

## Purchase Order Terms & Conditions

**1. Terms & Conditions.** No terms and conditions other than the terms and conditions set forth in this order, including those terms and conditions in any document attached to or incorporated by reference in this order, shall be binding upon Winndeavor, further referred to as the "Purchaser", unless accepted by it in writing. Terms and conditions contained in any acknowledgement of this order which are different from or in addition to the terms and conditions of this order shall not be binding on Purchaser and specifically objects to any terms and conditions which are different from or in addition to the provision of this order. This order becomes the exclusive agreement between the parties when accepted by acknowledgement, commencement, or performance.

**2. Compliance with Laws.** Seller warrants and certifies that in the performance of this contract it will comply with all applicable statutes, rules, regulations and orders of the United States and of any state or political subdivision thereof including laws and regulations pertaining to labor, wages, hours and other conditions of employment, applicable price ceilings, if any, packaging and labeling of goods that the articles delivered hereunder shall be produced in compliance with Fair Labor Standards Act. The seller agrees to indemnify and save harmless the Purchaser or its customers from any and all liability, loss, damage, expense, including attorneys fees, arising from the violation of any such law or regulation.

**3. State Law.** This order shall be governed in all respects by the laws of the State of Indiana, excluding its rules regarding choice of laws.

**4. Extra Charges and Packaging Requirements.** No charges of any kind, including charges for boxing and cartage, will be allowed unless specifically agreed to by Purchaser in writing. ***Seller shall be responsible for packing and packaging necessary to withstand transportation hazards. Price shall cover net weight, unless otherwise agreed.*** Packaging requirements for shipments of Commercial Bills of Lading must meet commercial standard and accepted practices of the industry with full protection of the material to ultimate destination and must conform to governing classifications, including, but not limited to Uniform Freight Classification for rail – National Motor Freight Classification for truck – Railway Express Classification for express – U.S. Official Postal Manual, for parcel post – Official Air Freight rules, Tariffs, for air freight.

**5. Transportation.** Unless otherwise stipulated on the face of this order, goods covered by this order shall be shipped "FOB" Seller's plant. Title to said goods shall pass to Purchaser upon delivery to carrier. However, all transportation charges must be prepaid. No charges for unauthorized transportation will be allowed. Purchaser carries insurance on all material to which it has title while such material is in transit. Therefore Seller shall not declare any value on such material shipped via United Parcel Service, Rail Express, Air Express, Air Freight, or Parcel Post. Seller shall release rail or truck shipments at the lowest released valuation permitted in the governing tariff or classification. If Seller does not comply with Purchaser's delivery schedule, Purchaser may in addition to any other rights which Purchaser may have under this order, require delivery by the fastest way. Charges resulting from such premium transportation must be fully prepaid and borne by Seller. The provisions of this clause shall in no way limit Purchaser's right to inspect and reject the goods covered by this Order upon receipt.

**6. Invoicing and Marking.** One copy of the invoice must be mailed to the Purchaser on date return shipment is made. Separate invoices must be furnished for each return shipment under this order showing point of shipment and routing. Attach to invoice original bill of lading and express bill for any prepaid express or freight shipment. Packages must be marked with Seller's name and Purchaser's purchase order numbers, and is to contain one copy of the complete list of materials contained therein. Each package must be identified with the contents as shown on the shipping or packing list.

**7. Delays in Delivery.** ***Seller will strictly adhere to the delivery and completion schedules specified in this purchase order, and agrees that time is of the essence in the delivery of all goods hereunder. If, at any time, Seller believes that it may be unable to comply with the required delivery or completion schedules, Seller shall immediately notify Purchaser in writing of the probable length of any anticipated delay and the reasons for it, and shall continue to notify Purchaser of any significant change in delivery status. In the event of such notice or of an actual failure by Seller to comply with the delivery or completion schedules, Purchaser may in addition to all other remedies, require Seller, at Seller's expense to ship goods via air freight or other expedited routing to avoid or minimize delay.***

**8. Rejections.** If any of the goods are found at any time to be defective in material or workmanship, or otherwise not in strict conformity with the requirement of this order, Purchaser, in addition to any other rights which it may have under warranties or otherwise, may at its option, correct or have corrected the non-conformity at Seller's expense or reject and return such goods at Seller's expense. Such goods are not to be replaced without specific written authorization from Purchaser.

