

MARLEY ENGINEERED PRODUCTS LLC
STANDARD TERMS AND CONDITIONS OF PURCHASE

(Rev. 1/1/16)

1. **ACCEPTANCE AND GOVERNING PROVISIONS.** These Standard Terms and Conditions of Purchase shall be incorporated as part of and shall apply to purchases of goods and/or services under any Purchase Order from Marley Engineered Products LLC ("Buyer"), to Seller to which they are attached or in which they are referenced or to any Purchase Order issued under a Master procurement Agreement or similar agreement to which they attached or in which they are referenced (the "Order"). Seller's acceptance of the Order shall occur upon the earlier of (a) Seller's acknowledgement of the Order, or (b) Seller's commencement of manufacturing or shipment of goods or performance of services under the Order. . The Order is an offer or counter-offer by Buyer to purchase the goods and/or services herein described from Seller, not a confirmation or acceptance of any offer to sell, and acceptance of this offer or counter-offer is expressly made conditional on assent to these Terms and Conditions of Purchase and the other provisions included in the Order. Buyer hereby objects to any additional or different terms contained in any of Seller's bid, quotation, proposal, acknowledgement, invoice, or other forms or in any other communication previously or hereafter provided by Seller to Buyer. No such additional or different terms or conditions will be of any force or effect. Upon acceptance, the Order constitutes the entire agreement of Buyer and Seller regarding its subject matter. Trade usage and course of dealing or performance shall not be employed to vary, explain, or supplement these Terms and Conditions of Purchase. Any reference in the Order to any bid, quotation, proposal, or offer of sale is deemed to be limited to the description of the goods and/or services and shall not affect or modify these Terms and Conditions of Purchase.
2. **DELIVERY SCHEDULE AND FORCE MAJEURE.** Buyer requires 100 percent on-time deliveries and/or performance; therefore, TIME IS OF THE ESSENCE OF THE ORDER. Unless otherwise set forth in the Order, any premium shipping expenses, overtime expenses, and other related expenses necessary to meet Buyer's delivery or performance schedules shall be Seller's sole responsibility. Seller shall not anticipate delivery, however, by purchasing materials or manufacturing goods in excess of what is reasonably required to meet Buyer's delivery schedule. Items received in advance of such schedule may, at Buyer's option, be returned at Seller's risk of loss and expense or be accepted, with payment withheld until the scheduled delivery date. Buyer shall have no liability to Seller for Buyer's failure to perform any of its obligations under the Order if such failure arises out of or relates to causes or events beyond Buyer's control. Deliveries in excess of those authorized by Buyer shall be at Seller's risk of loss and may be returned to Seller or disposed of by Buyer without any liability to Seller. Seller shall pay Buyer for all packaging, handling, sorting, transportation, storage, and other expenses in connection with Buyer's return of such excess goods.
3. **DOCUMENTATION.** All invoices for goods must reference the Order number, quantity of pieces in the shipment, number of cartons or containers in the shipment, bill of lading number, and other information required by Buyer. For international shipments, Seller shall include a customs valuation invoice with a master packing slip and shall furnish all other required export/import documents. Export and trade credits shall belong to Buyer. Seller shall furnish (a) all documents required to obtain export credits and customs drawbacks; (b) certificates of origin of the materials and goods supplied and the value added in each country; (c) all NAFTA and other related documents; (d) all required export licenses or authorizations; and (e) any other documents requested by Buyer or any of its customers. Seller warrants that the contents of such documents shall be true and accurate. Seller shall indemnify Buyer for any damages, including without limitation duties, interest, and penalties, arising from a false or inaccurate statement.
4. **INSPECTION AND REMEDIES.** (a) Buyer (or Buyer's customer, including any governmental agency) shall have the right, but not the obligation, to inspect goods and services and carry out quality audits at times and places designated by Buyer before, during, or after delivery or performance. If an inspection or audit takes place at the premises of Seller or its suppliers, Seller shall provide, at Seller's expense, all reasonable facilities and assistance to such inspectors. Seller shall maintain a test and inspection system acceptable to Buyer and shall cause its suppliers to maintain a similar test and inspection system. (b) If Buyer determines that any goods provided or services performed under the Order are defective or fail to conform to the requirements of the Order (including Seller's warranties and covenants under these Terms and Conditions of Purchase), Buyer may reject or revoke acceptance of such goods or services and may (i) terminate all or any part of the Order (as provided below); (ii) repair or return such goods to Seller for repair or replacement (at Seller's risk of loss and expense of unpacking, examining, repacking, and reshipping); and/or (iii) retain such goods or services at an adjusted price. Seller shall be liable for any special, consequential, and incidental damages of Buyer. These remedies are in addition to any other remedies provided hereunder, at law, or in equity. Buyer's inspection of goods, whether during manufacture, prior to delivery, or within a reasonable time after delivery, does not constitute acceptance of any work-in-process or finished goods. Buyer's acceptance, inspection, or failure to inspect does not relieve Seller of any of its responsibilities or warranties.
