



Moon Fabricating Corporation, P.O. Box 567, Kokomo, Indiana 46903-0567

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MOON TANKS

PURCHASE ORDER TERMS AND CONDITIONS (April 1, 2011)

1. OFFER TO BUY: This purchase order constitutes an offer to buy goods or services according to the description and other terms set forth on its face and reverse side. Terms on the face shall govern where inconsistent with those on the reverse. No additional or different terms offered by the Seller shall be or become part of this order nor shall this order be modified, without the express written approval of the Buyer.

2. WARRANTY: The Seller shall maintain an inspection and process control system acceptable to the Buyer. The Seller warrants that all articles covered by this Purchase Order will be in strict accordance with the specifications, drawings, and other descriptions furnished by the Buyer, and free from defects in material and workmanship. In the event of a recall, by the Buyer or the Buyer's Customer, necessitated by a defect in material the Buyer's Customer, necessitated by a defect in material or in workmanship in a Seller's part, the Seller will assume full financial responsibility for the cost of the recall, as well as replacement parts.

3. CONSIGNED GOODS: Any material furnished by the Buyer on a "No Charge" basis shall remain property of the Buyer and be fully accounted for, including scrap. Any such material scrapped because of defective workmanship of Seller shall, at the Buyer's discretion, be replaced or paid for by the Seller.

4. CHANGES: The Buyer may at any time by a written order make changes within the general scope of this order, in any one or more of the following: 1) Drawings, designs or specifications where the goods to be furnished are specifically manufactured for the Buyer in accordance therewith. 2) Method of shipment or packing. 3) Place of delivery. and, 4) The amount of Buyer-furnished property. If any such change causes an increase or decrease in the cost of, or the time required for the performance of any work under this order, whether changed or not changed, an equitable adjustment shall be made in the contract price or delivery schedule or both, and the order shall be modified in writing accordingly. The Seller shall proceed with the order as changed unless such changes will result in an increase in the cost or extension of the time of performance. If such changes will so affect the cost and/or time of performance, the Seller must notify the Buyer in writing to that effect within five (5) working days after receipt of changes (such notification will include an estimate of the extent of the effect of the changes on the cost and/or time of performance so that Buyer can determine if it wishes to proceed with the changes in view of the impact on cost and/or time of performance. After such notification, the Buyer shall specifically instruct the Seller in writing to proceed or not proceed with the changes. Any claim by the Seller for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Seller of notification the Buyer to proceed with the changes provided, however, that the Buyer, if it so chooses may receive and act upon such claim asserted at any time prior to the final payment under this purchase order. Nothing in this clause shall excuse the Seller from proceeding with the order as changed. Where the cost of property made obsolete or excess as the result of a change is included in Seller's claim for adjustment, Buyer shall have the right to prescribe the manner of disposition of such property.

5. CANCELLATION: The Buyer, without waiving any other legal rights, reserves the right to cancel without charge or to postpone deliveries of any of the articles covered by this order which are not shipped in reasonable time to meet the required date, provided, however, that in the event the Seller suffers delay in performance due to causes beyond reasonable control, such as act of God, war, act of the Government, act of the Buyer, fire, flood, strike, sabotage, or delay in transportation, the required date shall be extended a period of time equal to the period of such delay, if the Seller gives the Buyer notice in writing of the cause of the delay within a reasonable time after the beginning of thereof.

6. TERMINATION: The Buyer may terminate work on this order for its own convenience in whole or in part by written notice at any time. In that event any claim arising out of such termination shall be settled by negotiation on the basis of the Seller's costs and commitments properly incurred or made and supported with appropriate documentation, with due allowance for salvage data.