**9. Purchaser's Property.** Unless otherwise agreed in writing or unless subject to FAR, all tools, equipment or materials of every description furnished to Seller by Purchaser or specifically paid for by Purchaser and any replacement thereof or any materials affixed or attached thereto, shall be

plainly marked or otherwise adequately identified by Seller as Buyer's property and shall be safely stored separate and apart from Seller's property. Seller shall not substitute any property for Purchaser's property and shall not use such property except in filling Purchaser's order. Such property shall be subject to removal at Purchaser's written request in which event Seller shall prepare such property for shipment and shall deliver it to Purchaser within ten (10) days of Purchaser's written request in the same condition as originally received by Seller reasonable wear and tear accepted, all at the Seller's expense.

**10. Changes.** Purchaser may at any time by written notice make changes in the quantities ordered specifications, designs, or drawings, samples or other description to which the articles are to conform in methods of shipment and packaging or place of delivery. If any such change causes an increase or decrease in the cost of or the time required for the performance of any part of the work under this order whether changed or not changed by any such change order, an equitable adjustment shall be made in the price or delivery schedule or both and this order modified in writing accordingly. Nothing in this clause shall excuse the Seller from proceeding without delay to perform this order as changed. Seller shall immediately notify Buyer of any effect on price or delivery with written confirmation to follow within ten (10) days.

**11. Products, Methods, and Manufacturing Process.** Any knowledge or information which Seller shall have disclosed or may hereafter disclose to Purchaser incident to the placing and filling of this order shall not, unless otherwise specifically agreed upon in writing by Purchaser be deemed to be confidential or proprietary information and accordingly shall be acquired free from any restriction. No employee of Purchaser has authority to make any agreement express or implied limiting use or publication of or providing for confidential treatment of information or suggestions of whatever kind received by him unless such agreement is made in writing and signed by the Purchaser's General Manager or his delegated representative.

**12. Non-Assignment.** Assignment of this order or any interest therein or any payment due, or to become due, there under without the written consent of Purchaser, shall be void.

**13. Set-Off.** Purchaser shall be entitled at all times to set-off any amount owing at any time from Seller to Purchaser or any of Purchaser's affiliated companies against any amount payable at any time by Purchaser in connection with this order.

**14. Bankruptcy.** If Seller ceases to conduct its operations in the normal course of business (including inability to meet its obligations as they mature) or if any proceeding under the bankruptcy or insolvency laws is brought by or against Seller, or a receiver for Seller is appointed or applied for or an assignment for the benefit of creditors is made by Seller, Purchaser may terminate this order without liability except for deliveries previously made or for goods covered by this order which are at that time already then completed and which are subsequently delivered in accordance with the terms of this order.

**15. Work on Purchaser's or Its Customer's Premises.** If Seller's work under this order involves operations by Seller on the premises of Purchaser or one of its customers, Seller shall take all necessary precautions to prevent the occurrence of any injury to person or property during the progress of such work and except to the extent that any such injury is due solely and directly to Purchaser's or its customer's negligence, as the case may be, shall indemnify Purchaser against all loss which may result from any act or omission of the Seller, its agents, employees, or subcontractors, and Seller shall maintain such Public Liability, Property Damage and Employee's Liability and Compensation and Occupational Disease Acts. Without in any way limiting Seller's responsibility under this Clause when on the premises of Purchaser or Purchaser's Customer, Seller's employees shall be subject to and will follow the work site safety rules and regulations.

