

TERMS AND CONDITIONS OF PURCHASE ORDER

1. **ACCEPTANCE:** This Order constitutes an offer from the Purchaser that is expressly limited to the Terms and Conditions contained herein. Any additional or different terms contained in Vendor's acceptance requires a separate acceptance Purchaser.
2. **TIME OF PERFORMANCE: TIME IS OF THE ESSENCE** with respect to this Purchase Order. If delivery is not completed within the time specified herein, Purchaser reserves the right, without liability, in addition to its other remedies, to cancel the Purchase Order by notice effective when received by Vendor as to stated items not yet shipped and to purchase substitute items elsewhere and charge Vendor with any loss incurred and reject the goods. Goods shipped to Purchaser in advance of the delivery schedule may, at the Purchaser's sole discretion, be rejected or returned to Vendor at Vendor's expense. Vendor shall notify the Purchaser in writing promptly of any delays (however caused) and of any actual potential labor dispute which delays or threatens to delay the timely performance of this Purchase Order.
3. **RESCHEDULING:** Purchaser may without liability at least fourteen (14) days prior to the scheduled delivery date appearing on the Purchase Order defer delivery on any or every good under this Purchase Order by giving oral notice to the Vendor (confirmed in writing within ten (10) working days) of any necessary rescheduling.
4. **DELIVERY:**
 - A. Delivery shall be F.O.B. Jobsite. Transportation charges and liability during transportation shall be included by vendor.
 - B. All shipments of hazardous materials under this Purchase Order shall comply with current U.S. Department of Transportation (DOT) regulations as published in 49 CFR 100-199, and the labeling shall meet the current U. S. Occupational Safety and Health Administration (OSHA) regulations as published in 29 CFR 1910. 1200, for the transporting and labeling of hazardous materials. Material Safety Data Sheets (MSDS) shall be supplied with the first shipment of all hazardous materials, and these sheets shall be resubmitted if any changes or updates, as required, are made.
 - C. Vendor hereby agrees to notify the Purchaser of any inherent hazard related to the goods being purchased herein that would expose the hazard during handling, transportation, storage, use, resale, disposal or scrap. Said notice shall specify the product name and part number, the nature of the hazard, proper precautions that must be undertaken by the Purchaser or others and any additional information that the Purchaser should reasonably expect to know to protect its interest.
5. **FORCE MAJEURE:** Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached Seller's agreement with Buyer, for any failure or delay in fulfilling or performing any term of such agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller, including but not limited to acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion, hostilities (whether or not war is declared), terrorist threats or acts, riot, other civil unrest, national emergency, revolution, insurrection, pandemic, epidemic, lockouts, strikes or other labor disputes, shortages or difficulties (whether or not relating to Seller's or its supplier's or sub-contractor's workforce), or restraints or delays affecting manufacturing or material sourcing, carriers, vehicles, or other inability or delay in obtaining or transporting supplies of adequate or suitable materials, telecommunication breakdown, power outage, or fuel or energy shortage (any of the foregoing, a "Force Majeure Event"). Seller shall notify Buyer of any Force Majeure Event and make commercially reasonable efforts to mitigate the same to the extent reasonably practicable, and the date of delivery or time for completion of performance, as the case may be, will be extended by a period of time reasonably necessary under the circumstances to overcome the effect of such Force Majeure Event.