7. INDEMNIFICATION AND INSURANCE: Seller will indemnify and save harmless Buyer, its employees, agents and invitees from and against all liability, demands, claims, loss, cost, damage, and expense by reason or on account of property damage, death and personal injury whatsoever nature or kind arising out of, as a result of or in connection with the performance of this order which is occasioned by the actions and omissions of Seller or its suppliers. Seller will maintain and carry liability insurance which includes but is not limited to employer's liability, workers' compensation, general liability, public liability, property damage liability, product liability, completed operations liability and contractual liability in amounts set forth in this purchase order with carrier approved by the Buyer but in no event shall such amounts be less than the minimum statutory requirements, if any. Seller will, if requested by Buyer, furnish certificates of insurance indicating the foregoing coverage. The Seller agrees to perform the work in accordance with the safety rules of the Buyer and all applicable laws and regulations.

8. QUANTITIES: It is the Seller's responsibility to furnish the proper quantity called for on this order. No variation in the quantities specified herein will be accepted as compliance with this order, except by prior written agreement. The Buyer may retain any over shipments and consider them as having been delivered within the total price set forth in this order.

9. COMPLIANCE WITH TERMS: Any waiver of strict compliance with the provisions of this order shall not be deemed a waiver of the Buyer's right to insist upon strict compliance with this order thereafter.

10. DELIVERY: Shipment must be made to meet the specified schedule. Goods shipped to the Buyer in advance of schedule may be returned at the Seller's expense. Alternatively, and at the Buyer's discretion, payment may be withheld and the discount period will begin from the scheduled date of receipt. Late shipments caused by the Seller's failure to perform must be expedited. Any additional charges for overtime, expedited freight, or other unusual cost shall be at the Seller's expense.

11. PACKING SLIPS: All shipments must contain packing slips giving part number, description of material, quantity, and the purchase order number. If shipment is not made F.O.B. Destination, the original Bill of Lading must be furnished with invoices. Buyer's count shall be accepted as final on all shipments not accompanied by packing slips.

12. PACKAGING AND LABELING: Buyer's purchase order number shall appear conspicuously on each package, box, keg, bale, bundle, or other type of container. When shipping by weight, the tare weight of the containers should be permanently marked on each container. If this order covers stationery or printing, a label must also be placed on the outside end of each package showing Buyer's purchase order number, date ordered, and quantity and form number.

13. EXPORT REQUIREMENTS: All export shipments must be adequately boxed or crated, with any special handling marked, and contents waterproofed, rust protected, and otherwise packaged to prevent damage in transit, and must meet all export shipping requirements. When applicable, the Buyer must be supplied with a proper certificate of origin complying with customs regulations and all proper export documents for customs clearance. Seller is to fax necessary paperwork to Buyer's custom broker/agent at port of entry.

14. ROUTING INSTRUCTIONS: The seller shall make shipments as instructed. In the absence of specific routing instructions, shipments are to be routed "Best Way". Title and risk of loss pass to the Buyer at the F.O.B. point designated by it.

15. DIRECT SHIPMENTS: When material is invoiced by Seller but shipped by another company, the invoice shall bear the name of the shipper and the point from which shipment originated. Local and warehouse shipments of steel and bar stock should be marked or tagged in a suitable manner to permit prompt identification upon request.

16. TOOLING: All tools, gauges, dies, fixtures and patterns furnished by the Buyer or which the Buyer specifically authorized the Seller to acquire for work on this order shall be and remain the property of the Buyer. They shall be listed and maintained in suitable condition due to the work, by and at the expense of the Seller, and returned to the Buyer at any time upon request, F.O.B. Seller's plant. All tooling, dies, etc., shall be maintained and/or replaced as required to produce dimensionally capable products, at the Seller's expense. Seller shall not dispose of Buyer's tooling, dies, etc., without the express written approval of the Buyer.

17. REJECTIONS: All articles received by the Buyer may be subject to inspection. At the Buyer's discretion, any or all of the goods in a lot, in which there are articles which do not conform to the terms and conditions of the purchase order may be returned at the Seller's expense. Due to schedule or other constraints, the Buyer may elect to sort and/or repair the non-conforming articles at the Buyer's facility, in which case all inspection, sorting and repair costs shall be at the Seller's expense. When Seller receives consigned goods on Buyer's behalf, the Seller is responsible for completing appropriate incoming inspection with respect to count, verification, and any quality inspection that may be required as negotiated with the Buyer. If a count discrepancy occurs, Seller must notify Buyer within two (2) working days. Failure to do so may result in the Seller being responsible for the cost of any related material variances. Failure of the Seller to provide adequate material certification when required by court specification shall deem the goods to be rejected and the receipt date delayed until adequate material certification is provided.

