

TERMS AND CONDITIONS OF PURCHASE

1. This order is subject to all of the terms and conditions herein each of which the Seller agrees to by acceptance of this order. None of the terms or conditions contained in this order may be added to, modified, superseded, or otherwise altered except by a written instrument delivered to Seller signed by an officer of Magellan Corporation ("Magellan"). Each shipment received by Magellan from Seller shall be deemed to be only upon the terms and conditions contained in this order, except as they may be so added to, modified, superseded, or otherwise altered in writing signed and approved by an officer of Magellan, notwithstanding any terms or conditions that may be contained in any acknowledgment, invoice or other form used by Seller and notwithstanding Magellan's act of accepting or paying for any shipment or similar act of Magellan.
2. Magellan reserves the right to cancel all or any part of the undelivered portion of this order (i) if Seller does not make deliveries as specified, time being of the essence of this order, (ii) if Seller breaches any of the terms hereof including, without limitation, any of the warranties of Seller, (iii) if Seller makes an arbitrary change of price on this order, (iv) if there are existing quality problems with previous or existing orders from Seller, (v) if trade litigation is filed against the Seller or the country where the Seller is located, or (vi) if Seller has a change in ownership or becomes insolvent. Such cancellation may be communicated by written or electronic notice or by verbal notice confirmed in writing. Magellan shall not be liable to Seller for the cost of such goods not delivered as specified or not complying with any warranty of Seller and shall have no liability for the portion of the order cancelled.
3. Magellan's obligations under this contract may be voided at the option of, and by, Magellan at any time prior to delivery of the goods to Magellan in the event that the United States imposes trade sanctions in the form of additional duties, quotas, or other restrictions on the merchandise in this shipment. Magellan and the parties may also, solely at the discretion of Magellan, re-negotiate any material terms of this contract in the event of such trade sanctions.
4. Seller warrants that all goods purchased hereunder will be free from defects in design, material and workmanship, will conform to Magellan provided specifications and accepted samples, will be merchantable, and, if ordered for a stated purpose, will be fit for such purpose. Seller agrees that this warranty will survive acceptance of the goods by Magellan. This warranty shall be in addition to any warranties of additional scope given to Magellan by Seller.
5. Seller warrants that it is not engaging, and will not engage, in any conduct which would be proscribed under the U.S. customs and trade laws. In the event Seller is found to have been involved in such conduct, Seller shall compensate Magellan for any damages experienced by Magellan as a result of this conduct.
6. All goods, materials and services purchased pursuant to this order or parts thereof ("purchased goods"), will comply with all applicable federal, state or local governmental laws, regulations or orders (including occupational safety and health laws, regulations and orders) as to design, construction and performance at Magellan's place of use, and Seller will notify Magellan if goods ordered do not so comply; furthermore, it is agreed that the purchase price includes, and Seller agrees to furnish, all accessories, parts, and appliances required by any such law, regulation or order for use or operation of purchased goods at Magellan's place of use.
7. Risk of loss or damage to goods shall be Seller's risk until the goods have been delivered to and accepted by Magellan, notwithstanding any other terms contained herein. All goods will be received by Magellan subject to its right of inspection and rejection. Magellan, its processor, its customer or its customer's customer shall be allowed a reasonable period of time not less than thirty (30) days after the last to occur of delivery to Magellan, delivery to its processor, delivery to its customer or delivery to its customer's customer as the case may be, to inspect the goods and to notify Seller of any rejection of goods for nonconformance with the terms and conditions of this order. Goods so rejected may be returned to Seller, or held by Magellan, at Seller's risk and expense.
8. Magellan shall not be liable for failure to take deliveries hereunder or delay in taking shipments, for any cause beyond Magellan's reasonable control including, but not limited to, government action, acts of terrorism, shortage of labor, raw material, production or transportation facilities, labor difficulty, fire, flood, other casualty and act of God or any other causes of like character. In the event of any delay in Magellan's performance due in whole or in part to any cause beyond Magellan's reasonable control, Magellan shall have such additional time for performance as may be reasonably necessary under the circumstances.
