

GENERAL PURCHASING TERMS & CONDITIONS

The following terms and conditions (these "Terms and Conditions") shall apply to all purchase orders (each, a "Purchase Order" and collectively, the "Purchase Orders") issued by Folsom Industrial or H.A. Folsom and Associates ("Buyer") to the supplier identified on each Purchase Order ("Vendor") for the supply of any and all materials, parts, products, machines, tooling, test equipment and other tangible items or documentary information furnished or required to be furnished by Vendor and any and all technical assistance, support, maintenance, consultation, construction work, and other services furnished or required to be furnished by Vendor. These Terms and Conditions, together with the terms and conditions of all Purchase Orders shall be collectively referred to herein as this "Order".

PURCHASING TERMS & CONDITIONS

COMPLETE AGREEMENT: This Order shall become a binding agreement of the Vendor and the Buyer upon the Vendor signing and returning an acceptance copy of the Purchase Order, or upon commencing performance of this Order, whichever occurs first. This Order, together with the specifications, drawings and documents referred to herein and the other documents referred to therein, which by this reference are all made a part hereof, constitute the entire agreement between the parties, and all prior negotiations, proposals, and writing pertaining to this Order, or the subject matter hereof, are superseded hereby. Any reference to the Vendor's quotation, bid, or proposal does not imply acceptance of any terms, conditions, or instruction contained in such document.

Any invoice, acknowledgment or other communication issued by the Vendor in connection with this Order shall be construed to be for record and accounting purposes only. Except as expressly set forth herein, any terms and conditions stated in such communication shall not be applicable to this Order and shall not be considered to be the Vendor's exceptions to the provisions of this Order. Trade custom and/or trade usage is superseded by this Order and shall not be applicable in the interpretation of this Order.

INSPECTION: The Buyer and its representatives will at all times have access to the site at which the Vendor is performing its obligations under this Order. The Vendor will provide proper facilities for access and for inspection. The Buyer has the right to inspect and test the goods at any time during manufacture and prior to shipment, and to a final inspection within a reasonable time after arrival at the ultimate destination. The goods will not be accepted until after this final inspection. Any inspection made by the Buyer during or after performance by the Vendor does not waive any obligations of the Vendor.

RESPONSIBILITY FOR PROPERTY: To the extent that this Order permits or requires property of the Buyer to be in the care, custody, or control of the Vendor, the Vendor will be responsible for all loss and damage to the property, and will return it to the Buyer as requested in at least as good condition as when it was received by the Vendor. The property will be in the custody and care of the Vendor from the time it is delivered to the Vendor, or its agent, until it is returned and accepted by the Buyer.

PRICE INCREASE: The price reflected in this Order is firm, unless expressly provided in any escalation or adjustment clause appearing on the front of this Order or as otherwise mutually agreed to in writing by Buyer and Vendor.

INDEPENDENT CONTRACTOR: The Vendor shall act as an independent contractor and not as an agent or employee of the Buyer and shall not subcontract any portion of the work without the written consent of the Buyer.

TITLE AND RISK: Unless otherwise provided for on the front of this Order, title to the goods will remain in the Vendor and the goods will be at the Vendor's risk until actual delivery to the Buyer at the Buyer's address for delivery.

WARRANTIES: The Vendor warrants full, clear and unrestricted title to the Buyer for all goods furnished hereunder free and clear of all liens, restrictions, reservations, security, interests (except to Buyer), encumbrances and claim of others, whether or not the Buyer has knowledge thereof. The Vendor warrants that the goods sold and materials and services supplied under this Order are as described in this Order, conform to any plans, specifications or standards referred to in this Order, are of satisfactory and merchantable quality, are free from defects, are fit for their purpose, and are, unless otherwise stated, new. The Vendor warrants that all services provided in relation to this Order are as described in this Order and will be performed with due diligence and in a good and workmanlike manner. The Vendor warrants that all goods sold and materials and services supplied under this Order will comply with the operating conditions and performance data, if any, specified by the Buyer. The Buyer may inspect the work at any location, but neither the inspection, nor the failure to inspect, will relieve the Vendor of its obligations under this Order. If any work, in the Buyer's opinion, does not meet any of these warranties or is in any way defective, the Buyer may, by written notice to the Vendor, elect to:

(a) reject all or any of the goods sold and materials and services supplied under this Order at the Vendor's sole risk and expense and receive a full refund for all work rejected, whether or not any payments, full or partial, were made;

(b) have the Vendor, at its sole risk and expense, repair, replace or re-perform the goods sold and materials and services supplied under this Order at the Buyer's site as the Buyer indicates; or

(c) retain the goods sold and materials and services supplied under this Order and assert a right to compensation for breach of contract.

