



## **PURCHASE ORDER TERMS AND CONDITIONS**

### **All Affiliated Companies And Divisions**

These Purchase Order Terms and Conditions (“POTCs”) apply to all Purchase Orders placed by FabriTec Structures, LLC and its affiliates (“Buyer”) with a Supplier (and Supplier and Buyer hereinafter each a “Party” and collectively the “Parties”) and, in connection with an actual Purchase Order, supersede all prior communications and agreements between the Parties with respect to such Purchase Order, except as (1) specifically provided herein, and/or (2) otherwise provided in the specific terms of the respective Purchase Order. The preferred method of communication between Buyer and Supplier is email, unless otherwise agreed to.

**SPECIFICATION OF GOODS:** If Buyer has designated Product ID Numbers for ordering goods with Supplier, Buyer shall use those when ordering a good. If there are no such numbers, Buyer shall provide the specifications of the good to be ordered. Each good purchased by Buyer shall have all specifications generally associated with such product – such as tolerance, strength of material, mechanical and physical, quality control and measurements. Supplier is familiar with the business of Buyer, knows for what purposes Buyer uses the goods ordered and shall only sell goods to Buyer that may be used for such purposes.

**SHIPMENT OF GOODS:** If indicated in the Purchase Order, Supplier shall ship goods using Buyer’s specified carriers. Buyer’s Purchase Order Number, the Product ID Number and the Job ID Number, as applicable, shall appear on all documents exchanged in connection with a Purchase Order – such as packing slips and labels, invoices and other correspondence. Supplier shall deliver the goods DAP either to Buyer’s place of business or a specific project site designated by Buyer. *Accordingly*, risk of loss does not pass to Buyer until such delivery has taken place. Supplier shall not charge for packaging.

**ORDER, PRICING AND PAYMENT TERMS:** Within 24 hours of receipt of Buyer’s Purchase Order, Supplier shall acknowledge receipt and acceptance of same by email. Supplier shall accept Buyer’s Purchase Order by confirming the specifications, quantity and prices of the goods purchased as well as the respective shipping and/or delivery dates in an “Order Acknowledgement.” An Order Acknowledgement shall not alter or reject these POTCs. In addition, Supplier shall not condition, or otherwise limit, its acceptance of Buyer’s Purchase Order on rejecting or altering these POTCs. *Accordingly*, these POTCs apply to all purchases of goods by Buyer from Supplier and may only be altered or rejected if an authorized representative of Buyer agrees to same in writing. If, at the time a Purchase Order is submitted to Supplier, Supplier’s then current prices are different than the prices listed by Buyer the respective Purchase Order, Supplier shall notify Buyer before processing such Purchase Order. In addition, any price increase above pricing previously agreed to between the Parties requires ninety (90) days’ written notice to Buyer to become effective. Payment shall be made by Buyer per the payment terms provided in the Purchase Order; in no event, *however*, shall Buyer be required to remit payment to Supplier prior to receipt of the goods and a corresponding invoice from Supplier or to submit to COD. Changes in payment terms from those previously agreed to between the Parties shall be subject to written acceptance by Buyer.

**INSPECTION AND REJECTION:** (1) In case of any defect in materials, workmanship, quality or otherwise, (2) if the goods provided pursuant to a Purchase Order are not in accordance with drawings, prints, approved samples or other specifications provided by Buyer, or (3) in case of noncompliance with any provision of a Purchase Order or these POTCs, Buyer shall have the right to reject the goods provided by Supplier within a reasonable period of time. Supplier shall bear all risks as to the rejected goods, except for loss or damages caused by Buyer's gross negligence or willful misconduct. Rejected goods shall be returned to Supplier at Supplier's expense. In addition, solely at the option of Buyer, **(1) at the sole expense of Supplier, Buyer may request Supplier to promptly replace the rejected goods with new goods, or (2) Buyer may replace the rejected goods with new goods of the same kind originally ordered from a different supplier, and the cost of such replacement shall be borne exclusively by Supplier. BUYER MAY CHARGE SUPPLIER FOR ALL COSTS THAT RELATE TO INSPECTING, SHIPPING, HANDLING AND REPLACING REJECTED GOODS AT THE COST OF \$55/HOUR.**

**TIME OF ESSENCE:** BUYER USES A "JUST IN TIME" INVENTORY SYSTEM. AS SUCH, ALL TERMS RELATING TO THE TIME AND MANNER OF SHIPMENT AND DELIVERY ARE OF THE ESSENCE AND SHALL BE STRICTLY COMPLIED WITH BY SUPPLIER. **ALL COSTS ASSOCIATED WITH DELIVERY DELAYS PER A CONFIRMED SHIPPING AND/OR DELIVERY DATE (EXCLUDING WEATHER AND OTHER ACTS OF GOD) OR DELIVERY OF NON-CONFORMING GOODS, WHICH IMPACT BUYER'S BUSINESS/PRODUCTION, (INCLUDING INCIDENTAL AND CONSEQUENTIAL DAMAGES) SHALL BE CHARGED BACK TO, AND BE BORNE BY, SUPPLIER.**

**NON-WAIVER:** Payment for goods by Buyer shall not be deemed an acceptance of same. In addition, Buyer's failure to require strict performance by Supplier with any provision of a Purchase Order or these POTCs shall not waive Supplier's obligation to comply with such provision or the other provisions hereof or of the respective Purchase Order, nor shall it waive Buyer's right to demand strict compliance with the terms of the Purchase Order or these POTCs thereafter.

