

Werlatone Inc. (Werlatone) Terms and Conditions of Purchase

1. General

These terms and conditions apply to the purchase orders ("Orders") issued between Werlatone Inc. (Werlatone) and the supplier ("Seller") whose name appears on the face of this order. By acceptance of this order and/or performance here under, Seller agrees to comply fully with the terms and conditions set forth herein. Acceptance of this Order is expressly limited to the terms and conditions set forth herein. Any other terms used in Seller acknowledging this Order, in the acceptance of this Order or otherwise used by Seller shall not be of any force or effect. Acceptance by Buyer of the goods, services or work delivered under this Order shall not constitute acceptance of the Seller's terms and conditions. Seller may not ship under reservation. The terms and conditions hereof are the final, complete and exclusive statement of the agreement between the parties and no change in, modification of, or revision to this Order shall be valid unless agreed to in writing and signed by Buyer.

2. Quantities and Prices

Werlatone's count shall be accepted as conclusive on all shipments not accompanied by a packing slip. Werlatone reserves the right to reject and return any material in excess of the quantities specified herein.

3. Warranties

Seller expressly warrants that all articles, materials, parts and work covered by this order will conform to the specifications, drawings, samples or other descriptions furnished or adopted by Werlatone, shall be merchantable, of good workmanship and material and free from defects for a period of 12 months from shipment date, FOB Factory. These warranties are in addition to any other warranties specified herein or implied by law, and shall survive acceptance and payment. In case of ambiguity in specifications, drawings, or other requirements of this order, Seller, before proceeding, must consult Werlatone, whose written interpretation shall be final.

4. Inspection and Final Acceptance

All articles, parts, materials and workmanship entering into the performance of this order are subject to 100% inspection, testing and final acceptance by Werlatone after delivery to Werlatone, notwithstanding if prior payment has occurred. No preliminary inspection by or on behalf of Werlatone shall relieve Seller of its own obligation to make full and adequate test and inspection. Seller agrees to furnish all reasonable facilities and assistance for tests and inspections to be made on its premises by or on behalf of Werlatone.

5. Delivery

Deliveries must be made by Seller in accordance with the delivery schedule specified herein. If for any reason Seller cannot or will not make delivery by the time specified, Seller shall immediately notify Werlatone to that effect and the reasons thereof. Werlatone reserves the right to reject or return at Seller's risk and expense all articles or materials shipped, which are in excess of or in advance of the time specified for delivery or to defer payment for advance deliveries until the specified delivery dates.

6. Patents

By acceptance of this order, Seller agrees to indemnify Werlatone against all claims, judgments, decrees cost and expenses and attorney's fees incident to any infringement or to any claimed infringement of any patent arising out of its use or sale by Werlatone or its customers of articles or materials covered by this order, of the use thereof by Werlatone in the manufacture and sale of products, unless the article or material is solely of Werlatone design or formula. Seller agrees that it will, upon request of Werlatone, and at Seller's own expense, defend or assist in the defense of any action which may be brought against Werlatone or its customer for such infringement or claimed infringement. Werlatone agrees to notify Seller promptly upon receipt of notice or information of such a suit.

7. Changes

Werlatone shall have the right, by giving written notice to Seller to make changes in the drawings, specifications, design, quantities and delivery schedule of the articles ordered. Upon receipt of any such notice, Seller shall proceed promptly to make such changes in accordance with the terms of such notice. Seller shall deliver to Werlatone as promptly as possible but in no event more than thirty (30) days from notice a statement showing the effect of any such change on the delivery date and prices, and an equitable adjustment shall be negotiated between the parties claim representative.

8. Termination

Werlatone may terminate this contract as provided in FAR 52.249-2 Termination for Convenience of the government. References in such clauses to Buyer and Seller shall mean Werlatone and Seller respectively.

9. Default

Werlatone may, by written notice of Default to Seller, terminate the whole or any part of this order (i) if the Seller fails to make delivery of supplies or to perform the services within the time specified herein or any extension thereof, or (ii) if the Seller fails to perform any of the other provisions of this order, or so fails to make progress as to endanger performance of this order in accordance with its terms, and in either of these later circumstance does not cure such a failure within a period of 10 days, or such longer period of Werlatone may authorize in writing, after receipt of notice from Werlatone specifying such failure. In the event of Seller's default, Werlatone shall, in addition to those rights contained herein and under the UCC, have the right to recover all associated costs.

10. Proprietary Rights

If articles here under are to be manufactured or supplied pursuant to WERLATONE's drawings or to specifications furnished by WERLATONE here under and are not based upon Seller's design, Seller hereby grants to WERLATONE and assigns a nonexclusive, fully paid-up, and irrevocable license to make, procure, use and sell any improvement in such article made or incorporated by Seller in its performance hereunder.

