



MARKIN TUBING, LP

General Terms and Conditions of Purchase

1. **DEFINITIONS.** The term "Buyer" shall mean Markin Tubing, LP. The term "Seller" refers to the entity to whom Markin Tubing, LP has submitted a Purchase Order and whose name and address appears on the face side of such order. The terms and conditions set forth below govern the transactions of the purchase and sale of goods and/or services between Buyer and Seller described herein.
2. **ACCEPTANCE.** Buyer's order constitutes Buyer's offer to Seller and is not binding on Buyer until accepted by Seller. Seller's commencement of work on or tendering of delivery of any goods or services covered by Buyer's Order, whichever occurs first, shall constitute acceptance of the Order. Buyer may withdraw this Order at any time before Seller's acceptance without liability to Buyer. The terms and conditions specified herein shall apply to Buyer's Order, notwithstanding any contrary provisions or conditions contained in Seller's quotations, invoices or other forms or otherwise presented by Seller unless expressly agreed to in writing by Buyer. If Seller objects to any terms herein, such objection must be in writing specifically detailing each objection and Seller's objections must be received by Buyer at the address stated on the face hereof prior to acceptance of this Order by Seller. No variation of these terms and conditions or any provision of Buyer's Order shall be binding, based upon said objections, until agreed to in writing by Buyer.
3. **VARIATIONS.** No variation by Seller in the pricing, quantity, quality or other terms of any Order shall be accepted unless first approved by Buyer in writing.
4. **DELIVERIES.** Time is of the essence with all Orders and all deliveries must be made and all services furnished to Buyer on or prior to the delivery date(s) stated on the Order, failing which (a) Seller shall be responsible to Buyer for all losses, cost, damages and expenses occasioned thereby, including, but not limited to extra transportation and other costs incurred in expediting deliveries, premium costs to procure similar materials from other suppliers at added expense or cost, internal costs for delays and legal fees; and, (b) Buyer reserves the right, at its option, to cancel such Order and charge Seller with all losses, costs, damages and expenses to Buyer resulting therefrom. When any actual or potential labor dispute is delaying or threatens to delay the timely performance of an Order, Seller will immediately give notice thereof to Buyer and Buyer may, in its sole discretion, elect to terminate the Order if Buyer believes an unacceptable delay could result. Notice of any such delay from Seller must include all relevant information with respect to any such dispute.
5. **PACKING, MARKING AND SHIPMENT.** Seller will pack and mark goods and make shipments (including shipping on Saturdays and holidays when requested) in accordance with Buyer's instructions, meet carrier requirements and assure delivery free of damage and deterioration. A bill of lading must accompany each invoice and Seller shall send a shipping memorandum with each shipment. The bill of lading and shipping memorandum shall specifically identify the product, Buyer's purchase order number and, if applicable, Seller's invoice. Unless otherwise indicated in writing, all freight shall be prepaid by Seller and no charges will be allowed for cartage or packing unless authorized in writing by Buyer. No invoice shall be rendered by Buyer prior to the time specified by the terms of payment set forth on the face thereof.

Buyer may specify the carrier and/or method of transportation and Seller will process shipping documents and route shipments of the goods accordingly. Seller will comply with all of Buyer's transportation routing instructions, including, but not limited to, mode of transportation, utilization of assigned carrier and identification of the shipping point. Seller will be responsible for all costs incurred because of its failure to comply with Buyer's transportation instructions.

All goods to be delivered pursuant to an Order shall be delivered FOB Buyer's plant and title to said goods and liability for loss or damage thereto shall pass to Buyer at such time, provided that such goods conform in all respects to the specifications and requirements of the Order.

6. **DISCOUNTS.** If discount is allowed for payment within a certain time, the time for taking any discount will not begin to run until the day Buyer accepts delivery of conforming goods at Buyer's premises.
7. **INSPECTIONS.** Buyer may inspect and evaluate all goods and services, which are the subject of an Order, at such time(s) designated by Buyer, including work in progress. Seller will perform inspections, as may be requested by Buyer, and shall complete the inspection forms referenced in Buyer's standards, and Seller will make all records of inspections available to Buyer upon request. Notwithstanding payment for goods or any prior inspection, Buyer may reject the goods, require correction, or return the goods to the Seller at Seller's expense and at Seller's risk of loss for goods which do not conform to the specifications and requirements of the Order. Without limiting its remedies under law, after notice to Seller, Buyer may (a) replace or correct any non-conforming goods or services and charge Seller the cost of such replacement or correction, including the costs of sample runs, (b) cancel the Order for default without liability to Seller and/or (c) subject Seller's account to a debit for the damages sustained by Buyer.