5. **WARRANTY.** (a) In addition to any other express or implied warranties provided by law or otherwise, Seller warrants with respect to goods and services provided under the Order that (i) Seller has clear title, free of all liens and encumbrances; (ii) there are no claims of third parties of any nature whatsoever arising out of or related to the goods or services; (iii) all goods (including without limitation hardware, software, firmware, and systems consisting of goods working together) and services are new and in strict conformance with the specifications, drawings, samples, designs, or other descriptions furnished to or by Buyer, and shall be merchantable, of good quality and workmanship, free from defects in material, design, and workmanship, and fit for Buyer's particular purpose; (iv) all services shall be performed in a competent manner in accordance with the requirements of the Order and shall fulfill the particular purpose intended; (v) prices charged herein are as low as any net price now given by Seller to any other customer for similar goods or services, and if at any time during the contract period lower prices are quoted any other party for similar goods or services, such lower net prices shall, from that time, be substituted for the prices contained herein; and (vi) the sale or use of the goods or services covered by the Order shall not infringe or contribute to the infringement of any patents, trademarks, copyrights, or other proprietary rights. (b) These warranties extend to Buyer and its successors and assigns and to customers and users of Buyer's products and services. (c) The warranty period shall be the longest term provided by applicable law and shall commence on the date of Buyer's acceptance of the goods or services. A new warranty period shall commence from the date of acceptance of any replacements of goods or services that are defective or that fail to conform to the requirements of the Order. (d) Remedies for breach of these warranties are cumulative and shall include those provided under these Terms and Conditions of Purchase and any available at law or in equity.
6. **TERMINATION.** (a) Buyer may terminate all or any part of its purchases under the Order, without liability to Seller, if Seller (i) fails to deliver goods or perform services within the time and in the quantities and of the quality required by Buyer or to give adequate assurances requested by Buyer; (ii) breaches these Terms and Conditions of Purchase (including Seller's warranties and covenants); (iii) fails to make progress so as to endanger timely and proper performance of the Order, and such failure, if curable, is not cured within ten (10) days (or any shorter period that is commercially reasonable under the circumstances) after notice from Buyer; or (iv) 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. In addition to obtaining a refund or credit and any other remedies provided herein or available at law or in equity, Buyer may, upon such termination, purchase substitute goods or services elsewhere, on such terms as Buyer deems appropriate, and charge Seller with any excess costs and losses incurred by Buyer, including consequential and incidental damages. (b) Buyer may terminate all or any part of the Order for convenience, in which case (i) Seller shall, as directed by Buyer, cease work and deliver to Buyer all satisfactorily completed goods or materials and work in process; and (ii) Buyer shall pay to Seller reasonable termination charges solely limited to the costs of materials, goods, and labor that are incurred prior to Seller's knowledge of such termination, provided that Seller takes reasonable steps to mitigate its damages. (c) To the extent not terminated by Buyer, Seller shall continue performance under the Order. (d) Any termination under Section 6(a) adjudged to be wrongful shall be deemed to then be a termination for convenience under Section 6(b), but with Buyer having the right to avail itself of all of its remedies under these Terms & Conditions of Purchase, at law or in equity.
7. **FINANCIAL AND OPERATIONAL CONDITION OF SELLER.** Seller will permit Buyer and its representatives to review Seller's books and records concerning compliance with the Order and Seller's overall financial condition. Seller agrees that if Seller experiences any delivery or operational problems, Buyer may, but is not required to, designate a representative to be present in Seller's applicable facility to observe Seller's operations; provided, however, the acts or omissions of such representative shall in no way relieve or mitigate any of Seller's obligations or liabilities arising out of or in connection with an Order. Seller agrees that if Buyer provides to Seller any accommodations (financial or other) that are necessary for Seller to fulfill its obligations under the Order, Seller will reimburse Buyer for all costs, including attorneys' and other professionals' fees, incurred by Buyer in connection with such accommodation and will grant access to Buyer to use Seller's premises, machinery, equipment, and other property necessary for the production of goods covered by the Order under an access agreement.
8. **LIMITATION OF LIABILITY.** BUYER SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THE ORDER, INCLUDING ANY TERMINATION, REJECTION, OR REVOCATION OF ACCEPTANCE OF ALL OR ANY PART OF THE ORDER. IN NO EVENT SHALL BUYER'S LIABILITY HEREUNDER EXCEED THE PURCHASE PRICE OF THE ORDER.
9. **INDEMNITY AND INSURANCE.** Seller shall defend, indemnify, and hold Buyer and its directors, officers, members, employees, customers, affiliates, agents, contractors, successors, and assigns harmless from and against any and all claims, liabilities, losses, damages (including special, consequential, and incidental damages), actions, and expenses (including attorney's fees) in connection with (a) any breach by Seller of its warranties, covenants, or obligations hereunder; (b) any injury (including death), property damage, or economic loss arising out of or related to (i) defective or nonconforming goods or services supplied by Seller under the Order, or (ii) acts or omissions of Seller or its employees or subcontractors in providing goods to or performing work, including work at Buyer's or a customer's premises or using Buyer's property, unless resulting from the sole negligence of Buyer; (c) any failure to comply with laws under Section 11; and (d) any infringement or contributory infringement of a

