



Terms and Conditions

1. **SCOPE AND ACCEPTANCE:** This order, inclusive of the terms of the purchase order, is the exclusive agreement between the parties, subject to the terms and conditions herein and including any documents incorporated herein by reference. Seller's acceptance of this order shall be deemed to occur through written acknowledgment of this order. Additional or different terms contained in Seller's acknowledgment or any other documentation of Seller shall be void and of no effect unless accepted in writing by Buyer. No change in, modification of or revisions of this order shall be valid unless in writing signed by Buyer. Notwithstanding the forgoing, terms on the face of this order shall prevail over any conflicting terms herein. None of any past practice, industry standards, course of dealing or usage of trade shall constitute a modification of any term or condition contained herein, nor shall same add any term not contained herein. SELLER MAY NOT CHANGE MATERIAL OF MANUFACTURE, SOURCES OF SUPPLY, MANUFACTURING PROCESS OR MANUFACTURING LOCATION WITHOUT THE PRIOR WRITTEN CONSENT OF BUYER. Except as otherwise disclosed to Buyer, Seller represents that there exist no claims, actions, litigations, or other such matters involving the Seller that in any way would affect its ability to perform the obligations under this order.
2. **CHANGES:** Buyer may change this order at any time by written notice to Seller and Seller shall comply with such change notice. If such changes result in an increase or decrease in Seller's cost or in the time for performance, an equitable adjustment in the price and time will be made by the parties through written agreement, provided a request for adjustment is made by Seller within 10 days after receipt of such change notice.
3. **DELIVERIES:** Time and quantities are expressly made the essence for this order, and Buyer reserves the right to terminate, without penalty, this order as to any or all items if delivery is not made as required.
4. **WARRANTY:** In addition to all warranties implied in fact or at law, (including the implied warranties of merchantability and fitness for a particular purpose), Seller expressly warrants that all items and /or services furnished hereunder will be free from defect in materials and workmanship, conform strictly to all specifications and requirements of this order, and be free from design defects. If there is a breach of this warranty, Buyer, in addition to any other rights it may have, may return such items, at Seller's expense, for repair, replacement, refund or credit at Buyer's option.
5. **INSPECTION:** All items are subject to inspection and test by Buyer at destination and in any event prior to acceptance. Payment for items or services shall not constitute final acceptance. Acceptance of any items shall not be deemed to alter or affect Buyer's rights or the Seller's obligations under the Warranty clause.
6. **BUYER'S PROPERTY:** All designs, tools, patterns, drawings, specifications or other information and all reproductions thereof, and any other property furnished to Seller by Buyer, or paid for by Buyer, are proprietary and confidential and shall be the property of Buyer. Seller shall use Buyer's property for no other purpose than to fill Buyer's orders, and Seller shall not reproduce, disclose or use such property in the production, manufacture or design of any items for any other purchaser or for the manufacture of larger quantities than those specified by Buyer, except with the prior written consent of Buyer. All of Buyer's property is subject to removal from Seller's facility at any time upon Buyer's demand. Seller shall be liable for all loss of, damage to or destruction of Buyer's property and Seller shall, unless otherwise directed in writing by Buyer, insure at Seller's expense such property in the amount equal to the replacement cost thereof.
7. **INSURANCE:** Seller shall, prior to commencement of performance, transmit to Buyer a certificate of insurance affirming that Seller has the following types of insurance and minimum coverage amounts: (a) Statutory worker's compensation and occupational disease; (b) Employer's liability with limits of \$500,000; (c) General liability, including contractor's protective liability, products-completed operations and blanket contractual liability for both personal injury and property damage with limits of \$1 million, occurrence form; (d) Automobile liability, including non-owner automobile liability for both personal injury and property damage with limits of \$1 million, and (e) Umbrella/excess liability providing additional insurance over the above employers liability, general liability and auto liability with limits of \$3 million. This certificate of insurance shall name Buyer as an additional insured and contain a clause reading as follows: "The insurance provided by these policies shall not be materially changed or cancelled without at least 30 days prior written notice being given to Witco Inc. At Buyer's written request, Seller shall maintain greater coverage amounts or other types of insurance.
8. **PATENTS:** Seller warrants that the sale, manufacture or use of any or all items delivered hereunder, or the services performed by Seller hereunder, shall not infringe any patent or other intellectual property right of any third party. Seller shall, at its own expense, defend any action, suit or claim in which such an infringement is alleged, and Seller shall indemnify and hold harmless Buyer and/or its customers from any loss, damage or liability arising from any claim of such infringement, including any special, consequential and indirect damages so arising.