11. Werlatone's Property

Whenever Seller has in its possession any of Werlatone's property, Seller shall be deemed an insurer thereof and shall be responsible for its safe return. Equipment, patterns, dies, tooling, materials, specifications, and drawings supplied or paid for by Werlatone in connection with this order shall remain its property, shall not be used except for work performed for Werlatone, and upon request by Werlatone, shall be returned to it F.O.B., its shipping point specified on the face thereof, together with completed articles and those in process if so specified by Werlatone.

12. Nondisclosure of Trade Secrets

Seller agrees that the nature of said materials, specifications, and drawings, and the purposes for which the same are furnished by Werlatone to Seller shall be kept in strict confidence and shall be revealed only to Seller's employees to the extent necessary. These provisions shall also apply Government property furnished or supplied here under as part of a Government contract, and when so directed by Werlatone, Seller shall mark Government property with drawing and property numbers.

13. Damage and Risk of Loss

Seller assumes all responsibility for risk of loss or other damages to all articles and materials ordered here under or in its custody pursuant hereto, until delivered to Werlatone, F.O.B., its shipping point specified on the face hereof. In no event shall Werlatone be liable for anticipated profits or for damages on account of negligence or for incidental or consequential damages.

14. Claims

Seller agrees to indemnify Werlatone against all claims, whether on account of negligence or otherwise asserted by any persons other than Werlatone's employees, arising out of or resulting from Seller's performance of this order. Upon request by Werlatone, Seller agrees to furnish certificate in form satisfactory to Werlatone, evidencing adequate coverage for the benefit of both Seller and Werlatone as to workmen's compensation, occupational disease, unemployment compensation, fire and extended coverage, and public liability, including contractual liability on both owned and non-owned vehicles.

15. Assignment

No right or obligation under this order (including the right to receive money due and to become due here under) shall be assigned by Seller without the prior written consent of Werlatone, and any purposed assignment without such consent shall be void.

16. Equal Employment Opportunity

The Equal Employment Opportunity Clause in Section 202 and Executive Order 12466, as amended relative to equal employment opportunity and the implementing rules and regulations of the Office of Federal Contracts Compliance are incorporated herein by specific reference.

17. Payment

Invoices shall be submitted with the following information. Purchase Order number, item number description of articles, sizes, quantities, unit price and extended totals. Any adjustments in Seller's invoices due to shortages, late delivery, rejections, or either failure to comply with the requirements of this order may be made by Werlatone before payment. Cash discounts will be taken from the date of material receipt. Payment shall not constitute final acceptance.

18. Disputes

Except as otherwise specifically provided in this contract, all disputes concerning questions of fact under this order which are not promptly disposed of by mutual agreement may be decided by recourse to any available or equitable remedy. Pending decision of any dispute here under, Seller shall diligently proceed with performance of this contract as directed by Werlatone.

19. Miscellaneous

No delay or failure on the part of Werlatone in exercising any right here under shall constitute a waiver of any rights here under. Either party may cancel this order without obligation in the event that the other becomes bankrupt or insolvent or makes an assignment for the benefit of creditor.

This order shall supersede all prior understandings, transactions, and communications, whether oral or written, pertaining to the subject matter thereof.

This order and the performance by the parties here under shall be construed and governed by the law of the State of New York.

20. Export Control Regulations

Seller shall comply with all U.S. Government export control regulations, 22 CFR Parts 120-130, International Traffic in Arms Regulations (ITAR), and 15 CFR Parts 730-774, Export Administration Regulations (EAR), as applicable, before (a) disclosing to foreign nationals Werlatone's technical data, including drawings and specifications, or (b) providing foreign nationals with access to Werlatone's supplied equipment, or technology, or (c) assigning any foreign national to perform work under this Purchase Order/Subcontract. Seller also shall notify Werlatone in writing prior to subcontracting or sourcing all or any part of the work under this Order to any non-US entity or national. Failure to comply by Seller may be a violation of U.S. Government export control regulations and may be deemed a material failure to perform under this Purchase Order and shall subject Seller to termination in accordance with the Article titled Default.

The Seller is hereby notified that pursuant to 22 CFR 122.1(a) (International Traffic in Arms Regulations - ITAR), any person who engages in the United States in the business of manufacturing defense articles is required to register with the U.S. Department of State, Directorate of Defense Trade Controls.

