

Purchase Order Contract Requirements
Garner Industries
7201 North 98th Street
Lincoln, NE 68507
402-434-9100

- 1. ACCEPTANCE.** This Purchase Order (Order) is Buyers offer to Seller and acceptance is strictly limited to its terms. Buyer shall not be bound by and specifically objects to any term or condition whatsoever which is different from or in addition to the provisions of this Order, whether or not such term or condition will materially alter this Order. Seller's commencement of performance or acceptance of this Order, in any manner shall conclusively evidence agreement to this Order as written.
- 2. DEFINITIONS.** Whenever used in this Order (a) "Customer" means any customer of Buyer, any subsequent owner, operator or user of the Goods and any other individual, partnership, corporation or person or entity which has or acquires any interest in the goods from, or under Buyer; (b) "FAR" means the Federal Acquisition Regulations as in effect on October 11, 2000; (c) "Goods" means all the goods, services, data, software and other items furnished or to be furnished to Buyer under this Order; and (d) "Order" means this purchase order including the provisions on its face, these Purchase Order Terms and Conditions, and all of the specifications, technical descriptions, statements of work, drawings, designs, documents, and other requirements and provisions attached to, incorporated into or otherwise made a part of this Purchase Order by Buyer.
- 3. SHIPMENT/DELIVERY.** Time is of the essence. Shipments or deliveries, as specified in this Order, shall be strictly in accordance with the specified quantities, without storage or excess; the specified schedules, neither ahead of nor behind schedule; and the other requirements of this Order. Seller agrees to comply with Buyers shipping instructions: to show Buyers purchase order number and plant location on all invoices, packing sheets, delivery tickets, shipping orders and bills of lading; and to prepare and pack the Goods to prevent damage and deterioration and comply with carrier tariffs. Unless otherwise specified, the price set forth in this Order shall include all charges for packing and crating and for carriage to the FOB point. Goods sold FOB place of shipment shall be forwarded collect. Seller shall promptly notify Buyer in writing of any anticipated or actual delay, the reasons therefore, and the actions being taken by Seller to overcome or minimize the delay. If requested by the Buyer, Seller shall, at Sellers expense, ship via air or other fast transportation to avoid or minimize delay to the maximum extent possible. Seller shall make no declaration concerning value of Goods shipped, except on Goods where tariff rating is dependent upon released or declared value, in which event Seller shall release or declare such value at maximum value with the lowest rating.
- 4. DELIVERY DELAYS.** Buyer may cancel any undeliverable portion of this Order if deliveries are not made by the dates and in the quantities specified. Seller shall be excused for delays in deliveries arising from causes outside its control and without its fault or negligence including, but not limited to, fire, explosion, flood, war, acts of God, acts of the government in its sovereign and strikes. Buyer shall be excused from his obligation to accept deliveries for like causes. The curing of such disabilities shall be excusable only to the extent directly attributable to excusable cause.
- 5. INVOICE AND PAYMENT.** Seller shall issue a separate invoice for each delivery and shall not issue any invoice prior to the Order schedule date or actual delivery date, whichever is later. Payment will be made after receipt of Goods and correct invoice. Unless freight or other charges are itemized, any discount may be taken on full amount of invoice. Payment due date, including discount periods, will be computed from date of receipt of Goods or correct invoice, whichever is later, to date Buyers check is mailed or otherwise tendered. Seller shall promptly repay to Buyer any amounts paid in excess of amounts due Seller.
- 6. INSPECTION.** Buyer acceptance of Goods shall be subject to Buyers final inspection within a reasonable time after receipt at destination, notwithstanding any payment or prior test or inspection. In addition, except as to suppliers of basic raw materials, such as sheet, plate extrusion, bar, tubing, castings and forgings and other raw materials not fabricated into an end item, Buyer may inspect and evaluate Sellers plant, including but not limited to facilities, systems, equipment, testing, data, personnel and all work-in-progress and completed Goods manufactured for installation on Buyers products. No inspection, test or prior approval or acceptance, and no delay or failure to inspect, test or give prior approval or acceptance, or failure to discover any defect or other noncompliance, shall relieve Seller of any of its obligations nor impair any rights or remedies of Buyer or Customers. Buyer's acceptance shall be revocable and not conclusive regarding latent defects, fraud or such gross mistakes as amount to fraud.