## **16. Inspection.**

a. All goods (which term throughout this order includes without limitation raw material, components, intermediate assemblies and end products) shall be subject to inspection and test by the Purchaser and its Customer (which term throughout this clause shall include without limitation the government including its surveillance and/or regulatory agencies if this order is placed pursuant to Government Prime or Subcontract) to the extent practicable at all times and places including the period of manufacture and in any event prior to final acceptance by the Purchaser and its Customer.

b. If any inspection or test is made on the premises of Seller or its suppliers, Seller, without additional charge, shall provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. All inspections and tests of the premises of Seller or its supplier shall be performed in such a manner as not to unduly delay the work.

**c. Final acceptance or rejection of the goods shall be made within a reasonable time following delivery, except as otherwise provided in this order. Failure to inspect and accept or reject goods shall neither relieve Seller from responsibility for such goods as are not in accordance with the order requirements nor impose liabilities on Purchaser therefore.**

d. Seller shall provide and maintain an inspection and process control system similar to AS9100/ISO-9001 which is acceptable to Purchaser and its Customer covering the goods hereunder. Records of all inspection work by Seller shall be kept complete and available to Purchaser and its Customer during the performance of this order and for such longer periods as may be specified in this order.

e. Winndevor, our Customers, Government and Regulatory Agencies, shall have Right of Entry to verify the Quality of work, records and or materials at any time as deemed necessary.

f. The Seller's Calibration system shall conform to the requirements of MIL-STD-45662, ANSI/NCSL Z540-1, or ISO-10012-1 in that only current calibrated equipment traceable to a national standard shall be used for product acceptance.

g. If at any time the supplier detects a process violation, purchase order noncompliance, raw material or part nonconformance, Winndeavor shall be notified as soon as practicable. Nonconforming material or parts shall be documented and submitted to Winndeavor. Non-conformances shall indicate the nature of the discrepancy with root cause and corrective action. A copy of the nonconformance document shall accompany each affected shipment.

h. Suppliers do not have MRB authority for Winndeavor.

i. Supplier is responsible for ensuring all items procured from its subcontractors conform to all requirements of Winndeavor's purchase order. Supplier shall ensure all applicable provisions of this document are flowed to its subcontractors.

j. **Supplier shall notify Winndeavor (Buyer) in advance of any changes in product and/ or process, changes of external providers, or any change in location of manufacture with written approval by Winndeavor and/or buyer's customer. Our organization reserves the right to approve such changes. Changed articles shall be clearly identified from previous articles.**

**17. Requirements to Maintain Assembly Records.** When specifications or drawings require Seller to serially number assemblies Seller shall maintain records of all such serially numbered assemblies by part number and serial number. In addition, when such specifications or drawings required Seller to serially number detail parts of said assemblies Seller shall maintain records of the source, drawing number and serial numbers of such detailed units. Seller shall maintain all such records for ten (10) years from the date of completion of this order, unless a longer period is called in the time of this order.

**18. Purchasers Reservation of Rights in Data.** Seller agrees that any information received or to be received from Purchaser is the proprietary property of Purchaser and such information shall only be used for the purposes of this order. Without written approval from the Purchaser, Seller shall not except as necessary for the performance of this order.

**19. Patent Indemnity.** Seller shall defend at its own expense any suit or proceeding brought against Purchaser or its customers so far as based on a claim that any goods, or the normal use thereof (except goods designed in detail by the Purchaser) furnished under this order constitute any infringement of any patent of the United States or any foreign country if notified promptly in writing and given authority, information and assistance (at Seller's expense) for the defense of same, and Seller shall pay all damages and costs awarded therein against Purchaser or its customers. In case the use of said goods, or any parts, is enjoined, Seller shall at its own expense and at its option, either procure for Buyer and its customers the right to continue using said goods or parts, or modify them so they become non-infringing, or with the approval of Purchaser, remove said goods and refund the purchase price and the transportation and installation costs thereof.

**20. Release of Public Information.** No public disclosure (including, without limitation, photographs, films, announcement and denials or confirmations) with respect to this order, the subject matter, or any phase of any program, shall be made without the prior written approval of Purchaser.

