

Standard Terms & Conditions For SPECS Civil Solutions, Inc. dba SPECS

1. APPLICABILITY. These Standard Terms & Conditions for Acceptance of Purchase Orders hereafter, ("Standard Terms") shall apply to all purchase orders or other Supply Arrangements (hereafter defined) submitted by any customer ("Buyer") of SPECS Civil Solutions, Inc., and/or its affiliates (collectively, "SPECS") regardless of the form or medium of Buyer's purchase order, and regardless of whether Seller's actions are deemed to be a prior offer of Buyer's purchase order or acceptance thereof and regardless of SPECS' execution of any agreement or other instrument/document required by Buyer. If SPECS is deemed to be accepting a prior offer of Buyer, such acceptance is limited to the terms contained herein. Buyer's acceptance of any goods shipped or services provided by SPECS shall constitute acceptance of these Standard Terms, regardless of any conflicting terms or waiver language contained in any Buyer purchase order, general terms & conditions, or other Supply Arrangement. Any proposal for additional or different terms or any attempt by Buyer to vary in any degree any of the Standard Terms is hereby rejected, but such proposals shall not operate as a rejection of an offer by SPECS unless such variances are in the terms of the description, quantity, price or delivery schedule of the goods or services, but shall be deemed a material alteration thereof, and the offer by SPECS shall be deemed accepted by Buyer without said additional or different terms.

2. ACCEPTANCE OF ORDERS. All Buyer purchase orders shall be deemed accepted when SPECS issues an order acknowledgment to Buyer or when SPECS begins performance of the order. All orders accepted by SPECS shall be governed by these Standard Terms and by any additional terms and conditions which are expressly agreed upon by authorized representatives of the parties in a fully executed Supply Arrangement. Unless otherwise agreed to in a Supply Arrangement, SPECS shall have no obligation to accept any particular Buyer purchase order and these Standard Terms shall control.

3. SHIPMENT/DELIVERY DATES. The delivery date is only an estimate of when the product will be shipped. SPECS shall use reasonable efforts to meet any shipment or delivery date stated in any Buyer purchase order, but SPECS assumes no liability for loss or damage (including any direct, incidental, consequential or punitive damages) due to delays or failure to meet any Buyer-specified delivery date. If SPECS cannot meet such shipment or delivery date, it will promptly notify Buyer. Buyer will designate common carriers for the shipment of all products (but if Buyer fails to designate a carrier, SPECS shall have the right to select a carrier on Buyer's behalf). To the extent a quoted price for any product does not expressly include shipping, the cost thereof shall be paid directly by Buyer. SPECS reserves the right to make delivery in installments (including both advance shipments and back orders). All such installments shall be separately invoiced and paid for when due, without regard to subsequent deliveries. Delivery of an installment shall not relieve Buyer of its obligation to accept remaining deliveries. SPECS shall have no responsibility to ship goods to any location other than those in the United States, Canada or Mexico unless Buyer has previously secured all applicable permits and licenses for the transfer of goods.

4. TAXES/DUTIES. Applicable sales, excise, use and other taxes, and import/export duties and other charges, are in addition to any prices quoted by SPECS and shall be paid by Buyer.

5. PRICE CHANGES. The price shall be as set forth on the Supply Arrangement and due within thirty (30) days of delivery unless otherwise specified in writing. With respect to any "open" or "blanket" purchase order of Buyer, or if any Supply Arrangement contemplates the purchase/sale of products or services beyond a 6 month period, SPECS may from time-to-time (but no more than once in any 6 month period) increase the price of any particular product or service by an amount proportional to any increase in SPECS' labor, utility or other verifiable costs respecting such product or service. Additionally, in the event SPECS' raw material costs materially increase, SPECS may pass on such increases to Buyer at any time. Prices shall be adjusted to SPECS' prices in effect at the time of shipment.

