

UNICO MECHANICAL CORP.

TERMS AND CONDITIONS OF PURCHASE

Under these Terms and Conditions of Purchase (these "T&Cs") and the purchase order or statement of work under which these T&Cs are referenced (collectively "Order"), Unico Mechanical Corp. or its subsidiaries or affiliates as identified on this Order (collectively, "Unico") agrees to purchase and Supplier (as identified in this Order) agrees to sell the goods and services described in this Order (collectively "Work"). Supplier may accept the Order in writing or by commencing performance of the Work, whichever happens first. Supplier may not change the Order terms, and Unico hereby rejects any terms Supplier proposes whether verbally or in writing. Any written confirmation of this Order by Supplier containing additional or different terms shall be of no effect unless Unico expressly agrees in writing to such terms. Should Unico and Supplier have a negotiated and signed master agreement in place for the Work covered herein, such agreement will supersede this Order to the extent of any conflicts or inconsistencies.

For each Order issued and accepted hereunder, Supplier agrees to become familiar with the respective rights, powers, benefits, and liabilities of Unico under any agreement with a Customer or General Contractor of the particular project ("Prime Agreement"), and hereby agrees to comply with and perform all provisions thereof which are applicable to the Supplier's Work. Supplier agrees to be bound to Unico under the applicable Order according to the same terms and conditions as Unico is bound to the Customer under the Prime Agreement applicable to said Order. Supplier shall assume and perform all of the obligations and responsibilities of Unico under the Prime Agreement which pertain or relate to the Work as stated in the applicable Order.

1. PRICES AND PAYMENT

- (a) Unless otherwise specified, prices for the Work shall be the price shown on the face of the Order, fixed during the Order term and inclusive of all other charges including but not limited to product manufacturing, packaging and handling.
- (b) Supplier shall furnish at its own expense and cost any and all necessary labor, machinery, tools, transportation, permits, materials and whatever else is necessary in the performance and completion of the Work.
- (c) Supplier shall invoice Unico within 30 days of delivery of the Goods or performance of the Services in compliance with Unico's Order instructions and payment terms. Invoices shall specify the Order number and provide a breakdown to at least the item level. Invoices (less retainage) shall be paid to Supplier within seven (7) days after Unico's receipt of payment from its Customer, if applicable. In all projects where there is a Prime Agreement, payments to Supplier by Unico are expressly contingent upon and subject to receipt of payment for the Work by Unico from its Customer. In all other instances, Unico will pay Supplier within sixty (60) days of receipt of invoice.
- (d) Supplier shall comply with all applicable tax laws, including but not limited to laws relating to the collection and remittance of GST, PST, HST and QST.
- (e) Unico may withhold disputed amounts under this Order until the dispute is resolved and may offset any amounts Supplier owes Unico or amounts to protect Unico from any defects or deficiencies or any other failure by Supplier to comply with the requirements of this agreement.
- (f) Unico will apply a hold-back of 10% of all invoiced amounts until final turn-over documentation is received. Upon delivery of compliant turn-over documents, Supplier may submit an invoice for the hold-back amount.

2. SHIPMENT, PACKING AND DELIVERY

- (a) Supplier shall deliver the Product to Unico on the delivery date and to the destination stated in the Order. Unless the Order expressly states otherwise, Goods shall be delivered FOB Destination, Freight Prepaid (Incoterms 2010).
- (b) Supplier shall mark the applicable Order number on all containers, packing slips, bills of lading and invoices. An electronic packing slip shall be provided to Unico prior to shipment and a packing slip will accompany each shipment. Where applicable, any packing or crating materials that are to be returned to Unico by Supplier will be returned at the time, location and in the manner specified by Unico. When multiple packages comprise a single shipment, each package shall also be consecutively numbered. On the date shipment is made, Supplier shall mail or electronically transmit invoices to Unico. Supplier shall accept Unico's count as final and conclusive for any shipment that is not accompanied by a packing slip. Supplier shall not make partial shipments or deviate from the shipping instructions of this Order without Unico's prior written consent.
- (c) Time, quantity, and accuracy of deliveries are of the essence. Supplier shall immediately notify Unico if performance is delayed or likely to be delayed, in whole or in part, and shall provide Unico the reasons for such delay. Such

notice shall not constitute a waiver by Unico of any of Supplier's obligations under the Order. Supplier shall not deliver any Work in advance of the delivery date set out in the Order without Unico's written permission.

- (d) Once the Work has been received by Unico, Unico shall be entitled to inspect it and, at its option, to reject any of the Work which is defective in materials or workmanship.

