

Hydro Engineering, Inc.
Purchase Order Terms and Conditions

INTRODUCTION. These terms and conditions together with a Purchase Order form an “**Agreement**” between Hydro Engineering, Inc. (“Purchaser”) and the supplying party specified on the Purchase Order (“Supplier”) for the purchase of all products or services provided by Supplier, directly or indirectly, to or for Purchaser, under the applicable Purchase Order. No terms other than the Agreement will apply to Supplier’s provision of products or services, except if the parties have executed a separate written agreement governing the products or services, in which case the negotiated agreement will govern.

- 1. AGREEMENT:** Hydro Engineering, Inc. (Purchaser) may submit Purchase Orders (Orders) in writing, including electronic transmission. Unless the parties mutually agree otherwise in writing, Orders will state prices, delivery dates, and delivery locations for Products and Services. The Order is Purchaser's offer to Seller and becomes a binding contract, subject to the terms hereof, when accepted by acknowledgement or commencement of performance by Seller. Purchaser objects to all additions, exceptions, or changes to these terms, whether contained in any printed form of Seller or elsewhere, unless approved by Purchaser in writing. To the extent that there are any inconsistencies between these terms and those written on the face of the Order, the Order will control.
- 2. PRICE:** Unless otherwise specified, the prices stated on the front of this Order include all charges for packing, hauling, storage, transportation to point of delivery, and taxes. Sales and use taxes not subject to exemption shall be stated separately in Seller's invoice. Seller warrants that the prices quoted in this Order are no greater than those currently charged any other Purchaser for similar quantities of goods or services. Any price reduction extended to others by Seller prior to delivery shall also be extended to Purchaser.
- 3. CHANGES:** Purchaser may at anytime make changes in the scope or quantity of the goods or services covered by this Order, in which event an equitable adjustment will be made to any price, time of performance, and other provisions of this Order if appropriate. Claims for such an adjustment must be made within fifteen (15) days from the date of receipt by Seller of notice of the change. Substitutions or changes in quantities or specifications by Seller shall not be made without Purchaser's prior written approval.
- 4. WARRANTY:** Seller expressly warrants that the goods or services Ordered shall be merchantable; shall conform to this Order, to specifications, drawings, and other descriptions referenced in this Order, and to any accepted samples; shall be free from defects in materials and workmanship; shall be free from defects in design unless the design was supplied by Purchaser; and shall be fit and safe for the intended purposes. Seller further warrants that it has clear title to the goods and that the goods and services shall be delivered free of liens or encumbrances.
- 5. INSPECTION AND ACCEPTANCE:** Goods and services purchased under this Order are subject to Customer’s and/or Purchaser's Agent's reasonable inspection, testing, and approval at Sellers facilities or at Purchaser's destination. Purchaser reserves the right to reject and refuse acceptance of goods and services which are not in accordance with this Order or Seller's representation or warranties, expressed or implied. Purchaser will charge Seller for the cost of inspecting rejected goods and services. Rejected goods may be returned to Seller, or held by Purchaser, at Seller's risk and expense. Payment for any goods and services under this Order shall not be deemed acceptance of the goods.
- 6. RECALL:** In the event that a recall of the goods is necessitated by a defect, a failure to conform to the specifications, applicable laws, or any other reason within the Seller's control, Seller shall bear all costs and expenses of such recall, including without limitation, costs of notifying customers, customer

refunds, costs of returning goods, lost profits, and other expenses incurred to meet obligations to third parties.

7. **PRODUCT DELIVERY:** Time is of the essence, shipment or delivery of goods shall be in accordance with the schedule specified in this Order. Seller will immediately notify Purchaser if timely performance under the Order is delayed or is likely to be delayed. If Seller does not, or it appears that Seller will not, meet such schedule, Purchaser may, in addition to any other rights or remedies provided by law or this Order, require that Seller ship the goods via expedited routing to meet the schedule or to recover the time lost and Seller shall pay the difference in shipping costs.
8. **OVERSHIPMENT:** Over shipment of goods not approved by Purchaser in writing will be returned, at Seller's expense, if such over shipment exceeds 10% of the total Order price or \$500.00, whichever is smaller.
9. **SUBSTITUTION OR MODIFICATION:** No substitution or modification of any goods, component parts, tooling, sources of raw materials, processes, or manufacturing sites may be made without Purchaser's prior written consent.
10. **PAYMENT:** Purchaser will pay any undisputed portion of an invoice for accepted products or services within 30 business days following the later of: (i) delivery of the products or completion of services or (ii) receipt of a correct invoice by Purchaser's accounts payable department. Correct invoices must include Purchase Order number, description of Products or Services, complete bill-to address, any applicable tax or other charges, and Product part numbers, quantities, unit prices, and extended totals.
11. **SPECIAL LAWS:** In filling this Order, Seller will comply with all applicable federal, state, and local laws, including the following:
 - a) Seller will take affirmative action with regard to recruiting and retaining minorities in all levels of its workplace and protecting the interests of handicapped workers and disabled and Vietnam era veterans;
 - b) Laws prohibiting discrimination on the basis of an applicant's or employee's protected status;
 - c) Anti-bribery laws which prohibit direct or indirect corrupt offers of anything of value to anyone to obtain or keep business or to secure any other improper commercial advantage;
 - d) To the extent applicable, the goods are compliant with UL standards, RoHS Directives, or country/regional equivalent and agrees to furnish evidence of compliance upon request by Purchaser;
 - e) Goods are manufactured and provided to Purchaser in a manner that complies with all applicable human rights laws, including local laws and international frameworks such as but not limited to California Transparency in Supply Chain Act and provisions of the Dodd Frank Act (conflict minerals rules). Seller further represents that the goods are conflict mineral free, meaning any gold, tin, tantalum, or tungsten contained in the goods are sourced only from conflict free zones, sources, and smelters. Seller agrees to cooperate and fulfill related due diligence activities with its suppliers or represents that it has already done so;
 - f) the goods are consistent with, and can be used in compliance with, the Occupational Safety and Health Act of 1970 (OSHA), that services to be performed on Purchaser's premises will be consistent with OSHA provisions, and that Seller will provide Purchaser the latest safety data sheets (SDS) for any chemical substance determined to be hazardous;
 - g) For any Order over \$10,000, Seller shall have an approved plan for small business concerns and small disadvantaged business concerns as specified under Public Law 95 - 507 unless Seller itself is one of these concerns.
12. **INDEMNIFICATION:** Seller shall defend, indemnify and hold Purchaser, its successors, assigns, employees, customers, and users of the goods or services harmless with respect to all claims, liability, damage, loss, and expenses, including attorney's fees, incurred relating to or caused by:
 - a) Actual or alleged patent or trademark infringement or violation of other proprietary right, arising out of the purchase, sale, or use of the goods or services covered by this Order;
 - b) Actual or alleged defect in the services or in the design, manufacture, or material of the goods;
 - c) Actual or alleged breach of warranty;
 - d) Failure of Seller to deliver the goods or services on a timely basis; or

