

Hytek Finishes Purchase Orders Terms and Conditions

1. **Acceptance:** This purchase order represents Buyer's offer to purchase the goods or services ordered strictly in accordance with its stated terms and conditions. Seller's acceptance of this purchase order is expressly limited to the terms and conditions stated and no additional or different terms shall be binding on Buyer unless agreed to by Buyer in a writing signed by Buyer's authorized representative. Seller shall be deemed to have accepted this purchase order by signing and returning the acknowledgement copy, by failure to deliver a written objection to this offer within 5 days of receipt, or by delivering the goods or services ordered. If any term or condition of this purchase order is invalid, illegal or unenforceable, the remaining terms and conditions of this purchase order shall remain in effect.

2. **Shipment and Delivery:** All shipments and deliveries shall be strictly in accordance with the quantities, schedules and shipping instructions stated in this purchase order. Goods shall be shipped FOB Buyer's plant unless otherwise stated on the face of this purchase order. Title and risk of loss shall pass at the FOB point, subject to inspection and acceptance as described herein. Time is of the essence in performance of this purchase order. Seller shall not make advance, late, short or excess deliveries without Buyer's prior written approval. Buyer reserves the right to cancel this purchase order (or any part thereof) without liability if delivery is not made within the time specified, or, if no time is specified, within a reasonable time. Seller agrees to pay to Buyer any penalty or damages imposed upon or incurred by Buyer resulting from the failure of Seller to deliver the goods ordered in accordance with the quantities, schedules and shipping instructions stated in this purchase order.

3. **Shortages:** If, at any time during the term of this purchase order, Seller anticipates a shortfall in production of the goods and services to be provided, which shortfall is reasonably likely to result in Seller's inability to meet Buyer's requirements as set forth in this purchase order, then Seller shall (a) promptly notify Buyer in writing as to the reason for the shortfall, and state (and give reasons for) its expectations as to the duration of the shortfall, (b) take all commercially reasonable steps to avoid the shortfall and (c) allocate to Buyer all available goods or services of the type ordered to meet this purchase order. In addition, Seller shall promptly notify Buyer in writing when any shortfall is over and, unless directed otherwise in writing by Buyer, shall use best efforts to make up all unfulfilled portions of this purchase order as promptly as possible.

4. **Payment:** Invoices in [duplicate] shall be mailed to Buyer's [Accounting Department] when goods are shipped or services completed. This purchase order number shall be shown on the relevant invoice. The time for payment shall commence on the actual receipt of goods or services in complete accordance with the requirements of the purchase order. Payment terms are net 30 days unless otherwise stated on the face of this purchase order. Buyer may make any adjustment in Seller's invoice due to shortage, late delivery, rejection or other failure to comply with all the requirements of this purchase order before payment. Buyer may offset refunds or reductions from this purchase order against its obligations under other purchase orders with Seller, and vice versa. Seller agrees to refund any overpayments in cash immediately upon discovery.

5. **Inspection and Acceptance:** Buyer may inspect the goods, supplies and work in process at all times and places and may inspect Seller's books and records related to such, both during the term of this purchase order and thereafter. Where specified in the contract, the customer or the customer's representative shall be afforded the right to verify at the supplier's premises and the organization's premises that subcontracted product conforms to specified requirements. If inspection and tests are made on Seller's premises, Seller shall, without additional charge, provide reasonable facilities and assistance for the safety and convenience of Buyer's representatives. Notwithstanding any previous inspection or acceptance, all goods and services delivered under this purchase order shall be subject to final inspection and acceptance by Buyer after receipt by Buyer at the agreed destination. Buyer reserves the right to inspect goods delivered under this purchase order on a sample-inspection basis. Rejection of a sample shall be cause for rejection of the entire lot. Neither inspection, failure to inspect or acceptance of any goods or services shall alter or affect any of the rights or remedies of Buyer or the obligations of Seller under this purchase order, including, without limitation, under Section 6 of these terms and conditions. If seller delivers defective goods or services, or goods or services that vary from any sample, specification, warranty or other requirements of this purchase order, Buyer may reject the goods or services and elect one of the following remedies at Seller's expense: (a) return the goods or services for full credit or refund, including freight charges, (b) require the Seller to correct, repair or replace the goods or services, (c) obtain replacement goods or services and reduce the purchase price for loss of value. The seller shall notify Hytek Finishes Co. in writing, in the event that non conforming material has been delivered against this order. This condition shall survive beyond the performance period of this contract.