9. Seller shall indemnify and hold harmless Magellan, its successors, assigns, officers, employees, agents, customers and users of its products, from and against all claims, losses, penalties, damages (including incidental and consequential damages) or expenses (including reasonable attorneys' fees) which may be sustained by Magellan, its successors, assigns, officers, employees, agents, customers or users of its products arising out of (1) any infringement or claim of infringement of any letters patent or trade secrets by reason of the use or sale of any goods purchased hereunder, excepting unpatented staple articles of commerce and goods manufactured in accordance with Magellan's design, (2) any defects in the goods, (3) breach by Seller of any of the warranties contained herein, (4) Seller's failure to timely deliver the goods purchased hereunder, (5) failure of the goods to include necessary safety features or otherwise conform to the requirements of any federal, state or local occupational safety and health laws, regulation or ordinance, when used in a manner and for a purpose intended by Seller or (6) death of or injury to persons or destruction of property sustained in connection with performance of this order, provided, that Magellan shall not be indemnified for any of the foregoing events caused solely by Magellan's or its employees' gross negligence or willful misconduct. Seller shall, at its own expense, if so requested by Magellan, defend all claims, proceedings or suits against Magellan, its successors, assigns, officers, employees, agents, customers and users of its products, in which any of the aforesaid claims are alleged, provided Seller is duly notified of such claims, proceedings or suits. Seller further waives all rights to make a claim against Magellan for, and releases Magellan from all liability arising from, the death of, or injury to, persons or destruction of property sustained in connection with performance of this order, arising from any cause except that caused solely by the gross negligence or willful misconduct of Magellan or its employees.
10. Goods will be billed by Seller at the price last quoted by Seller, at Seller's price to other buyers at the date of shipment, or the price as indicated on Magellan's purchase order, whichever is lowest, plus any applicable surcharges. No additional charges of any kind, including, but not limited to charges for boxing, burlapping, packing, cartage, storage, insurance or other extras will be charged to Magellan unless agreed to in writing in advance by Magellan.
11. The cash discount period where appropriate will date (i) from the receipt of the goods or (ii) from the date of the invoice, whichever is later.
12. Seller must furnish the entire quantity ordered hereunder and said quantity cannot be varied by Seller unless an officer of Magellan agrees in writing to accept a different quantity. Magellan reserves the right to reject any unauthorized quantities and to return same to Seller at Seller's risk and expense. Seller further agrees to indemnify Magellan for any expenses or losses incurred by Magellan as a result of Seller's failure to furnish the entire quantity ordered hereunder.
13. Magellan reserves the right at any time to make changes in the following: (a) specifications, drawings and data incorporated in this order where the goods to be furnished are to be specially manufactured for Magellan; (b) methods of shipment or packing; (c) place of delivery; and/or (d) time of delivery. If any such change causes an increase or decrease in the cost of, or the time required for performance of this order, an equitable adjustment shall be made in the purchase price or delivery schedule, or both. Any claim by Seller for adjustment under this paragraph shall be deemed waived unless Magellan is notified in writing within ten (10) days from receipt by Seller of the change. Price increases or extensions of time for delivery shall not be binding on Magellan unless approved in writing by an officer of Magellan.
14. Magellan may at any time for its convenience terminate this order, in whole or in part, by written or electronic notice, or verbal notice confirmed in writing. If this order is terminated for Magellan's convenience, Magellan shall not be liable to Seller for anticipated profits and any claim of Seller shall be settled on the basis of the reasonable costs Seller has incurred in the performance of this order prior to such termination.
15. Any material that Magellan has furnished or may furnish Seller without charge in connection with this order shall remain Magellan's property subject to Magellan's recall at any time. Seller agrees to keep such material fully insured for Magellan's benefit against loss or damage of any kind and to reimburse Magellan for any such material that is spoiled or lost while in Seller's possession. All blueprints, specifications, plans or designs furnished to Seller by Magellan are confidential and Seller shall not furnish them to anyone else without Magellan's prior written consent.
16. In fulfilling this order, Seller shall comply with all applicable federal, state and local laws and governmental regulations and orders. Seller specifically warrants (a) that all goods furnished hereunder will be produced and sold in compliance with all applicable requirements of the Fair Labor Standards Act, as amended, including Sections 6, 7 and 12, and the regulations and orders issued under Section 14 thereof, and that it will certify such compliance on each invoice submitted in connection with this order, (b) that it will comply with all applicable Equal Employment Opportunity requirements including those set forth in Section 202 of Executive Order 11246, as amended, which requirements are incorporated herein by reference and (c) that it will not discriminate against any employee or qualified applicant for employment because he or she is a disabled veteran or a veteran of the Vietnam Era (Section 402 of the Vietnam Era Readjustment Act of 1974); or because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified (Section 503 of the Rehabilitation Act of 1973). Seller further agrees to comply with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to such Act or Acts as amended.
