

HI-VAC CORPORATION TERMS AND CONDITIONS OF PURCHASE

1. Applicability. These terms and conditions of purchase (these "Terms") are the only terms which govern the purchase of all goods ("Goods") and services ("Services") by Hi-Vac Corporation ("Purchaser") from the seller named on any purchase order issued by Purchaser ("Seller"). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence related to the Goods and Services covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms. Unless excepted herein, the purchase order referencing Terms (the "Purchase Order") and these Terms (collectively, this "Agreement") comprise the entire agreement between the parties related to Good and Services, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Seller's general terms and conditions of sale regardless whether or when Seller has submitted its sales confirmation or such terms. This Agreement expressly limits Seller's acceptance to the terms of this Agreement. Fulfillment of this Purchase Order constitutes acceptance of these Terms.

2. Delivery of Goods and Performance of Services.

(a) Seller shall deliver the Goods in the quantities and on the date(s) specified in the Purchase Order or as otherwise agreed in writing by the parties (the "Delivery Date"). If no delivery date is specified, Seller shall deliver the Goods within 30 days of Seller's receipt of the Purchase Order. If Seller fails to deliver the Goods in full on the Delivery Date, Purchaser may terminate this Agreement immediately by providing written notice to Seller and Seller shall indemnify Purchaser against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller's failure to deliver the Goods on the Delivery Date.

(b) Seller shall deliver all Goods to the "Ship to" address specified in the Purchase Order (the "Delivery Point") during Purchaser's normal business hours or as otherwise instructed by Purchaser. Seller shall pack all in a manner sufficient to ensure that the Goods are delivered in undamaged condition. Seller must provide Purchaser prior written notice if it requires Purchaser to return any packaging material, which shall be made at Seller's risk of loss and expense.

(c) Seller shall provide the Services to Purchaser as described and in accordance with the schedule set forth on the reverse side of these Terms and in accordance with the terms and conditions set forth in these Terms. Seller acknowledges that time is of the essence with respect to Seller's obligations hereunder and the timely delivery of the Goods and Services.

3. Quantity. If Seller delivers more or less than the quantity of Goods ordered, Purchaser may reject all or any excess Goods. Any such rejected Goods shall be returned to Seller at Seller's sole risk and expense. If Purchaser does not reject the Goods and instead accepts the delivery of Goods, the Price for the Goods shall be adjusted on a pro-rata basis.

4. Shipping Terms. Delivery shall be made FOB Delivery Point, unless otherwise specified within the terms of the Purchase Order or terms of this Agreement. The Purchase Order number must appear on all shipping documents, shipping labels, invoices, and any other documents pertaining to the Purchase Order.

5. Title. Title and risk of loss passes from Seller to Purchaser upon delivery of the Goods to Purchaser or the agent of Purchaser at the Delivery Point specified.

6. Inspection and Rejection of Nonconforming Goods. Purchaser has the right to inspect the Goods on or any time after the Delivery Date. Purchaser, at its sole option, may inspect all or a sample of the Goods, and may reject any portion of the Goods if it determines the Goods are nonconforming or defective. If Purchaser rejects any portion of the Goods, Purchaser has the right, effective upon written notice to Seller, to: (a) rescind this Agreement in its entirety; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require immediate replacement, at Seller's full expense, of the rejected Goods. If Seller fails to deliver replacement Goods free of cost within 10 days, Purchaser may replace them with goods from a third party and charge Seller the cost thereof and terminate this Agreement for cause.

7. Price. The price of the Goods and Services is the price stated in the Purchase Order (the "Price"). Unless otherwise specified in the Purchase Order, the Price includes all packaging, insurance, customs duties and fees and applicable taxes. No sales or use taxes shall be added when a valid exemption is noted on the Purchase Order. No increase in the Price is effective without the prior written consent of Purchaser. Seller represents that the price charged for the Goods is the lowest price charged by the Seller to purchasers of a class similar to Purchaser.

8. Payment Terms. Seller shall issue an invoice to Purchaser on or any time after the completion of delivery and only in accordance with these Terms. Unless agreed otherwise in writing, Purchaser shall pay all properly invoiced amounts due to Seller within 90 days after Purchaser's receipt of such invoice, except for any amounts disputed by Purchaser in good faith without prejudice to any other right or remedy it may have, Purchaser reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Purchaser to Seller. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under this Agreement notwithstanding any dispute.

9. Seller's Obligations Regarding Services. Seller shall:

(a) before the date on which the Services are to start, obtain, and at all times during the term of this Agreement, maintain, all necessary licenses and consents and comply with all relevant laws applicable to the provision of the Services;

(b) comply with all rules, regulations and policies of Purchaser, including security procedures, general health and safety practices and procedures;

(c) maintain complete and accurate records relating to the provision of the Services under this Agreement, including records of the time spent and materials used by Seller in providing the Services in such form as Purchaser shall approve and may request at any time.

(d) obtain Purchaser's written consent, which shall not be unreasonably withheld prior to entering into agreements with or otherwise engaging any person or entity, other than Seller's employees, to provide any Services to Purchaser (each such approved subcontractor or other third party, a "Permitted Subcontractor"). Purchaser's approval shall not relieve Seller of its obligations under the Agreement, and Seller shall remain fully responsible for the performance of each such Permitted Subcontractor for their compliance with all of the terms and conditions of this Agreement as if they were Seller's own employees. Nothing contained in this Agreement shall create any contractual relationship between Purchaser and any Seller subcontractor or supplier;

(e) require each Permitted Subcontractor to be bound in writing by the confidentiality provisions of this Agreement and, upon Purchaser's written request, to enter into a non-disclosure or intellectual property assignment or license agreement in a form that is reasonably satisfactory to Purchaser;

(f) ensure that all persons, whether employees, agents, subcontractors, or anyone acting for or on behalf of the Seller, are properly licensed, certified or accredited as required by applicable law and are suitably skilled, experienced and qualified to perform the Services;

(g) keep and maintain any Purchaser equipment in its possession in good working order and shall not dispose of or use such equipment other than in accordance with the Purchaser's written instructions or authorization.