9. **TERMINATION:** Buyer may terminate this order in whole or in part at any time by written notice to Seller. Upon receipt of such notice or at the time specified there in, if any, Seller shall immediately discontinue all work under the order, shall incur no further costs of performance and shall terminate all related orders and subcontracts given by Seller for performance. If made exclusively for Buyer, Seller will then deliver and Buyer will accept and pay for at the original purchase price all items then completed and ready for delivery in final form and according to specification. If any uncompleted items are for use by Buyer in fulfilling a contract with another party that is subject to termination, settlement shall be made on the basis of and by analogy to the procedures provided by Buyer's contract with such other party; otherwise on the basis of and by analogy to Government FAR termination procedures. If dispute shall arise to any sum claimed by Seller, it shall be determined from an audit of Seller's books and records by a certified public accountant selected by Seller and approved by Buyer. In no event shall Buyer be liable for any loss of profit or for any incidental, indirect or consequential damages or losses incurred by Seller as a result of such termination.
10. **FORCE MAJEURE:** Neither party shall be liable for defaults or delays due to acts of God or any government or governmental agency, fires, floods, accidents or other unforeseeable events beyond its reasonable control and not due to its fault or negligence. Each party shall notify the other in writing of the cause of such delay, and the expected period of such delay within five (5) days after the beginning thereof. In the case of delays impacting Seller's performance under this order, Buyer reserves the right to terminate the order in accordance with the provisions of Paragraph 9.
11. **GOVERNMENT CONTRACTS:** When government flow down is noted on this order, the applicable referenced Government clauses and any additional clauses which the Government makes mandatory for a contractor under a Government contract to include in its subcontracts thereunder will apply to this order.
12. **ASSIGNMENT:** Neither this order nor any rights and obligations herein may be assigned by Seller nor may Seller delegate performance of any of its duties hereunder without the prior written permission of Buyer.
13. **COMPLIANCE WITH LAWS:** Seller warrants and hereby certifies that in the performance of this order, Seller shall comply, and shall cause all items or services furnished hereunder to comply with all current governmental and safety constraints on restricted, toxic, and hazardous materials as well as environmental, electrical, and electromagnetic considerations applicable to the country of manufacture and sale. In addition, Seller shall comply, and shall cause all items or services furnished hereunder to comply with the Fair Labor Standards Act of 1938, as amended, and Seller agrees that this certification may be considered as a certificate contemplated by that Act. Seller further warrants and certifies that its performance of this order and the items and services furnished hereunder shall be in compliance with all applicable federal, state and local laws, rules, regulations, standards and orders, including, without limitation, the Equal Opportunity Clause in Section 202 of Executive Order 11246 of September 24, 1965, as amended; the Affirmative Action provisions referenced in the regulations at 41 CFR Parts 60-1 through 60-250, and Section 402/503 and the regulations at 41 CFR Parts 60-250 and 60-741; and the provisions of the Toxic Substances Control Act of 1976, as amended.
14. **OSHA COMPLIANCE:** Seller warrants and certifies that the items covered by this order shall be in compliance with the provisions of the Federal Occupational Safety and Health Act of 1970 (OSHA), as amended; and regulations thereunder at the time of shipment by Seller; or upon completion of, if installed by Seller; or upon assembly by Buyer, in accordance with Seller's instructions. Where services are being provided, Seller shall perform the services in a manner so as to comply with the applicable provisions of OSHA and regulations thereunder. Seller further agrees to defend, indemnify and hold Buyer harmless for any loss, damage, fine, penalty or any expense whatsoever as a result of Seller's failure to comply with OSHA and any standards or regulations issued thereunder.
15. **CONFIDENTIALITY:** Any information disclosed by Buyer to Seller incident to the performance of this order, including but not limited to information related to pricing, volumes or the financial terms of the order and the existence of this order itself is disclosed in confidence for the sole and exclusive use of Seller. Seller shall not publish or otherwise disclose such information without the express written consent of Buyer. In the absence of a signed agreement to the contrary, no information disclosed by Seller to Buyer shall be considered confidential. (A signed Witco Inc. Confidentiality and Non-Disclosure Agreement supersedes this clause.)