3. TITLE AND OWNERSHIP OF GOODS

- (a) Supplier represents and warrants that it will be the absolute owner of all Goods with good and marketable title thereto, free and clear of any lien, charge, encumbrance or right of others whatsoever and shall be exclusively entitled to possess and sell same. Supplier shall keep all Goods and Supplier's premises free and clear of any and all liens and charges arising in connection with this agreement. Unless otherwise expressly agreed between the parties, any design, drawing, sample, pattern, tool or material supplied by, loaned by, or paid for by Unico in relation to this agreement, including any associated intellectual property, shall remain or become property of Unico.
- (b) Title to the Goods will transfer to Unico when the first of the following events occurs: (a) Unico pays for the Goods; or (b) the Goods are dispatched from the Supplier's place of manufacture to the place of delivery stated in the Order. Notwithstanding the foregoing, and regardless of any full or partial payment by Unico, care, custody, control and risk of loss of any Goods under the Order remains with Supplier until Unico takes physical possession and accepts delivery of the Goods.

4. ALTERATION AND CHANGES

- (a) Unico may request changes by providing Supplier reasonable advance notice. If Unico demonstrates that a change will reduce Supplier's costs or Supplier demonstrates that a change will materially increase Supplier's costs, Unico and Supplier may negotiate adjustments to the price or schedule.
- (b) All agreed to changes, Order specified and assumed, shall be agreed to in writing by an authorized Unico representative prior to commencement of Work on the change ("Change Order"). Change Orders shall identify and detail Order variations inclusive but not limited to pricing, quantity, delivery terms, schedule, shipment methods, specification adjustments, design deviations with reference to affected drawing & documentation.

5. ALLOCATION OF RISK / INDEMNIFICATION

- (a) As used herein: (i) "Unico Group" shall mean Unico and its customers and their respective officers, directors, employees, contractors, subcontractors, vendors (except Supplier), agents, representatives, invitees and licensees; and (ii) "Supplier Group" shall include Supplier, its parent, subsidiary or affiliated companies, and their respective officers, directors, employees, contractors, subcontractors, vendors, invitees and licensees and agents, any or all entities with an interest or any or all of such entities
- (b) To the fullest extent permitted by law, Supplier shall be liable to the Unico Group for and shall indemnify and save harmless Unico Group from and against any and all claims, suits, demands, awards, actions, proceedings, losses, costs, damages or expenses (including attorney's fees) suffered or incurred by Unico Group that arise out of, result from, are based upon or are in any way connected with the following: (i) the failure of Supplier to comply with any applicable laws, regulations, by-laws, rules or orders of any government, authority or body having jurisdiction; (ii) those arising from Goods defects and related loss or damage; (iii) those arising as a result of the negligence or willful misconduct of Supplier Group; (iv) those resulting from any laborers', materialmen's, or mechanics' liens relating to the Work; and (v) those brought for actual, alleged, direct or contributory infringement of any patent, trade mark, copyright or industrial property right with respect to the Work.
- (c) In the event that any of the Work is subject to a claim of infringement of intellectual property rights, at Unico's option Supplier shall (at its expense) (i) procure for Unico the right to continue using the Work or applicable portion thereof, (ii) replace with an equivalent non-infringing item, (iii) modify the item to be non-infringing, or (iv) refund Unico all amounts paid hereunder.
- (d) The foregoing indemnity and waiver given by Supplier shall not apply to the extent of Unico's own negligence or willful misconduct. The onus of establishing that Unico was negligent shall be upon Supplier. Unico shall not be deemed to have caused or contributed thereto merely by reason of

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its knowledge, approval or acceptance of the Work, specifications, or procedures of Supplier.

of influencing, the business decisions that Unico employees may make on behalf of Unico.

6. **CONFIDENTIALITY & INTELLECTUAL PROPERTY**

- (a) Any information of Unico or its client received by Supplier (in writing, orally or electronically), including this Order itself, shall be deemed confidential and Supplier may not disclose it to any third party, without Unico's written approval and only after appropriate written acknowledgement of confidentiality is obtained from such parties. Supplier may only use Unico's confidential information to perform Work under this Order.
- (b) Supplier may not use Unico's or its client's logo or name (including identifying Unico or its client's as a customer) without prior written permission.

