



Corporation

1716 Vanderbilt Rd. • Portage, MI 49024
PH. (269) 323-1369 • FAX (269) 323-0108



ISO: 9001:2000

1. **ACCEPTANCE AND AMENDMENTS:** This purchase order constitutes an offer by FEMA Corporation (“buyer”) to purchase from Seller the goods and/or services referenced in this purchase order exclusively under these terms and conditions. Acceptance of this purchase order is expressly limited to these terms and conditions. No amendment, modification or waiver of any of these terms and conditions shall be effective against Buyer except as shall be set forth in writing signed by Buyer’s authorized representative. Terms and conditions proposed by Seller in its acceptance or otherwise which are additional to or different from these terms and conditions are objected to without further notification from Buyer and shall not become a part of this purchase order. All specifications, drawings and other data referred to in this purchase order or submitted by seller to Buyer prior to the date of this purchase order concerning goods or service purchased are hereby made a part of the purchase order as if fully set forth herein. If this order shows on its face that it is placed under Government contract or a subcontract thereunder or if Buyer otherwise notifies Seller that this order is placed under a Government contact or a subcontract thereunder, certain clauses of the Federal Acquisition Regulation (FAR) (48 CFR Chapter 2) and the Department of Defense FAR Supplement (DFARS) apply. These clauses are incorporated herein by reference.

This purchase order shall be deemed accepted by Seller and shall constitute the entire agreement between the parties with respect to the subject matter hereof upon any of the following: (a) Seller’s acknowledgement of the purchase order; (b) Seller’s commencement of performance; (c) Sellers acceptance of any payment under this purchase order; or (d) Seller’s failure to deliver written notice of rejection to Buyer within ten (10) days of receipt of this purchase order.

2. **PRICES INCLUDE TAXES AND PACKAGING:** Except as Buyer has otherwise provided in this order, the prices stated in the purchase order include (i) all applicable federal, state and local taxes, and duties; and (ii) the cost of packaging the goods purchased in a manner suitable for shipment by the method specified by Buyer.
3. **CHANGES:** Buyer reserves the right at any time prior to delivery date of this order by written notice to Seller to make changes to the drawings, designs or specifications of the goods ordered, the method of packaging and shipping, the time, place or method of delivery, the quantity of goods



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- ordered or the work covered hereby. If any such changes affect Seller's cost and/or delivery schedule, Seller shall notify Buyer immediately, and, in the case of an increase in seller's cost, within twenty (20) days of such notice seller shall submit a detailed cost break-down comparing original requirements and costs to the changed requirements and costs. The parties will then discuss an equitable adjustment in purchase order price, delivery schedule or both; however, no adjustment will be binding on Buyer unless evidenced by a purchase order, change notice or revision to this purchase order signed by an authorized representative of Buyer's Purchasing Staff. Nothing in this clause shall excuse Seller from proceeding with this purchase order as changed.
4. **PACKING, MARKING AND SHIPPING, PACKING SLIPS:** Seller shall pack, mark and ship all goods in accordance with the requirements of this purchase order and good commercial practices, and in a manner which will permit the securing of the best transportation rates. Damage to any article resulting from improper packaging will be charged to the seller. No additional charges will be allowed for containers, crating, boxing, bundling, dunnage, drayage, storage or transportation thereof, unless stated in this purchase order. Packing slips must accompany all shipments. The buyer's count will be accepted as final and conclusive on all shipments not accompanied by packing slips. The Buyer's purchase order number and Seller's packing slip number, description and count must appear on all invoices, packages, and bills of lading.
 5. **DELIVERY:** Unless otherwise specified in this purchase order, all deliveries shall be made F.O.B. at the "ship to" address specified therein. Seller shall deliver in accordance with the delivery date(s) specified in this purchase order or, if a delivery date or dates are not specified, then only as authorized in shipment releases issued by Buyer to Seller. If delivery by lots is specified, the designated quantity within each lot and the number of lots to be delivered shall not deviate from the purchase order schedule unless written authorization is received by Seller from an authorized representative of Buyer's Purchasing Staff. If Seller's delivery of the purchased goods or services is not made in the quantities and at the times specified herein, Buyer reserves the right without liability and in addition to any other rights and remedies, to cancel this purchase order and to procure substitute goods or services and charge Seller with any loss incurred including lost profits and special damages. Buyer shall have the right to reject any goods or services which are tendered by Seller in advance of the date scheduled for delivery, to accept early delivery of



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goods or services and defer payment until after the scheduled delivery date or to accept early delivery of goods and place such goods in storage at Seller's expense until scheduled delivery date. Buyer may return any overshipments to Seller at Seller's risk and expense.