patent, trademark, copyright, or other proprietary interest by reason of the manufacture, delivery, license, use, or sale of the goods supplied or services performed under the Order ("Infringement"), regardless whether (a) through (d) arise in tort (including negligence), contract, warranty, strict liability, or otherwise. Seller shall provide a certificate of insurance evidencing coverage for workers compensation, commercial general liability, automobile liability, and property damage insurance in amounts and coverages sufficient to satisfy all claims hereunder. Such policies, except workers compensation, shall name Buyer as an additional insured. All policies shall be written or endorsed to be primary and noncontributory to any coverage provided by Buyer and to include a waiver of any subrogation rights against Buyer. Other terms may apply.

10. **INTELLECTUAL PROPERTY INFRINGEMENT.** For any Infringement (as defined above), Seller shall, at Seller's expense, obtain for Buyer a perpetual, royalty-free license with respect to such item, or shall replace or modify the item in a manner satisfactory to Buyer, so as to avoid the infringement without any degradation in performance. Seller's obligations shall apply even though Buyer furnishes any portion of the design or specifies materials or manufacturing processes used by Seller.

11. **COMPLIANCE WITH LAWS.** (a) In providing goods or services under the Order, Seller shall comply with any and all applicable federal, state, local, and international laws, regulations, ordinances, executive orders, rules, orders, standards, conventions, directives, and treaties, including those relating to (i) design, manufacture, transportation, sales, advertising, distribution, exportation, importation, labeling, packaging, certification, or approval of the goods or services; and (ii) employment discrimination, hours and conditions of employment, occupational health and safety, wages, environmental matters, product safety, motor vehicle safety, corrupt or deceptive practices, boycotts, antitrust, consumer products, or government subcontracting. Without limiting the foregoing, Seller shall ensure that none of the goods it supplies to Buyer (A) contain any poly brominated biphenyls (PBBs), penta-brominated diphenyl ether (pentaBDE), octa-bromodiphenyl ether (octaBDE), polychlorinated biphenyls (PCBs), mercury, or asbestos, or (B) are manufactured with any ozone depleting substances. (b) At Buyer's request, Seller shall certify in writing Seller's compliance with any or all of the foregoing. Seller's invoices shall contain Seller's certification that the goods purchased hereunder have not been produced, and will not be produced, in violation of any of the provisions of the Fair Labor Standards Act of 1938.