**21. Material Test Certification.** By acceptance of this purchase order Seller certifies that goods supplied strictly conform to all requirements of this purchase order, and that objective evidence of conformance to each specific drawing and specification required by the purchase order is on file and available for examination by Purchaser. Seller shall provide a Certificate of Conformance with each shipment. ***Each lot or shipment of castings, forging, raw material or finished parts made to specifications that require reporting of numerical test results, shall be accompanied by a copy of a certified Laboratory Test Report formulated in accordance with said specifications and made by or at the order of Seller which lists the numeric results of the specific test.***

**22. Warranties.** Seller warrants that all goods delivered hereunder will strictly conform to all requirements of this order (including all applicable descriptions, specifications, and drawings): and will be free from defects in material and workmanship: and, to the extent not manufactured pursuant to detailed designs furnished by Purchaser, be free from all defects in design and will be merchantable and fit for the intended purposes. Seller's warranties (and any more favorable warranties, service policies, or similar undertakings of Seller in favor of any other customer) shall be enforceable by Purchaser's customers and the users of Purchaser's goods, as well as by Purchaser.

**23. Termination.** ***This Order shall automatically terminate where (a) Seller refuses or fails to comply with any of the provisions hereof which refusal or failure has not been cured within a period of ten (10) days after receipt of written notice of the same from Buyer;*** (b) Seller becomes insolvent, or makes a general assignment for the benefit of its creditors or files or has filed against it a petition in bankruptcy or for reorganization, or pursues any other remedy under any other law relating to the relief of debtors, or in the event a receiver is appointed for Seller's property or business.

This Order may be terminated by Buyer at any time at its option in whole or in part for its convenience without penalty to Buyer, by giving written notice to the Seller. After receipt of such notice, unless otherwise directed by the Buyer, Seller, (a) shall immediately terminate all work under this Order; (b) shall transfer title and deliver to Buyer all (i) completed goods, (ii) goods in process, and (iii) materials produced or acquired in connection with such goods, which goods and/or materials conform to the requirements of this Order, do not exceed the quantity authorized by Buyer, and cannot otherwise reasonably be used by Seller; and (c) shall take all action necessary to protect goods and materials in Seller's possession in which Buyer has or may require an interest. Buyer shall determine the amount, if any, due Seller with respect to such termination of this Order and such determination shall be final.

**24. Precedence.** Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence:

- a.) Typed provisions on the fact of this order.
- b.) Purchase Order attachment.
- c.) The printed portion of this order including these terms and conditions, and
- d.) Specifications attached or incorporated by reference. Purchaser specification shall prevail over those of any agency of the U.S. Government and both shall prevail over those of the Seller.

**25. Waiver.** The failure of Purchaser to insist on performance of any provision of this Order shall not be construed as a waiver of that provision in any later instance.

**26. Default.** Purchaser may terminate this order or any part hereof by written or telegraphic notice of default to Seller signed by Purchaser, under any of the following circumstances.

- a.) If Seller refuses to make deliveries or perform the services within the time specified or extensions thereof agreed to in writing by Purchaser.
- b.) If Seller fails to comply with any of the provisions of this purchase order or so fails to make progress as to endanger performance of this order in accordance with terms.
- c.) If Seller becomes insolvent or is subject to proceedings under the laws relating to bankruptcy, insolvency or the relief of debtors. In the event of default Purchaser may purchase similar parts, materials or services elsewhere or secure the manufacture and delivery of parts, materials, services or otherwise and Seller shall be liable to Purchaser for any such excess costs to Purchaser, provided, however, that Seller shall not be liable to Purchaser for any such excess costs when the default of the seller is due to Causes beyond its control and totally without its fault or negligence, provided further that Seller shall not be excused from liability unless Seller has notified Purchaser immediately and confirmed in writing the existence of such cause within ten (10) days from the beginning thereof. Any termination by Purchaser, whether by default or otherwise shall be without prejudice to any claims to damages or any other rights of Purchaser against Seller.