17. Magellan may by a document signed by an officer of Magellan waive performance of any condition, but waiver by Magellan of any condition with reference to any shipment shall not be construed as a waiver of that condition on prior or subsequent shipments.
18. All rights and remedies of Magellan herein stated are nonexclusive and in addition to other rights and remedies provided by law. This order shall constitute the entire agreement between the parties. If Magellan employs attorneys to enforce the terms of this order or otherwise with respect to this order, Seller agrees to pay to Magellan all of the reasonable attorneys' fees and costs of such attorneys.
19. This order and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by the laws of the State of Illinois, USA. PURSUANT TO ARTICLE 6 OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS (THE "UN CONVENTION") THE PARTIES AGREE THAT THE UN CONVENTION SHALL NOT APPLY TO THIS ORDER.
20. SELLER, FOR ITSELF AND ITS SUCCESSORS AND ASSIGNS, IRREVOCABLY SUBMITS GENERALLY AND UNCONDITIONALLY FOR ITSELF AND IN RESPECT OF ITS PROPERTY TO THE JURISDICTION OF ANY STATE COURT OR ANY UNITED STATES FEDERAL COURT SITTING IN COOK COUNTY, ILLINOIS, USA OVER ANY DISPUTE ARISING OUT OF OR RELATED TO THIS ORDER AND THE PERFORMANCE THEREOF. SELLER IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION THAT SELLER MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE IN ANY SUCH COURT AND ANY CLAIM THAT ANY SUCH COURT IS AN INCONVENIENT FORUM. SELLER HEREBY AGREES AND CONSENTS THAT, IN ADDITION TO ANY METHODS OF SERVICE OF PROCESS PROVIDED FOR UNDER APPLICABLE LAW, ALL SERVICE OF PROCESS IN ANY SUIT, ACTION OR PROCEEDING IN ANY STATE COURT OR ANY UNITED STATES FEDERAL COURT SITTING IN ILLINOIS MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO SELLER AT ITS ADDRESS FOR NOTICE SET FORTH IN THIS ORDER, OR AT A SUBSEQUENT ADDRESS OF WHICH MAGELLAN RECEIVED ACTUAL NOTICE FROM SELLER IN ACCORDANCE WITH THE NOTICE SECTION OF THIS ORDER, AND SERVICE SO MADE SHALL BE COMPLETE FIVE (5) DAYS AFTER THE SAME SHALL HAVE BEEN SO MAILED. NOTHING HEREIN SHALL AFFECT THE RIGHT OF MAGELLAN TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW OR LIMIT THE RIGHT OF MAGELLAN TO BRING PROCEEDINGS AGAINST SELLER IN ANY OTHER COURT OR JURISDICTION.
21. This order may not be assigned or delegated by Seller without Magellan's prior written consent. Any assignment attempted without such consent shall be null and void and shall effect, at Magellan's sole option, a cancellation of all of Magellan's obligations hereunder. Magellan may assign this order to any affiliate of Magellan or any successor of Magellan without the consent of Seller. All notices, demands, requests, consents, approvals or other communications (any of the foregoing, a "Notice") required, permitted, or desired to be given hereunder shall be in writing sent by telefax or email (with answer back acknowledged) or by registered or certified mail, postage prepaid, return receipt requested, or delivered by hand or reputable overnight courier addressed to the party to be so notified at its address herein set forth, or to such other address as such party may hereafter specify in writing. Any Notice shall be deemed to have been received: (a) three (3) days after the date such Notice is mailed, (b) on the date of sending by telefax or email if sent during business hours on a business day (otherwise on the next business day), (c) on the date of delivery by hand if delivered during business hours on a business day (otherwise on the next business day), and (d) on the next business day if sent by an overnight commercial courier.
22. This order may be executed in counterparts, all of which together shall constitute one and the same document.