6. **Warranties:** Seller warrants that all goods and services delivered under this purchase order will: (a) conform to all applicable specifications, drawings, samples and other descriptions given, (b) be merchantable, (c) be fit for their intended purpose and (d) be free from defects in workmanship, materials and, to the extent that the design was furnished by Seller, design and (e) be free and clear of all liens and encumbrances when delivered by Seller. The foregoing warranties shall survive inspection, test, acceptance and payment, and shall run to Buyers, its successors, assigns and customers.

7. **Buyer's Intellectual Property and Tooling:** All inventions, ideas, concepts, trademarks, know-how, designs, specifications, drawings, documents, materials, tools, jigs, fixtures, methods, processes and other property, owned or paid for by Buyer, shall be the property of Buyer, subject to removal at any time without cost or expense to Buyer. All property of Buyer shall be identified and marked as such, used only for Buyer's purchase orders and covered by adequate liability, damage and fire insurance (including extended coverage) for its fair and reasonable value. Seller shall assume full liability for and maintain and repair all property of Buyer in its possession or control and shall, on request, return the same to Buyer in good condition, reasonable wear and tear excepted. Seller shall provide Buyer with inventories of all property of Buyer in its possession or control when requested by Buyer and certify to Buyer that all use thereof is expended on Buyer's purchase orders.

8. **No Assignment or Subcontracting:** Seller may not assign this purchase order, including any claims for monies due hereunder, without the prior written consent of Buyer. In addition, Seller shall not subcontract the performance of this purchase order without the prior written consent of Buyer. This purchase order shall be binding on Buyer and Seller and their respective successors and permitted assigns.

9. **Pricing:** Seller warrants that prices for the goods and services ordered are not less favorable than those currently extended to any other customer of Seller for the same or like goods or services (whether in like or smaller quantities), and are otherwise in accordance with all applicable price laws and regulations. If Seller establishes or offers a lower price for the goods or services ordered (whether in like or smaller quantities) from the date of acceptance of this purchase order by Seller to the date goods or services are invoiced to Buyer, Seller agrees to reduce the prices stated in this purchase order correspondingly.

10. **Termination:** Buyer shall have the right to terminate this purchase order (without liability or cost to Buyer) if: (a) Seller breaches any provision of these terms and conditions or otherwise defaults on any requirement or obligation under this purchase order, (b) Seller becomes insolvent, or unable to meet its debts and obligations as they become due, (c) Seller files a voluntary petition in bankruptcy or an involuntary petition is filed and not dismissed within 30 days, (d) a receiver or trustee is appointed for Seller or its assets or (e) Seller executes an assignment for the benefit of its creditors. Buyer reserves the right to terminate this purchase order in whole or in part at any time for the convenience of Buyer, by notifying Seller in writing. In the event of termination for the convenience of Buyer, Buyer will give Seller instructions with respect to delivery of goods (in process, purchased or committed) and Seller shall be compensated for any goods not accepted by Buyer based on Seller's actual direct out-of-pocket costs, less amounts realized by Seller from the later sale of such items not purchased by Buyer. Termination by Buyer under this section shall not relieve Seller of any of Seller's obligations with respect to goods or services furnished prior to the effective date of termination.

11. **Patent Indemnity:** Seller shall indemnify Buyer, Buyer's customer and others subsequently acquiring title to the goods and services provided under this purchase order from any and all liabilities, losses, damages, judgments, costs and expenses (including, but not limited to, attorneys' fees) directly or indirectly arising from claims (whether or not successful) relating to actual or alleged infringement of any patent, copyrights, trademark or other intellectual property rights of a third party by the purchase, use or sale of the goods or services provided under this purchase order, except where such infringement or alleged infringement arises by reason of (a) a detailed design furnished by Buyer or (b) the use of sale of the goods or services provided under this purchase order in combination with items not delivered by Seller where the infringement would not have occurred from the use or sale of such goods or services solely for the purpose for which they were designed or sold to Buyer. Patent Rights FAR Clause 52.227 is applied to all purchase orders.

