



## PURCHASE ORDER STANDARD TERMS AND CONDITIONS

### 1. General

The terms and conditions shall be deemed to be exclusive and complete and shall not in any way be modified or waived, except by agreement in writing by a duly authorized representative of Vanguard Space Technologies, Inc. (hereafter referred to as "Vanguard").

All communications between Vanguard and Seller shall be through Vanguard's Purchasing Department. Vanguard's engineering and technical personnel may from time to time render assistance or give technical advice to, or affect an exchange of information with personnel in a liaison effort concerning the contract products to be furnished hereunder. Such exchange of information or advice, however, shall not vest with the authority to change the contract products to be furnished hereunder or the provisions of the contract, nor shall such change in contract products or provisions of the contracts be binding upon Vanguard unless incorporated as a change, pursuant to the "changes" clause (Para. 8) of the Standard Terms and Conditions directed in writing and signed by Vanguard's Purchasing Manager.

**REFERENCE IN THIS ORDER TO ANY OFFER TO SELL, QUOTATION OR PROPOSAL SHALL IN NO WAY CONSTITUTE A MODIFICATION OF ANY OF THE TERMS AND CONDITIONS OF THIS ORDER TO ANY DEGREE WHATSOEVER.**

### 2. Delivery and Performance

Delivery according to schedule is a material condition of this order. Time is of the essence and failure to meet the delivery schedule shall constitute a material breach of this agreement. Seller agrees to exert every reasonable effort, including the application of overtime and premium shipments at the expense of Seller, to meet promised delivery dates. Seller agrees to notify Vanguard immediately if it appears that the delivery schedule cannot be met. Furnishing this notice shall not constitute a waiver of any rights by Vanguard.

### 3. Risk of Loss

Risk of loss or damage shall remain with the Seller until (a) delivery to a common carrier suitably packaged, insured and freight prepaid, if FOB origin is listed on the face of the order or (b) delivery to the Vanguard designated location if FOB destination is listed, except that risk of loss or damage to supplies that do not conform with the requirements of this order shall remain with the Seller until cured.

### 4. Specifications:

Seller shall comply with all specifications and/or drawings listed on the face of this order and with all applicable United States Government specifications. If there are no specifications stated, then Seller shall provide Seller's standard commercial product.

### 5. Warranty

Seller warrants to Vanguard and to purchasers of Vanguard's products that all goods and/or services provided by Seller:

- a. shall be free from defects in materials and workmanship;
- b. shall conform to all applicable specifications;
- c. shall be merchantable and suitable for the purpose intended whether express or implied;
- d. free from all liens and encumbrances.

Seller will repair or replace, at Vanguard's option, at Seller's expense, any goods or services found to be defective within one year from the date of acceptance or initial use, whichever is later.

### 6. Inspection

Seller agrees that its books, records and its plant, or such parts thereof as may be engaged in the performance of this order, shall, at all reasonable times, be subject to inspection and audit by any authorized Vanguard representative. Inspection shall not signify acceptance of any work in progress or finished goods, nor relieve Seller of any warranty obligations hereunder.

### 7. Rejection

Notwithstanding prior inspection, payment for or use of the goods, Vanguard shall have the right, exercisable within three (3) months of its receipt of the goods, to reject any goods which do not conform to the requirements of this order. This limitation shall not apply to rejections of goods for latent defects, fraud, or such gross mistakes as amount to fraud. All such rejected goods shall be returned to Seller, transportation collect (declared at full value, unless advised otherwise) for credit or refund and shall not be replaced by Seller except upon written instruction from Vanguard. Vanguard may elect to repair nonconforming goods at Seller's expense. Vanguard's rights under this paragraph shall be in addition to and shall not be deemed to diminish its rights under the "Warranty" paragraph.

### 8. Changes

Vanguard may at any time make changes in specification or drawings as to any articles, materials, or services covered by this purchase order or by written amendment signed by Vanguard's Purchasing Manager. If such changes result in an increase or decrease in the amount due under this purchase order, an equitable adjustment shall be negotiated in the contract price or performance schedule or both. Any claim by Seller for adjustment hereunder shall be deemed waived unless asserted in writing to Vanguard within 30 days from the date the seller received notification of the change. Nothing in this clause shall excuse Seller from proceeding with this order as changed.



**9. Use of Data**

Seller shall not reproduce, use or disclose, without Vanguard's written consent, any data, designs or other information belonging to or supplied by or on behalf of Vanguard except as necessary in the performance of the order for Vanguard. Upon Vanguard's request, such data, design or other information, and any copies thereof shall be returned to Vanguard.

All technical information disclosed by Seller to Vanguard in connection with the goods or services supplied pursuant to this order is disclosed on a non-confidential basis.

