



Purchase Order Terms and Conditions

1. **ACCEPTANCE OF CONTRACT:** **Shiloh Industries, Inc.**, hereinafter referred to, as “Buyer” shall not be bound by this order until Seller executes and returns to Buyer an acknowledgement of this order. Seller shall be bound by this order and its terms and conditions when it executes and returns an acknowledgement copy when it otherwise indicates its acceptance of this order or when it delivers to Buyer any of the goods herein or renders for Buyer any of the services ordered herein. This order expressly limits acceptance to the terms and conditions stated herein, and any additional or different terms proposed by the Seller are rejected unless expressly assented to in writing by Buyer. No contract shall exist except as hereinabove provided.
2. **AMENDMENTS:** The parties agree that this purchase order, including, the terms and conditions on the face and reverse side hereof together with any documents attached hereto or incorporated herein by reference, contains the complete and final contract between Buyer and Seller, that no agreement or understanding to modify this contract shall be binding upon Buyer unless in writing and signed by Buyer’s authorized representatives. All specifications, drawings, and data submitted to Seller with this order or referred to by this order are hereby incorporated herein and made a part of this order.
3. **PRICING, TAXES:** (a) The price for goods will be the amount shown on the face hereof and includes all charges related to preparation for and actual manufacture/formulation and deliver of the goods, except as otherwise expressly set forth herein or agreed in writing by Buyer, and any taxes or duties imposed on Seller and required by law to be paid by Seller.
 - (b) The price herein specified for the goods will not exceed the price set forth in any applicable purchasing agreement between the parties, if any, and/or that Seller offers or has agreed, on the date of shipment hereunder, to sell the same or like goods to another person on terms and conditions substantially similar to those set forth herein.
 - (c) Buyer is a manufacturer or producer of goods for resale in each state in which it engages in such operations and, therefore, is exempt from sales and use taxes in respect of goods procured for resale. Buyer will furnish to Seller any exemption certificate or other document required to exempt Buyer’s purchase of goods hereunder from sales and use taxes.
 - (d) If Seller is required by law to collect any taxes or duties from Buyer, Seller will show each such item and the amount thereof separately on the applicable invoice.
4. **INVOICES, PAYMENT:** (a) Seller will provide to Buyer at the location shown on the face of this order an invoice for each separate shipment. Each invoice will include all information required by other provisions of this order, including item number and purchase order number.
 - (b) Buyer will pay to Seller the purchase price of goods and other charges shown in the applicable invoice in full and without reduction within the time for payment shown on the face hereof. Seller will not submit an invoice for goods before delivery at the designated location.
 - (c) The preceding subsection notwithstanding, if Buyer disputes the amount of any invoice, Buyer may deduct the amount in dispute, and additionally, Buyer may deduct from and set off against any amount due or to become due to Seller hereunder any amount which Seller owes to Buyer under this order or otherwise.
5. **CHANGES:** The Buyer reserves the right at any time to make written changes in any one or more of the following (a) Specifications, Drawings, and data incorporated in this contract where the items to be furnished are to be specially manufactured for the Buyer, (b) Methods of shipment or packing, (c) Place of delivery, (d) Time of delivery, (e) Manner of delivery and (f) Quantities.

If any such change causes an increase or decrease in the cost of or the time required for performance of this contract, an equitable adjustment shall be made in the contract price or delivery schedule, or both. Any claim by

Seller for adjustment under this clause must be approved by the Buyer in writing before the Seller proceeds with such change. Price increases shall not be binding on Buyer unless evidenced by a purchase order change notice or revision issued and signed by Buyer.

6. **DELIVERY:** Time is of the essence in this contract, and if delivery of goods is not made in the quantities and at the times specified, or rendering of services is not completed at the times specified, Buyer reserves the right without liability and in addition to its other rights and remedies, to take either or both of the following actions: (a) direct expedited routings of goods (the difference in cost between the expedited routing and the order routing costs shall be paid by Seller); (b) terminate this contract by notice effective when received by Seller as to stated goods not yet shipped or services not yet rendered, and to purchase substituted goods or services elsewhere and charge Seller with any loss incurred.

