

FAIRBANKS MORSE - TERMS AND CONDITIONS OF PURCHASE

1. **Acknowledgment and Acceptance** – This document is an offer by the Fairbanks Morse LLC (“Buyer”) to purchase the goods and/or services herein described, not a confirmation or acceptance of any offer to sell, and acceptance of this offer is expressly made conditional on assent to these terms and conditions and the other provisions contained in this document. Buyer hereby objects to any additional or different terms contained in any of Seller’s quotation, acknowledgment, invoice or other forms, or in any other correspondence from Seller. These terms and conditions and this document, as supplemented by agreed-upon prices, quantities and delivery dates, shall constitute the entire agreement between the parties on the subject of purchases by Buyer from Seller, superseding all prior written and oral communications and negotiations.
2. **Delivery** – Unless otherwise specified on the face hereof, the product shall be delivered DDP (Incoterms 2010) Buyer’s facility in Beloit, Wisconsin. Deliveries are to be made both in quantities and at times specified on the face hereof, or on release schedules furnished against this order. Buyer reserves the right to cancel this order and refuse delivery of material and return same at Seller’s risk and expense if Seller defaults in the manner and time of delivery or in the rate of shipment. Goods shipped to Buyer in advance of schedule may be returned to Seller at Seller’s expense. Buyer further reserves the right to reject and return at Seller’s risk and expense all quantities of materials and equipment delivered in excess of the quantity ordered. All costs incurred by Buyer as a result of Seller’s failure to make delivery at the time and place specified herein shall be charged to the Seller. Seller must advise Buyer promptly in writing of delivery delays. Buyer reserves the right to reschedule delivery dates to a later date without cost to Buyer. Time is of the essence as to Seller’s obligation hereunder.
3. **Price Warranty** – The prices indicated on this order are firm and no change or adjustment will be allowed unless authorized in writing by Buyer. Seller represents that the prices set forth in this order do not exceed current selling price of similar materials having the same or similar quality in like quantity, whether sold to the U.S. Government or to any other purchaser. In the event of such excess price or in the event prices charged hereunder shall exceed prices permitted by any applicable law or regulation. Seller agrees to forthwith refund any such excess price to the Buyer.
4. **Samples** – Samples required on this order shall be invoiced to the Buyer at no higher cost than the production price indicated thereon. Samples shall be distinctly identified and bear reference to this purchase order. Samples must be approved in writing before production shipments are made.
5. **Tools and Materials** – Buyer shall retain title to any design, sketches, drawings, blueprints, patterns, dies, molds, tools, plates, cuts, gauges, special items and materials furnished by or paid for by Buyer in connection with this Order. The price indicated on the Order for any of the foregoing shall constitute the entire cost to the Buyer of any such item. All of said items shall be recorded on Seller’s books and records and identified both in said books and physically where such items are located as property of Buyer and retained by Seller on consignment, subject to examination by Buyer. They shall be at Seller’s risk and shall be maintained and stored by the Seller and if lost, damaged, or destroyed shall be replaced by the Seller without charge to the Buyer. Such items shall be used exclusively in the production for Buyer of articles ordered hereunder and the use thereof for any other purpose is prohibited unless approved by Buyer in writing. All items covered by the Order are subject to removal by buyer immediately on demand without charges.
6. **Confidential Relationship** – Seller agrees to treat as strictly secret and confidential all specification, drawing, blueprints, nomenclature, samples, models and other information supplied by Buyer Unless the written consent of Buyer is first obtained. Seller shall not in any manner advertise or publish or release for publications any statement mentioning Buyer, or the fact that Seller has furnished or contracted to furnish to disclose any information relating to this Order to any person not authorized by Buyer to receive it. Seller shall make no use of the information supplied other than to complete this order and shall return such information to Buyer upon completion of the order.