**27. Over Shipment / Advance Shipment.**

Purchaser reserves the option to return any goods to the Seller at Seller's expense that are received by Purchaser more than fifteen (15) days prior to the delivery schedule date specified on the purchase order without first obtaining shipping authorization from Purchaser's Purchasing representative.

**28. Notice of Labor Disputes.** Whenever Seller has knowledge that any present or potential labor dispute is delaying or threatens to delay the timely performance of this contract, Seller shall immediately give notice thereof including all information relevant thereto to Purchaser. Seller agrees to insert the substance of this provision, including this sentence, in any lower-tier subcontract hereunder wherein a labor dispute might delay timely performance of this contract.

**29. Anti-Kickback.** This statute entitled "Anti-Kickback Act of 1986" (41 USC 51-58) is incorporated herein by reference:

- a.) By its acceptance of this purchase order or subcontract, Seller warrants and represents to Purchaser that neither Seller nor any lower-tier subcontractor of Seller nor any person acting on behalf of any of them has engaged nor will engage in conduct prohibited by Section 3 of the Anti-Kickback Act of 1986 (41 USC 51-58) relating to this purchase order or subcontract or any lower-tier purchase order or subcontract.
- b.) Purchaser shall have the right to withhold from any sums due Seller under this purchase order or subcontract if so directed, pursuant to Section 6 of the aforesaid Act or pursuant to Subparagraph (4) (11) of the Anti-Kickback Procedures Clause, by the contracting officer or agent cognizant of the applicable prime contract under which this purchase order or subcontract is awarded. For purpose of this Clause, the definitions of the terms "subcontractor", "subcontract" and "person" shall be those set forth in section 2 of the aforesaid Act.
- c.) Seller agrees to incorporate the substance of the Anti-Kickback Procedures Clause (FAR 52.203-7) in all purchase orders and subcontract.

**30. Disputes.** Pending the final resolution of any dispute involving this purchase order, Seller agrees to proceed with performance of this purchase order, including the delivery of goods, in accordance with Purchaser's instructions.

a.) Seller shall submit to Purchaser's authorized Purchasing Representative a written demand for Purchaser's final decision regarding the disposition of any dispute between the parties relating to this order, unless Purchaser on its own initiative has already rendered such a final decision. Any Purchaser's final decision shall be expressly identified as such, shall be in writing and shall be signed by Purchaser's authorized Purchasing Representative, except that Purchaser's failure to render a final decision within ninety (90) days after receipt of Seller's demand shall be deemed a final decision adverse to Seller's contentions.

b.) Purchaser's final decision shall be conclusive and binding regarding the dispute unless Seller commences an action to contest such decision within ninety (90) days following the date of the final decision or within one (1) year following the accrual of the cause of action whichever is later.

c.) Seller shall cooperate fully with Purchaser in seeking a resolution of any dispute involving this purchase order under the disputes procedures set forth in any applicable Government prime or higher-tier contract. If Purchaser elects to follow such procedures, Seller shall be bound by the final outcome of the disputes procedure if:

(1) Purchaser has afforded Seller an opportunity to participate in Purchaser's conduct of the dispute: or

(2) Purchaser, having decided to discontinue its own processing of the dispute has afforded Seller an opportunity to take over such processing completely; provided, however that Seller agrees to inform and notify Purchaser as to status and outcome of the dispute proceeding.

d.) Purchaser and Seller shall each bear its own costs of processing any dispute hereunder.

