

# KITCO TERMS AND CONDITIONS OF PURCHASE

QAS 310-4, Rev b – 2/1/2006

## 1. APPLICABILITY

These terms and conditions of purchase are applicable to purchases made by Kitco, Inc. (“Buyer”) from its vendors and/or suppliers (“Seller”).

## 2. ACCEPTANCE AND ACKNOWLEDGEMENT

Acknowledgment of a P.O. must be prompt (by return mail) and must confirm Kitco’s required shipping date. Any performance on a purchase order (“P.O.”) is deemed an acceptance, without exception, of the terms and conditions set forth on the face of the purchase order and in these terms and conditions of purchase.

## 3. DELIVERY

Delivery shall be made as specified and strictly in accordance with the delivery schedule of the P.O. All orders must be shipped via FedEx on Kitco’s FedEx account, unless otherwise specified by Kitco. If Seller’s deliveries fail to meet the delivery schedule set forth in the P.O. requiring Kitco to elect expedited shipments from Seller, Seller will pay the difference between the method of shipping specified on the P.O. and premium transportation rates, unless the delay in delivery arises out of causes beyond the control and without the fault or negligence of Seller within the meaning of the clause hereof entitled “Default.” Kitco reserves the right, without loss of discount privileges, to pay invoices covering goods shipped in advance of the schedule on the normal maturity after the date specified for delivery.

## 4. CERTIFICATE OF CONFORMANCE

- (a) Supplier shall submit with each shipment a certificate of conformance stating products shipped are in compliance with PO requirements and all applicable drawings & specifications.
- (b) The certificate shall include P.O. number, part number with revision level, quantity, lot/batch number, serial number (where applicable), cure date/lube date (where applicable), and be signed by an Authorized Company Representative including title.
- (c) All certification must be clearly legible. Poor copies may result in rejection of order at seller’s expense.
- (d) Unless agreed in writing by Kitco, when the supplier is not the Manufacturer, the Manufacturer’s Certificate of Compliance is required, together with certification from any intervening distributor.
- (e) Material Safety Data Sheets: with any delivery of hazardous material, supplier shall provide the current edition of the Material Safety Data Sheet (“MSDS”) published by the manufacturer.

## 5. PACKAGING AND LABELING

- (a) Each manufacturer’s lot in each shipment must be segregated

and identified.

- (b) Supplier shall ensure parts are adequately packaged and protected to preclude damage in transit. Except where otherwise specified, packaging of parts shall comply with best commercial practice.
  - (i) Hazardous materials, including compressed gases, shall be in approved containers.
  - (ii) Electronic equipment sensitive to electrostatic discharge (ESD) must be appropriately protected.
  - (iii) Product shall be protected against rust or corrosion.
  - (iv) Elastomeric parts, unless otherwise specified, shall be no older than 4 quarters (or 25% of shelf-life, whichever is less) at time of receipt at Kitco facility.
  - (v) If part/material is not listed in SAE ARP5316, supplier shall indicate material and recommended shelf life (e.g. proprietary parts).
  - (vi) Adhesives, paints, sealants and other items that have age control, shall have a minimum 75% of shelf-life remaining.
  - (vii) Lubricated Bearings shall have minimum 75% of recommended lube life remaining at time of receipt by Kitco.
- (c) Unless otherwise specified in P.O., part specification, or drawing, each package shall be labeled with as a minimum the Kitco P.O. Number, Part Number, Revision and Quantity.

## 6. INVOICING

Delays in receiving invoice, errors or omissions on invoice, or lack of supporting documentation required by the terms of the P.O., will be cause for withholding settlement without losing discount privileges. No charges shall be allowed for boxing, crating, packaging, or any other handling unless such provisions are agreed to in writing.

## 7. CHANGES

Kitco may at any time, by written order, make changes within the general scope of the P.O. in any one or more of the following: (i) drawings, designs, or specifications, where the goods to be furnished are to be specially manufactured for Kitco in accordance therewith, (ii) method of shipment or packing, (iii) time and/or place of delivery, and (iv) the period of performance of work, and Seller shall comply therewith. 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 the P.O., whether changed or not changed by any such order, an equitable adjustment shall be made in the P.O. price or delivery schedule, or both, and the P.O. shall be modified in writing accordingly. Except as expressly provided for elsewhere in the P.O., the parties agree that there shall be no adjustment in the price or time for performance hereunder unless an authorized

representative of Kitco's Purchasing Department shall have directed the change by the issuance of a written change order to the P.O.