6. CREDIT; LATE PAYMENTS. Any obligation of SPECS to extend credit to Buyer is conditional upon Buyer's timely payment of invoices, and upon the continued financial stability of Buyer. SPECS reserves the right to limit, cancel or revoke credit of Buyer at any time for any reason, and SPECS may require or demand payment or adequate assurances of performance from Buyer prior to performing any aspect of the sale of goods hereunder. Late payments on invoices shall bear interest at 1.5% per month or the highest rate allowed by applicable law, whichever is less. SPECS shall be entitled to recover its costs of collection of any past due invoice, including court costs and reasonable attorneys' fees. Buyer agrees that SPECS shall have the right to obtain financial information on a quarterly basis and shall be entitled to annual tax returns.

7. WARRANTY. SPECS shall provide an "industry standard" warranty on all of its goods and services. If there is no industry standard, then SPECS' sole warranty obligation for all goods and services that are or become defective in material or workmanship within twelve (12) months from the date of shipment or performance shall be limited to the replacement or repair of the defective goods or services free of charge. SPECS' warranty obligations hereunder are contingent upon the following conditions: SPECS is promptly notified of the defect; Buyer establishes to SPECS' reasonable satisfaction that any goods have been properly handled, stored, installed, maintained and operated; the goods were not materially altered; the defect did not occur after receipt of shipment; and upon SPECS' request, Buyer will return the defective goods or part thereof to SPECS. The foregoing warranty is a limited warranty, and is in lieu of all other warranties, express or implied. EXCEPT AS EXPRESSLY STATED IN THIS SECTION, SPECS DISCLAIMS AND DOES NOT MAKE ANY ADDITIONAL REPRESENTATIONS, WARRANTIES AND/OR INDEMNITIES OF ANY KIND (WHETHER BY IMPLICATION OR OPERATION OF LAW) WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION ANY REPRESENTATIONS, WARRANTIES AND/OR INDEMNITIES AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PRICE, PATENT OR ANY OTHER MATTER. THIS SECTION SURVIVES THE TERMINATION OR CANCELLATION HEREOF.

8. REMEDIES AND LIABILITIES. BUYER AGREES THAT SPECS' LIABILITY AND BUYER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY KIND HEREUNDER OR RELATING TO THE GOODS OR SERVICES DELIVERED BY SPECS SHALL BE (A) THE REPAIR OR REPLACEMENT AT SPECS' OPTION OF DEFECTIVE GOODS OR SERVICES, OR (B) A REFUND OF THE PRICE ALLOCABLE TO THE DEFECTIVE GOODS OR SERVICES IF SPECS IS UNABLE TO EFFECTIVELY REPAIR, REPLACE OR CORRECT SUCH DEFECT IN A REASONABLE TIME AFTER USING ITS REASONABLE EFFORTS. UNDER NO CIRCUMSTANCES SHALL SPECS HAVE ANY LIABILITY WHATSOEVER FOR INCIDENTAL, CONSEQUENTIAL (INCLUDING LOSS OF BUSINESS OR PROFITS) OR PUNITIVE DAMAGES, NOR SHALL BUYER BE ENTITLED TO OBTAIN INJUNCTIVE RELIEF AGAINST SPECS FOR ANY REASON WHATSOEVER.

9. RISK OF LOSS; TITLE. Possession and risk of loss for all goods shall pass to Buyer upon SPECS' delivery of such goods to any carrier, common or otherwise. Title to such goods shall not pass until they have been fully paid for by Buyer. Buyer shall have been deemed to have accepted the goods and services as delivered within five (5) business days of delivery unless Buyer shall notify SPECS of any deficiency in writing.

10. ASSIGNMENT. Buyer shall not assign its interest in any Supply Arrangement without SPECS' prior written consent.

11. INDEMNITY. To the maximum extent allowed by law, Buyer shall reimburse, indemnify and hold SPECS and its employees and agents harmless from and against any claims, demands, liabilities, damages, suits, judgments, losses, costs and/or expenses (including attorneys' fees and other expenses of any litigation) suffered and paid by SPECS (collectively, "Losses") that relates to or arises on account of (a) Buyer's negligence, use, ownership, maintenance, transfer, transportation or disposal of the goods and services delivered by SPECS or (b) Buyer's violation or alleged violation of any federal, state, county or local law, rule or regulation.