7. **Invoices** – Payment terms shall be as reflected on the face hereof, and invoices shall only be issued consistent with such payment terms. Unless otherwise set forth on the face hereof, Buyer shall pay properly issued

invoices within 90 days after receipt thereof. Invoices shall (a) be rendered separately for each delivery with bill of lading attached (b) cover not more than one order (c) be rendered with order number noted thereon. If invoice is subject to cash discount the discount period shall date from receipt of material or receipt of proper and correct invoice whichever is later. All invoices shall contain substantially the following assurance: “Seller hereby certifies that these goods were produced in compliance with all applicable requirements of the Fair Labor Standards Act as amended, and of regulations and orders thereunder, and of all federal, state and local statutes, rules and regulations relating to employment and conditions of employment.” When machinery requires installation to verify satisfactory operation, invoices will not be honored prior to Buyer approval of satisfactory installation and operation.

8. **Inspection** – All goods purchased hereunder (and work-in-process relating thereto) shall be subject to inspection and testing by Buyer (or Buyer’s customer) at any reasonable time and from time to time before, during or after manufacture and delivery. If any inspection or test is to be made on the premises of the Seller, the Seller without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of the inspectors in the performance of their duties. Notwithstanding prior inspections, all goods are subject to final inspection and approval at Buyer’s plant or other place designated by Buyer and, notwithstanding any payment that may be made, no goods are deemed accepted until such final inspection and approval. Buyer’s inspection before, during or after manufacture and delivery shall not constitute a waiver of the right of subsequent rejection by reason of any undiscovered or latent defect. The Buyer has the right to inspect the goods on or after delivery. Buyer, at its sole option, may inspect all or a sample of the goods, and may reject all or any portion of the goods. If the goods are non-conforming or damaged, Buyer has the right, effective upon written notice to Seller, to: (a) rescind the Order in its entirety; (b) accept the goods at a reasonably reduced price; or (c) reject the goods and require replacement of the rejected goods. If Buyer requires replacement of the goods, Seller shall, at its expense, promptly replace the non-conforming goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement goods. If Seller fails to timely deliver replacement goods, Buyer may replace them with goods from a third party and charge Seller the cost thereof and terminate this Order for cause pursuant to *Section 15*. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller’s obligations under the Order, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions.
9. **Performance Testing** – Seller acknowledges that Buyer will be required to demonstrate that its products can operate in accordance with their specifications at Buyer’s or its customer’s facility. In the event of any failure to successfully complete a performance test due to problems with a product, Seller shall promptly provide one or more technicians without charge at such facility to make such modifications or adjustments as necessary. If the product cannot promptly thereafter successfully complete the performance test, Buyer may reject (and/or rescind any earlier acceptance) the product as non-conforming.
10. **Patent Indemnity** – Seller shall indemnify and save harmless and defend the Buyer and its customers from and against any and all suits, actions, claims, demands, damages, costs, expenses and attorney fees arising out of or relating to any infringement or any alleged infringement of any U.S. or Foreign patent, trademark or other intellectual property right in the manufacture or sale of the materials or equipment covered by this order, or in any way concerned therewith, or with the use thereof by Buyer or its customers.
11. **Shipping Instructions** – All materials and equipment must be shipped in accordance with the shipping instructions indicated on the face of this order. In the absence of specific routing instructions, Seller shall ship via least expensive way commensurate with safe and expeditious delivery. Any extra expense in effecting delivery of material and equipment not so shipped will be charged to Seller.
12. **Packing** – No charges shall be made for crating, packaging or packing materials unless agree to and specified as part of this order. Each shipment must be accompanied by a packing slip showing order number. Packing, crating, and packaging on purchases from outside the United States of America must conform to ISPM 15, International Standard for Phytosanitary Measures Publication Number 15.