The above warranties of the goods sold and materials and services supplied under this Order and the repair, replacement or re-performance of same, will extend until the earlier of 12 months from the date of start of operation or use or 24 months from the date of shipment, unless otherwise specified on the face of this Order. Despite the above, if the Vendor's standard warranty provisions are more beneficial to the Buyer than the warranty provisions set out in this Order, then the Vendor's warranty provisions will apply. All warranties will continue in full force and effect, despite any termination of the Order by either the Buyer or the Vendor. The Vendor will, on written notice given by the Buyer, assign to the Buyer or enforce for the Buyer's benefit any warranties obtained from manufacturers or subcontractors. Payment or acceptance by the Buyer under this Order will not constitute a waiver of these warranties nor will anything contained in this Order be construed to limit or exclude any warranties or conditions implied by law.

FORCE MAJEURE: If the Vendor or the Buyer is prevented from or delayed in its performance under this Order as a result of fire, delays in transportation, an act of God, an order of a governmental official body, a labor dispute or other cause beyond the Buyer's or Vendor's reasonable control, the time for performance by that party will be extended by the length of time it is so prevented or delayed. If any event of force majeure involving the Vendor or its subcontractor disrupts, or threatens to disrupt, the Buyer's operations, the Buyer may cancel this Order by written notice, terminating without liability all obligations imposed by this Order.

DELIVERY: Time is of the essence on this Order. Immediately upon acceptance of this Order, the Vendor will commence performance and will continue performance with due diligence. This Order must be completed within the time stated, or if no time is stated, within a reasonable time. Failure of the Vendor to complete performance within this time or to perform with due diligence will entitle the Buyer to cancel this Order without liability or, alternatively, to require performance by the Vendor according to the terms and conditions of this Order. Exercise of either option will be without prejudice to the Buyer's right to claim from the Vendor any loss or damage suffered.

LIQUIDATED DAMAGES: The Vendor acknowledges and agrees that time is of the essence to the Buyer and that shipment (per the terms of the Purchase Order) of the equipment and/or materials, services must be made by the date specified herein. If the Vendor fails to meet the shipping date stipulated in this contract, the Vendor shall pay to the Purchaser as liquidated damages the sum of .5% per business day to a maximum of 10% of the contract price for each day the shipping date is delayed up to and including the day on which the shipment is made (the "Liquidated Damages"). The Buyer and Vendor recognize and agree that the Liquidated Damages are a reasonable pre-estimation of damage which may occur to the Buyer and that such terms are liquidated damages and in no event are considered penalties.

CHANGES: This Order contains the entire agreement between the Buyer and the Vendor. Except as expressly set forth herein, the Vendor's standard terms and conditions, if any, shall not be applicable. No oral statements or agreements made by an agent or employee of the Buyer and no variation of the terms and conditions of this Order (whether contained in the Vendor's standard documents or otherwise) will bind the Buyer unless duly approved by it on this Order or in writing.

RIGHT TO CHANGE: The Buyer may at any time and from time to time, at its discretion and without invalidating this Order, request the Vendor to make one or more changes by providing written notice, including additions to or deletions from the quantities originally ordered, or in the specifications or drawings. If any of these changes affect the amount due or the time of performance under this Order, an equitable adjustment will be made. Vendor shall not proceed to effect a requested change until it receives written authorization from the Buyer to proceed. Vendor's warranties as to the goods sold and materials and services supplied under this Order shall be deemed restated to them as changed.

TERMINATION AT WILL: The Buyer may at any time, by written alteration to this Order, terminate this Order as to all or any portion of the goods not yet shipped, subject to an equitable adjustment between the parties as to any work or materials then in progress, provided that the adjustment will not be made in favor of the Vendor on any goods which are the Vendor's standard stock. The Buyer reserves the right at any time to cancel any part of this Order NOT SHIPPED PRIOR TO CANCELLATION. Upon receipt of cancellation notice, the Vendor will immediately cease performance under this Order and use its best efforts to reduce loss. The liability of the Buyer will be limited to direct costs and expenses reasonably incurred by the Vendor prior to receipt of the cancellation notice.