Seller shall be liable for excess transportation charges, delays or claims resulting from Seller's deviation from Buyer's routing instructions. Neither party shall be liable for excess costs of deliveries or defaults due to causes beyond its control and without its fault or negligence, provided, however, that when the Seller has reason to believe that deliveries will not be made as scheduled, written notice setting forth the cause of the anticipated delay will be given immediately to Buyer. If Seller's delay or default is caused by the delay or default of a subcontractor, such delay or default shall be excusable only if it arose out of causes beyond the control of both Seller and subcontractor and without the fault or negligence of either of them and the goods to be furnished or services to be rendered were not obtainable from other sources in sufficient time to permit Seller to meet the required delivery or performance schedule.

Buyer will have no liability for payment for goods delivered to Buyer which are in excess of quantities specified in this contract and delivery schedules. Such goods shall be subject to rejection and return at Seller's expense including transportation charges both ways. Buyer will not be liable for any material or production costs incurred in excess of the amount or in advance of the time necessary to meet Buyer's delivery of schedules.

7. **INSPECTION AND ACCEPTANCE:** Payment for any goods under this contract shall not constitute acceptance thereof. All goods purchased hereunder are subject to inspection at Buyer's destination either before or after payment or before or after acceptance at Buyer's option. Buyer reserves the right to reject and refuse acceptance of goods which are not in accordance with the instructions, specifications, drawings and data or Seller's warranties (expressed or implied). Goods not accepted will be returned to Seller for full credit or replacement at Buyer's option and at Seller's risk and expense, including transportation charges both ways. No replacement of rejected goods shall be made unless specified by Buyer in writing.

Buyer shall not be liable for failure to accept any part of the goods if such failure is the result of any cause beyond the control of Buyer. Among such cases, but not definitive thereof, are fires, floods, acts of God, strikes, differences with employees, casualties, delays in transportation, shortages of cars, inability to obtain necessary materials or machinery or total or partial shutdown of Buyer's plant for any cause.

Acceptance of any part of the goods shall not bind Buyer to accept future shipments, nor deprive it of the right to return goods already accepted.

Acceptance of all or any part of the goods shall not be deemed to be a waiver of Buyer's right either to cancel or to return all or any portion of the goods because of failure to conform to this contract, or by means of defects, latent or patent, or other breach of warranty, or to make any claim for damages including manufacturing costs, damage to materials or articles caused by improper boxing, crating or packing, and loss of profits or other special damages occasioned the Buyer. Such rights shall be in addition to any other remedies provided by law.

8. **PACKING, DRAYAGE AND CONTAINERS:** No charges for packing, drayage, or containers will be allowed unless specified on the face of this order, or specifically listed as an additional and separate charge on Seller's quotation and acceptance of this order. Seller shall be liable for damage to materials or articles described herein caused by improper boxing, crating or packing.

9. **SELLER'S WARRANTIES:** Seller hereby warrants that the whole of the goods furnished hereunder shall be merchantable and fit for Buyer's purposes and that they shall conform with Buyer's instructions, specifications, drawings and data. Seller hereby further warrants that the whole of the goods furnished hereunder shall conform to all representations, affirmations, promises, descriptions, samples or models forming the basis of this contract. In addition, Seller represents and warrants that title to the goods will pass to Buyer free and clear of any claim or lien of any third person asserting through or against Seller. Seller agrees that these warranties shall survive

acceptance of the goods. Said warranties shall be in addition to any warranties of additional scope given by Seller to Buyer. None of said warranties and no other implied or express warranties shall be deemed disclaimed or excluded unless evidenced by a purchase order change notice or revision issued and signed by Buyer.