13. **Part Preservation** – No charges shall be made for the preservation of metal items. All material has an expected shelf life of six months or longer for all in-coming material unless otherwise indicated. It is “practical” to prevent contamination and maintain shelf life. Corrosion, the result of oxidation or interaction with air or its environment that causes metals to deteriorate must be prevented. Prevention and/or preservation is the Seller’s responsibility to take necessary steps to prevent the parts from deteriorating from the inside out. Seller agrees to accept responsibility for rework on any parts that do not maintain a minimum a six-month shelf life. All products with a ground surface finish should have some form of preservation treatment and be packaged

properly in an effort to extend shelf life. The Buyer must approve any exceptions in writing. Seller shall provide Buyer with detailed instructions on the storage of the goods and warrants that if such instructions are observed, the goods will for a period of five years after delivery be capable of operation as intended..

14. Warranty – Seller warrants that the during the Warranty Period the goods and services supplied under this order will conform to the specifications, drawings, samples or other description specified, will be merchantable and of good quality, material and workmanship, will be suitable for the purposes intended and free from defects in workmanship, materials and design. Seller further warrants that the goods will comply with and have been produced and sold in accordance with all applicable national, state and local laws. All warranties shall survive inspection, delivery, acceptance or payment by Buyer and Seller shall bear all costs of inspecting rejected articles. Articles which are not as warranted may be returned by Buyer at Seller's expense for full credit, including cost of shipment. Seller agrees that the cost of all labor, shipment, re-working and materials, either in Buyer's plant or in the field, which shall at any time be necessary because of any breach of warranty, shall be charge to Seller. This warranty shall run to Buyer, its successors, assigns, customers and users of the articles sold hereunder by Seller. "Warranty Period" shall be a period of 24 months after successful completion of the final performance test in respect of the product into which a good is incorporated; provided, however, in the event a good has a defect subject to the warranty hereunder that renders the product into which the good is incorporated unavailable, the Warranty Period of such good shall be increased by the length of the unavailability of the product up to a maximum additional 12 months beyond the Warranty Period otherwise applicable. This warranty shall be in addition to any other rights which Buyer may have at law or in equity and shall not be construed to limit Buyer's rights and remedies in any manner. This warranty shall also apply for the benefit of Buyer's customer.
15. Cancellation – Buyer may cancel this Purchase Order for convenience upon written notice at any time. In the event that Buyer cancels this Purchase Order for convenience, Buyer's obligations shall be limited to reimbursing to Seller, Seller's direct out-of-pocket costs incurred in performing under the Purchase Order prior to such cancellation as evidenced by written records less amounts previously paid by Buyer thereon and the resale value of any Products or work in progress under the Purchase Order. Buyer may terminate this Purchase Order without liability in the event of (i) a breach hereof by Seller that is not remedied within 10 days after notice thereof, or (ii) in the event of insolvency of Seller.
16. Compliance with Federal, State and Local Laws – Seller warrants that in the performance of work under this order it has complied with or will comply with all applicable federal, state, foreign, provincial and local laws and ordinances, and with all lawful orders, rules and regulations thereunder, including but not by way of limitation, the Fair Labor Standards Act of 2938, as amended (29 U.S.C. Sec. 201-209) and insofar as applicable to this order, the Walsh-Healey Public Contracts Act, as amended (41 U.S. C. Sec. 35-45 and, Occupational Safety and Health Act of 1970 as amended, Equal Employment Opportunity the requirement of executive orders 11246, 11375 and 11758, and the requirements of 38 U.S.C. 2012 in the Vietnam Era Veteran Readjustment Assistance Act of 1974, as amended, the requirements of Section 503 of the Rehabilitation Act of 2973, as amended and all lawful rules and regulations thereunder.
17. Plant and Site construction or Installation – In the event Seller performs work on Buyer's premises or on buyer's customer's premises, Seller shall indemnify and save Buyer and Buyer's customers harmless from and against any and all damages for injuries to persons or property by reason of Seller's operations hereunder. Seller shall at all times remain an independent contractor, all employees and agents performing such work shall be employees or agents of the Seller.
18. Waiver – No waiver of any of the provisions contained in this Order shall be valid unless made in writing and executed by both parties. No charges beyond the contract price herein specified will be allowed except with Buyer's written consent. Failure of Buyer to insist upon strict performance shall not constitute a waiver of any of the provisions of this Order or waiver of any other default.