Terms and Conditions

16. **GOVERNING LAW:** This order shall be construed, interpreted and controlled by the laws of Michigan, and all claims arising out of or related to the parties' relationship created by this order, whether in contract, tort or otherwise, shall be governed and decided pursuant to the laws of Michigan. Seller agrees to subject itself to the courts of said jurisdiction and that such venue shall be exclusive regarding disputes arising out of this order.
17. **SURVIVAL:** The following clauses survive in perpetuity cancellation, termination, completion or expiration of this order: 4. Warranty; 6. Buyer's Property; 8. Patents; 9. Termination; 14. OSHA Compliance; 15. Confidentiality; and 16. Governing Law.
18. **USE OF BUYER'S NAME:** Seller shall not in any advertising, sales promotion materials, press releases or any other publicity matters use the name of Buyer, Buyer's parent, any affiliate or subsidiary of Buyer or any variation thereof or language from which the connection of said names may be implied without Buyer's prior written approval.
19. **AUDIT RIGHTS:** For any reason determined by Buyer, including without limitation quality control and pricing, Buyer, Buyer's customer, and regulatory authorities may inspect Seller's manufacturing facilities as well as review and copy, upon its request, any and all books, records and information of Seller relating to the items provided hereunder. Seller shall maintain the books, records and information (including but not limited to production and quality records) relating to the items provided hereunder for a minimum of ten (10) years after delivery and acceptance of items, unless a longer period is specified by a clause on the face hereof.
20. **NOTIFICATION OF NON-CONFORMING PRODUCT:** Seller shall notify Witco Inc. immediately after discovering non-conforming product. Witco Inc. will then determine the disposition of the product. If the disposition is OK to Proceed, the non-conforming material shall be tagged and inspection data describing the non-conformance shall accompany the product. If the disposition is non-conforming, Witco Inc. will provide seller with specific instructions.
21. **SUB-CONTRACTING:** Seller shall flow down to sub-contractors the applicable requirements in the purchasing documents, including key characteristics where required.
22. **ETHICAL BUSINESS PRINCIPLES** - Supplier acknowledges and agrees that Buyer requires that Supplier maintain a high standard of ethical conduct in all its dealings with the Buyer. Supplier is encouraged to implement their own written code of conduct and to flow down their principles to the entities that furnish them with goods and services. Buyer expects its Supplier to maintain effective programs to encourage their employees to make ethical, value-driven choices in their business dealings.
23. **COUNTERFEIT PARTS PREVENTION.**
 - (a) Seller warrants that Counterfeit Supplies shall not be supplied to the Buyer or installed in the Buyer's products by the Seller.
 - (b) Seller warrants that only new, unused, authentic, genuine and legitimate items shall form part of the products supplied to the Buyer.
 - (c) If Counterfeit Supplies or Suspect Counterfeit Supplies are supplied or furnished under the Order, such supplies shall be impounded. The Seller shall promptly replace such supplies with supplies acceptable to the Buyer and the Seller shall be liable for all costs relating to impoundment, removal and replacement.
 - (d) The Seller shall notify the Buyer as soon as it becomes aware of any Counterfeit Supplies or Suspected Counterfeit Supplies which arise in relation to any supplies.

Witco Inc. believes that all persons are entitled to equal employment opportunities. all federal equal opportunity and affirmative action requirements in regard to race, sex, religion, national origin, handicap, and Vietnam veteran or disabled veteran status, as found in 41cfr 60 and 41cfr 741 are hereby incorporated by reference.

24. **TRADE COMPLIANCE:** With respect to any articles or technical information disclosed or provided to Seller pursuant to this order:

Export Controls

- (a) The Seller acknowledges that certain products, software, and technical data or services (which includes information regarding design, assembly, testing, repair, maintenance or modification to Buyer products and technologies) provided pursuant to this order may be subject to United States export control laws and regulations. Seller agrees that any services provided, use, transfer or re-export of such items or technical data must be authorized by the appropriate U.S. Government agency. Seller agrees to comply with all applicable U.S. export and re-export control laws and regulations and any local export regulations, specifically including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. §2751 et seq., the International Traffic in Arms Regulation ("ITAR"), 22 C. F. R. §120 et seq.; the Export Administration Act, 50 U.S.C. app. 2401-2420, including the Export Administration Regulations ("EAR"), 15C.F.R. §730-774; and the Foreign Asset Control Regulations ("FACR"), 31 C.F.R. §500-599, including the requirement for obtaining any export or re-export license or agreement, if applicable. Without limiting the foregoing, the Seller agrees that it will not transfer any products or information it receives from Buyer that constitutes an export of controlled items, data, or services, to include transfer to a foreign national employed by or associated with, or under contract to the Seller, without the authority of an applicable export license or agreement, or applicable exemption or exception.
- (b) Seller agrees to notify Buyer if any information or items the Seller provides or discloses is restricted by U.S. or local export laws or regulations.
- (c) Seller shall immediately notify Buyer if it is, or becomes, listed on any country's Denied Parties List, Debarred Parties List, or other such government issued lists or if the Seller's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. or non U.S. Government entity or agency.
- (d) Seller understands that certain of its activities undertaken on behalf of Buyer may require U.S. companies to register with the Department of State, Directorate of Defense Trade Controls ("DDTC") pursuant to the ITAR 22 C.F.R. §122, as a person engaged in the exporting or manufacturing (whether exporting or not) of defense articles or furnishing defense services. Seller herein represents that it is registered with DDTC, as may be required for activities involving ITAR-Controlled Buyer parts/projects. Proof of such registration will be provided to Buyer upon request. If the Seller is not a U.S. company or does not reside in the U.S., then the Seller must be registered as may be required under its local export regulations. If Seller is a Canadian company, Seller shall be registered in Canada by the Canadian Federal or Provincial government authorities (i.e. "Canadian registered person"). Seller will immediately notify Buyer if said registration and/or other required authorization are revoked, expired or invalidated for any reason, and to immediately cease any activity on behalf of Buyer involving the transfer of defense articles, including technical data, or defense services (ITAR-Controlled).