## **8. INSPECTION**

- (a) All goods, including but without limitation to raw materials, components, intermediate assemblies, and end goods, shall be subject to inspection and test by Kitco and its customers to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance.
- (b) Kitco representatives shall be granted the right to verify at the Supplier's premises that furnished product, processes and records conform to specified requirements. The same right of entry shall be afforded to Kitco's customers and for Regulatory Authorities as necessary and notified in writing.
- (c) In case any goods or lots of goods are defective in material or workmanship or otherwise not in conformity with the requirements of the P.O., Kitco shall have the right to either reject the goods (with or without instructions as to their disposition), or to require their correction with the nonconforming goods returned to Seller at Seller's risk and expense, including transportation both ways. Goods or lots of goods which have been rejected or required to be corrected shall be removed, or, if permitted or required by Kitco, corrected in place by and at the expense of Seller promptly after notice and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If the Seller fails to promptly remove such goods or lots of goods that require removal, or to promptly replace or correct such goods or lots of goods, Kitco either, (i) may by contract or otherwise replace or correct such goods and charge to Seller the cost incurred thereby, or (ii) may cancel the P.O. for default as provided in the clause of this agreement entitled "Default."
- (d) If any inspection or test is made by Kitco or its customers on the premises of Seller or a subcontractor, Seller without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of Kitco and other inspectors in the performance of their duties.
- (e) Seller shall provide and maintain an inspection system acceptable to Kitco covering the goods hereunder. As a minimum, the supplier inspection system shall comply with MIL-I-45208. Manufacturing facilities shall comply with ISO9001:2000. Records of all inspection work by Seller shall be kept complete and available to Kitco during the performance of the P.O. and for a minimum of seven years thereafter.
- (f) This clause shall not affect any of the rights or liabilities of the parties under the clause hereof entitled "Warranty."

## **9. WARRANTY**

- (a) Seller warrants that all goods delivered under the P.O. will be merchantable, free from defect in material and workmanship, and will conform to applicable specifications and drawings if Seller is responsible for design of the goods according to performance specifications established by

Kitco. Seller warrants that all goods delivered under the P.O. will be free from defect in design and will be fit and sufficient for the purposes intended by Kitco. Kitco's approval of designs furnished by Seller shall not relieve Seller of its obligations under this warranty. Seller's warranties together with its service guarantees, if any, shall pass on to Kitco and its customers.

- (b) Seller's liability for breach of any warranty, as hereinabove set forth, shall be limited to the repair or replacement, at Kitco's election, of all defective or nonconforming goods and the payment of all packing and transportation costs attributable to the repair or replacement of defective or nonconforming goods.
- (c) Seller's obligations under this clause shall apply only to such defects or nonconformance as occur within one (1) year after such item was delivered to, and accepted by, Kitco. Where Kitco will incorporate this item in an end item to be delivered to its customers, Seller's obligation under this clause shall be extended to one year after delivery of said end item to the customer.

## **10. DEFAULT**

- (a) Kitco may, subject to provisions of paragraph (c) below, by written notice of default to Seller, cancel the whole or any part of the P.O. in any one of the following circumstances: (i) if Seller fails to make delivery of the goods or to perform the services within the time specified in the P.O. or any extension granted thereof, or (ii) if Seller fails to perform any of the other provisions of the P.O., or so fails to make progress as to endanger performance of the P.O. in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as Kitco may authorize in writing) after receipt of notice from Kitco specifying such failure.
- (b) In the event Kitco cancels the P.O. in whole or in part as provided in paragraph (a) of this clause, Kitco may procure upon such terms and in such manner as Kitco may deem appropriate and reasonable, goods or services similar to those so cancelled, and Seller shall be liable to Kitco for any excess costs for such similar goods or services. Seller shall continue the performance of the P.O. to the extent not cancelled under the provision of this clause.
- (c) Except with respect to defaults of subcontractors, Seller shall not be liable for any excess costs if the failure to perform the P.O. arises out of causes beyond the control and without the fault or negligence of Seller. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of Kitco, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of Seller. If the failure to perform is caused by the default of a subcontractor and if such default arises out of causes beyond the control of both Seller and subcontractor, and without the

fault or negligence of either of them, Seller shall not be liable for any excess costs for failure to perform unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedule.