6. **FORCE MAJEURE:** Neither party shall be liable for delays or defaults due to causes beyond its control and without its fault or negligence, provided that Seller delivers written notice setting forth the cause of the anticipated delay immediately to Buyer whenever Seller has reason to believe that performance will not be made as scheduled. If Seller's delay or default is caused by a delay or default of a subcontractor or supplier, such delay or default shall be excused only if it arose out of causes beyond the control of both Seller and the subcontractor or supplier and without the fault or negligence of either of them, and goods or services were not obtainable from other sources in sufficient time to meet the required delivery or performance schedule.
7. **REJECTION/REVOCATION:** Payment for any goods under this purchase order shall not constitute acceptance thereof and Buyer reserves the right to inspect all goods purchased hereunder at Buyer's discretion and at Buyer's option and to reject non-conforming goods or services or revoke acceptance of non-conforming goods or services. At Buyer's option and at Seller's risk and expense, Buyer may return non-conforming goods to Seller, require Seller to grant a full refund or credit to Buyer for non-conforming goods, hold non-conforming goods for disposition by Seller or rework non-conforming goods to detect and correct nonconformities.

In the event of multiple non-conforming goods or services, Seller shall, within 20 days from notice thereof by Buyer, submit a written corrective action report to Buyer. Such report shall identify the root cause of the nonconformance, identity of affected goods and services, and corrective action plan, for Buyer's review and approval.

Buyer shall not be liable for failure to accept any part of the goods or services purchased hereunder if such failure is the result of any cause beyond the control of Buyer including without limitation, fires, floods, acts of God, strikes, differences with employees casualties, delays in transportation, inability to obtain necessary materials, utility services for machinery, or total or partial shutdown of Buyer's facilities for any cause. Acceptance of any part of the goods ordered hereunder shall not bind



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Buyer to accept future shipments or waive its right to revoke acceptance of goods previously delivered.

8. **SELLER'S WARRANTIES:** Seller warrants that all goods and services provided hereunder will conform to Buyer's instructions, specifications, drawings and data current as of date of this purchase order (unless otherwise specified in writing by Buyer), will be merchantable, free from defective materials or workmanship and will be fit for Buyer's purposes. Seller further warrants that the goods and services furnished under this purchase order shall conform to all representations, affirmations, promises, descriptions, samples or models which are a part of this purchase order. Seller agrees that these warranties shall survive acceptance of the goods and services. Seller further warrants that all services performed for or on behalf of Buyer will be performed in a competent, workmanlike manner, and shall be free from faults and defects. The warranties stated in this Section 8 are hereby extended to, and shall inure to the benefit of, Buyer and Buyer's affiliates, subsidiaries, successors, assigns and direct and indirect customer to whom the goods and services provided hereunder may be sold or transferred (jointly and severally "Buyer Entities").

In the event of breach of warranty, Buyer shall be entitled to all rights and remedies available at law, including but not limited to credit, replacement or repair of defective goods at Buyer's option, costs or removal of the goods from any component, assembly or system into which the goods may have been incorporated, and reinstallation of non-defective goods, and cost of return of the goods. Seller shall also reimburse Buyer for any incidental and consequential damages caused by such non-conforming goods including, but not limited to costs, expenses and losses incurred by Buyer: (a) in inspecting, sorting, repairing or replacing such goods; (b) resulting from and production interruptions; (c) conducting any recall campaigns or other corrective actions and (d) claims for personal injury or property damage.

9. **BUYER'S PROPERTY:** Unless otherwise expressly provided in this purchase order, all Special Property, and all tangible and intangible property furnished to Seller by Buyer, or based on or derived from Seller's confidential or otherwise proprietary information, or produced or purchased by Seller at Buyer's expense, for use in Seller's performance hereunder, and any replacement thereof, is and shall remain the exclusive



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property of Buyer. For purposes of this purchase order, “Special Property” includes without limitation, dies, fixtures, molds, patterns, gauges, test equipment, information or similar items used in Seller’s performance of this purchase order that are especially acquired for Seller’s performance hereunder of such specialized nature that absent substantial alteration, their use is limited to the production of the goods or the rendering of the services referenced in this purchase order. Absent express agreement to the contrary, the amounts charged by Seller pursuant to this purchase order shall include payment for all Special Property. Hereinafter Special Property and all property furnished to Seller by Buyer are collectively referred to as “Buyer’s Property”.