19. Taxes – Unless otherwise indicated, the prices set forth herein shall include all Federal, State and Local Taxes of any kind or nature applicable to the manufacture, use or sale to Buyer of the completed items and the subsidiary items incorporated therein.
20. Assignments and Subcontracts – This Order shall not be assigned or transferred without written consent of Buyer, and any such purported assignment without consent shall be null and void. Seller agrees that it will not subcontract the furnishings of any of the completed or substantially completed articles required by this Order without written approval of Buyer. No assignment of monies due or to become due hereunder shall be binding upon Buyer until its written consent thereto is obtained.
21. Force Majeure – This order is subject to modification or cancellation by Buyer in the event of fire, act of God, public enemy, earthquake, floods, strikes, labor troubles or any other cause beyond Buyer's reasonable control.
22. Changes – Buyer may at any time, by written change order, make changes in the drawings, designs or specifications applicable to the supplies or services covered by this purchase order. If any such change affects the cost of manufacturing such supplies or the cost of furnishing such services an equitable adjustment shall be made promptly in the purchase price or prices by agreement of the parties.
23. Audit – Seller agrees to make available to Buyer or Buyer's representative, without expense to Buyer, such facilities and records as may be necessary to audit, substantiate, and justify Seller's costs, if this offer on the face hereof specifies time and material, or this order shall have been terminated prior to completion and delivery.
24. Interpretation – This offer shall be considered as executed in, and shall be construed in accordance with, the laws of the State of Wisconsin. All disputes arising out of or related to this Purchase Order shall be resolved by binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. All such proceedings shall be conducted in Chicago, Illinois. Any arbitral award may be entered in any court having jurisdiction
25. Indemnification – Seller shall indemnify, defend, and hold harmless Buyer against any and all claims, losses, damages and expenses (including without limitation reasonable attorney's fees and other costs of defending any action) which it may sustain or incur as a result of any (i) claim of infringement of any patent, trademark or other intellectual property right or proprietary right arising out of or related to the goods, (ii) personal injury or death, property damage or claims of pollution of the environment caused by defect in goods or negligence of Seller, any of its employees or subcontractors, (iii) nonfulfillment or breach by Seller of any provision of this Purchase Order, or (iv) gross negligence or misconduct of Seller, any of its employees or subcontractors.
26. Nuclear. The Provisions of 10 CFR Part 21 entitled "Reporting of Defects and Non-compliance", when applicable, apply to this Purchase Order. The Regulation requires that Buyer shall give notice to the Nuclear Regulatory Commission when information is obtained that a component supplied to a nuclear facility within the United States contains a defect which could create a substantial safety hazard. If Seller obtains any information reasonably indicating such a defect, related to products supplied for this purchase order, Seller is required to notify Buyer immediately. Attention: Quality Assurance Manager.
27. Spare Parts Availability – Seller agrees that it shall provide spare and replacement parts for goods for a period of ten years after the delivery of the good. The purchase of such spare or replacement parts shall be at Seller's then-current list price (which shall not be greater than a reasonable price). In the event that Seller is unable to supply a spare or replacement part, without limiting Seller's obligations and liability in respect hereof, Seller shall promptly provide all necessary design schematics, specifications and intellectual property rights in respect of such spare or replacement parts so as to permit Buyer to make or have such spare or replacement part made.
28. Set-Off – Buyer shall have the right to set-off against any amounts due hereunder owed by Seller to Buyer.
29. Insurance – During the term of the Order and for a period of three years thereafter, Seller shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than \$5,000,000 with financially sound and reputable insurers. Upon Buyer's request, Seller shall provide Buyer with a certificate of insurance from Seller's insurer evidencing the insurance coverage specified in this Order. The certificate of insurance shall name Buyer as an additional insured. Seller shall provide Buyer with 30 days' advance written notice in the event of a cancellation or material change in Seller's insurance policy. Except where prohibited by law, Seller shall require its insurer to waive all rights of subrogation against Buyer's insurers and Buyer or the Indemnitees.