**10. Patent or Copyright Protection**

Seller shall indemnify and hold harmless Vanguard, its successors, assigns, and customers from and against any claims, liability, loss, and damage, including without limitation, costs, expenses and attorneys fees arising out of or relating to any claim or patent, copyright, trademark, or other proprietary right infringement of or in any way related to the goods or parts thereof furnished hereunder or any litigation based thereon.

**11. Advertising Announcements and News Releases**

Seller shall not, without first obtaining written consent of Vanguard, in any manner advertise, publish or issue any news releases or make any public announcements or denial or confirmation of same concerning the fact that Seller has furnished or contracted to furnish Vanguard the goods or work herein mentioned.

**12. Seller's Financial Status**

Vanguard shall have the right to immediately cancel this order or any party thereof without liability in the event of the happening of any of the following or any other comparable event:

- a) insolvency of the Seller;
- b) filing of a voluntary petition in bankruptcy by the Seller;
- c) filing of any involuntary petition in bankruptcy against the Seller; or
- d) execution of an assignment for the benefit of creditors by Seller provide that such petition, appointment or assignment is not vacated or nullified within fifteen (15) days of such event.

**13. Assignment and Set-off**

Performance of this order shall not be assigned by Seller without the prior written consent of Vanguard. Vanguard shall have the right to reduce or set off against amounts owing hereunder any indebtedness or other claim which Vanguard may have against the Seller, or any of its affiliated companies, however and whenever arising.

**14. Excusable Delays**

Each party shall not be liable for delays of reasonable duration due to acts of God, of the public enemy, act or demands of the Government or any Governmental Agency, strikes, fires; accidents or other unforeseeable causes beyond its control and not due to its fault or negligence. Each party shall notify the other party in writing of the cause of the delay within five (5) days after the beginning thereof. In the event of such delay of Seller, Vanguard shall have the rights, at its option and without liability to Seller, to cancel by notice in writing to Seller the portion or portions of this order so affected.

**15. Relationship of the Parties**

Seller and Vanguard are independent contracting parties and nothing in this order shall make either party the agent or legal representative of the other, for any purpose whatsoever, nor does is grant either party any authority to assume or create any obligation on behalf of or in the name of the other.

**16. Government Compliance**

Seller agrees to comply with all federal, state, and local laws, executive orders, rules, regulations and ordinances which may be applicable to Seller's performance of its obligations under this order, including, but not limited to, Fair Labor Standards Act of 1938 as amended, and the Equal Employment Opportunity Acts and Occupational Safety and Health Act. Seller shall indemnify and hold /Vanguard harmless from any costs, fines or damages arising from Seller's failure to comply with this paragraph.

**17. Export Licenses**

Seller shall be responsible for obtaining all export licenses and permits from cognizant government agencies for shipment to the designated location of the purchase order.

**18. Cancellation**

Vanguard reserves the right to cancel all or any part of this order, without liability to Seller, if Seller (a) repudiates or breaches any of the terms of this order, including Sellers warranties: (b) fails to perform services or deliver goods as specified by Vanguard, or (c) fails to make progress so as the endanger timely and property completion of services or delivery of goods, and does not correct such failure or breach within ten (10) days (or such shorter period of time if commercially reasonable under the circumstances) after receipt of written notice from Vanguard, specifying such failure or breach.

**19. Termination**

In addition to any other rights or Vanguard to cancel or terminate this order, Vanguard may at its option immediately terminate all or any part of this order, at any time and for any reason, by giving written notice to Seller. Upon such termination, Vanguard shall pay to Seller the following amounts without duplication; (a) the order price for all goods or services which have been completed in accordance with this order and not previously paid for; and (b) the actual costs of work-in-progress and raw materials incurred by Seller in furnishing the goods or



services under this order to the extent such costs are reasonable in amount and are property allocable or apportionable under generally accepted accounting principles to the terminated portion of this order, less however, the reasonable value or cost (whichever is higher) of any goods or materials used or sold by Seller with Vanguard's written consent and the cost of any damaged or destroyed goods or material. Vanguard will make no payments for finished goods, work-in-progress or raw materials fabricated or procured by Seller in amounts in excess of those authorized in delivery releases nor for any undelivered goods which are in Seller's standard stock or which are readily marketable. Payments made under this paragraph shall not exceed the aggregate price payable by Vanguard for finished goods which would be produced by Seller under delivery or release schedules outstanding at the date of termination. Except as provided in this paragraph, Vanguard shall not be liable for and shall not be required to make payments to Seller, directly or on account of claims by Seller's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claim, product development and engineering costs, facility or equipment costs, rental costs, unamortized depreciation costs, and general and administrative burden charges. Within sixty (60) days from the effective date of termination, Seller shall submit a comprehensive termination claim to Vanguard with sufficient supporting data to permit Vanguard's audit and shall thereafter promptly furnish such supplemental and supporting information as Vanguard shall request. Vanguard or its agents shall have the right to examine all books, records, facilities, work, material, inventories and other items related to any termination claim.