Seller shall not sell, encumber, transfer, assign, dispose of or modify Buyer’s Property and shall not use Buyer’s Property for any purpose other than in the performance of this purchase order without Buyer’s prior written consent.

At all times while Buyer’s Property is in Seller’s custody or control, Buyer’s Property shall be held at Seller’s risk and fully insured at Seller’s expense at replacement cost with less payable to Buyer, and Seller shall provide routine maintenance at its expense.

Seller agrees that Buyer’s Property shall remain personalty and shall not become a fixture attached to realty. Seller shall allow Buyer’s representative to inspect Buyer’s Property upon Seller’s premises at any time upon reasonable notice. Seller hereby authorizes Buyer to file a form UCC-1 financing statement or its equivalent to enable Buyer to make its ownership rights in buyer’s Property of public record.

At any time upon the request of Buyer and in accordance with Buyer’s instructions, Seller shall prepare for shipment, package and deliver Buyer’s Property in good condition and at Seller’s cost F.O.B. Seller’s business location.

10. **INSURANCE:** Seller represents that it has and will maintain the following types and amounts of insurance coverage and agrees to furnish certificates of insurance showing that Seller has insurance coverage in the following minimum amounts:

Workers Compensation – Statutory limits for the state(s) in which the work will be performed



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General/Products Liability - \$1,000,000 per occurrence/\$2,000,000 in the aggregate

Automobile Public Liability - \$1,000,000 (per any one accident)

Said certificates of insurance shall set forth the amount of coverage, the number of the policy and the date of expiration. Upon Buyer's request, Seller shall name Buyer or the Buyer Entities as an additional insured on its policies. If Seller is a self-insurer for worker's compensation purposes, Seller shall provide Buyer with a copy of the self-insured certificate issued by the state(s) where work will be performed. Compliance by Seller with the insurance requirements stated in this Section 10 shall not in any way affect Seller's duty to indemnify Buyer under Section 11 herein.

If this purchase order includes a sale of goods manufactured in whole or in part to Seller's designs or specifications, Seller agrees to provide Buyer, upon request, with a current certificate of product liability insurance and a supplier's endorsement naming Buyer as an additional insured on Seller's policy.

11. INDEMNIFICATION: Seller agrees to indemnify, defend and hold Buyer Entities harmless from and against any and all losses, liabilities, damages, claims, demands, suits, actions, proceedings, subrogation, costs and expenses including court costs and attorney's fees, incurred by Buyer Entities arising from or relating to goods delivered or to services or labor performed pursuant to this purchase order, or breach of any of Seller's representations or obligations under this purchase order (hereinafter collectively referred to as "Claims") including Claims which are made by any third party including employees, workers, servants or agents of Seller or its subcontractors. Seller further agrees upon receipt of notification, to promptly assume full responsibility for the defense of any and all Claims which may be brought against the Buyer Entities, and in such event, Seller shall not consummate any settlement without Buyer's prior written consent. If Seller performs any work on the premises of any Buyer entity or utilizes any of the Buyer's Property, whether on or off the premises of any Buyer entity, Seller shall indemnify and hold harmless Buyer Entities from and against any liabilities, claims, demands or expenses (including court costs and attorney's fees) for damages to the property or for injuries (including death) to any person, including without limitation any employees of buyer Entities, or any other person arising from or in connection with