12. **CHANGES.** Buyer may, at any time, make changes in the Order, including changes in the quantity, delivery time or place, or shipping or packing method, or in any drawings, specifications, or designs. If such a change causes a material increase or decrease in the cost of, or the time required for, performance of the Order, or makes the timely performance of the Order impossible, Seller shall notify Buyer in writing immediately. Any claim by Seller for an adjustment in time for performance or price must be asserted in writing within ten (10) days from date of notification of a change. No change shall be binding on Buyer unless agreed to in writing by an authorized member of Buyer's senior management.

13. **BUYER'S PROPERTY AND INFORMATION.** All tools, dies, molds, templates, equipment, specifications, data, drawings, designs, software, or materials furnished by Buyer to Seller or paid for by Buyer, including replacements and materials attached thereto, shall remain and be marked as the personal property of Buyer. Such items shall be separately stored and insured by Seller, and Seller assumes all risk of loss and liability arising out of or related to the items, until such items are returned to Buyer. These items shall be used by Seller only for filling Buyer's Order and are subject to immediate removal, at Buyer's written request, with each item to be delivered (at Seller's expense) in its original condition, reasonable wear and tear excepted. Seller shall provide to Buyer, without restriction on use or disclosure, all information and documents that Seller has or shall develop or acquire related to the work Seller is performing under the Order. Such information and documents shall be deemed to be "works for hire" and shall be the property of Buyer, with Buyer having a right of use for any purpose, without liability to Seller. All information and documents Buyer may have disclosed or shall disclose to Seller in connection with the goods to be delivered or services provided under the Order shall be deemed confidential and proprietary and shall not be disclosed or used by Seller without the written consent of an authorized member of Buyer's senior management.

14. **PRICES, INVOICES, AND SET-OFF.** Unless the Order contains a special notation by Buyer to the contrary, all prices are (a) firm and not subject to increase or additional charges during the period of the Order; (b) in U.S. dollars; (c) if goods are shipped to Buyer from a point within the U.S., FCA Seller's U.S. facility (Incoterms[®] 2010), and if goods are shipped to Buyer from a point outside the U.S., DDP Buyer's U.S. facility (Incoterms[®] 2010); and (d) inclusive of all freight and duty (consistent with the terms in clause (c)) and taxes (other than sales or use taxes) that Seller is required by law to collect from Buyer. Such sales or use taxes shall not be included in Seller's invoice if Buyer indicates that the goods or services ordered are exempt from such taxes. Applicable taxes shall be separately stated on Seller's invoice. Seller shall deliver duplicate invoices to Buyer immediately upon shipment of goods or completion of services. Invoices shall be paid based on the later of the date of Buyer's receipt of conforming goods and services or Buyer's specified delivery date, and not on the basis of Seller's invoice date. All purchases are on open account to be paid by Buyer's check or wire transfer. Buyer shall be entitled to set off any amount owing at any time from Seller to Buyer or its affiliates against any amount payable at any time by Buyer under the Order.

15. **PACKING, MARKING, AND SHIPMENT.** Seller shall suitably pack, mark, and ship goods in accordance with the instructions of Buyer and the requirements of the carrier transporting such goods. Buyer shall not be charged for packing, marking, or shipping unless such services are separately itemized on the Order. Buyer's Purchase Order number must appear on the container, packing list, invoice, and any correspondence relating to the Order. Two copies of the packing list (providing the quantity and description of the goods contained therein) shall be placed within the container.

16. **PROPER BUSINESS PRACTICES.** Seller shall act in a manner consistent with all laws concerning improper or illegal payments and gifts or gratuities, including without limitation the Foreign Corrupt Practices Act of 1977, as amended, and Seller shall not pay, promise to pay, or authorize the payment of any money or anything of value, directly or indirectly, to any person for the purpose of illegally or improperly inducing a decision or obtaining or retaining business in connection with the Order.