The parties acknowledge and agree that any changes of laws, regulations, or other governmental rules, procedures, processes or requirements that cause an increase in the cost of producing or delivering any products or services under or in connection with the Agreement or which occur after Seller accepts an order ("Governmental Changes") have not been reflected in the quoted or agreed prices. Seller reserves the right to require that the Buyer pay for any new, increased or additional tariffs, duties, levies, surcharges, or like items (however denominated or designated) ("New Governmental Charges") prior to the delivery of any such products or services. Buyer, not Seller, assumes the risk of Governmental Changes and New Governmental Charges.
6. **ESCALATION:** If during the performance of the contract, the price of labor, material, freight, and other costs significantly increase, through no fault of Koester Associates, the price shall be equitably adjusted and subject to escalation. A significant price increase shall mean any price increase from proposal date to material procurement greater than 2.5% from stated prices. Delays and costs associated with a Force Majeure event shall also be equitably adjusted and subject to a change in price and/or schedule. Escalation to be based on cost increases, (without additional profit, overhead or margin) and shall include labor, material, freight, and other costs to Koester Associates that occur in the specified time period. Any revisions or changes requested by the customer will be priced on a case-by-case basis. Such price increases shall be documented through third party sources. Carbon material escalation will be based on the US Midwest Domestic Index, current flats and longs indexes, in effect at the time of bid. Stainless material escalation will be based the Argus Metals Stainless Steel ex works US base price plus surcharge for flat and bar (per design specified alloy), in effect at the time of bid.
7. **INSPECTION:** Each and every item purchased hereunder is subject to Purchaser's inspection and approval at any place that Purchaser may reasonably designate. Upon receipt of the goods, Purchaser shall have the opportunity to conduct adequate tests to determine whether or not the goods conform to this Purchase Order. Use of the goods for the purpose of testing shall not constitute an acceptance of the goods. Purchaser shall have the right to inspect or to be present at any test performed on the goods prior to shipment but no such inspection or observation of any test shall be regarded as an acceptance of the goods or vary Purchaser's right to conduct tests upon and after receipt of the goods. In addition to any other rights it may have, Purchaser expressly reserves the right, without liability hereunder or otherwise, to refuse acceptance of and/or reject items which do not conform in all respects to (a) any instructions contained herein; (b) Purchaser's specifications, drawings, blueprints and data; and/or (c) Vendor's warranties and each of them, whether such warranties be express or implied notwithstanding Purchaser's knowledge of the non-conformity, its substantiality or the case of its discovery.
8. **PURCHASER'S INSPECTION OF VENDOR'S PROPOSALS:** If this Purchase Order covers the design and construction or fabrication of goods by Vendor, the review or approval of Vendor's drawings or other materials by Purchaser shall not relieve Vendor of responsibility for errors in design, construction, fabrication or performance, nor constitute a waiver of Vendor's responsibility for complying with the specifications, warranties and other conditions of this Purchase Order.
9. **NON-CONFORMING GOODS:** With respect to any good(s) which do not conform to this Purchase Order, Purchaser may, in Purchaser's sole discretion (a) hold such good(s) for Vendor's instructions at Vendor's risk upon notification to Vendor, (b) return

such good(s) to Vendor at Vendor's expense, (c) require replacement of any such rejected good(s) without additional cost to Purchaser, or (d) retain and use the good(s) with an equitable reduction in purchase price. Such good(s) is/are not to be replaced without written authorization from Purchaser. Vendor shall pay the cost of inspection and testing goods rejected for cause and all return transportation, storage and other charges thereon. Payment for any item shall not be deemed an acceptance thereof. Exercise by Purchaser of its rights under this paragraph shall in no way prevent the exercise of such other rights provided by law or equity.