TERMINATION FOR DEFAULT: The Buyer may terminate this Order immediately upon breach or noncompliance by the Vendor of any terms or conditions in this Order or in any other contract between the Buyer and the Vendor, without limiting any other rights or remedies the Buyer may have under this Order or any other contract, or by operation of law. Further, if the Vendor becomes insolvent, enters into voluntary or involuntary bankruptcy or receivership proceedings or makes an assignment for the benefit of its creditors, the Buyer will have the right, without limiting any other rights or remedies which the Buyer may have under this Order or by operation of law, to terminate this Order by written notice to the Vendor. The Buyer will then be relieved of all further obligations under this Order except to pay a reasonable value of the Vendor's prior performance, as determined by the Buyer and which will not exceed the price agreed upon in this Order. The Vendor will be liable to the Buyer for all costs in excess of the price specified in this Order and incurred by the Buyer in completing or procuring the completion of the work of this Order.

COMPLIANCE: The Vendor shall comply with and require that its directors, officers, employees, contractors and agents comply with all applicable federal, provincial and municipal statutes, regulations and rules, technical codes and standards applicable (collectively, "Laws") to goods sold and materials and services supplied under this Order, including without limitation, the U.S. Department of Transportation Code of Federal Regulations, Title 49, Clean Air Act, 42 U.S.C. §7401 et seq. (1970), Clean Water Act, 33 U.S.C. §1250 et seq. (1972), and the Occupational Safety and Health Act, 29 U.S.C., and the Occupational Safety and Health Act, 29 U.S.C. 51 et seq. (1970) (all as amended from time to time). The Vendor shall acquire and keep in force all required permits and certificates of approval and shall be responsible for all documentation required to comply with Laws.

WAIVER OF SECURITY INTEREST AND LIENS: The Vendor agrees to return, immediately on demand, all patterns, forms, plans and other intellectual property (the "Patterns") delivered by Buyer to the Vendor and the Vendor hereby waives any current or future right to claim a security interest in, or lien claim over, the Patterns, whether arising by statute or otherwise.

CUSTOMS AND IMMIGRATION: Unless otherwise provided for on the front of this Order, the Vendor shall be responsible for obtaining, at its sole risk and expense, any documentation, licenses or authorizations required from international, national or local governmental authorities prior to shipping goods or providing services to the Buyer. Specifically, without limiting the generality of the foregoing, the Vendor shall comply with or use its best efforts to assist the Buyer in complying with requirements under any foreign treaties or similar agreements and U.S. Citizenship and Immigration Services, to obtain work authorizations or permits for foreign workers.

CONFIDENTIALITY: The Vendor and its employees, agents, and subcontractors will not divulge to any person or persons any information gained as a result of or in connection with this Order and performance related to this Order, and they will treat all such information furnished or arising under this Order as confidential except to the extent required for the performance of the services. Any and all confidential and proprietary information provided to the Vendor under this Order remains the sole property of the Buyer, all rights reserved. At the request of the Buyer the Vendor must immediately return or destroy all confidential or proprietary information provided to it. It is understood that nothing in connection with this Order will be construed as granting to the Vendor a license or any other right to exploit the confidential information of the Buyer including but not limited to information relating to research, development, manufacturing, purchasing, accounting, engineering, marketing, merchandising, ideas, selling, leasing, servicing, finance and business systems, techniques and clients of the Buyer. The Vendor shall not claim any patent or proprietary right based upon the providing of confidential information and shall prohibit, and shall defend and indemnify the Buyer from, any such claims from the Vendors' employees or others who may receive the confidential information from or through the Vendor. The Vendor agrees that money damages alone would not be a sufficient remedy for any breach of this understanding of Confidentiality as set out in this Order and that the Buyer shall be entitled to enforce this Order by injunctive and other available relief without limitation and at the expense of the Vendor.