18. PAYMENT: Seller's accounts receivable from the Buyer will be paid monthly except where cash discounts apply or other terms are specified. If correct invoices do not reach Buyer within three (3) days from invoice date, payment deadlines and discount periods will be calculated from the date of receipt of the correct invoice.

19. TAXES: Any taxes whether sales, goods and services, value added or otherwise shall be shown separately on the invoice.

20. ASSIGNMENT: This order or monies due there under may not be assigned in whole or in part without written consent of the Buyer.

21. SET-OFF: Buyer shall be entitled at all times to set off any amount owing at any time by Seller to Buyer of their respective affiliated companies against any amount payable at any time by Buyer in connection with this order.

22. EXTRA CHARGES: No extra charges of any kind will be allowed unless specifically agreed to in writing by the Buyer.

23. ADVERTISING: Seller shall not, without first obtaining the written consent of buyer, in any manner advertise or publish the fact that Seller has contracted to furnish Buyer the goods or services herein ordered, or use any trademarks or trade name of Buyer in Seller's advertising or promotional materials. In the event of Seller's breach of this provision, Buyer shall have the right to cancel the undelivered portion of any goods or services covered by this order and shall not be required to make further payments except for conforming goods delivered or services rendered prior to cancellation.

24. PATENTS: Seller shall pay all costs including attorney's fees and any damages finally awarded in any suit for which the Buyer in law may be responsible to the extent based upon findings that the design or construction of the goods as furnished infringe an American or Canadian patent (except infringement occurring as a result of incorporating a design or modification at the request of the Buyer, provided that Buyer promptly notifies Seller of any charge of infringement and Seller is given the right to settle such charge and to defend or control the defense of any suit based upon such charge at its expense). This paragraph sets forth the Seller's exclusive liability with respect to patents.

Moon Fabricating Corp.
General Terms & Conditions of Sale

As used below, the term Moon Fabricating Corp. or such business doing business as Moon Fabricating Corp. or under some other name as set forth on the face of this document (hereinafter referred to as Moon)

