

PURCHASE ORDER TERMS & CONDITIONS	POTC-01 REV: F
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THIS ORDER IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

- 1.) PURCHASE ORDER FORMATION:** The Purchase Order and these terms and conditions ("Purchase Order") constitute an offer by Buyer which is accepted by Seller solely in accordance with the terms set forth herein together with the addenda, supplemental sheets, schedules, exhibits, specifications, drawings, data or riders annexed to the Purchase Order or set forth on the face of the Purchase Order upon the earlier of the Seller's (a) written acknowledgment (b) commencement of effort, or delivery in whole or in part of items or services required herein, or (c) failure to take written exception within five working days of receipt of the Purchase Order. By acceptance of the Purchase Order, Seller agrees that these terms and conditions shall supersede any additional, different or conflicting terms of Seller's quotation, proposal or other offer to sell. Buyer hereby objects to any additional, different or conflicting terms contained in any order acknowledgement, and the same shall not form any part hereof, unless Buyer expressly and specifically acknowledges and accepts such terms by written agreement. In the event of inconsistency between the clauses of the Purchase Order, the inconsistency shall be resolved by giving precedence in the following order: (a) provisions on the face of the Purchase Order, (b) Terms and Conditions, (c) other provisions of the Purchase Order attached or referenced, and (d) the Specifications.
- 2.) PACKAGING/SHIPPING/LABELLING:** Seller shall provide adequate protective packaging to prevent damage, contamination, and deterioration of the Products, comply with Buyer's written instructions, and comply with good commercial practice at no additional charge to Buyer. Shipments shall be made in accordance with Buyer's specific instructions. Seller shall enclose a packing slip with each shipment and all packaging/documentation shall reference Buyer's Purchase Order number. Seller shall label all shipping containers with Seller name, Buyer's part number, Purchase Order number, total shipment quantity, box number, and bar code when requested by Buyer. INCOTERM shall be EXW unless otherwise indicated on the face of the Purchase Order.
- 3.) PERFORMANCE:** Seller shall comply with the performance requirements provided by Buyer to Seller. Seller shall promptly inform Buyer of any potential delay in delivery for whatever reason, and take all necessary or appropriate steps to mitigate such delay at Seller's sole expense. *Time is of the essence.*
- 4.) CHANGES:** Buyer may at any time, by written notice, make changes in the specifications, designs or drawings, quantities, samples or other description to which any items are to conform, in methods of shipment and packaging, or place of delivery. If Buyer and Seller mutually agree that such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under the Purchase Order, an equitable adjustment shall be made in the price or delivery schedule, or both, and the Purchase Order shall be modified accordingly. Seller shall make no substitutions or changes to the items furnished to Buyer without prior written notice to, and approval in writing from, Buyer.
- 5.) PAYMENT:** Unless otherwise specified on the Purchase Order, payment for items delivered to Buyer and strictly conforming to the terms hereof shall be made by Buyer within 60 calendar days of the date of invoice. Seller shall not invoice prior to shipment and shall issue one invoice per shipment. All customs duties, licenses, taxes, and similar charges shall be borne by the Seller.
- 6.) COMPLIANCE WITH LAWS:** Seller warrants that it will comply with all foreign, federal, state, and local laws, including, but not limited to any statute, rule, regulation, judgment, decree, order, license, or permit applicable to its performance under any Purchase Order at its sole cost and expense, including, without limitation all applicable export control regulations.
- 7.) CANCELLATION/ TERMINATION:** Upon written notice to Seller, Buyer may immediately terminate the Purchase Order in whole or in part, for its sole convenience, in its sole discretion without cause and without penalty. In such event, Seller shall have the right to submit a termination claim to Buyer within 30 days of termination. Seller shall have the right to claim, and the Buyer's maximum liability for such termination, shall be payment for those items already delivered and accepted by Buyer and not yet invoiced, plus the proportionate part of Seller's cost for those items in the process of being manufactured, inspected, or tested pro-rated to the state of their completion by the Seller to the extent the same cannot be reused by Seller for other purposes. Seller shall include evidence documenting all such costs, and such claim shall be subject to audit by Buyer. In no event shall such amount exceed the amount of the cancelled Purchase Order. Upon receipt of a notice of termination from Buyer, Seller shall stop work and immediately take the necessary action to ensure that all work under the Purchase Order shall cease to the extent specified in Buyer's notice of termination. All subcontracts and agreements that are related to Seller's ability to fulfill its obligations under the Purchase Order shall be terminated immediately. Upon written notice to Seller, Buyer may immediately terminate the Purchase Order, in whole or in part, without prejudice to any other rights or remedies provided under the Purchase Order, by law or at equity, if Seller shall fail in the performance of any of its obligations contained in the Purchase Order, which failure shall continue uncured for a

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period of 10 days after written notice from Buyer, without further obligation on the part of Buyer. No termination of the Purchase Order shall relieve any party from liability for obligations arising prior to such termination.

8.) INSPECTION AND ACCEPTANCE: The manufacture and repair of all items provided pursuant to the Purchase Order by Seller or Seller's subcontractors shall be subject to inspection and test at all reasonable times and places, including during the period of manufacture, by Buyer, regulatory agencies, and Buyer's customers. All items are also subject to final inspection and acceptance at Buyer's specified place of delivery notwithstanding any prior inspections. Seller shall be responsible to correct, at its expense, all defects and failures to conform to the warranties set forth herein, whether or not they can be discovered by Buyer through reasonable inspection methods or time of use. Any item rejected upon Buyer inspection shall be promptly repaired or replaced by Seller or returned for credit at Buyer's sole discretion. Items rejected by Buyer on incoming inspection shall not be deemed delivered by Seller until a conforming replacement is received by Buyer.