10. **PROPERTY OF BUYER:** Unless otherwise provided in this order or agreed to in writing, property of every description including, but not limited to all tooling, tools equipment and material furnished or made available to Seller, title to which is in Buyer and any replacement thereof shall be and remain the property of Buyer. Property other than material shall not be modified without the written consent of the Buyer. Such property shall be plainly marked or otherwise adequately identified by Seller as "Property of Shiloh Industries, Inc.", and shall be safely stored separately and apart from Seller's property. Seller shall not use such property except for performance of work hereunder or as authorized in writing by Buyer. Such property while in Seller's possession or control shall be kept in good condition, shall be held at Seller's risk, and shall be kept insured by Seller, at its expense, in an amount equal to the replacement cost with loss payable to Buyer. To the extent such property is not material consumed in the performance of the order, it shall be subject to inspection and removal by Buyer and Buyer shall have the right of entry for such purpose without any additional liability whatsoever to Seller. As and when directed by Buyer, Seller shall disclose the location of such property and/or prepare it for shipment and ship it to Buyer in as good condition as originally received by Seller, reasonable wear and tear accepted.
11. **PROPRIETARY RIGHTS:** All technical information in the nature of designs, blueprints, specifications, engineering data for production or product know-how which is supplied to the Seller by the Buyer to facilitate or assist in the performance of this contract, shall unless otherwise agreed, be considered and kept confidential by the Seller, and the Seller will use and cause its employees and agents to use extreme caution not to disclose any such information either directly or by incorporation of such information in or its use in manufacturing products for others. Additionally, Seller agrees to assign to the Buyer and not otherwise to make use of any invention, improvement or discovery (whether or not patentable), conceived or reduced to practice in the performance of this contract by any employee of the Seller or other person working under Seller's direction, and such assignment shall be considered as additional consideration for the making of this contract. Upon completion of performance of this contract, the Seller shall deliver to the Buyer any and all information relating to any such invention, improvement or discovery, and shall cause employees or others subject to enable the Buyer to file applications of Patents throughout the world and to obtain title thereto.
12. **PATENT INDEMNITY CLAUSE:** The Seller agrees upon receipt of notification, to promptly assume full responsibility for the defense of any suit or proceeding which may be brought against Shiloh Industries, Inc., or any of its subsidiaries, constituent companies, agents or vendees, hereinafter for purposes of this Section collectively referred to as the Buyer for alleged patent infringement, as well as for the alleged unfair competition resulting from similarity in design, trademark, or appearance of goods, by reason of the use or sale of any goods furnished under this contract, except for goods manufactured entirely to Buyer's specifications; and the Seller further agrees to indemnify Buyer against any and all expense, loss, royalties, profits and damages, including court costs and attorney's fees, resulting from the bringing of such suit or proceedings, including any settlement or decree or judgment entered therein. The Buyer may be represented by and actively participate through its own counsel in any such suit or proceedings, if it so desires. The Seller's obligations hereunder shall survive acceptance of the goods and payment therefore by the Buyer.
13. **INDEMNIFICATION:** Seller further agrees to indemnify and save Buyer harmless from any and all losses, liabilities, damages, claims, demands, suits, actions, proceedings, subrogation, and expenses, including court costs, and reasonable attorney's fees related in any way to this contract, or the services performed or goods delivered under this contract, except for goods manufactured entirely to Buyer's specifications, which are claimed or made by any person, firm, association or corporation, including employees, workmen, servants or agents of the Seller and his subcontractors arising from any cause of for any reason whatsoever. Seller further agrees upon receipt of notification, to promptly assume full responsibility for the defense of any and all such suits, actions, or proceedings which may be brought against Seller or against Buyer. In the event Buyer's machinery or equipment is used by Seller in the performance of any work that might be referred under this contract, such machinery or equipment shall be considered as being under the sole custody and control of Seller during the period of such use by Seller.

14. **INSURANCE:** If this contract covers the performance of labor for Buyer, Seller agrees to indemnify and protect Buyer against all liability claims or demands for injuries or damages to any person or property growing out of the performance of this contract. Seller further agrees to furnish insurance Carrier's Certificate showing that Seller has adequate insurance coverage in the following minimum amounts:

Worker's Compensation – Statutory limits for State in which the work is to be performed.
Employer's Liability Limits: - \$1,000,000 disease – each employee - \$1,000,000 disease policy limit.
Comprehensive or Commercial General Liability (bodily Injury and Property Damage) Limits: \$2,000,000 each occurrence combined single limit.
Comprehensive or Commercial Automobile Liability (Bodily Injury and Property Damage) Limits: \$1,000,000 each occurrence, combined single limit.

Said certificate must be set forth the amount of coverage, number of policy and date of expiration. If Seller is a self-insurer, the Certificate of the Department of Labor and Industry of the State of which said labor is to be performed must be furnished by such Department directly to Buyer. Compliance by Seller with insurance requirements does not in any way affect Seller's indemnification of Buyer, under Article 12 above.

15. **CANCELLATION:** Buyer shall have the right to cancel for default all or any part of the undelivered portion of this contract if Seller does not make deliveries as specified in the delivery schedule, if Seller breaches any of the terms hereof including warranties of Seller, or if Seller becomes insolvent or commits an act of bankruptcy. If it is determined, however, that Seller's failure to perform this contract is due to unforeseeable causes beyond the control and without the fault or negligence of the Seller (other than insolvency or an act of bankruptcy) such cancellation shall be deemed to have been made pursuant to Article 16, hereof entitled "Termination" provided that such causes shall include delays and defaults of subcontractor and without the fault or negligence of either of them and the goods to be furnished were not obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedule.