- e) Failure of the goods or services to meet the requirements of the law without limitation.

In the event of a claim under this paragraph, Purchaser may at its option terminate this Order or defer acceptance of the balance of the goods or services ordered until the claim is resolved. If Purchaser is enjoined from use of the goods, Seller shall at Purchaser's option, either procure for Purchaser the right to continue using the goods, replace the goods with substantially equivalent goods, modify the goods so as to be usable by Purchaser, or repurchase the goods at the price set forth in the Order.

This Paragraph shall not be construed to indemnify Purchaser for any loss to the extent it is attributable to Purchaser's design, specification, or negligence.

- 13. INSURANCE:** Seller shall obtain and keep in force comprehensive liability insurance in amounts sufficient to protect Seller with special endorsements providing coverage for:
 - a) Products and Completed Operations Liability;
 - b) Blanket Broad Form Vendor's Liability; and,
 - c) Blanket Contractual Liability. If services are performed under this Order on Purchaser's premises, Seller shall also obtain Premises Operations, Personal Injury, and Independent Contractors Protective Liability endorsements, and shall further obtain Workers' Compensation, Employer's Liability and Automobile Liability Insurance coverage in amounts acceptable to Purchaser. If requested, Seller shall furnish Purchaser with a certificate evidencing the required insurance.
- 14. RISK OF LOSS:** Seller shall bear the risk of loss or damage to the goods covered by this Order until they are delivered to and accepted by Purchaser.
- 15. PURCHASER FURNISHED MATERIAL:** Seller shall not use, reproduce, or appropriate for or disclose to anyone other than Purchaser, any material, tooling, dies, drawings, designs, or other property or information furnished by Purchaser ("Material") without Purchaser's prior written approval. Title to all Material shall remain in Purchaser at all times, and where practicable the Material shall be clearly marked or tagged to indicate this ownership. Seller shall bear the risk of loss or damage to the Material until it is returned to Purchaser. All Material, whether or not spoiled or used, shall be returned to Purchaser at termination or completion of this Order unless Purchaser shall otherwise direct.
- 16. REFERENCES TO PURCHASER:** Except to the extent required by law, Seller shall make no reference, advertisement, or promotion regarding Purchaser or Purchaser's purchase or use of the goods or services covered by this Order without the prior written consent of Purchaser.
- 17. USE OF SELLER'S INFORMATION:** All information disclosed to Purchaser in connection with this Order is furnished as part of the consideration for Purchaser's placement of this Order. This information is not to be treated as confidential or proprietary, and no claim will be asserted against Purchaser, its assigns, or customers, for its disclosure or use.
- 18. TERMINATION:**
 - a) Purchaser may terminate this Order, in whole or in part, without liability: If Purchaser anticipated Seller's breach of this Order and Seller does not provide adequate assurance of its performance within ten (10) days of Purchaser's request; if deliveries are not made at the time or in the quantities specified; or in the event of a breach or failure by Seller to meet other terms of this Order, this right shall be in addition to any other remedies provided Purchaser by law;
 - b) Purchaser may terminate this Order, in whole or in part, at anytime for its convenience by notice to Seller in writing. Seller's sole compensation for such termination shall be payment by Purchaser of the percentage of the total Order price corresponding to the proportion of work completed in filling the Order prior to such notice, plus any reasonable expenses incurred by Seller in terminating Orders and work in progress. Such termination claim must be submitted to Purchaser within sixty (60) days of the date of termination and shall be subject to audit by Purchaser;
 - c) upon any termination under this paragraph, title to all equipment materials, work in progress, finished products, plans, drawings, specifications, information, special tooling, and any other items for which Seller may submit a claim shall vest in Purchaser, and Seller shall promptly

deliver these items to Purchaser and take all necessary action to protect such property prior to such delivery.

- 19. GOVERNING LAW:** The Order is constructed in accordance with, and all disputes will be governed by, the laws of the State of Utah. Supplier irrevocably consents to the personal jurisdiction of the state and federal courts of Salt Lake County, State of Utah, USA.
- 20. SEVERABILITY:** If any term (or part of a term) of this Agreement is found to be invalid, illegal or unenforceable, the rest of the Agreement will remain in effect.