profit or payment for any materials or Purchase Items that Seller may consume or sell to others in its ordinary course of business.

**17. Limitation of Buyer's Liability.** In the event of a breach of any provision of this Order by Buyer by reason of failure to make payment when due or to accept delivery of the Purchase Items or otherwise, Buyer shall be liable only for the direct and documented costs actually incurred by Seller. IN NO EVENT SHALL BUYER'S LIABILITY EXCEED THE PURCHASE PRICE OF THE PURCHASE ITEMS TO BE PURCHASED HEREUNDER, AND IN NO EVENT SHALL BUYER BE LIABLE FOR CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND WHATSOEVER.

**18. Notices.** Any notice or communication provided for hereunder will be in writing and will be deemed given and received (a) upon delivery, if delivered personally or by facsimile transmission with receipt acknowledged, (b) one business day after having been deposited for overnight delivery with Federal Express or a comparable overnight courier, or (c) three business days after deposit in U.S. mail when sent by registered or certified mail, postage prepaid, with proof of delivery to the address of the party shown on the Order or such other address as a party may specify in a written notice to the other.

**19. Miscellaneous.**

(a) **Governing Law.** The interpretation, validity and enforcement of this Order shall be governed by the internal laws of the State of Missouri, without application of its conflicts of laws principles.

(b) **Successors and Assigns.** This Order shall be binding upon and inure to the benefit of the successors and assigns of Buyer and Seller but shall not be assignable by Seller without the prior written consent of Buyer, which consent shall not be unreasonably withheld.

(c) **Nonexclusivity.** No remedy of Buyer provided herein shall be exclusive of any other remedy provided hereunder or under any applicable law, regulation, rule, order or ordinance. Seller's sole and exclusive remedies are limited to those expressly stated herein.

(d) **Waiver.** The failure by Buyer to insist, in any one or more instances, upon the performance of any of the terms or conditions of this Order, or to exercise any right hereunder, shall not be construed as a waiver of the future performance of any such terms or conditions or the future exercise of such right.

(e) **Severability.** The invalidity or unenforceability of any of the provisions of this Order shall not affect the validity or enforceability of any of the other terms of this Order, and if any term or provision of this Order is held to be to any extent invalid or otherwise unenforceable by any court of competent jurisdiction, such provision will be construed as if it were written so as to effectuate to the greatest possible extent the expressed intent of this Order, and the remainder of the Order will not be affected thereby and will remain valid and enforceable.

(f) **Headings.** The paragraph headings hereof have been inserted for the convenience of the parties and shall not be considered in the interpretation or construction of this Order.

(g) **No Partnership or Joint Venture.** Seller is an independent contractor, and nothing contained in this Order will be construed to create a partnership or joint venture among Buyer and Seller or to make either Buyer or Seller an agent of the other party hereto for any purpose.

**20. Government Contract Terms and Conditions** If the cover page of this Order indicates that the Federal Government is the ultimate customer, the terms and conditions in the Federal Acquisition Regulation and/or an agency supplement to those regulations described below are incorporated by reference and made a part of this Order if, by the terms of the clause or the instructions below, they are applicable to this Order, with date of the clause being the same as the date of the clause in Buyer's contract with its customer. Seller may contact the Buyer to obtain full text copies of the clauses.

As appropriate to effectuate the intent of the clause, the word "Government" or the "United States" in the incorporated clauses shall mean "Buyer," the word "Contractor" shall mean "Seller," and the word "Contracting Officer" shall mean an authorized representative of Buyer. It is intended that the referenced clauses shall apply to Seller in such manner as is necessary to reflect the position of Seller as a subcontractor to Buyer and to ensure Seller will satisfy its obligations to its customer.

The following clauses are incorporated:

1. 52.203-13, Contractor Code of Business Ethics and Conduct
2. 52.219-8, Utilization of Small Business Concerns (Applicable if this Order offers further subcontracting opportunities. If the Order (except subcontracts to small business concerns) exceeds \$650,000 (\$1.5 million for construction of any public facility), the Seller must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.)
3. 52.222-26, Equal Opportunity
4. 52.222-35, Equal Opportunity for Veterans
5. 52.222-36, Affirmative Action for Workers with Disabilities
6. 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496).
7. 52.222-41, Service Contract Act of 1965
8. 52.222-50, Combating Trafficking in Persons
9. 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements
10. 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services-Requirements
11. 52.222-54, Employment Eligibility Verification
12. 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations. (MAR 2009) (Pub. L. 110-247). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.
13. If this is a first-tier subcontract with a value of \$25,000 or more, Seller shall provide Buyer with the information required to be provided to the Government regarding a first-tier subcontractor by paragraphs (c)(1) and, if applicable to Seller, (c)(3) of 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards, in sufficient time for Seller to provide that information to the Government in a timely fashion according to the time periods set out in the clause. Note that the information to be provided will be made publicly available.
14. 52.225-1, Buy American Act—Supplies
15. 52.225-5, Trade Agreements

If the cover page of this Order indicates that the Department of Defense is the agency of the Federal Government that is the ultimate customer, the following clauses from the Defense Federal Acquisition Regulation Supplement are incorporated in addition to the foregoing clauses or, if so indicated, in lieu of one or more of the foregoing clauses:

16. 252.225-7001, Buy American Act and Balance of Payment Program (in lieu of No. 13, 52.225-1, Buy American Act—Supplies)
17. 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals
18. 252.225-7014, Preference for Domestic Specialty Metals, Alt I
19. 252.225-7016, Restriction on Acquisition of Ball and Roller Bearings
20. 252.225-7021, Trade Agreements (in lieu of No. 14, 52.225-5, Trade Agreements)

21. 252.246-7003, Notification of Potential Safety Issues
22. 252.247-7003, Pass-Through of Motor Carrier Fuel Surcharge to the Cost Bearer (applicable if Seller is a motor carrier, broker or freight forwarder)
23. 252.247-7023, Transportation of Supplies by Sea
24. 252.247-7024, Notification of Transportation of Supplies by Sea

In the event more than one clause applies to a particular situation, the most restrictive one shall govern, unless the parties agree in writing to the contrary.

**21. Rated Order.** If the cover page of this order indicates that this is a DPAS rated order, the Seller shall follow all the requirements of the Defense Priorities and Allocations System regulation (15 CFR 700).

**22. Counterfeit Controls.** Seller shall only supply buyer with new materials. Used, remarked, fraudulent & counterfeit materials will not be accepted. Seller shall establish a counterfeit control program that meets AS5553, AS6174 or equivalent, in order to prevent the acceptance and shipment of fraudulent and counterfeit materials. Seller shall immediately notify Herndon Products if it becomes aware or suspects that it has furnished fraudulent or counterfeit materials. Buyer shall not return or pay for any fraudulent or counterfeit materials but shall provide evidence of such to the seller.