All goods and services rendered pursuant to an Order will be received by Buyer subject to weight, count, inspection and testing for compliance with all applicable specifications of Buyer and acceptance will not be effective until all goods have first been determined by Buyer to comply with all such applicable inspections, test and specifications. Any and all goods, rejected by Buyer, may, at Buyer's sole option, be held at Seller's risk and expense, subject to Seller's prompt written advice as to

disposition. At Buyer's option rejected goods may be returned and charged back to Seller, including all transportation and handling costs. In the absence of Seller's prompt advice as to disposition or upon Seller's refusal to receive back rejected, non-conforming goods, the rejected goods will be delivered to a storage facility to be held for the benefit of Seller, at Seller's expense. Buyer's election to exercise any rights, as provided herein or otherwise available to Buyer pursuant to applicable law, shall not in any respect be deemed to be acceptance of such goods by Buyer.

8. **WARRANTIES.** Seller warrants that its goods and/or services will (a) comply with all specifications, tool standards, drawings, descriptions or samples furnished, specified and/or approved in writing by Buyer, (b) be merchantable and (c) be free from defects in material and workmanship. Seller warrants that all goods will be fit and sufficient for the purpose for which they are intended. Seller further warrants that on delivery Buyer will receive good title to the goods and services, free and clear of all liens and encumbrances, and that all goods and services will be free from any actual or claimed patent, copyright or trademark infringement and Seller agrees to indemnify and hold Buyer harmless against any and all such claims. These warranties are in addition to any warranties implied by law or otherwise made by Seller and will survive acceptance and payment by Buyer.

Seller warrants that all materials, supplies, articles, equipment, or services to be manufactured or furnished hereunder shall be manufactured, fabricated or performed in compliance with the applicable provisions of the Fair Standards Act of 1938 as amended, and all regulations under such Act, and Seller shall so certify on all invoices rendered pursuant to any Order from Buyer.

9. **BUYER'S TOOLING STANDARDS.** Unless otherwise authorized in writing by Buyer, Seller shall strictly comply with Buyer's tooling standards. Buyer may revise such tooling standards from time to time and Seller agrees and commits to comply with any such revisions upon Seller's receipt thereof. It is Seller's responsibility to determine that it has the latest version of Buyer's tooling standards prior to commencement of work under the Purchase Order. The aforesaid tooling standards and revisions thereto, are incorporated herein by reference and shall constitute a material part of any Order from Buyer.
10. **CLAIMS ADJUSTMENT.** Buyer may, at any time and without notice, deduct or setoff Seller's claims for money due or to become due from Buyer against any claims that Buyer has or may have arising out of any transaction between Buyer and Seller.
11. **CONFIDENTIALITY.** The specifications, tooling standards, drawings, manufacturing data, prints, designs and other information transmitted or furnished to Seller by Buyer in connection with the performance of an Order are the property of Buyer or its customers and may be covered under one or more patents, patent applications or copyrights. Seller will treat all such information as "confidential" and "proprietary" and will insure that it is not used in a manner adverse to the interests of Buyer or its customers. Such property shall be returned to Buyer immediately upon Buyer's request therefore.
12. **ASSIGNMENTS.** No Order from Buyer shall be assigned or subcontracted, in whole or in part, without Buyer's prior written consent. Any authorized assignee or subcontractor shall certify in writing that the assignee or subcontractor agrees to be bound to these terms and conditions and those of any specific Order and, in the event of such assignment or subcontract, the term "Seller" as used herein shall encompass said assignee or subcontractor.
13. **TERMINATION AT BUYER'S OPTION.** Buyer may terminate an Order at any time without cause, in whole or in part, by written notice, whereupon Seller shall stop work on the date and to the extent specified in such notice and terminate all orders and subcontracts that relate to the terminated order. Within thirty (30) days after receiving the termination notice, Seller will submit all claims resulting from such termination. Buyer will have the right to verify such claims by auditing the relevant records, facilities, work or materials of Seller and/or its subcontractors. Buyer will pay Seller for finished work which has been accepted by Buyer, and for the documented, direct cost to Seller of work in process and raw materials allocable to the terminated work which is not in excess of any prior Buyer authorization. Payment under this provision will constitute Buyer's only liability for termination hereunder, with title and right of possession to all accepted goods and services vesting in Buyer immediately upon Buyer's tender of such payment. This provision does not apply to any cancellation or termination by Buyer for a default by Seller or for other cause recognized by law or specified by the Order.
14. **SELLER'S DEFAULT.** If Seller (a) fails to deliver goods or perform services, as required by Buyer's Order, at the time specified therein, (b) fails to perform any other provision thereof and does not cure such failure within a period of ten (10) days after receipt of written notice from Buyer specifying such failure, (c) becomes insolvent, makes an assignment in favor of creditors, or enters bankruptcy or dissolution procedures, (d) is merged into another company, or (e) if Buyer deems itself unsecured or anticipates any material breach of the terms and conditions herein or of any Order, Buyer may cancel the whole or any part of the Order without any liability, except for payment due for goods and services delivered and accepted. Upon such termination Buyer will have the right to take possession of the goods covered by the Order (whether or not complete) without additional liability whatsoever to Seller. Upon taking possession of all or any part of the work performed by Seller under an Order, as provided in this paragraph, and without limiting its remedies, Buyer upon notice to Seller, may (a) complete, replace or correct any non-conforming goods or services and charge Seller the cost of such completion, replacement or correction, (b) cancel the Order for default without liability to Seller, and/or (c) subject Seller's account to a debit for the damages suffered by Buyer.