Customs/Import Controls

- (a) U.S. Customs Regulations. Seller, by accepting this order, covenants and agrees that Seller and its employees, agents, independent contractors and sellers have fully complied with any and all country of origin and other requirements established by the Bureau of Customs and Border Protection (U.S. Customs Regulations, 19. C.F.R. §140-199) and related agencies and all similar requirements of other applicable jurisdictions, for all merchandise sold to Buyer by Seller pursuant to this order. Seller shall provide Buyer (or its designated representative) with such information pertaining to the manufacture of the merchandise covered by this order as Buyer may request from time to time in order to verify Seller's compliance with the provisions of this section.
- (b) Country of Origin (COO) Marking. As required in the U.S. Customs Regulations 19 CFR §134, every article of foreign (non-U.S.) origin (or its container) that is imported into the United States shall be marked in English in a conspicuous place as legible, indelibly and permanently as the nature of the article (or container) will permit, in such a manner as to indicate (country of origin) to an ultimate purchaser in the United States, unless except by law. All commercial invoices accompanying shipments imported into the U.S. must clearly state the actual country of origin of each article, in a manner that is both accurate and that reflects the actual country of origin marking applied to the article or its container. If not marked upon arrival to the U.S., all additional marking expenses, fines or penalties will be billed to and payable by the Seller.
- (c) Buyer Provided Materials. Buyer may provide the Seller with Buyer owned materials, such as, raw materials, equipment, tooling, forgings, molds, etc. (collectively, "Buyer Provided Materials") in support of this order. Buyer will provide the Buyer Provided Materials to the Seller as designated on the Purchase Order. Seller will be responsible for the import customs formalities required to enter the goods into the country of destination (Seller's country). All Buyer Provided Materials that are returned to Buyer will be FCA (shipper's dock or port of export). Seller will be responsible for the export formalities in the local country to clear the goods for export. Buyer will complete all customs formalities in the U.S. for the export of materials provided to the Seller and for the return/import of materials by the Seller.
- (d) Free Trade Agreements. Seller will provide Buyer with supporting Free Trade Agreement Certificates or other such written Free Trade Certification Statements on a shipment-by-shipment basis, for all products that qualify under Free Trade Agreements. In addition, Buyer may request annual ("blanket") Free Trade Agreement



Terms and Conditions

Certificates or other such written certification from the Seller. Seller will advise Buyer of any change-in-fact that may occur, related to Free Trade Agreement certifications previously issued to Buyer.

- (e) Trade Compliance Affidavit ("TCA"). Buyer may require the Seller to respond to a Trade Compliance Affidavit request. Seller will complete a TCA and provide the requested trade compliance data (HTS, ECCN, COO, etc.) to Buyer. Seller will advise Buyer of any change-in-fact that occurs for any TCA issued to Buyer.
- (f) Dutiable Assists - Buyer may furnish Buyer Provided Materials to a Seller that may be considered dutiable assists associated with production of articles that will be imported into the United States. If the Seller is the Importer of Record into the U.S., the values of such "assists" must be declared to U.S. Customs and Border Protection upon entry, to arrive at the appropriate customs value. Dutiable assists provided by Buyer are the responsibility of the importer of record to properly declare to U.S. Customs upon entry.
- (g) Importer Security Filing - Seller agrees to comply with Importer Security Filing (ISF) Requirements as found in 19 C.F.R. Part 149 of the United States Customs Regulations, including providing security filing information to Buyer in the manner proscribed by the Regulation and within the time period of fourteen (14) days prior to the Seller's ex-factory date for each shipment. Should the Supplier default with regard to any ISF obligation, Seller shall reimburse Buyer for any liquidated damages that United States Customs & Border Protection may impose on Buyer as well as additional administrative fees that may be imposed due to a default by Seller.