

Marsh Purchase Order Terms and Conditions

Marsh Instrumentation Ltd.
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1. **OFFER TO BUY:** This purchase order constitutes an offer to buy goods or services according to the description and other terms and 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 its 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. Steel castings shall not be welded without the Buyer's consent. Consent shall not relieve the Seller of its warranty responsibility. In the event of a recall, by the Buyer or the Buyer's Customer, necessitated by a defect in material or 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" bases 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 deliver and 4. The amount the 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 (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 from 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 Seller's claim for adjustment, Buyer shall have the right to prescribe the manner of disposition of such property.
5. **CANCELLATION:** The Buyer, without any other legal rights, reserves the right to cancel without change 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 value.
7. **IDENTIFICATION and INSURANCE:** Seller will identify 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, worker's compensation, general liability, public liability, property damage liability, product liability, completed operation liability and contractual liability in amounts set forth in this purchase order with carriers 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:** Applicable Technical and Quality Assurance requirements shall be extended to original Manufacturer and lower tier suppliers 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. **DELIVER:** 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 changes for overtime, expedited packing slips, freight or other unusual cost shall be at the Seller's expense.
11. **BILL OF LADING/PACKING SLIP:** 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 LABELLING:** 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 stationary or printing, a label must also be placed outside of each package showing Buyer's purchase order number, date ordered, 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 point designated by X WORKS (EXW).
15. **HAZARDOUS:** Seller must comply with the requirements of the Transportation of Dangerous Goods Act and all amendments and regulations hereto. Seller must also comply with the Occupational Health and Safety Act, WHMIS regulations, and supply MSDS sheets.
16. **DIRECT SHIPMENTS:** When material is invoiced by Seller by 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.
17. **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.
18. **REJECTIONS:** 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-confirming 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 variances. Failure of the seller to provide adequate material certification when required by order specification shall deem the goods to be rejected and the receipt date delayed until adequate material certification is provided.
19. **INSPECTION:** MARSH, Marsh agents or Marsh client to have free access during regular work hours during performance of the contract to inspect and verify the work performed including associated contract documents and procedures to ensure compliance to contract.
20. **REWORK:** Marsh is to be advised of any rework on products manufactured and supplied under this Purchase Order.
21. **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.
22. **SRED(Scientific Research Experimental Development):** In the event that this Purchase Order for Goods and/or Services is eligible for scientific research and experimental development tax credit, Marsh Instrumentation Ltd. reserves the right to these credits.
23. **TAXES:** Any taxes whether sales, goods and services, value added or otherwise shall be shown separately on the invoice
24. **ASSIGNMENT:** This order or monies due thereunder may not be assigned in whole or in part without written consent of the Buyer.
25. **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.
26. **EXTRA CHARGES:** no extra charges of any kind will be allowed unless specifically agreed to in writing by the Buyer.
27. **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 tradename 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.
28. **PATENTS:** Seller shall pay all costs included 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, proved that Buyer promptly notifies Seller of any change of infringement and Seller is given the right to settle such change 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.
29. **COUNTERFEIT:** The supplier warrants that all parts and components are new and original OEM preventing counterfeit items entering into Marsh supply chain.
30. **CHOICE OF LAW AND JURISDICTION:** The Buyer and Seller agree that the courts of Ontario shall have jurisdiction for all purposes. The International Sales of Goods Act shall not apply.