Buyer shall have the right to notify Seller and any party with whom Seller is contractually obligated with respect to the subject matter of an Order of Buyer's intention to pursue any and all remedies available to Buyer.

15. **REMEDIES.** The rights and remedies contained herein and in Buyer's Order are cumulative and in addition to any other or further rights or remedies available at law or in equity, including those available under the Uniform Commercial Code. No waiver of any of these provisions or any of the provisions of any Order will constitute a waiver of any other provision.

16. **COMPLETE AGREEMENT.** These terms and conditions and those of any specific Order, together with the attachments, exhibits supplements and specifications referenced therein, will constitute the exclusive agreement of the parties and may not be altered, amended, or otherwise modified except by agreement of the parties evidenced by the written consent of Buyer. No previous writing or oral representation by Buyer shall serve to alter, amend, or otherwise affect the rights, obligations and duties of the parties.
17. **GOVERNING LAW.** It is the express agreement of the parties hereto that all Orders are made and executed at Buyer's place of business and that the law of the State of New York shall govern all rights and duties of the parties.
18. **BUYER'S PROPERTY.** All specifications, tool standards, drawings, manufacturing data, designs, prints, patents, plates, dies, jugs, fixtures, special tools, equipment and other property furnished to the Seller by Buyer shall remain the property of Buyer and the Seller shall bear all risk of loss and damage thereto, normal wear and tear excepted, while such property is in the Seller's possession or control and such property shall be returned to Buyer immediately upon its request therefore.

In the event that any drawings, specifications, manufacturing data, designs, prints, parts, samples or other information related thereto are prepared, created or obtained by or for Seller in connection with Seller's performance hereunder, said drawings, specifications, manufacturing data, designs, prints or other information related thereto shall upon Buyer's inspection and approval thereof remain subject at all times to Buyer's exclusive right to use and to take possession and/or title thereto without additional expense to Buyer.
19. **SECURITY INTEREST.** Notwithstanding any term or provision to the contrary herein or any document of acceptance from Seller, Buyer shall have and Seller hereby grants a security interest in the personal property being purchased pursuant to an Order together with all additions, accessions and substitutions thereto and proceeds thereof, under all applicable provisions of the Uniform Commercial Code of the State of New York. At Buyer's option, Seller agrees to execute a financing statement to perfect Buyer's interest therein and upon Seller's default under any of the terms hereof, Buyer may, at its option, exercise all rights and remedies provided under the Uniform Commercial Code to a secured party. Seller shall not sell, encumber, assign or transfer any interest in said property, without the prior written consent of Buyer, as a secured party. Seller shall execute any and all documents designed to provide Buyer with a security interest described herein, as Buyer may require.
20. **SEVERABILITY.** The invalidity or unenforceability of any provision herein shall not affect the other provisions and the parties' agreement, as set forth herein and in any Order, shall be construed in all respects as if any invalid or unenforceable provisions were omitted.
21. **MODIFICATION.** No modification of or additions to these terms and conditions or to the provisions of any Order, however provided or proposed will become a part of the parties' agreement unless and until accepted in writing by the Buyer. If Seller commences work on or tenders delivery of any goods or services covered by an Order, such tender of delivery or commencement of work shall constitute an acceptance of the Order as written.