12. **Indemnification:** Seller shall indemnify Buyer, its directors, officers, employees and agents from all liabilities, losses, damages, judgments, costs and expenses (including, but not limited to, attorneys' fees) directly or indirectly arising from claims (whether or not successful) relating to: (a) personal injury or death to any person or damage to any property based in whole or in part upon defective or nonconforming goods or services provided under this purchase order, (b) Seller's breach of any provision of these terms and conditions or other default under any requirements or

obligation of this purchase order or (c) the recall or correction of any product or equipment in which the goods or services provided under this purchase order are incorporated.

13. **Insurance:** Seller shall obtain and maintain, at its expense and throughout the terms of this purchase order and for [1] year thereafter, the following minimum insurance coverage in form and amounts reasonably satisfactory to Buyer: Commercial General Liability coverage of \$(1,000,000) per occurrence combined single limit of liability, and \$(2,000,000) general aggregate, which shall include, but not be limited to contractual liability, premises liability, advertising liability and product liability. All policies shall provide that the coverage hereunder shall not be terminable without at least 30 days' prior written day notice to Buyer. Seller shall promptly supply Buyer, upon demand, evidence satisfactory to Buyer of the existence of all required insurance.

14. **Confidentiality:** Seller shall not make or Authorize any news release, advertisement or other disclosure regarding the existence of substance of this purchase order without the prior written consent of Buyer. Seller shall keep confidential all information provided to Seller related to the performance of this purchase order, including, but not limited to, statement of work, specifications, drawings, designs, processes and other technical or business information, and shall use such information only in the performance of Buyer's purchase orders. Upon completion, cancellation or termination of Buyer's purchase orders, Seller shall, at Seller's expense, return to Buyer or destroy all documents or other media containing or incorporating any of the information and, on request, provide a certificate confirming the return or destruction of all such material. Seller shall include a provision comparable to this section in all permitted subcontracts relating to the goods or services ordered.

15. **Changes by Buyer:** Buyer may by written notice at any time before completion of this purchase order make changes in the general scope of this purchase order, including quantities, drawings and specifications, delivery schedule and methods of shipment. If the change causes an increase or decrease in price or the time required for performance, an equitable adjustment shall be made in the price or delivery schedule or both. Any claim by Seller for adjustment under this section shall be submitted within 30 days of receipt by Seller of Buyer's notice of change. Buyer shall have the right to examine any of Seller's books and records for the purpose of verifying Seller's claim for adjustment. Nothing in this section shall excuse Seller from proceeding with this purchase order as changed, including failure of the parties to agree upon an adjustment to the price or delivery schedule or both.

16. **Taxes:** All applicable federal, state and local taxes shall be listed separately on Seller's invoice, and such taxes shall not be payable if Buyer provides an appropriate exemption certificate. If not listed separately on Seller's invoice, Seller assumes responsibility for paying all applicable taxes, and shall indemnify Buyer against all liabilities, damages, fines, penalties, interest, costs and expenses (including but not limited to, attorneys' fees) arising from the failure to pay such taxes in a timely manner.

17. **Remedies and Waiver:** The remedies provided Buyer in these terms and condition shall be cumulative and in addition to any other remedies provided herein, by law or in equity. No waiver by Buyer of any right or remedy under these terms and conditions shall be effective unless in a written, signed by Buyer's authorized representative. Neither failure nor any delay in exercising any right, power or privilege under these terms and conditions will operate as a waiver of such right, power or privilege. No single or partial exercise of any such right, power or privilege by Buyer will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. No waiver that may be given by Buyer will be applicable except in the specific instance for which it is given.

18. **Applicable Law:** This purchase order shall be interpreted in accordance with the laws of the State of Washington, without giving effect to its or any other jurisdiction's principles of conflicts of laws. The parties hereby irrevocably and unconditionally submit to the exclusive jurisdiction of the state and federal courts located in Kent, Washington, in any action or proceeding arising out of or relating to this purchase order.

19. **Compliance with Laws:** Seller warrants that all goods and services sold hereunder shall have been produced, sold, delivered, and furnished in strict compliance with all applicable laws and regulations including EEO and affirmative action to which they are subject. Federal contractors are notified that they may be subject to the provisions of 41 CFR section 60-1.40, 41 CFR section 60-250.4, 41 CFR section 60-300.5, 41 CFR section 741.4, and 29 CFR part 471, appendix A to subpart A with respect to affirmative action program requirements.