7. REJECTION. In the regular course of its business, Buyer may reject acceptance ("rejection" herein) of any or all of the Goods or any tender thereof which are not strictly in conformance with all of the requirements of this Order, and by notice rejection tag or other communication, notify Seller of such rejection. At Sellers risk and expense, all such Goods will be returned to Seller for immediate Seller repair, replacement and other correction and recovery to the Buyer: provided, however, that with respect to any or all such Goods and at Buyers election and at Sellers risk and expense, Buyer may: (a) hold, retain or return such Goods, without permitting any repair, replacement or other correction by Seller: (b) hold or retain such Goods for repair by Seller or, at Buyers election for repair by Seller or, at Buyers election, for repair by Buyer with such assistance from Seller as Buyer may require; (c) hold such Goods until Seller has delivered conforming replacements for such Goods. (d) hold such Goods until conforming replacements are obtained from a third-party: or (e) return such Goods with instructions to Seller as to whether the Goods shall be repaired or replaced and as to the manner of redelivery. All repair, replacement, and other correction and redelivery shall be completed within such time as Buyer may require. All costs and expenses and loss of value incurred as a result of or in connection with nonconformance and repair, replacement or other correction may be recovered from Seller by equitable price reduction, setoff or credit against any amounts which may be owed to Seller under this Order or otherwise.

8. WARRANTIES. Seller warrants to Buyer and Customers That the Goods shall: (a) conform in all respects to all of the requirements of this Order: 9b) be free from all defects in materials and workmanship: and (c) to the extent not manufactured pursuant to detailed designs furnished by Buyer, be free from all defects in design and fit for the intended purposes.

9. INFRINGEMENT. Seller shall defend Buyer and Customers against all claims and proceedings based upon actual or alleged misappropriation or wrongful use of any proprietary or confidential information involving any Goods, and Seller shall hold them harmless from any resulting losses, liabilities, damages, costs and expenses. Seller shall be notified of such claims or proceedings with reasonable promptness. Sellers obligations under this clause shall not apply to the extent any Goods are manufactured pursuant to detailed designs furnished by Buyer or to any infringement arising from the use or sale of Goods in combination with items not furnished by Seller if such infringement arising from the use or sale of such goods solely for the purpose for which they were designed or delivered to Buyer.

10. CHANGES. Buyer may from time to time in writing direct changes within the general scope of this Order in any one or more of the following: (a) technical requirements and descriptions, specifications, statements of work, drawings or designs; (b) shipment or packing methods; (c) place of delivery, inspection or acceptance; (d) reasonable adjustments in quantities or delivery schedules or both; and (e) Amount of Buyer furnished property. Seller shall comply immediately with such direction, and avoid unnecessary costs related thereto. If any such change causes an increase or decrease in the cost of or the time required for performance of this Order, an equitable adjustment in the prices and schedules of this Order shall be made to reflect such increase or decrease and this Order, shall be modified in writing accordingly. Unless otherwise agreed in writing, any Seller claim for adjustment must be delivered to Buyer in writing within 21 days after Sellers receipt of such direction, Seller shall make available for Buyer examination relevant books and records to verify Sellers claim for adjustment. Failure of Buyer and seller to agree upon any adjustment shall not excuse Seller from performing in accordance with such direction. If Seller considers that the conduct of any of Buyers employees has constituted a change hereunder, Seller shall notify Buyer immediately in writing as to the nature of such conduct and its effect upon Sellers performance. Pending direction from Buyer, Seller shall take no action to implement any such change.

11. TERMINATION-CONVENIENCE. Buyer may terminate this Order in whole or from time to time in part, effective as of the date specified by Buyer, in accordance with the provisions of the Termination clause in FAR 52.249-2, which provisions are incorporated herein by reference; however in FAR 52.249-2, "Contractor" shall mean Seller, "Contracting Officer" and "Government" shall mean Buyer; throughout paragraph (e) substitute six (6) months for one (1) year; in paragraph (1) substitute 45 days for 90 days (d) and (j) are deleted.