9.) WARRANTY: Seller represents and warrants that all items and services, for a period beginning upon delivery to Buyer and continuing for a five year period after delivery of the applicable item to Buyer's customer: (a) conform to the specifications, drawings, samples and/or descriptions furnished or specified by Buyer, or provided by Seller as applicable, (b) are merchantable and fit in every respect for the purpose intended, (c) are free from both latent and patent design defects: (d) are free from defects in material and/or workmanship, (e) that no item, part, component, or raw material thereof be counterfeit, (f) are free of any liens, encumbrances, and clouds on title, and (g) do not infringe the intellectual property rights of any third party. The Purchase Order expressly includes all implied warranties and all of the Buyer's remedies set forth in the Uniform Commercial Code. Buyer's approval of samples shall not be construed as a waiver by the Buyer of any requirement of the drawings, specifications, and/or other descriptions applicable hereto, or as a waiver of an expressed or implied warranty of the Seller unless specifically waived in writing by Buyer's authorized personnel. Seller warrants that all items and material used in the manufacture of the Purchase Order are monitored for impending obsolescence issues and that Seller will provide immediate formal notification and a proposal of alternatives to Buyer as soon as a pending obsolescence issue or event is known to Seller. Seller will endeavor to minimize cost and operational impacts to Buyer and Buyer's customers.

10.) CONFIDENTIALITY: The Parties shall abide by all terms in any previously signed Non-Disclosure Agreement in force. In the event a Non-Disclosure Agreement between the Parties is not found the Parties shall treat all confidential and proprietary information not in the public domain, including but not limited to, writings drawings, equipment, tooling, models, oral disclosures, and/or learned of or produced by the Parties in connection with the performance of the work under the Purchase Order, as confidential and shall be held by the Parties in strict confidence at all times. Unless written consent is first obtained, neither Party shall in any manner disclose, advertise, publish or release for publication any confidential or propriety information, quote or opinion of any employee of Buyer or any statement mentioning Buyer or Purchase Order.

11.) BUYER'S PROPERTY AND TOOLING: All property used by Seller in connection with the Purchase Order which is owned, furnished, charged to, or paid for by Buyer shall be and remain the property of Buyer subject to removal and inspection by Buyer at any time without cost or expense to Buyer. Seller grants Buyer an unlimited license to access Seller's premises for the purpose of inspecting or removing such property. All such property shall be identified and marked as Buyer's property, used by Seller only to fulfill its obligations under the Purchase Order and adequately insured by Seller at its expense for Buyer's protection. Seller assumes all risk of loss of such property in its possessions. Items or services designed or manufactured specifically to Buyer requirements or specifications shall not be sold or marketed to any third party without Buyer's express written consent, and shall constitute the intellectual property of Buyer. At no additional cost to Buyer, Seller shall follow normal industrial practices in the identification, maintenance, preservation, and segregation of Buyer's property, and shall maintain property control records which Buyer shall be allowed to access any time during normal business hours.

12.) INDEMNIFICATION: Seller shall indemnify, defend and hold harmless Buyer and its affiliates, subsidiaries, officers, directors, agents, representatives, contractors and employees from and against any and all damage, loss, liability, expense, claim or demand (including, without limitation, interest, penalties, reasonable expenses of investigation and reasonable attorney's fees and expenses in connection with any action, suit, or proceeding) that may be charged to, recoverable from, suffered or incurred by or assessed or asserted against any of them by any third party to any extent arising from Seller's breach of its obligations, representations or warranties hereunder. Seller shall indemnify and hold Buyer and its employees harmless from any property damage, personal injuries, or death arising out of Seller, its agents, employees, subcontractors and representatives entry upon property or premises under the control of Buyer and shall procure and maintain insurance in adequate amounts against such risks.

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13.) NON-WAIVER: The rights and remedies provided to Buyer pursuant to the Purchase Order shall be cumulative and in addition to any other rights and remedies provided by law or equity. Any term or provision of the Purchase Order may be waived, or the time for its performance may be extended by the party hereto entitled to the benefit thereof, only in writing. The failure of either party to enforce at any time any provision of the Purchase Order shall not be construed to be a waiver of such provision, nor in any way to affect its validity or any part hereof or the right of such party thereafter to enforce each and every such provision. No waiver of any breach of any terms of Purchase Order shall be held to constitute a waiver of any other subsequent breach.

14.) ASSIGNMENT: Seller shall not, by contract, operation of law, or otherwise (a) assign any of its rights or interest in the Purchase Order, including, but not limited to, any right to monies due or to become due (b) delegate any of its duties or obligations under this Purchase Order or (c) subcontract all or substantially all, of its performance of the Purchase Order to one or more third parties without Buyer's prior written consent. No assignment, delegation, or subcontracting by Seller, with or without Buyer's consent, shall relieve Seller of any of its obligations under the Purchase Order, or prejudice any of Buyer's rights against Seller, whether arising before or after the date of the assignment including, but not limited to, set off or recoupment.

15.) LIMITATION OF LIABILITY: In no event shall Buyer be liable for punitive, indirect, special, incidental or consequential damages.

16.) ARBITRATION/ GOVERNING LAW: The terms of the Purchase Order shall be governed and construed in accordance with the laws of New York, without regard to its choice of law rules. The exclusive jurisdiction for the resolution of any dispute arising hereunder shall be the federal and state courts located in said state.

17.) STAFF TRAINING AND COMPETENCIES: The supplier shall ensure that employees are aware of:

- Their contribution to product or service conformity
- Their contribution to product safety
- The importance of ethical behavior

These requirements shall be flowed down to sub tier suppliers.