- (d) If the P.O. is canceled as provided in paragraph (a) of this clause, Kitco, in addition to any other rights provided in this clause, may require Seller to transfer title and deliver to Kitco, in the manner and to the extent directed by Kitco (i) any completed goods, and (ii) such partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter "manufacturing materials") as Seller has specifically produced or specifically acquired for the performance of such part of the P.O. as has been cancelled, and Seller shall, upon direction of Kitco, protect and preserve property in possession of Seller in which Kitco or its customers have an interest. Payment for complete goods delivered to and accepted by Kitco shall be at the P.O. price. Payment for manufacturing materials delivered to and accepted by Kitco and for the protection and preservation of property shall be in an amount agreed upon by Seller and Kitco.
- (e) If, after notice of cancellation of the P.O. under the provisions of this clause, it is determined for any reason that the Seller was not in default under the provisions of this clause or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of cancellation had been issued pursuant to the clause of this Agreement entitled "Termination for Convenience."
- (f) The rights and remedies of Kitco provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

#### **11. TERMINATION FOR CONVIENENCE**

The performance of work under the P.O. may be terminated in whole or part by Kitco for its convenience in accordance with the provisions set forth in the Federal Acquisition Regulation ("FAR") Part 49.

#### **12. PATENT INDEMNITY**

Seller agrees to indemnify Kitco and its customers against any liability including costs and expenses, for or by reason of any actual or alleged infringement of any patent arising out of the manufacture, use, sale, or disposal of goods or articles furnished under the P.O. except where such goods or articles would be normally non-infringing but are rendered infringing by reason of Seller's compliance with Kitco's detail, design, and stated requirement for specific structure and Seller gives prompt notice of any claim of infringement related thereto. Where Kitco furnishes Seller with detail design, stated requirement for specific structure, or specifications for goods or articles to be furnished hereunder by Seller to Kitco, Seller agrees to waive any rights to be held harmless by Kitco against any claims for infringement or the like and covenants not to sue Kitco to enforce any

such hold harmless agreement.

#### **13. RIGHTS AND RESERVATIONS**

Rights to all drawings, designs, information, tools, patterns, equipment, and other items supplied by Kitco, and proprietary rights embodied therein, are reserved, and the same shall not be used or reproduced for any purpose whatsoever except the performance of work under the P.O.

#### **14. COMPLIANCE WITH LAWS AND REGULATIONS**

- (a) Seller agrees that at all times it shall comply with all applicable Federal, State, and Local laws, rules, and regulations.
- (b) The Federal Acquisition Regulation ("FAR") and the Defense Federal Acquisition Regulation Supplement ("DFARS") clauses cited below, where applicable by their terms and/or monetary threshold, are incorporated by reference as if set forth in full text. The effective version of each FAR or DFARS clause shall be the same version as that which appears in Buyer's prime contract or subcontract. If any of the clauses are not applicable by their terms and/or monetary value, they shall be self-deleting. Within the clauses, it is understood that the term "contractor" shall mean Seller, the term "contract" shall mean this contract, and "Government", "Contracting Office", and equivalent terms shall mean Kitco:

##### **FAR Reference:**

- (1) 52.203-3 Gratuities
- (2) 52.203-6 Restrictions on Subcontractor Sales
- (3) 52.203-7 Anti-Kickback Procedures
- (4) 52.203-12 Limitation on Payment to Influence Certain Federal Transactions
- (5) 52.204-2 Security Requirements
- (6) 52.209-6 Protecting The Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment
- (7) 52.2 1 1-5 Material Requirements
- (8) 52.21 1-15 Defense Priority and Allocation Requirements
- (9) 52.215-2 Audit & Records –Negotiation
- (10) 52.2 15- 10 Price Reduction for Defective Cost or Pricing Data
- (11) 52.215-1 1 Price Reduction for Defective Cost or Pricing Data – Modifications
- (12) 52.215-12 Subcontractor Cost or Pricing Data
- (13) 52.215-13 Subcontractor Cost or Pricing Data Modifications
- (14) 52.215-14 Integrity of Unit Prices & Alternate I
- (15) 52.215-15 Pension Adjustments and Asset Reversions
- (16) 52.2 15-1 8 Reversion or Adjustment of Plans for Post Retirement Benefits Other than Pensions (PRB)
- (17) 52.215-19 Notification of Ownership Changes
- (18) 52.2 19-8 Utilization of Small Business Concerns
- (19) 52.222-4 Contract Work Hours and Standards Act - Overtime Compensation
- (20) 52.222-20 Walsh-Healey Public Contract Act
- (21) 52.222-2 1 Prohibition of Segregated Facilities
- (22) 52.222-26 Equal Opportunity

- (23) 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era and Other Eligible Veterans
- (24) 52.222-36 Affirmative Action for Workers With Disabilities
- (25) 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era and Other Eligible Veterans
- (26) 52.223- 14 Toxic Chemical Release Reporting
- (27) 52.225-1 Buy America Act – Supplies
- (28) 52.225-8 Duty Free Entry
- (29) 52.225-13 Restrictions on Certain Foreign Purchases
- (30) 52.227-1 Authorization and Consent
- (31) 52.227-9 Refund of Royalties
- (32) 52.227-1 1 Patent Rights - Retention by the Contractor (Short Form)
- (33) 52.227-12 Patent Rights -Retention by the Contractor (Long Form)
- (34) 52.236-13 Accident Prevention
- (35) 52.242-15 Bankruptcy
- (36) 52.242-15 Stop Work Order
- (37) 52.245-17 Special Tooling
- (38) 52.245-18 Special Test Equipment

**DFARS Reference:**

- (1) 252.203-7001 Prohibition on persons Convicted of Fraud or Other Defense Contract Relate Felonies
- (2) 252.225-7001 Buy American Act and Balance of Payments Program
- (3) 252.225-7014 Preference for Domestic Specialty Metals & Alternate 1
- (4) 252.225-7016 Restriction on Acquisition of and Roller Bearings
- (5) 252.225-7025 Restriction on Acquisition of Forgings
- (6) 252.226-7001 Utilization of Indian Organizations and Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns
- (7) 252.227-7013 Rights in Technical Data - Noncommercial Items
- (8) 252.247-7023 Transportation of Supplies by Sea

part hereof. Seller also certifies full compliance with all state and local laws and orders relating to nondiscrimination in employment and facilities that are applicable to Seller.

**16. VENUE SELECTION/CHOICE OF LAW**

This agreement shall be deemed to have been made in the State of Utah, U.S.A. and shall be interpreted in accordance with the law of the State of Utah without regard to conflict of law principles. Seller consents to the exclusive jurisdiction of the state and federal courts of the state of Utah, U.S.A., for determination of any claim or controversy between the parties and arising out of or relating to these terms and conditions of purchase. In the event that Kitco shall engage an attorney or commence an action against Seller arising out of facts and circumstances related to these terms and conditions of purchase including, but not limited to, Seller's breach of any of its obligations hereunder, Kitco shall be entitled to recover its reasonable attorney's fees, costs, and other disbursements incurred in connection therewith.

**15. NON-DISCRIMINATION & FAIR LABOR STANDARDS ACT**

Seller hereby certifies that all goods sold hereunder which are produced or manufactured in the United States are produced in compliance with all applicable requirements, orders and regulations of the United States Federal Government pertaining to nondiscrimination in employment and facilities including, but without limitation to, the provisions contained in paragraphs one through seven of Part II, Nondiscrimination in Employment by Government Contractors and Subcontractors, of Executive Order 11246 (as amended by Executive Order 11375), Certification of Nonsegregated Facilities (41 CFR Chap.1, Section 1-12.803-10), the Equal Opportunity and Affirmative Action clauses as required by 41 CFR 60-1.4 (f) (7),60-250.4(m) and 60-741.4(f), and the Fair Labor Standards Act of 1938 as amended (29 U.S. Code 201-219), all of which provisions are incorporated herein by reference and expressly made a