1. **Acceptance.** Moon's acceptance of Buyer's order is subject to all terms and conditions set forth on the face of herein document, including but not limited to arbitration and limitation of warranties, all of which are accepted by Buyer, supersede Buyer's order form and acknowledgement if any, and constitute the entire contract between Buyer and Moon. The herein document shall become a binding contract upon (a) our written acceptance of your order, (b) our shipment of any unit of the item ordered by you or (c) other conduct by us recognizing the existence of a contract with you. No communication, prior or subsequent hereto, shall act to modify, amend, or reject any term or condition stated herein unless expressly agreed in writing by a duly authorized officer of Moon.
2. **Alteration of Terms and Cancellation.** Changes in the terms and conditions herein or the cancellation of this agreement shall not be binding on Moon unless made in writing and accepted in writing by a duly authorized officer of Moon. Buyer shall reimburse Moon for any and all expenses incurred by Moon in connection with any such alteration or cancellation.
3. **Payment.** Payment is due from Buyer on the terms set forth on the face of this invoice. All payments not made by the due date shall bear interest at a rate of one and one half (1 ½) percent per month on the unpaid balance. Further, Buyer shall reimburse and indemnify Moon for any costs of collection incurred in collecting any past due sums, including court fees, out-of-pocket expenses, and reasonable attorney fees.
4. **Site and Work Conditions.** Buyer will provide a work site with clear access acceptable to Moon. If conditions at the site are otherwise, Moon reserves the right to adjust its price accordingly. All necessary materials of the installation items that are to be furnished by others shall be within fifty (50) feet of the applicable area of installation prior to Moon's arrival on site. Any materials received during Moon's erection or installation schedule shall be unloaded with the assistance of on site crane or equipment furnished by Buyer, Owner or their assigns. Scaffolding is to be tank builders scaffolding as approved by the OSHA variance granted to Marathon Steel Company and other members of the tank building industry effective April 4, 1975. Work Points, centerline, elevations, and all other information necessary for the performance of the work under this invoice shall be provided prior to the commencement of the work. Moon will not provide any electrical, steam, refuse disposal and sanitary service. These Site and Work Conditions are an essential part of the contract for equipment or services purchased hereunder any many not be modified without the express consent of Moon.
5. **Delays and Damages.** Moon shall endeavor as far as practicable to meet the schedule set forth by the Buyer. If Moon shall fail, for any cause, to meet such schedule, Moon shall not be liable for any loss or damage resulting from any such failure, including, but not limited to, increased labor or material costs, incidental or consequential damages, loss of use or lost profits.
6. **Choice of Law and Venue.** The contract shall be governed by and construed in accordance to the laws of the state of Indiana; notwithstanding the choice of law rules of another jurisdiction. To the extent that any of these Terms and Conditions conflict with Indiana law, the conflicting Term or Condition shall be deemed intended by the parties and should prevail, unless its application would constitute a violation of the public policy of the state of Indiana. All lawsuits arising out of or in any way relating to this contract shall be brought in a court of competent jurisdiction in Howard County, Indiana and the parties consent to the exercise of personal jurisdiction by such court with respect to any such procedures.

7. **LIMITED WARRANTY AND LIMITATIONS OF REMEDY.** MOON WARRANTS MATERIAL AND WORKMANSHIP DELIVERED UNDER THIS CONTRACT TO BE FREE OF DEFECTS UNDER NORMAL USE FOR A PERIOD OF ONE YEAR FROM THE DATE OF ACCEPTANCE AND, UPON WRITTEN NOTICE FROM THE BUYER, WILL REPAIR OR REPLACE, AT ITS OPTION, ANY MATERIALS OR WORKMANSHIP PROVIDED BY MOON. MOON FABRICATING CORP. SHALL REMEDY DEFECTS IN ACCORDANCE WITH MANUFACTURER'S RECOMMENDATIONS, APPLICABLE CODES, AND STANDARDS. BUYER AGREES TO PROVIDE MOON WITH ACCESS TO THE SITE IN ORDER TO INSPECT ANY MATERIALS OR WORKMANSHIP ALLEGED TO BE DEFECTIVE. MOON DOES NOT IN ANY WAY WARRANT THE MERCHANTABILITY OF THE MATERIALS OR WORKMANSHIP. IN NO EVENT SHALL MOON BE LIABLE FOR THE RESULTS OR CONSEQUENCES FROM USE OF SUCH MATERIALS BY ITS CUSTOMERS OR OTHERS, EXCEPT FOR ITS INTENDED USE. ANY ABUSE OR MISUSE OF THE MATERIALS VOIDS THIS LIMITED WARRANTY. THERE IS NO OTHER WARRANTY EXPRESSED OR IMPLIED. MOON'S LIABILITY UNDER THIS WARRANTY IS LIMITED TO THE REPAIR OR REPLACEMENT OF DEFECTIVE MATERIAL ONLY. MOON SHALL NOT BE LIABLE, IN ANY EVENT, FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES, OR FOR TRANSPORTATION, INSTALLATION, ADJUSTMENT, OR OTHER EXPENSES WHICH MAY ARISE IN CONNECTION WITH THE MATERIALS OR WORKMANSHIP.