21. Foreign Nationals

Seller is hereby notified that technical specifications, drawings, or information (technical data) provided by Werlatone may be subject to U.S. Government export control regulations (ITAR) (22 CFR 120-130) or (EAR) (15 CFR 730-774). Applicable export control regulations may restrict access to Werlatone's technical data and equipment to U.S. citizens and permanent residents only. It is

Seller's responsibility to obtain from Werlatone the appropriate export classification of technical data or other items provided by Werlatone pursuant to this order if Seller will engage in any exports of such technical data or items. Supplier is prohibited from providing any transmission or access (e.g., visual or electronic), of any technical data, including drawings and specifications that are designated by the company as subject to the ITAR under this Purchase Order/Subcontract, to any Foreign Person*. The prohibition regarding Foreign Person access includes the Supplier's foreign employees, subcontractors or visitors.

*Foreign Person means any person who is not a U.S. citizen or Green Card Holder as defined by 8 U.S.C. 1101(a)(X20).

22. Eligibility to Accept U.S. Contract

Supplier certifies by acceptance of the purchase order, that they are not included on any export debarment list. Seller agrees to provide immediate written notice to the Buyer if, during the term of the purchase order, the Supplier or any of its Principals are debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in any U.S. contract or export transaction. Supplier agrees that debarment, suspension, proposed debarment or suspension, ineligibility or exclusion of Supplier, or any of its Principals or subcontractors, may constitute cause for immediate termination of the purchase order/contract unless corrective action is taken to the satisfaction of the Purchaser.

23. Export-Controlled Data

Supplier is hereby notified that any technical specifications, drawings, or information (technical data) provided by the Buyer that are marked or labeled as containing U.S.-origin technical data controlled under the International Traffic in Arms Regulations ("ITAR") are subject to the U.S. Government export control laws and regulations. Supplier is obligated to comply with the ITAR and shall indemnify Purchaser for all liabilities, penalties, losses, damages, costs or expenses that may be imposed on or incurred by the Buyer in connection with any violations of such laws and regulations by Supplier.

Compliance with Laws, Regulations and Executive Orders

The following clauses appearing in the Federal Acquisition Regulations (FAR) or Dept of Defense-Federal Acquisition Regulations (DFAR) are incorporated by reference herein. It is recognized that certain of these clauses apply only to certain types of contracts, the applicability thereof being conditioned on such factors as price and the nature of the work to be performed. The extent and scope of applicability to this contract shall be in accordance with the terms, requirements, guidelines and limitations stated in each clause.

Security Requirements 52.204-2
Material Requirement 52.211-5
Defense Priorities and Allocations Requirements 52.211-15
Audit - Negotiation 52.215-2
Price Reduction for Defective Cost or Pricing Data 52.215-10
Price Reduction for Defective Cost or Pricing Data - Modifications 52.215-11
Pricing Adjustment 52.215-7000
Utilization of Small Business Concerns and Small Disadvantaged Business Concerns 52.219-8
Small Business and Small Disadvantaged Business Subcontracting Plan 52.219-9

Notice to the Government of Labor Disputes 52.222-1
Contract Work Hours and Safety Standards Act
Overtime Compensation - General 52.222-4
Walsh-Healey Public Contracts Act Disputes 52.222-20
Equal Opportunity 52.222-26
Affirmative Action for Special Disabled and
Vietnam Era Veterans 52.222-35
Affirmative Action for Workers with Disabilities 52.222-36

Hazardous Material Identification and Material Safety Data 52.223-3
Duty Free Entry 52.225-8
Buy American Act 52.225-10
Buy American Act and Balance of Payments Program 52.225-7001
Qualifying Country Sources as Subcontractors 52.225-7002
Duty-Free Entry Qualifying Country End Products and Supplies 52.225-7008
Preference for Domestic Specialty Metals and Alternates 1 52.225-7014

Authorization and Consent 52.227-1
Notice and Assistance Regarding Patent and Copyright Infringement 52.227-2
Patent Indemnity 52.227-3
Royalty Information 52.227-6
Refund of Royalties 52.227-9
Filing of Patent Applications - Classified
Subject Matter 52.227-10
Rights in Technical Data 52.227-7013
Technical Data - Withholding of Payment 52.227-7030
Workmen's Compensation Insurance (Defense Base Act) 52.228-3
Workmen's Compensation and War Hazard.
Insurance Overseas 52.228-4

Cost Accounting Standards (except (b) thereof) 52.230-2
Disclosure and Consistency of CAS 52.230-3
Administration of Cost Accounter Frequency Authorization 52.235-7004
Government Property (Fixed Price Contracts) 52.245-2
Contractor Inspection Requirements 52.246-1
Limitation of Liability 52.246-23
Limitation of Liability High-Value Items 52.246-24
Value Engineering 52.248-1

Copies of applicable acquisition regulations may be obtained for the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

Seller hereby acknowledges to have notice of the foregoing provisions and agrees that non-compliance with any of the above provisions incorporated by reference may be considered a material breach of this contract and, as such, shall go to the essence of the contract.