20. **DAR/FAR/DFAR Regulations:** If it is intended that Buyer use Seller's goods or services to perform a government contract, all Defense Acquisition Regulations (DAR) and Federal Acquisition Regulations (FAR) are hereby incorporated herein by reference. In the event of any conflict between the DAR/FAR/DFAR clauses and the remaining provisions of these terms and conditions, the DAR/FAR/DFAR clauses shall control. DFARS requirements 252-225-7014 PREFERENCE FOR DOMESTIC SPECIALTY METALS, DFARS ALT 225.872-1 52.222-26 EQUAL OPPORTUNITY, 52.222-25 AFFIRMATIVE ACTION COMPLIANCE.

21. **Stopwork:** Buyer may at any time by written stopwork order require Sellers to stop all or any part of the work under this purchase order for up to 90 days after the stopwork order is received by Seller and for any extension of such period as the parties may agree. The stopwork order shall specifically refer to this section. Upon receipt of the stopwork order, Seller shall take all steps to comply with this section and all other reasonably steps to minimize costs incurred during the period covered by the stopwork order allocable to this purchase order. Within the period covered by the stopwork order, Buyer shall cancel the stopwork order or terminate the work covered by this purchase order in accordance with these terms and conditions. If a stopwork order causes an increase or decrease in price or the time required for performance, an equitable adjustment shall be made in the price and delivery schedule or both. Any claim by Seller for adjustment under this section shall be submitted within 30 days of the cancellation or expiration of the stopwork order. Buyer shall have the right to examine any of Seller's books and records for the purpose of verifying Seller's claim for adjustment. Nothing in this section shall excuse Seller from proceeding with this purchase order on the cancellation or expiration of the stopwork order, including failure by the parties to agree upon an adjustment to the price or deliver schedule or failure by the parties to agree upon an adjustment to the price or delivery schedule or both.

22. **Packaging:** All goods shall be prepared for shipment and packed using best commercial practices to prevent damage and deterioration during shipment and storage. Buyer may charge Seller or adjust the price of the goods downwards for any goods damaged or which deteriorate due to improper packing. No charge shall be made for preparation, packing, crating, cartage or shortage unless specifically stated in this purchase order. Each shipping container must be marked to show this purchase order number, Buyer part number, and quantity of goods contained therein. A packing list showing this purchase order number must be included with each shipment and the container in which the packing list is contained shall be clearly and appropriately marked.

23. **Useful Life Shortage:** Goods having characteristics susceptible to degradation with age shall be clearly identified and marked with the dates on which the useful life was initiated and expires. In addition to normal marking requirements, the containers used for goods with a limited useful life shall identify all special storage and handling requirements, the dates on which useful life was initiated and expires (both for opened and unopened conditions).

24. **Quality Assurance:** Seller shall maintain a quality assurance program that is acceptable to Buyer for all goods and services delivered under this purchase order. Buyer shall have the right during the term of this purchase order, upon reasonable notice and during regular business hours, to visit Seller to observe production of the goods or performance of the services and inspect records and data directly related thereto for the purpose of confirming compliance with these terms and conditions and the quality assurance program. Seller agrees to implement any reasonable corrective action requested by Buyer resulting from such review. Records created by and/or retained by suppliers shall be retained for 10 years minimum, or supplied to Hytek Finishes Co. Approval. Suppliers shall flow down to any sub-tier supplier, all applicable purchasing requirements including key characteristics, where required. The English language shall be used in all quality related documentation.

25. **No Changes by Seller:** Supplier shall notify Hytek Finishes Co. of changes in product and/or process definition. Class 1 changes must have Hytek Finishes Co. approval.

26. **Cost Savings:** In the event of manufacturing or other cost savings for any reason (e.g., reduced component or raw materials costs or increased purchases by Buyer), Seller shall promptly notify Buyer of the cost savings, and the parties shall negotiate in good faith to determine a portion of the cost saving to pass on to Buyer.

27. **Attorneys' Fee:** If either Buyer or Seller retains legal counsel to enforce any of these terms and conditions, or to recover damages from the other, arising from the other's alleged breach of any of these terms and conditions or other default under any obligation or requirement of this purchase order, or the other commences a suit against Buyer or Seller in connection with this purchase order that is not successful, then the other party shall pay the reasonable attorneys' fees together with costs of suit at both trial and appellate levels of either Buyer or Seller, as the case may be.