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- Seller's performance of work or use of Buyer's property. In the event "Buyer's Property", as defined in Section 9 hereof, is used by Seller in the performance of this purchase order, Buyer's Property shall be considered to be in the full custody and control of Seller during the period of use by Seller. Seller's obligations pursuant to this Section 11 shall survive the completion of performance and the expiration or termination of this purchase order.
12. ACCESS TO FACILITIES, AUDIT AND INSPECTION: If this purchase order (a) includes specifications, or (b) is for the procurement of either (i) goods to be incorporated into Buyer's products or (ii) services to be used in the production of Buyer's products, then Seller's (and Seller's sub-tier suppliers who provide goods or services) plant, books and records pertinent to this or any related order (to the extent consistent with applicable laws and regulations) shall at all practical times be subject to review, inspection and audit by Buyer, its authorized representative and any authorized representative of Buyer's customer to the extent necessary to verify compliance with Buyer's specification or to enable Buyer to comply with its obligations to its customer(s).
13. BUYER'S REMEDIES: Buyer's remedies described herein shall be cumulative and in addition to any remedies allowed by law or in equity.
14. PROPRIETARY RIGHTS: All information (including materials that contain information) relating to this purchase order or to the goods or services to be provided hereunder which has been disclosed to Seller by or on behalf of Buyer (whether such information is owned by Buyer or by any other entity with whom Buyer is doing business) or which will be developed in the course of Seller's performance under this purchase order specifically for Buyer (collectively referred to as "Information"), has been and will be received and held by Seller in confidence. Such Information includes, but is not limited to, trade secrets, drawings, plans, designs, specifications, manufacturing, research and development data, invention, know-how, processes, procedures, costs, suppliers, methods, sales, customer information and lists, financial data and business plans. Seller will not disclose the Information to others and will not use the Information for any purpose other than for the direct benefit of Buyer. Seller will acquire no right in or to such Information, and Seller will promptly return the Information to Buyer and discontinue all use of the Information upon expiration or termination of the purchase order or at Buyer's written request. Seller will not disclose to Buyer or use in the course and scope



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of Seller's performance hereunder any information of other entities that Seller does not have a lawful right to use or disclose. Seller will limit access to the Information to only those employees of Seller having a need to know such Information, and all such employees of Seller having access of Information shall be made aware of and agree to obligations under this Section 14.

Any invention or development of copyrightable subject matter conceived, first reduced to writing, first reduced to practice or made by Seller, either solely or with others, in the course of Seller's performance under this purchase order is hereby assigned to Buyer if such invention or developments or copyrightable subject matter (i) results from services for Buyer, or (ii) is made using Buyer's time, materials, facilities or Information. All such copyrightable subject matter will be a work made for hire. Seller will disclose such inventions, developments or copyrightable subject matter promptly to Buyer and will cooperate with Buyer during and after the term of this purchase order in filing and prosecuting any patent or copyright applications thereon and in evidencing ownership thereof by Buyer. Seller agrees that the payments pursuant to this purchase order are full and complete compensation for all obligations assumed by Seller hereunder, and the assignment of inventions or developments of copyrightable subject matter does not entitle Seller to any additional compensation.

The obligations of this Section 14 shall survive the completion of performance and expiration or termination of the purchase order.

15. **INDEMNITY FOR INFRINGEMENT:** Seller agrees upon receipt of notification, to promptly assume full responsibility for defending any claim, suit, action, or proceeding which may be brought against the Buyer Entities which alleges that any goods or services provided by Seller pursuant to this purchase order infringe any patent, trademark, copyright, trade secret or other propriety right owned by a third party. Seller further agrees to indemnify Buyer against any and all expenses, losses, royalties, lost profits and damages, including court cost and attorneys fees, resulting from such claim, suit, action or proceeding, including any settlement, decree or judgment entered therein. Buyer may at its option, be represented and actively participate through its own counsel in any such claim, suit or proceeding, including any settlement, decree or judgment entered therein. Seller's obligations pursuant to this Section 15 shall survive the completion of performance and expiration or termination of this



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purchase order. Notwithstanding the foregoing, Seller shall have no obligation to defend or indemnify Buyer with respect to any claim which is directed to items delivered pursuant to this purchase order, the designs for which were specified entirely by Buyer.

16. **TERMINATION FOR CONVENIENCE:** In addition to any other rights, Buyer further reserves the right to terminate Seller's performance under this purchase order in whole or in part at any time without cause by giving written notice of termination, whereupon Seller will cease performance on the date and to the extent specified in the notice and will take such actions as are reasonably necessary to protect property in Seller's possession in which Buyer has an interest until disposition instructions from Buyer have been received. Seller will promptly advise Buyer of any items acquired in anticipation of completion of its performance and the most favorable disposition that Seller can make thereof. Seller will comply with Buyer' instructions regarding the disposition of such items. Seller will submit all claims resulting from such termination within sixty (60) days of its receipt of such notice. Buyer shall have the right to inspect Seller's records, facilities, work and materials relating to its performance or anticipated value of the purchase order for the purpose of establishing the value of Seller's claims upon reasonable advance notice. Buyer will pay Seller, without duplication, the purchase order price for finished work accepted by Buyer and the cost to Seller to work on Buyer's audit of Seller's records, using generally accepted accounting principles; however, the amount due Seller Shall be reduced by the following:
- a. The market value or cost (whichever is higher) of any items used or disposed of by Seller without Buyer's consent;
 - b. The agreed value of any items used or disposed of by the Seller with the Buyer's consent; and
 - c. The cost of any defective or destroyed materials.