7. **WARRANTY**

- (a) Supplier warrants and represents that all Work shall comply with the terms and conditions of the Order and conform to the specifications provided by Unico. If no specifications are provided, then the Work must conform to generally accepted industry standards and be fit for the known purpose. All services constituting part of the Work shall be performed in a good and workmanlike manner.
- (b) All Goods constituting part of the Work shall be new (unless otherwise approved in writing by Unico) and of good quality; merchantable; free from defects; and free and clear of any liens, security interests, charges, or encumbrances of any kind; and suited for any purposes specified by Unico in the Order.
- (c) Supplier must assign to Unico all guarantees and warranties applicable to any portion of the Work furnished to Supplier by a manufacturer. If Supplier utilizes subcontractors in performance of the Work, the subcontractors must provide similar warranties that are assignable to Unico. If Unico or one of its affiliated companies is not the ultimate consumer of the Goods or Services, all rights, benefits and remedies given to Unico, including but not limited to the benefit of any warranties, shall be deemed to also be for the express benefit of the client of Unico.
- (d) Supplier represents and warrants that use of the Work by Unico shall not interrupt, delay, or otherwise adversely impact Unico or its clients' operations or Unico's ability to provide compliant Goods/Services to its clients.
- (e) Supplier shall provide written certification or certificates of conformance with each shipment of Goods to Unico. Such certification will verify compliance with the requirements for product usage, plating/coating operations, heat treatment, or other special processes to be used in manufacturing the Goods, as defined on the product documentation or on the face of this Order.
- (f) Notwithstanding any other Unico remedies stated herein, Supplier agrees to immediately replace or reperform any non-compliant Work at no cost to Unico for twenty-four (24) months following delivery of Goods or Unico's acceptance of Services.
- (g) All of the above warranties will survive termination or expiration of this Order or acceptance of any Work by Unico.
- (h) If any Goods or Services are rejected for non-conformance with the Order, Unico may return the Goods at Supplier's expense and risk and request that Supplier re-deliver Goods, re-perform Services or refund any amounts Unico has paid and cancel the Order. If redelivery or reperformance is not possible or completed to Unico's satisfaction. Supplier shall pay the difference between the original Order price and the cost for an alternative supplier to perform the Work.

8. **COMPLIANCE WITH LAWS AND POLICY**

- (a) Supplier must perform all Work in a manner that complies with all applicable federal, provincial, and local laws, rules, regulations, ordinances, and statutes, including without limitation all applicable health, safety and environmental ("HSE") rules, directives, and procedures, including those applicable to work while any member of Supplier Group visits a Unico facility.
- (b) Unico's Code of Conduct requires that its employees must not engage in, or give the appearance of, engaging in any activity involving a conflict, or reasonably foreseeable conflict, between personal interests and those of Unico. Supplier shall ensure that its employees do not offer Unico employees anything of value that may influence, or create the appearance

9. **INSURANCE**

Supplier and Supplier's subcontractors or agents shall each carry Commercial General Liability insurance with a combined single limit of not less than \$5,000,000 per occurrence and Automobile Liability insurance of not less than \$2,000,000 per occurrence. At Unico's request, Supplier shall provide independent proof of such coverage and/or add Unico as an additional insured to its policy(s).

10. **LIMITATION OF LIABILITY**

Neither party will be liable to the other for any indirect, special, punitive, exemplary, or consequential damages, including but not limited to damages for: lost production, lost revenue, lost product, lost profits, lost business, or business interruptions. This exemption does not apply to i) any claims covered by insurance policies of the indemnifying party; ii) claims due to willful misconduct or gross negligence; iii) any warranty requirements or iv) indemnification obligations for third party claims.

11. **ASSIGNMENT AND SUBCONTRACTING**

Supplier may not assign any rights or obligations under this Order without Unico's prior written consent. Supplier may not subcontract any portion of this Order without Unico's prior written consent.

12. **INDEPENDENT CONTRACTOR / USE OF NAME**

This Order does not create a partnership or joint venture between the parties. Each party is an independent contractor, has no authority to bind the other, and is solely responsible for its own employees and subcontractors.

13. **TERMINATION**

Unico may cancel the Order at any time with respect to any Goods not yet delivered or Services not yet performed by notifying Supplier. Upon such cancellation, Unico's liability shall be limited to payment to Supplier of a final invoice for amounts owing for conforming Work delivered, or provided, as applicable, to Unico prior to the date of cancellation.

14. **AUDIT**

At any time during normal business hours for three (3) years following delivery of the Goods or performance of the Services, Unico, its client or their respective representatives may inspect and audit all of Supplier's records related to this Order or its relationship with Unico, including any records required to confirm Supplier's compliance with these terms and conditions.

15. **SET-OFF**

Unico shall be entitled at all times to set off at law and/or in equity any amount owing from Supplier to Unico against any amount due or owing to Supplier with respect to this Order or other agreements between Unico and Supplier.

16. **GOVERNING LAW**

This agreement shall be governed by the laws of the state of California. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY ACTION, CLAIM, SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THESE TERMS AND CONDITIONS.

17. **ENTIRE AGREEMENT**

This Order constitutes the entire agreement between the parties and supersedes and replaces all other agreements between the parties with respect to the Goods or Services and may be amended only by written instrument signed by the parties. The terms of this Order shall supersede any terms attached to Supplier's invoice, proposals or other documents, which terms shall not be applicable to this Order and shall not be considered to be Supplier's exceptions to the provisions of this Order. If any provision is deemed illegal or invalid, such provision will be deemed conformed as needed to be enforceable while consistent with the parties' intent as expressed in the Order.