**20. Stop Work Order**

Vanguard reserves the right to stop work under this order for a reasonable time without liability.

**21. Cumulative Remedies**

The rights and remedies herein reserved to Vanguard shall be cumulative and additional to any other or further rights in law and equity.

**22. Governing-Law**

This order is to be construed according to the laws of the State of California. Seller irrevocably consents to the bringing of any action arising in connection with this order or breach thereof in the courts of the State of California or in the Federal Courts located therein regardless of whether, absent such consent, personal jurisdiction could otherwise be obtained

**23. Disputes**

Seller further consents to service of process on its by certified mail to its place of business as set forth in this order in addition to or in lieu of other means provided by the laws of California. The parties agree that any action at law or equity against Vanguard, based upon this order, or breach thereof, may be brought only in the Courts of the State of California or in the Federal courts located therein, and that such Courts shall have exclusive jurisdiction over any such actions. No action commenced or removed to the Federal Courts, located in the State of California, shall be transferred to any Federal Court located without the State.

**24. Captions**

Captions as used herein are for convenience of reference only and shall not be construed to limit or extend the language of the provisions to which such caption may refer.

**25. Liability Insurance**

Seller represents that It carries adequate workers' compensation, public liability and propeJly insurance with responsible insurers to cover any work performed by Seller on Vanguard's or its customer's property. On request, Seller will furnish proof of insurance. Seller shall indemnify and hold Vanguard harmless from and against any and all loss or injury of any kind or nature (including death) to all persons or property, or for claims therefore; including defense costs and attorneys fees, resulting from, pertaining to, or arising out of Seller's performance of this order regardless of cause or nature of such claims and irrespective of Vanguard's negligence. This indemnity shall not, however, apply to losses or claims arising from Vanguard's sole negligence.

Seller expressly waivers any immunity defense under Workers Compensation laws and will indemnity and hold Vanguard harmless from any claim of injury, illness or death brought by its employees, agents, assigns or subcontractors against Vanguard in accordance with the preceding paragraph.

**26. Vanguard's Property in Seller's Possession**

Title to any property furnished by Vanguard hereunder shall, at all times, remain in Vanguard, but Seller assumes the risk of and shall be responsible for any loss thereof or damage thereto however caused. Without limiting the foregoing, Seller agrees to procure insurance satisfactory to Vanguard, insuring to the full insurable value thereof all Vanguard's property in Seller's possession against loss of or damage resulting from fire or theft (including extended coverage, malicious mischief and vandalism). Satisfactory evidence of procurement of such insurance shall be submitted to Vanguard promptly. Seller further agrees to pay all taxes assessed against Vanguard's property or the use thereof while in Seller's possession and to file all necessary declarations and reports ill connection therewith. The Vanguard material shall be separately stored, identified, and not co-mingled with other material at Seller's facility.

**Vanguard** shall not be liable for any loss, damage or expense resulting directly or indirectly from any delay in delivery or non-delivery of such property to be furnished by Vanguard or from the use of such property furnished Vanguard which is defective. Vanguard's liability is expressly limited to the replacement of detective Vanguard property upon return thereof to Vanguard within thirty (30) days from receipt thereof by Seller.

**27. Marking and Title**

If this order requires the purchase of supplies not of Seller's standard inventory, all materials obtained by Seller for use and performance of this order shall be marked and identified as material for the Vanguard order, separately stored and not co-mingled with other material at the Seller's facility.

Title to such supplies shall pass to Vanguard upon the earlier of the following, payment by Vanguard, marking as Vanguard materials or start of fabrication or assembly.



**28. No Implied Waiver**

The failure of Vanguard in any one or more instances to insist on performance of any of the provisions of this order shall in no way be construed to be a waiver of such provisions in the future.

**29. Partial Invalidity**

If in any instance, any provision of this order shall be determined to be invalid or unenforceable under any applicable law, such provision shall not apply in such instance, but the remaining provisions shall be given effect in accordance with these terms.

**30. Entire Agreement**

This order, together with attachments, exhibits or supplements specifically referenced herein constitutes the entire agreement and supersedes all prior and contemporaneous oral or written representations and agreements between Vanguard and Seller.

**31. Type of Agreement**

This order constitutes a firm fixed price agreement unless stated otherwise on the face of the order.