

# DELAFIELD CORPORATION

## PURCHASE ORDER TERMS & CONDITIONS

1. **APPLICATION OF CONDITIONS:** This Purchase Order, including any attachments, shall be the entire agreement between Delafield (Buyer) and Seller. Acknowledgement of this Purchase Order, shipment of any goods, or rendering of any services pursuant to this Purchase Order shall be deemed an acceptance of these terms and conditions. No modification of or change to this Purchase Order shall be binding unless agreed to by Buyer in writing and specifically stated as a modification and/or change. These terms and conditions supersede any submitted by Seller in any acknowledgment, proposal, invoice, or any other form of communication between Buyer and Seller unless specifically agreed to by Buyer.
2. **TERMS OF PAYMENT:** Unless otherwise noted on the face of the Purchase Order, payment for goods delivered or services rendered shall be paid within thirty (30) days after the goods are delivered and/or services completed.
3. **CHANGES:** Buyer reserves the right at any time to change this Purchase Order. No changes to this Purchase Order shall be made unless Buyer issues a Purchase order revision. Within five (5) days of Buyer's request for a change, the Seller shall submit a proposal to Buyer, which includes price increase/decrease in Seller's cost or changes in the delivery schedule. Buyer shall within ten (10) days inform the Seller of intent to modify the Purchase Order through the revision process or notify the Seller to proceed with the original work.
4. **TERMINATION:** Buyer, may at any time, terminate this Purchase Order, in whole or in part, for convenience, by written notice to Seller. Buyer's liability shall be limited to payment of the amount for (i) goods completed and not paid for up to and including the date of termination and (ii) actual costs of work in process to the extent such costs are reasonable and properly allocable to the Purchase Order less the costs of any such goods or material used or sold by Seller with Buyer's consent. All amounts shall be substantiated with proof satisfactory to Buyer, and Seller will render no further work. Such payment shall constitute a complete discharge of Buyer's obligations, and Buyer shall not be responsible for claims by Seller or its subcontractors for any other cost or anticipated profit. In no event shall Buyer's liability exceed the purchase price of this Purchase Order. Nothing in this provision shall link Buyer's right to terminate this Purchase Order for default of Seller. Buyer may, at its options, terminate this Purchase Order without liability to Seller if Seller: (a) repudiates or breaches any of the terms of this Purchase Order, including Seller's warranties; (b) fails to deliver goods or services as specified in this Purchase Order; (c) fails to make progress as to endanger timely and proper completion of this Purchase Order, and does not correct such failure or breach within ten (10) days of written notice by Buyer; and upon such termination, Buyer shall have all rights by reason of Seller's default as provided by law.
5. **APPLICABLE LAWS: VENUE** Seller warrants and agrees that it has complied and will comply with all applicable Federal, state and local laws, codes, and regulations. The laws of the State of California, USA, excluding conflict of law provisions shall govern the construction, interpretation, and performance of this Purchase Order and all transaction under it. Any legal action or proceeding with respect to this Purchase Order or arising out of this Purchase Order, shall be brought and maintained exclusively in the appropriate court of the State of California in and for the County of Los Angeles if there is exclusive Federal jurisdiction, in the United States District Court for the Central District of California, Los Angeles, California. Buyer and Seller hereby each accept for itself and in respect of its property, generally and unconditionally, the personal and subject matter jurisdiction of said Courts. Seller and Buyer each hereby irrevocably waive any objection that it may now or hereafter have to the laying of venue in any action or such proceeding brought arising out of or in connection with this Purchase Order that any action or such proceeding brought in such Court has been brought in an inconvenient forum. In the event any action is instituted to enforce or interpret this Purchase Order, the prevailing party shall be entitled to all costs and legal expenses including, without limitation, reasonable attorney's fees, expert witness fees, accountants' fees, and Court costs.
6. **ASSIGNMENT:** Seller may not assign, transfer, or subcontract this Purchase Order or any right or obligation hereunder without Buyer's written consent. Any purported assignment, transfer, or subcontract shall be void and ineffective. All work performed by Seller's subcontractors, at any tier, shall be deemed work performed by Seller.
7. **DELIVERY:** Time is of the essence. Seller shall furnish sufficient labor and management forces, plant and equipment and shall work such hours as may be required to assure timely delivery. Regardless of delivery or performance in installments, Seller's obligation is not severable. Buyer need not accept shipments sent C.O.D. without his consent and may return them at Seller's risk.
8. **FORCE MAJEURE:** Neither party shall be held responsible for any delay or failure in any performance of this Purchase Order to the extent that such delay or failure is caused by fires, floods, strikes, lockouts, epidemics, accidents, shortages, act of any Governmental authority, or other causes beyond reasonable control and without the fault or negligence of the delayed or non-performing party or its subcontractors. If the delay by Seller is more than forty five (45) days, the Buyer may elect to terminate, at his discretion, this Purchase Order without liability to Seller by written notice to Seller given before receipt of notice from Seller that the delay has ceased.