17. **US C-TPAT.** If Seller directly conducts any import or export business, Seller agrees to develop and implement, within a framework consistent with the Customs Trade Partnership Against Terrorism ("C-TPAT") recommendations/guidelines, a verifiable, documented program to enhance security procedures throughout its supply chain process. Where Seller does not exercise control of a production facility, transportation, or distribution entity or process in the supply chain, Seller agrees to communicate the C-TPAT recommendations/guidelines to its suppliers and transportation/distribution service providers and, where practical, condition its relationships to those entities on the acceptance and implementation of the C-TPAT recommendations/guidelines.

18. **ASSIGNMENT AND SUBCONTRACTING.** Seller may not assign (including by change of ownership or control) the Order or any interest therein, including payment, without the prior written consent of a member of Buyer's senior management. Seller shall not subcontract or delegate performance of all or any substantial part of the work called for under the Order without the prior written consent of a member of Buyer's senior management. If Buyer grants consent to Seller's assignment or subcontract, then Seller's assignee or subcontractor shall be bound by all terms and conditions of the Order.

19. **WAIVER.** No claim or right arising out of a breach of the Order can be discharged in whole or in part by a waiver or renunciation unless supported by consideration and made in writing signed by the aggrieved party. No failure to enforce a breach of any provision of the Order shall be deemed a waiver of any other breach of such or other provisions.

20. **GOVERNMENT CONTRACTS AND COOPERATIVE AGREEMENTS.** This Section 20 shall apply if the goods or services to be delivered or performed under the Order are for the purpose of enabling Buyer to perform a government contract, subcontract, cooperative agreement, or grant. (a) The Order incorporates by reference any clauses required to be included by such contract or subcontract or by any applicable law, ordinance, rule, or regulation, and implementing rules and regulations of all of the preceding, including, but not limited to, the equal employment opportunity clause in Section 202 of Executive Order 11246 of September 24, 1965, as amended from time to time. **Buyer and Seller shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a), and 60-741.5(a). These regulations prohibit discrimination against (i) qualified individuals based on their status as protected veterans; (ii) individuals with disabilities; and (iii) all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status, or disability.** To the extent required, Executive Order 13658 of February 12, 2014, establishing a minimum wage for contractors, and its implementing regulations, including applicable contract clause, are incorporated by reference into this Order as if fully set forth herein. (b) The Order shall be governed by and construed according to the U.S. Federal Law of Government Contract as enumerated and applied by U.S. Federal Judicial Bodies and Boards of Contract Appeals. (c) Any and all governmental property furnished hereunder shall be administered and maintained in accordance with FAR Part 45.

21. **COMPLIANCE WITH CONFLICT MINERALS REQUIREMENTS.** Seller shall promptly and accurately complete surveys and certifications requests by Buyer related to goods that may contain tantalum, tin, tungsten, or gold that directly or indirectly finance or benefit armed groups in the Democratic Republic of Congo or the nine adjoining conflict countries, i.e., Angola, Burundi, Central African Republic, the Republic of the Congo, Rwanda, South Sudan, Tanzania, Uganda, and Zambia ("Conflict Minerals"). Seller shall inform Buyer (a) whether Conflict Minerals are known to be present in any goods provided by Seller to Buyer; and (b) at Buyer's request, of the status of Seller's policies and procedures relating to compliance with the Conflict Minerals Law. Seller shall require that each of its suppliers agrees to provisions substantially identical to this Section 21. Seller shall notify each of its suppliers of its requirement to fill out Conflict Minerals surveys and certifications and will exercise reasonable best efforts to ensure that all suppliers fully and accurately complete surveys and certifications for the prior fiscal year no later than February 28 of each year. Upon reasonable notice, Seller shall permit Buyer to audit such records as reasonably necessary to confirm Seller's compliance with this Section 21.

22. **MISCELLANEOUS.** The Order shall be interpreted and governed by the laws of the State of Delaware, U.S.A., excluding its principles of conflicts of laws, and litigation arising from the Order shall be brought only in the jurisdiction where Buyer's principal place of business is located.