PROPRIETARY RIGHTS. The Vendor will disclose to the Buyer, and the Vendor hereby assigns to the Buyer and will take all further steps necessary to transfer to the Buyer, all right, title and interest in and to any discoveries, developments, enhancements, improvements, know-how, concepts, formulas, techniques, processes, ideas, writings, industrial and other designs, patents, copyrights, trade-marks and other forms of intellectual property, trade secrets or utility models, developed in the fulfillment of this Order, developed by the Vendor using any device, samples or materials provided by Buyer or using any confidential information of Buyer, including rights to any specially designed or custom goods, and to all patents, copyrights or other intellectual property rights thereto. The Buyer will remain the exclusive owner of all right, title and interest in and to any devices, products, goods, parts, patterns, plans, molds, samples or other materials provided by the Buyer to the Vendor, and the Vendor will not, and will not knowingly permit a third party to, whether directly or indirectly, modify, reverse engineer or disassemble any such devices, products, goods, parts, patterns, plans, molds, samples or other materials provided by the Buyer without the prior written consent of the Buyer.

NO WAIVER: The Buyer may at any time insist upon strict compliance with the terms and conditions of this Order, despite any previous custom, practice or course of dealing to the contrary.

INDEMNITY: The Vendor agrees to indemnify, defend (with counsel selected by Buyer), and hold harmless Buyer, its officers, directors, agents, representatives, employees, customers, subsequent users/owners of the goods supplied under this Order or the end products of which they are a part and successors and assigns from and against any and all claims, losses, liabilities, causes of action, damages, injury and costs (including reasonable solicitors' fees and other expenses of litigation) of any kind arising out of or in connection with, directly or indirectly:

- (a) any breach of the Vendor's obligations set out in this Order,
- (b) defects in the goods supplied under this Order,
- (c) breach or alleged breach of any of the Vendor's representations or warranties hereunder,
- (d) infringement or alleged infringement of any United States or foreign patent, trade secret, trademark, copyright or proprietary right of any third party, in connection with the supply of the goods under this Order,
- (e) the breach of the confidentiality undertakings hereunder;
- (f) any damage to property or injury (including death) to persons (including any damage to the property or personal injury to any employee of Vendor, Sub-suppliers or any tier thereof or of the Buyer) which may be caused or be alleged to have been caused in whole or in part by, or which may occur or be alleged to have occurred in connection with, the performance of this Order by the Vendor or the Sub-suppliers or any tier thereof; or
- (g) any other act or omission of the Vendor, contractors or subcontractors, or their respective employees, officers, directors, agents, representatives or assigns.

The Vendor shall afford Buyer the opportunity to participate in the defense, compromise or settlement thereof, with Buyer's counsel. The Vendor's obligation hereunder shall not be limited to any amount or type of damages, compensation or benefits payable by the Vendor or any of its subcontractors under workers' or workmen's compensation acts, disability benefit acts or other employee benefits acts.

Without limiting the rights and remedies of Buyer, if the use, sale or other distribution of the goods supplied under this Order is enjoined or Buyer determines that such an injunction is reasonably likely, Buyer may require the Vendor at the Vendor's expense (a) to procure within thirty (30) days for Buyer the right to continue using, selling or distributing such goods, (b) to modify such goods to become non-infringing, (c) to replace such goods with non-infringing but functionally equivalent goods or (d) to remove such goods and to refund the purchase price, transportation and installation cost paid by Buyer for such goods.

GOVERNING LAW: Unless otherwise stated on the face of this Order, this Order will be construed and applied in accordance with and governed by the laws of the State of Delaware. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Order.

SUBCONTRACTORS: The Vendor will not, without the prior written consent of the Buyer, which will not be unreasonably withheld, assign or subcontract its obligations under this Order. No subcontract or assignment will relieve the Vendor of its obligations under this Order.

UNAUTHORIZED USE OF NAME: The Vendor will not, without the Buyer's prior written approval, make any statement or publish or release to any other person any photograph, advertisement, testimonial, letter of commendation or approval or any other document or written matter which might imply the Buyer's approval of the products, actions or performance of the Vendor.