9. **INSPECTION:** Buyer shall inspect each shipment of Products by Seller to Buyer immediately upon arrival at the shipment's destination. And within 30 days of such arrival shall notify Seller of (a) any defects in any Products contained in such shipment and (b) any reason Buyer claims such Products are non-conforming (c) rejects of any such Product except that with respect to any claims of shortages, such claims must be made within five days of receipt of such Product.
  - A) Seller shall provide and maintain a quality inspection system acceptable to the Buyer, but in any event sufficient to detect defects in the Goods, and shall tender to Buyer for acceptance only Goods that have been inspected in accordance with such requirements. Records evidencing such procedures and inspections shall be made available for Buyer's (or Buyer's Customer) review during performance of the Order and for a minimum of **ten (10) years** thereafter.
  - B) Buyer and its Customer(s) have the right to inspect and test all Goods to the extent practical at the source, and at all places and times, including the period of manufacture. If Buyer performs inspections and tests on the premises of the Seller or a subcontractor, Seller shall furnish, and shall require subcontractors to furnish, all reasonable facilities and assistance for the safe and convenient performance thereof without additional charge.
10. **LIMITATIONS OF LIABILITY:** In no event shall the amount of the Seller's liability for any breach or default hereunder exceed the purchase price paid or payable by Buyer to Seller for the Products and no event shall Buyer be entitled to claim compensation for special, incidental, or consequential damages for defective goods or services, late deliveries, or non-delivery, nor shall Seller be liable for Buyer's loss of any kind or description whatsoever. Buyer acknowledges that seller has not made and shall not make or be liable under any guarantees, warranties, or representations, express or implied in any manner or form whatsoever, including but not limited to any warranties of merchantability or fitness for any particular use of purpose, except those expressly set forth herein or in writing delivered by Seller to Buyer and Seller shall not directly or indirectly, be responsible or liable for any claims, loss, damage, liability, cost or expense in connection with, arising out of, or relating to the Products except as expressly set forth herein.
11. **TITLE AND RISK OF LOSS:** The risk of loss of all goods ordered hereunder and identified as goods to which this Purchase Order refers, shall be borne by Seller until such goods are delivered to and received by the Buyer at the place specified in the Purchase Order. Any charges by carrier at final designation for spotting, switching, demurrage, or any other services shall be paid by Buyer. Any price quotations contained herein are price terms only, and risk of loss, damages, and shipping terms are separately provided in this agreement.
12. **BUYER'S PROPERTY:** Any drawings, patterns, materials, designs, tools, confidential information, or equipment furnished to Seller by Buyer, may be considered obsolete and may be destroyed within (2) years by Seller (unless specific language addressing such items is agreed upon by both parties) after two consecutive years have elapsed without Buyer procuring such items manufactured using such property. Seller shall not be held responsible for any loss or damage to such property while it is in Seller's possession or control.
13. **PACKAGING, PACKING SLIPS AND BILL OF LADING:** All items purchased under this Purchase Order must be identified independently of the packing slip by (a) the vendor part number is marked on the part; (b) the vendor part number is on a tag attached to the part; or (c) the part is in a separate box or bag with the vendor part number clearly identified. Buyer will not be able to complete receipt of the parts until such data is correctly provided. Buyer, in its sole discretion, may return the items for marking or return the invoice for resubmission after the items are properly and correctly identified. NOTE: The packing slip is insufficient verification of vendor part number and will not be accepted for more than an indication of what may be included in the shipment. Seller shall, at no cost to Buyer, proper packaging, loading, and tie-down to prevent damage during transportation. Seller shall enclose a packing slip with each shipment containing the Buyer's order number, Seller's name, packing slip number, piece number, and other shipping papers and when Seller and shipper are not the same; the names of both shall be shown thereon. Seller shall enclose a packing slip with each shipment indicating the contents of each container, excluding prices. Buyer's weight and/or count will be accepted as final and conclusive on all shipments not accompanied by such packing slip.
14. **WAIVER:** Buyer's failure to insist on Seller's strict performance of the Terms and Conditions of this Purchase Order at any time shall not be construed as a waiver by Buyer to performance in the future.

Note: Clauses applicable to this Purchase Order are from the Delafield Terms and Conditions and Delafield Procurement Quality Requirements Clauses are incorporated herein by reference. Unless indicated otherwise elsewhere in the contract, the version of each incorporated clause applicable to this contract is the latest dated version of the confirming date of this contract. Quality Requirement Clauses are available on the internet at: <http://www.dfcorp.com>.