10. RISK OF LOSS: Risk of loss shall pass upon physical receipt of the goods by Purchaser.
11. PRICE: Vendor warrants that:
 - A. The prices for the goods sold to the Purchaser under this Purchase Order are not less favorable than those currently extended by Vendor to any other customer for the same or like items;
 - B. Any reduction by Vendor in the price of any good covered by this Purchase Order made subsequent to the issuance of this Purchase Order by Purchaser shall be applicable hereto;
 - C. The price of the goods shall not be higher than that appearing on the face of this Purchase Order or, if no price appears thereon, then no higher than that price last quoted by Vendor or, if Vendor has not specifically made such a quote to Purchaser, no higher than the price previously charged by Vendor to Purchaser.
 - D. The price of the goods is based on the specifications provided by Purchaser.
 - E. Purchaser shall be responsible for payment, together with the purchase price, all sales, use or excise taxes required to be paid with respect to the goods.
12. EXTRA CHARGES: No extra charges boxing, packing or cartage will be allowed unless specifically agreed to in writing by the Purchaser.
13. WARRANTIES:
 - A. By accepting this Purchase Order, Vendor warrants that, notwithstanding Purchaser's inspection and acceptance of the goods delivered, goods delivered under this Purchase Order, including without limitation goods furnished as replacement or corrective goods, will be:
 1. free from defects in design, materials and workmanship (including damage due to unsatisfactory packaging by Vendor);
 2. in conformity with the generally recognized manufacturing and safety standards of the Vendor's industry in the United States
 3. merchantable as defined in Section 2-314 of the Uniform Commercial Code and fit for the use and purpose intended by the Purchaser, if Vendor has been advised of such purpose;
 4. goods which conform to recognized commercial standards of quality and function;
 5. in full and strict compliance with any description of the goods by Vendor, with Vendor's specifications as detailed in the Vendor's brochures, sales literature and other specifications as may be available to the Purchaser, and with any samples provided by Vendor to Purchaser.
 6. in full and strict compliance with Purchaser's specifications, drawings, and data, if any and of the quality, size and dimensions ordered;
 7. free from any actual or claimed patent, copyright or trademark infringement; and
 8. goods to which Vendor has unencumbered title.
 - B. Vendor agrees that the warranties herein contained shall:
 1. be in addition to any warranties either implied by law or expressly made by Vendor other than hereunder; and
 2. survive any inspection, delivery, acceptance, payment, expiration or earlier termination of this Purchase Order and such warranties shall run to the Purchaser, its successors, assigns, employees, and users of the goods.
14. REMEDIES: In addition to any other rights and remedies Purchaser may be entitled to, upon receiving written notice from the Purchaser that any goods ordered hereunder are non-conforming or defective:
 - A. Vendor shall replace the goods at no cost to Purchaser and, should Vendor request the return of the non-conforming or defective goods, all costs of handling and freight charges incurred for such return shall be paid by Vendor; and
 - B. If the non-conformity or defect is discovered after installation, Vendor shall pay the cost of removal and replacement with proper goods plus the cost of making good all work damaged or destroyed by or as a result of the non-conforming or defective goods or the removal or replacement of same.
 - C. Cost of replacement, rework, inspection, repackaging and transportation of such corrected goods shall be at the Vendor's expense.
 - D. Nothing herein shall limit the Purchaser's rights in law or equity for damages resulting from delivery of defective goods or damage caused during the delivery of goods or provision of services.
15. PURCHASER'S PROPERTY IN VENDOR'S POSSESSION: Any special dies, molds, patterns, jigs and any other property furnished to the Vendor by the Purchaser or specifically paid for by the Purchaser for use in the performance of this Purchase Order shall be and remain the property of the Purchaser; shall be subject to removal at any time upon the Purchaser's demand; shall be used only in filling orders for the Purchaser; shall be maintained in good order and condition and shall be clearly identified as the property of the Purchaser. The Vendor assumes all liability for loss or damage to such property.
16. PATENT/INFRINGEMENT CLAIMS: Except for goods made in strict accordance with Purchaser's specifications, Vendor shall indemnify and hold Purchaser harmless from all claims, losses, damages, charges and expenses, including court costs and attorneys fees, and shall defend any suit, claim, or proceeding brought against the Purchaser based on a claim that any good or part thereof furnished pursuant to this Purchase Order constitutes an infringement of any United States or foreign patent; provided.
17. COMPLIANCE WITH LAWS: By acceptance of this Order, Vendor agrees to indemnify and hold the Purchaser harmless from any loss or damage that may be sustained by the Purchaser, by reason of Vendor's failure to comply with any federal, state, county or local laws, ordinance, regulations and codes.
18. CHANGES: The Purchaser shall have the right at any time, by written notice, in the form of a Change Order, to Vendor, to make any

changes it deems necessary, including, but not limited to, changes in specifications, design, delivery, testing methods, packing or destination. If such changes cause an increase or decrease in the amount due under this Purchase Order or in the time required for its performance, an equitable adjustment shall be made and the Purchase Order shall be modified in writing accordingly. Any claim for adjustment shall be deemed waived unless asserted by the Vendor in writing within ten (10) days from receipt by Vendor of the notice of change. Price increases, extensions of time for delivery and change in quantity shall not be binding on the Purchaser unless evidenced by a form of Change Order issued and signed by the Purchaser. Nothing contained in this clause shall relieve the Vendor from proceeding without delay in the performance of this Purchase Order as changed.