12. INTELLECTUAL PROPERTY.

(a) If Buyer provides SPECS with any specifications for goods or services to be furnished by SPECS, Buyer shall reimburse, indemnify, defend and hold SPECS harmless from and against any Losses concerning, arising out of or relating to any claimed or actual infringement of any patent, copyright, trade secret or other intellectual property rights of any third party respecting such goods or services.

(b) Except with respect to any product that Buyer has specifically contracted with SPECS to design or develop, (i) any product or any improvement to any product developed by SPECS, and (ii) any method or process of production respecting the product or improvement thereto developed by SPECS, shall be the sole property of SPECS.

(c) Buyer may use SPECS' trademarks only to sell new SPECS products purchased by Buyer directly from SPECS, and for no other reason. Buyer shall not take any or fail to take any action that may dilute SPECS' trademarks.

(d) Except as expressly set forth herein, (i) SPECS shall have no obligation to sell, assign, license, or transfer intellectual property of any kind to Buyer, and (ii) Buyer shall have no right to use any intellectual property of SPECS without the express written consent of SPECS, which may be withheld in its sole discretion. SPECS may enforce this Section through injunction or otherwise.

13. FORCE MAJEURE. SPECS shall be temporarily excused from performance under any Supply Arrangement to the extent such non-performance is caused by acts of God, war, terrorism, riot, embargoes, fire, floods or other severe weather problems, accidents or other casualty, quarantine restrictions, factory conditions, labor disputes, governmental acts, orders or regulations, delays in transportation, shortage of transport vehicles, labor or materials or other circumstances beyond the reasonable control of SPECS. SPECS shall use all available commercially reasonable efforts to remedy the circumstances causing the non-performance, or shall take steps to work around such circumstances. Promptly after the circumstances causing the non-performance are remedied, SPECS shall resume performing.

14. TERMINATION. Buyer may terminate this contract in whole or in part upon notice in writing to Seller. Seller shall immediately stop work and transfer to Buyer title to all completed and partially completed products and to any raw materials or supplies acquired by Seller especially for the purpose of performing this contract, and Buyer shall pay Seller the sum of the following: (1) the contract price for all products which have been completed prior to termination; (2) the cost to Seller of the material or work in process plus a reasonable profit thereon, but in no event more than the contract price; (3) the cost f.o.b. origin of materials and supplies acquired especially for the purpose of performing this contract; and (4) reasonable cancellation charges, if any, paid by Seller to settle any commitment(s) made for the purpose of this contract.

15. MISCELLANEOUS. Notwithstanding any Buyer purchase order or Buyer standard terms and conditions to the contrary:

(a) Buyer shall have no right to (i) inspect SPECS' facilities, (ii) examine SPECS' books, records or other documents, or (iii) seek or obtain any information from SPECS deemed proprietary or confidential by SPECS in its sole discretion, without the express written consent of SPECS obtained in each instance, which consent may be withheld in SPECS' sole discretion.

(b) SPECS shall have no obligation to sell or otherwise transfer any raw materials, work-in-progress, tools, dies, jigs, fixtures, molds, patterns, templates, models, mock-ups, gauges, drawings, equipment/machinery or other means of production to Buyer except where the same was specifically designed, developed and/or purchased by SPECS solely for Buyer's account under a bona fide Supply Arrangement and has been fully paid for by Buyer.

(c) SPECS shall have no obligation to comply with any agreements between Buyer and any third party unless SPECS is furnished a written copy of such agreement and expressly agrees to so comply in a signed writing after SPECS' receipt of such copy.

(d) SPECS shall not be required to obtain any property, liability or other type of insurance for its own account or for the account of Buyer or its property.

(e) SPECS shall not be required to arbitrate any claim against Buyer or Buyer's customers or agents, or bring or defend any such claim in any particular forum.

(f) In the event of any formal dispute resolution proceeding between the parties, the prevailing party shall be entitled to recover its reasonable attorney's fees and other expenses of dispute resolution, such as arbitrator fees, case filing fees, costs of transcription and expert witness fees.