**31. Prevention of Counterfeit Products.** The Seller shall plan, implement, and control processes, appropriate to the organization and the product, for the prevention of counterfeit or suspect counterfeit part or materials use and their inclusion in product(s) delivered to the Purchaser. NOTE: Counterfeit part prevention processes should consider: training of appropriate persons in the awareness and prevention of counterfeit parts and materials; application of a parts obsolescence monitoring program; controls for acquiring externally provided product from original or authorized manufacturers, authorized distributors, or other approved sources; requirements for assuring traceability of parts and components or materials to their original or authorized manufacturers; verification and test methodologies to detect counterfeit parts or materials; monitoring of counterfeit parts reporting from external sources; quarantine and reporting of suspect or detected counterfeit parts or materials. If any of the products delivered or to be delivered under the Buyer's purchase order are discovered or suspected of being a counterfeit item or has used counterfeit materials, then the Buyer shall have the right to impound those items for further investigation of its authenticity. The Seller shall cooperate with the Purchaser in good faith with any investigation conducted by the Purchaser. The Buyer shall not be required to return the items to the Seller during the investigation process or thereafter. The Purchaser shall not be liable for payment to the Seller or supplier of any suspected counterfeit items under investigation.

**32. Awareness.** The Seller shall ensure that all persons who are involved in the fulfillment of the purchase order are aware of their contribution to the product or service being provided, contribution to product safety, and the importance of ethical behavior.

**33. Supplier Conflict Mineral Certification.** The Seller or supplier shall ensure materials supplied to Winndevor per contract shall be free of conflict minerals as defined by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Section 1502. This section imposes Security and Exchange Commission (SEC) reporting requirements (17 CFR Parts 240-249(b)) upon manufacturers if their product(s) contain metals derived from minerals defined as "Conflict Minerals" (examples include Tantalum and all its derivatives, Tin, Tungsten or Gold from the Democratic Republic of Congo, Angola, Burundi, Central African Republic, Rwanda, Tanzania, South Sudan, Uganda and Zambia). Evidence of compliance shall be provided if requested.

## QUALITY ASSURANCE PURCHASE ORDER CLAUSES

### QA CLAUSES ARE MANDATORY AND APPLICABLE TO ALL PURCHASE ORDERS.

**QA1 – Specification - Seller is responsible to perform operation and provide certification to the latest revision of the specification noted on the Purchase Order.**

**QA2 – Foreign Objects Debris (F.O.D.) –** Supplier shall assure cleanliness of products provided. Delivered product must be clean and free from any debris, such as machined chips, burrs, grinding dust, forming materials, corrosion, oil and other foreign material on surface to prevent F.O.D. entrapment.

**QA3 – Certification of Conformance –** Except for: Standard hardware (NAS, AN, MS hardware etc.) The Certification must include at a minimum the following:

1. Suppliers name and address.
2. Winndevor purchase order number.
3. Quantity shipped.
4. Seller's part number (if applicable).
5. Serial numbers, Batch numbers, Certification numbers, Heat numbers, or Cure dates if applicable.
6. **The Certification of Conformance must contain the statement that all inspections, processing and tests have been performed as required by the drawing and/or specification requirements and/or purchase order.**
7. Products controlled by Heat numbers, Certification numbers, Batch numbers or Cure dates must be linked to the Certification of Conformance by the Controlling number.
8. Each shipment must be accompanied **by legible and reproducible** copies of Raw Material, Processing, Testing, and Hardware Certification required to produce the seller's product referred to on the seller's Purchase Order.

**QA4 – ITAR Requirements** – Technical data supplied by Winndevor to suppliers is governed by the United States International Traffic and Arms Regulation (ITAR). The seller hereby represents and agrees that all technical data provided to the seller by Winndevor hereunder will be used in strict compliance with the ITAR and solely for the performance of the work hereunder. Seller agrees to implement procedures for restricting access to said technical data to U.S. citizens only.

**QA5 – Document Retention** - In addition to the requirements of the certifications included in the Winndevor Purchase Order, any additional records relating to work performed for Winndevor maintained by the supplier must be kept complete and available to Winndevor at the suppliers' facility, including without limitation, all records, reports, data and other information necessary to assure compliance with purchase order requirements. The records maintained at the suppliers facility must be maintained for a **minimum** of 10 years, unless otherwise specified.

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