**PATENT INDEMNIFICATION:** As to any good purchased, the design of which is not furnished by Buyer, Supplier shall defend any action against Buyer or its customers for patent infringement, and Supplier shall hold harmless and indemnify Buyer and its customers, as applicable, from all damages (direct as well as incidental and consequential) and expenses, including (but not limited to) attorney's fees caused by such action.

**BUYER'S PROPERTY, CONFIDENTIAL INFORMATION:** All designs, tools and materials furnished by Buyer, together with any replacements or additions thereto, shall remain the property of Buyer and shall not be used for any purpose other than filling the respective Purchase Order or other orders placed by Buyer with Supplier and, in addition, shall be returned to Buyer on demand. "Information" shall mean all commercial, technical or other information, including (but not limited to) information regarding designs, methods, procedures or tools, directly or indirectly disclosed between the Parties orally, in documentary form or by demonstration, and the Parties agree to maintain the confidentiality of Confidential Information and shall not, directly or indirectly publish, release or otherwise disclose any Confidential Information to any third party. As used herein, "Confidential Information" means all confidential and proprietary Information, inventions, purchasing history, research, know-how and other trade secrets relating to a Party and the goods ordered pursuant to a Purchase Order. Confidential Information shall not include information that (1) has passed into the public domain through no act or omission of a Party in violation of this provision, (2) is legally and rightfully in possession of a Party free of any obligation of confidentiality at the time such information is provided to such Party, (3) is developed by a Party

independent of the other Party's Confidential Information, (4) is required to be disclosed by a Party pursuant to an order issued by a court or agency, or (5) is lawfully received by a Party from a third party that, to such Party's knowledge after reasonable inquiry, does not breach an obligation of confidentiality relating to such information. In the event that a Party is required by applicable law or legal process to disclose any Confidential Information, such Party agrees that it shall provide the other Party with prompt notice of such requirement in order to (1) enable the other Party to seek an appropriate protective order or other remedy, (2) seek consultation amongst the Parties with respect to taking steps to resist or narrow the scope of such disclosure requirement, and (3) allow the other Party, in its sole discretion, to waive compliance with the terms of this confidentiality provision. In the event that no such protective order or other remedy is obtained, or that the other Party waives compliance with the terms of this confidentiality provision, the Party required to disclose Confidential Information shall use its reasonable best efforts to disclose only that portion of any of the Confidential Information which it is legally required to disclose and shall exercise its reasonable best efforts to ensure that all Confidential Information so disclosed shall be afforded confidential treatment.

**COMPLIANCE, EQUAL OPPORTUNITY, AFFIRMATIVE ACTION AND EXPORT CONTROL:**

FabriTec Structures, LLC is an equal opportunity employer and federal contractor or subcontractor. Supplier warrants and certifies that it complies with all laws, rules, regulations and orders of the United States, and/or of any state or political subdivision thereof. In particular, Supplier warrants and certifies that, unless exempt, it complies with all laws, rules, regulations and orders pertaining to equal opportunity in employment, Executive Order Nos. 11246, 11701 and 11758, and any amendments thereof. **Supplier further warrants that, as applicable, it shall abide by the requirements of 41 CFR sections 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that Supplier 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.** The parties also agree that, as applicable, they will abide by the requirements of Executive Order 1496(29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws. Furthermore, to the extent applicable to Supplier, Supplier certifies that it is the policy of Supplier to comply fully with all applicable export control laws and regulations of the United States, including (but not limited to) the Arms Export Control Act, 22 U.S.C. §§ 2778-2994; the International Traffic in Arms Regulations, 22 C.F.R. parts 120-130; the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-1706; the Export Administration Regulations, 15 C.F.R. parts 730-774; and Office of Foreign Assets Control regulations. Upon request from Buyer, Supplier shall supply Buyer with ECCNs, Certificate of Origin certifications and other information regarding Supplier's goods that may be necessary for the export of Buyer's finished products outside of the United States.

**GOVERNING LAW, CHOICE OF FORUM:** Each Purchase Order, and any ensuing contract or transaction, shall be governed by, construed and enforced in accordance with the laws of the State of Texas, without regard to its choice of law principles. The courts of Dallas County, Texas and/or the United States District Court for the Northern District of Texas and their respective appellate court systems shall have exclusive jurisdiction over the Parties with respect to any dispute or controversy, cause of action, lawsuit, appellate action and related mediation or other dispute resolution among them arising under or in connection with a Purchase Order, and **THE PARTIES HEREBY AGREE TO SUBMIT THEMSELVES TO THE EXCLUSIVE JURISDICTION OF THE ABOVE STATED COURTS AND TO WAIVE TRIAL BY JURY.**