12. TERMINATION-DEFAULT. Buyer may terminate this Order in whole or from time to time in part, effective as of the date specified by Buyer, in accordance with the provisions of FAR 52.249-8, which provisions are incorporated herein by reference, in the event of Seller default, or in the event at Seller's suspension of business, insolvency, bankruptcy, reorganization or arrangement or liquidation proceedings, assignment for the benefit of creditors, or actual or constructive rejection by a bankruptcy trustee, or appointment of a receiver for Seller's property. In FAR 52.249-8 "Government" and "Contracting Officer," except in paragraph (c), shall mean Buyer, "Contracting Officer," except in paragraph (c), shall mean Buyer, "Contractor" shall mean Seller, and all references to a "Disputes" clause are deleted. If Buyer and Seller fail to agree on the amount to be paid for manufacturing materials referred to in paragraph (f) of FAR 52.249-8, the amount shall be the reasonable value thereof but not to exceed that portion of the price of this Order which is reasonable allocable to such materials.

13. RESPONSIBILITY FOR PERFORMANCE. Buyers issuance of this order is based in part on Buyer reliance upon Sellers ability, expertise and awareness of the intended use of the Goods, and Seller continuing compliance with all applicable laws and regulations during the performance of this Order. Further, Seller shall not, by contract, operation of law, or otherwise; assign any of its duties or obligations under this Order, or subcontract all or substantially all of its performance of this Order to one or more third parties, without Buyers prior written consent. No assignment, delegation or subcontracting by Seller with or without Buyers consent shall relieve seller of any of its obligations under this Order.

14. PUBLICITY. Seller shall not, and shall require that its subcontractors and suppliers of any tier shall not, cause or permit to be released any publicity, advertisement, news release, public announcement, or denial or confirmation of same, in whatever form, regarding any aspect of this Order or the Goods or program to which they pertain without buyers prior written approval.

15. RESPONSIBILITY FOR PROPERTY. Unless otherwise specified, upon delivery to Seller or manufacture or acquisition by Seller of any materials, parts, tooling, data or other property, title to which is in Buyer, Seller assumes the risk of and shall be responsible for any loss thereof or damage thereto. In accordance with the provisions of this Order, but in any event upon completion thereof, Seller shall return such property to Buyer in the condition in which it was received except for reasonable wear and tear and except for such property as has been reasonably consumed in the performance of this Order.

16. CONFIDENTIAL OR PROPRIETARY INFORMATION AND PROPERTY. Seller shall keep confidential and otherwise protect from disclosure all information and property obtained from Buyer in connection with this Order and identified as confidential or proprietary. Unless otherwise expressly authorized herein or by Buyer, Seller shall use such information and property, and features thereof, only in the performance and for the purpose of this Order. Upon Buyers request, and in any event upon the completion, termination or cancellation of this Order, Seller shall return all such information and property to Buyer or make such other disposition thereof as is directed by Buyer. Seller shall not sell or dispose of as scrap or otherwise any completed or partially completed or defective proprietary property before receiving written authorization from Buyer and before rendering such property unsuitable for use. In all lower tier subcontracts and purchase orders issued by Seller and involving subcontractor receipt of this such information or property, Seller shall provide to Buyer the same rights and protection as contained in this clause.

17. NON-WAIVER AND PARTIAL INVALIDITY. Any and all failure, delay or forbearance of Buyer in insisting upon or enforcing at any time or times any of the provisions of the Order, or to exercise any rights or remedies under this Order, shall not be construed as a waiver or relinquishment of any such provisions, rights or remedies in those or any other instances; rather, the same shall be and remain in full force and effect. Further, if any provision of this order is or becomes void or unenforceable by law, the remainder shall be valid and enforceable.

18. GOVERNMENT REQUIREMENTS. Within Sellers invoice or other form satisfactory to Buyer, Seller shall certify that Goods covered by this Order were produced in compliance with Sections 6, 7, and 12, Fair Labor Standards Act, as amended, and the regulations and orders of the U.S. Department of Labor issued there under. Subparagraphs (b) (1) through (b) (11) of the Equal Opportunity clause set forth in FAR 52.222-26 are incorporated herein by reference, except "Contractor" means Seller.

19. GOVERNING LAW. This Order and the performance thereof shall be governed by the laws of the State of Nebraska, USA, and any action or proceeding arising out of, or in connection with this Order shall be subject to exclusive jurisdiction of the appropriate courts within the State of Nebraska, USA.

20. ENTIRE AGREEMENT. This Order sets forth the entire agreement and supersedes any and all other agreements, understandings and communications between Buyer and Seller and related to the subject matter of this Order. No amendment or modification of this Order shall be binding upon Buyer unless set forth in a written instrument signed by Buyer. The rights and remedies afforded to Buyer or Customers pursuant to any provision of this Order are in addition to any other rights and remedies afforded by any other provision of this Order, by law, or otherwise.