PACKING, SHIPPING, DELIVERY, INVOICING & TERMS OF PAYMENT:

- (a) **SHIPPING DOCUMENTS:** All cases, packages, bundles, etc. will be marked with the Order Number. The Vendor will enclose with each box, package or container, a shipping notice showing contents, together with the name of the Vendor and the Order Number.
- (b) **WOOD PACKAGING:** The Buyer requires that any items imported or exported in wood packaging containing non-manufactured wood products (including pallets, blocking, bracing, dunnage, spacers, bearers, crating, etc.):

(i) In the case of any country other than the continental United States of America, will be affixed with the internationally recognized International Plant Protection Convention (IPPC) symbol indicating they have received approved phytosanitary treatment (heat treatment or methyl bromide fumigation), or shipment will be accompanied with a phytosanitary certificate indicating wood packaging has been fumigated by an approved method and specifying the treatment used. Shipping documents (BoL) will be marked to indicate either: a) wood packaging has received approved phytosanitary treatment; or (b) no wood packaging; or

(ii) In the case of the continental United States of America, the Vendor represents that any wood packaging used originates in the continental United States of America, has not been used outside the continental United States of America at any time, and complies with all import requirements. The Vendor will indemnify the Buyer from any damages it may suffer as a result of non-compliant wood packaging used by the Vendor in accordance with section "Indemnity".

(c) **PACKING CHARGES:** No charge will be allowed for boxing, packing, crating, or for cases, packages, pallets or boxes, unless specified in the Order.

(d) **SHIPPING:** If this Order specifies a method of shipping, carrier or route, no deviation from those terms may be made without the written authorization of the Buyer. The Vendor will be responsible for any loss or damage resulting from an unauthorized deviation in method, carrier or route.

(e) **DOCUMENTS (FOREIGN SHIPPERS):** Vendors of item(s) to be shipped from outside of United States must mail (by Air Mail) four copies of prescribed United States Customs and Border Protection invoices properly executed to the attention of the person who has signed this Order, or otherwise specified on the Order.

(f) **INVOICES:** The Vendor will send an invoice with a copy of the Bill of Lading to the address noted on the face of this Order. The Vendor must show the Order Number and the items invoiced and state whether partial or complete Order is covered. Any sales, use and excise taxes and duties will be listed as separate items. If freight is not included in the Order price, and is prepaid by the Vendor, it must be invoiced separately with receipted copies of freight bills attached. Unit prices must agree with the prices shown on this Order. Brokerage, duty, applicable sales taxes, authorized special charges for packing, boxing, crating or services, and freight charges, must each be shown as separate items on the Vendor's invoice.

(g) **TERMS OF PAYMENT/ WITHHOLDING TAX:** The Buyer will remit payment to the Vendor not later than sixty (60) days from the date which Buyer received the goods sold and materials and services supplied under this Order or the Vendor's invoice, whichever is the later, unless otherwise noted on the face of this Order or agreed upon by prior arrangement. If applicable, the Buyer shall withhold or deduct required amounts from payments to the Vendor in accordance with taxation or other legislation. Payment by Buyer will not result in a waiver of Buyer's rights under this Order.

RIGHT TO OFFSET: The Buyer, without waiver or limitation of any of its rights or remedies, shall be entitled from time to time to deduct from any amounts due or owing by the Buyer to the Vendor in connection with this Order, any and all amounts owed by the Vendor to the Buyer.

SURVIVAL: The provisions of this Order which by their nature are intended to survive the termination, cancellation, completion or expiration of this Order shall continue as valid and enforceable obligations of the parties notwithstanding any such termination, cancellation, completion or expiration.

TRIAL: The Vendor hereby knowingly, voluntarily and intentionally waives (to the extent permitted by applicable law) any right it may have to a trial by jury of any dispute arising under or relating in any way to this Order and agrees that any such dispute may, at the Buyer's option, be tried before a judge sitting without a jury.

ARBITRATION: If there is any disagreement, dispute or controversy (a "Dispute") between the parties with respect to any matter arising under this Agreement or the construction of this Agreement, then the Dispute shall be referred to and finally resolved by arbitration under the rules of the American Arbitration Association in accordance with its Commercial Arbitration Rules by a sole arbitrator agreed to by the parties. The seat or place of arbitration shall be in Salt Lake City, Utah, United States. The arbitration shall be conducted and the award shall be rendered in the English language. The award of the arbitrator shall be final and binding upon each of the parties and shall not be subject to appeal or judicial review.

End of General Purchasing Terms & Conditions