10. Change Orders. Purchaser may at any time, by written instructions issued to Seller (each a "Change Order"), order changes. Seller shall within 10 days of receipt of a Change Order submit to Purchaser a firm cost proposal for the Change Order. If Purchaser accepts such cost proposal, Seller shall proceed with the changed services subject to the cost proposal and the terms and conditions of this Agreement.

11. Warranties.

(a) Seller warrants to Purchaser that the greater of Seller's warranty or 18 months from the Delivery Date, all Goods will: (i) be new and free from any defects in workmanship, material and design; (ii) conform to applicable specifications, drawings, designs, samples and other requirements specified by Purchaser; (iii) be fit for their intended purpose and operate as intended; (iv) be merchantable; (v) be free and clear of all liens, security interests or other encumbrances; and (vi) not infringe or misappropriate any third party's patent, copyright or other intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by Purchaser;

(b) Seller warrants to Purchaser that it shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement; and

(c) The warranties set forth herein are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Purchaser's discovery of the noncompliance of the Goods or Services with the foregoing warranties. If Purchaser gives Seller notice of noncompliance pursuant to this Section, Seller shall, at its own cost and expense, within 30 days (i) replace or repair the defective or nonconforming Goods and pay for all related expenses and transportation or (ii) repair or re-perform the applicable Services.

12. General Indemnification. Seller shall defend, indemnify and hold harmless Purchaser and Purchaser's parent company, its subsidiaries, affiliates, successors or assigns and its respective directors, officers, and employees (collectively, "Indemnitees") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorneys' and professionals' fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "Losses") arising out of or occurring in connection with the Goods and Services purchased from Seller or Seller's negligence, willful misconduct or breach of the Terms. Seller shall not enter into any settlement without Purchaser's prior written consent.

13. Intellectual Property Indemnification. Seller shall, at its expense, defend, indemnify and hold harmless Purchaser and any Indemnitee against all Losses in connection with any claim that Purchaser's or Indemnitee's use or possession of the Goods or use of the Services infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Seller enter into any settlement without Purchaser's or Indemnitee's prior written consent.

14. Limitation of Liability. Nothing in this Agreement shall exclude or limit Seller's liability for monetary damages, fraud, personal injury or death caused by its negligence, breach or willful misconduct.

15. Insurance. During the term of this Agreement and for a period of twelve months thereafter, Seller shall, at its own expense, maintain and carry insurance which includes, but is not limited to, commercial general liability (including product liability), automotive, and employment liability in a sum no less than one million USD per occurrence and two million USD in aggregate, with financially sound and reputable insurers. Upon Purchaser's request, Seller shall provide Purchaser with a certificate of insurance from Seller's insurer evidencing the insurance coverage specified in these Terms. The certificate of insurance shall name Purchaser as an additional insured.

16. Compliance with Law. Seller shall comply with all applicable laws, regulations and ordinances, including but not limited to import and export regulations, OSHA, as well as the Foreign Corrupt Practices Act. Seller shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement.

17. Termination. In addition to any remedies that may be provided under these Terms, Purchaser may further terminate this Agreement with immediate effect upon written notice to the Seller, at any time, if Seller has not performed or complied with any of these Terms, in whole or in part. If Purchaser terminates the Agreement for any reason, Seller's sole and exclusive maximum remedy is payment for the Goods received and accepted and Services accepted by Purchaser prior to the termination.

18. Waiver. No waiver by Purchaser of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Purchaser. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

19. Confidential Information. All confidential or proprietary information of Purchaser, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Purchaser to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the purpose of performing this Agreement and may not be disclosed or copied or used for any purpose other than the fulfillment of Seller's obligations under this Agreement unless authorized in advance by Purchaser in writing (which authorization may be granted or withheld by Purchaser in its sole discretion). Upon Purchaser's request, Seller shall promptly return all documents and other materials received from Purchaser. Purchaser shall be entitled to injunctive relief for any violation of this Section. Notwithstanding the terms herein, if Seller has previously executed the Purchaser's non-disclosure agreement (the "NDA") it shall remain in full-force and effect and in the event of any conflict between the terms of this Agreement and the NDA, the terms and conditions of the NDA shall control.

20. Force Majeure. Neither party shall be liable to the other for any delay or failure in performing its obligations under this Agreement to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable.

21. Assignment. Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under this Agreement without the prior written consent of Purchaser. Any purported assignment or delegation in violation of this Section shall be null and void. Purchaser may at any time assign or transfer any or all of its rights or obligations under this Agreement without Seller's prior written consent to any affiliate or to any person acquiring all or substantially all of Purchaser's assets.

22. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

23. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature.

24. Governing Law & Jurisdiction. All matters relating to this Agreement are governed by and construed in accordance with the laws of the State of Ohio without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than those of the State of Ohio. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Ohio in each case located in the City of Marietta and County of Washington, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such proceeding.

25. Notices. All notices, requests, claims, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the Purchase Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier, facsimile, or certified or registered mail. Except as otherwise provided in this Agreement, a Notice is effective only upon receipt of the receiving party.

26. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

27. Survival. Provisions which by their nature should apply beyond the terms herein remain in force after termination or expiration of this Agreement.

28. Amendment and Modification. These Terms may only be amended or modified in a writing signed by an authorized representative of each party.