(g) The substantive laws of the State of California shall apply to all dealings and transactions between Buyer and SPECS.

16. CONFLICT OF TERMS. These Standard Terms supersede any prior purchase orders, supply agreements, nomination letters, proposals, quotations, requisitions, oral statements and/or representations, Buyer standard terms and conditions, correspondence or similar matters (collectively, "Supply Arrangements") between the parties or their representatives. Any conflict between these Standard Terms and other Supply Arrangements shall be resolved in favor of these Standard Terms. Buyer's acceptance of any goods shipped or services provided by SPECS shall constitute acceptance of these Standard Terms. If at any time (i) Buyer claims or asserts that these Standard Terms are not applicable to any Supply Arrangement between SPECS and Buyer, or (ii) a determination is made by a court, arbitration panel or other legal authority that these Standard Terms do not apply to any Supply Arrangement between the parties, SPECS shall have the right to immediately terminate such Supply Arrangement without liability or further obligation to Buyer. However, the failure or refusal of SPECS to so terminate any Supply Arrangement shall not constitute or be deemed a waiver by SPECS of the effectiveness or enforceability of these Standard Terms. SPECS reserves the right to amend these Standard terms from time to time.

17. WAIVER. Either party hereto may waive any requirement, condition or obligation to be performed by the other party, provided any such waiver is in writing and executed by the party waiving the requirement, condition or obligation and shall be specifically designated as a waiver hereunder with reference to the applicable section. A waiver by a party of any breach of any term, covenant, or condition contained herein to be performed by a party, or the delay, forbearance, indulgence or failure of a party in exercising any right hereunder on account of such breach, or the partial exercise of such right, shall not be deemed a waiver of any subsequent breach of the same term or any other term, covenant or condition hereof.

18. DELIVERY. Unless otherwise agreed to in writing by the Seller, the Buyer hereby agrees to take delivery of the materials on this order within the later of thirty (30) days after the want date shown on the face of the order or within thirty (30) days after notification, oral or written, that the materials are ready for shipment. In the event that the Buyer does not arrange to take delivery of the materials in accordance with this Contract, Seller, at Seller's option, may:

(a) invoice the Buyer for the materials less freight if applicable; store the material in Seller's yard for a period not to exceed sixty (60) days from the date of invoice; charge a storage fee not to exceed 5% per month or fraction thereof of the selling price of the stored materials; add any applicable price increases listed on the face of the order; charge for any repair work to protective coatings harmed by weathering while such material is being stored; and charge applicable freight when shipment to the Buyer is made. Materials remaining in storage after sixty (60) days from the invoice date shall become the property of the Seller for disposition at the Sellers' discretion. In that event, Buyer shall not be liable for the invoice price of the materials, but shall be liable for the storage fee and any repair work to protective coatings.

(b) Cancel the order and invoice the Buyer for cancellation charges, which shall be 25% of the selling price of the materials if the materials are standard, in-stock material, or the full selling price if the materials are special or nonstandard in nature and were specially fabricated for the Buyer.

19. SEVERABILITY. If any provision of this Agreement or any related document or instrument is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be either reformed by a court of competent jurisdiction to reflect the intent of the parties, or deleted from the Agreement by the court, whichever course of action in the opinion of the court would best reflect the intent of the parties, taking into consideration all provisions of this Agreement. If a provision is deleted, the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by severance herefrom.

20. WAIVER OF JURY TRIAL. BUYER AND SPECS ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH OF THE BUYER AND SPECS, AFTER CONSULTING (OR HAVING THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS CHOICE, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO ANY OTHER DOCUMENT PERTAINING TO ANY ORDER.

21. VENUE. The parties hereby agree that all actions or proceedings arising directly or indirectly, from this Agreement shall be litigated in courts having a situs within the state of California, and the parties hereby consent to the jurisdiction of any local, state or federal courts that is located within the state of California.

22. STATUTE OF LIMITATIONS. Any action resulting from any breach on the part of SPECS as to the goods or services delivered hereunder must be commenced within one year after the cause of action has accrued.