19. ASSIGNMENT AND SUBCONTRACTING: No right or interest in this Purchase Order shall be assigned by either party without the written permission of the other party; provided, that Purchaser may assign this Purchase Order and any related bill of lading to a fabricator or contractor designated by Purchaser. No delegation of any obligation owed by either Purchaser or Vendor shall be made without written permission of the other party. Any attempted assignment or delegation without any required prior written permission shall be wholly void. Purchaser expressly reserves the right to approve Vendor's subcontractors.
20. TERMINATION:

A. If Vendor ceases to conduct its operations in the normal course of business (including inability to meet its obligations as they mature) or if any proceeding under then bankruptcy or insolvency laws is brought by or against Vendor or a receiver for the Vendor is appointed or applied for, or an assignment for the benefit of creditors is made by Vendor, or if an action under any law for the relief of debtors is taken with respect to Vendor, Purchaser may terminate this Purchase Order without liability except for deliveries previously made or for goods covered by this Purchase Order then completed and subsequently delivered in accordance with the terms of this Purchase Order.

B. Vendor may, on written notice to Purchaser, terminate this Purchase Order if Purchaser's credit rating becomes impaired.

21. **CANCELLATION:** Purchaser reserves the right to cancel this Purchase Order in whole or in part at any time, in which case Purchaser's sole liability shall be for the payment of a reasonable amount for goods accepted or goods in the process of manufacture prior to cancellation. Any goods paid for shall become Purchaser's property. The foregoing notwithstanding, if any good order hereunder is a standard product not made exclusively to fill this Purchased Order, this Purchase Order or the applicable portion thereof is subject to cancellation by notice from Purchaser prior to shipment, in which event Purchaser shall have no liability to Vendor whatsoever.

22. **PROPRIETARY INFORMATION:**

A. All written information obtained by the Vendor from the Purchaser in connection with this Purchase Order and which is identified as proprietary, including, but not limited to, any specifications, drawings, blueprints and software programs, shall remain the property of the Purchaser, shall be used by the Vendor only to the extent necessary for performance of this Purchase Order and shall not be disclosed to any third parties without prior written consent of the Purchaser.

B. Vendor shall not make or authorize any news release, advertisement, or other disclosure which shall deny or confirm the existence of this Purchase Order without prior written consent of the Purchaser except as may be required to perform this Purchase Order. He

23. **MODIFICATION-WAIVER:** This Purchase Order, including exhibits, attachments, technical specifications, drawings, notes, instructions, or information referenced in or related to this Purchase Order, is intended by the parties as the final expression of their agreement and is also intended as a complete and exclusive statement of the terms of such agreement. No course of prior dealings between the parties nor any trade usage shall be relevant to supplement or explain any term used herein. . No alteration or modification of the provisions hereof nor any waiver or renunciation of any right or claim accruing to Purchaser shall be binding unless it is in writing and signed by an authorized representative of the Purchaser. No failure or delay in exercising any right or remedy hereunder shall constitute a waiver thereof. No waiver of any performance required under this Purchase Order shall be deemed a waiver of future compliance with all of the terms hereunder.

24. **COSTS OF ENFORCEMENT:** In the event that either party retains legal counsel and/or commences legal proceedings in order to enforce their respective rights hereunder upon a breach or default of the other party hereunder, the other party shall discharge all costs, charges and expenses, including court costs and reasonable attorneys' fees, which the other pays or incurs. In the event Purchaser defaults in payment hereunder, and in addition to any other legal or equitable remedy available to Vendor, Vendor may cancel unshipped goods and make no further deliveries of goods to Purchaser.

25. **GENERAL:**

A. If this Purchase Order is given pursuant to an existing contract, it is also subject to the terms of such contract.

B. Purchaser shall be entitled at all times to set off any amount owing at any time from Vendor to Purchaser against any amount payable at any time by Purchaser in connection with this Purchase Order.

C. Vendor shall not reserve a security interest in any goods shipped to Purchaser.

D. This Purchase Order and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the State of New York without reference to its provisions on conflict of laws.

E. Each party acknowledges it has had the opportunity to be represented by counsel of its choice in connection with this Purchase Order. This Purchase Order will therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arms length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.

F. These Terms and Conditions are a part of this Purchase Order and are binding upon and inure to the parties, their respective successors and assigns.