THE FOREGOING LIMITED WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL, OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OF ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

8. **Limitation of Damages.** In no event shall Moon Fabricating Corp. liability exceed the purchase price of the products identified or involved in any dispute.
9. **Indemnity.** Buyer agrees to defend, indemnify and hold harmless Moon and its officers, director, shareholders, agents and employees from any and all loss, damage, liability, recovery, settlement, or expense, including attorneys and consultants fees and costs of investigation and defense, arising from any demand, claim, dispute or cause of action of any nature asserted or brought against Moon as a result of any injury (including death) or damage to any person(s) or property allegedly caused by, resulting from, arising out of, or occurring in connection with the furnishing of any goods or services or the performance or preparation of the performance of any of the work or any duties of Moon hereunder, or incidental to or appertaining thereto, including, but not limited to, any demand, claim, dispute, or cause of action asserted by any person or entity for damages from any cause directly or indirectly relating to any action or failure to act by Moon, its representatives, employees, subcontractors or suppliers, or any claim based on liability without fault for injury caused by defective products supplied by Moon, its contractors, subcontractors, representatives, agents or employees, and whether or not it is alleged that Moon or its officers directors, shareholders, agents or employees in any way contributed to the alleged wrongdoing or is liable due to a nondelegable duty.

It is the intent of the parties that Buyer shall indemnify Moon and its officers, directors, shareholders, agents and employees, to the fullest extent permitted by law, however, Buyer may not be obligated to indemnify Moon or its officers, directors, shareholders, agents or employees for any of its sole negligence or willful misconduct where such indemnification is contrary to law, but otherwise it is the intent of the parties that Buyer shall indemnify Moon and its officers, directors, shareholders, agents or employees to the fullest extent permitted by law for such liability.

Buyer also agrees to assume responsibility for and indemnify Moon for, the payment of any taxes or assessments (including penalties and punitive damages to the extent permitted by law) which may be imposed under any Federal, state or local law or ordinance, upon, or with respect to any compensation of any person employed by Owner, Buyer, their officers, directors, shareholders, agents, representatives, employees, successors or assigns

10. **Force Majeure.** No failure or omission by us in performance of any obligation under the contract shall either be deemed a breach or create any liability for damages or other relief, if the same shall arise from any cause or causes beyond the reasonable control of the party whose performance of obligations under the contract is interfered with by Force Majeure. In the case of interference of Force Majeure shall not cease within a reasonable period of time, we shall have the right to cancel the contract without any liability to Seller, their successors, agents or assigns.
11. **Arbitration.** Any controversy or claim arising out of or relating to the on site services, shall be settled finally and exclusively by binding arbitration held in Kokomo, Indiana, under the Uniform Arbitration Act as adopted by the State of Indiana, and the auspices of the Construction Industry Arbitration Rules of the American Arbitration Association, by which each party hereto agrees to be bound. Proceeding to arbitration and obtaining an award there under shall be a condition precedent to bringing or maintaining any action in any court with any dispute under this contract. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction.
12. **Enforceability.** Buyer agrees that in the event that any term or terms of this agreement shall be held to be unenforceable, the remaining terms shall continue in full force as if the unenforceable term or terms were not part of the agreement when it was executed. Should severance of any portion hereof affect a material right or obligation of a party the party do affected may rescind this agreement.
13. **Merger Clause.** This purchase order contains the entire understanding and agreement between the parties upon the subject matter hereof. There is no agreement, oral or otherwise, which is not set forth in this writing and neither parol nor extrinsic evidence shall be introduced to explain or change the terms of this agreement.
14. **Waiver.** No delay or failure on the part of Moon in exercising any right, privilege or remedy shall operate as a waiver of such or of any other right, privilege or remedy, and no waiver whatsoever shall be valid against Moon unless in writing by a duly authorized officer of Moon and then only to the extent set forth therein. No waiver by moon of any breach of this contract by Seller shall be deemed a waiver of any prior or subsequent breach of the same or any other provision of this agreement.
15. **Assignment.** No assignment of this contract or the rights and obligations hereunder shall be valid without the express consent of Moon.
16. **Headings.** The headings contained in the document are for reference purposes only and shall not affect, in any way, the meaning or interpretation of this purchase order.