Buyer will make no payments for finished work, raw material or other items fabricated or procured by Seller in excess of the lesser of (i) that ordered; (ii) that for which Buyer has issued shipment releases as of the date of the notice of termination released; or (iii) thirty days supply. Notwithstanding the foregoing, payments under this Section 16 shall not exceed the price for the entire performance specified in this purchase order less payments that would otherwise be made to complete performance hereunder.



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- Payment under this Section 16 will constitute Buyer's sole and exclusive liability in the event Buyer elects to terminate this purchase order without cause by notice. This Section 16 shall not apply to cancellation by Buyer hereunder.
- 17. CANCELLATION:** Buyer may cancel this purchase order and Seller's performance hereunder immediately without incurring liability to Seller (A) immediately upon (i) Seller's insolvency; (ii) filing of a voluntary petition in bankruptcy by Seller; (iii) filing of an involuntary petition in bankruptcy against Seller; (iv) appointment of a receiver or trustee for Seller; (v) execution or assignment for the benefit of creditors by Seller; or (vi) any comparable event, and (B) upon thirty days written notice to Seller in the event of Seller's breach of contract or failure to perform.
 - 18. COMPLIANCE WITH LAWS, EXECUTIVE ORDERS, AND REGULATIONS:** Seller warrants that the goods and services supplied hereunder will have been produced or provided in compliance with, and Seller will comply with, all applicable laws, orders, rules, regulations, ordinances and conventions, including without limitation, those that relate to equal employment opportunity, wages, hours and conditions of employment, discrimination, occupational health/safety motor vehicle safety, and environmental matters. At Buyer's request, Seller shall certify in writing its compliance with the foregoing. Seller shall indemnify and hold Buyer harmless from and against any loss, cost, damage, expense or liability claim (including attorneys fees and other costs of defense) arising from or relating to Seller's violation of this clause.
 - 19. ASSIGNMENT AND SUBCONTRACTING:** The obligations of Seller under this purchase order may not be assigned or subcontracted in whole or in part nor may any assignment of any money due or to become due hereunder be made by Seller without the prior written consent of Buyer and any prohibited assignment shall be null and void for all purposes.
 - 20. INDEPENDENT CONTRACTING PARTIES:** The relationship between Buyer and Seller shall be that of independent contracting parties. Nothing contained in this Agreement shall be construed as providing for the sharing of any costs, expenses, risks, or liabilities arising out of the other party's activities related to this Agreement. Seller shall not in any manner represent that it or its employees or agents are employees



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or agents of Buyer, and nothing contained in this Agreement shall be construed as authorizing Seller to create or assume any obligation or liability in the name of Buyer or subject Buyer to any obligation or liability. This Agreement shall not constitute, create, give effect to or otherwise imply a joint venture, pooling arrangement, partnership or formal business organization of any kind. Nothing herein shall be construed as providing for the sharing of profit or losses arising out of the efforts of either or both parties.

- 21. NO GIFTS:** Seller agrees not to provide or offer to provide to any director, officer or employee of Buyer, or any member of such person's family, any favors, gifts, loans or other benefits (including services and discounts as well as material goods), except casual entertainment or gifts (other than money) of nominal value which are customarily offered to others having a similar relationship with Seller, provided that the foregoing exception shall not apply if this order shows on its face that it is placed under a U.S. Government contract or a subcontract thereunder, or if Buyer otherwise notifies Seller that this order is placed under a U.S. Government contract or a subcontract thereunder.
- 22. GOVERNING LAW/JURISDICTION/ARBITRATION:** This purchase order shall be governed and construed in accordance with the laws of the State of Michigan without regard to provisions concerning conflict of laws. Notwithstanding anything in this Section 22, the parties shall have recourse to the courts of Michigan for the purpose of obtaining any provisional or equitable remedy as permitted by the laws of the State of Michigan.
- 23. WAIVER/SEVERABILITY:** Buyer's failure to insist upon the performance of any term or condition of this purchase order or to exercise any right hereunder on one or more occasions shall not constitute a waiver or relinquishment of Buyer's right to demand future performance of such term or condition or to exercise such right in the future. If any term or portion of this purchase order is held to be invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term or portion shall be deemed reformed or deleted as the case may be, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule and the remaining provisions of this contract shall remain in full force and effect.