Such right of cancellation is in addition to and not in lieu of any other remedies which Buyer may have in law or equity.

16. **TERMINATION:** The Buyer may terminate performance of work under this order in whole or from time to time in part by written notice of termination, whereupon the Seller will stop work on the date and to the extent specified in the notice and terminate all orders and subcontracts to the extent they relate to the terminated work. Seller will promptly advise the Buyer of the quantities of applicable work and material on hand or purchased prior to termination and the most favorable disposition that the Seller can make thereof. Seller will comply with the Buyer's instructions regarding transfer and disposition of title to the possession of such work and material. Within 60 days after receipt of such notice of termination, the Seller will submit all its claims resulting from such termination. Buyer will have the right to check such claims at any reasonable time or times by inspecting and auditing the records, facilities, work or materials of the Seller relating to this order.

Buyer will pay the Seller, without duplication the order price for finished work accepted by the Buyer and the cost to the Seller of work in process and raw material allocable to the termination work based on any audit the Buyer may conduct and generally accepted accounting principles; less, however, (a) the reasonable value or cost (whichever is higher) of any item used or sold by the Seller without the Buyer's consent (b) the agreed value of any items used or sold by the Seller with the Buyer's consent, and (c) the cost of any defective, damaged or destroyed work or material. Buyer will make no payments to the Seller for finished work; work in process and raw material, which the Seller may have in excess of any Buyer's order or material release. Buyer will only be liable for the costs associated with a maximum of two (2) weeks finished goods and six (6) weeks of work in process and raw materials in any combination thereof. Any costs associated with Seller's inventory levels' being over the above stated maximum levels without written authorization from Buyer are solely at the risk of the Seller.

Notwithstanding the above, payments made under this clause shall not exceed the aggregate price specified in this order less payments otherwise made or to be made, and adjustments shall be made reducing the payment hereunder for costs of work in process and raw material to reflect on a prorata basis any indicated loss on the entire contract had it been completed. Payment under this clause will constitute the Buyer's only liability in the event this order is terminated hereunder. Except as otherwise provided in this order, the provisions of this clause will not apply to any cancellation by the Buyer for default by the Seller or for any other cause allowed by law or under this order.

17. **PROPRIETARY INFORMATION AND NON-SOLICITATION:** While performing the contract services described herein for the Company and hereafter, Vendor shall hold in trust and strictest confidence all the Company's proprietary, confidential and valuable business information including, but not limited to, manufacturing processes, equipment, new processes and procedures, know-how, customer and supplier information, trade secrets and business techniques. Additionally, Vendor shall not, at any time without the Company's prior written consent, directly or indirectly, solicit or induce or attempt to induce any Company employee or representative to terminate his or her relationship with the Company.
18. **COMPLIANCE WITH APPLICABLE LAWS:** Seller agrees that, in the performance of this contract, it will comply with all applicable laws, statutes, rules, regulations or orders of the United States government or of any state or political sub-division thereof. Without limiting the generality of the foregoing, Seller agrees that it will include on all invoices, and that all invoices in order to be approved for payment must include the following statement:

“Seller represents that, with respect to the production of the goods covered by this invoice, it has fully complied with all provisions of the Fair Labor Standard Act of 1938 amended.”
19. **NON-DISCRIMINATION IN EMPLOYMENT:** The Seller agrees that the representations and provisions required by Section 202 of Executive Order No 11246 of September 24, 1965, as to non-discrimination in employment are hereby incorporated in and made a part of this contract.
20. **HIRING OF CURRENT SHILOH EMPLOYEES.** Seller and/or any subsidiary of Seller agrees that during the term of this Agreement and at a minimum of Two (2) years following Seller's acceptance of this order, Seller will not solicit or make an offer of employment to a Shiloh employee that was employed by Shiloh at the time this purchase order is accepted by Seller.
21. **WAIVER:** The failure of Buyer to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this contract, or to exercise any right hereunder shall not be construed as a waiver of relinquishment of the future performance of any such terms, covenants or conditions or the future exercise of such right but the obligation of Seller with respect to such future performance shall continue in full force and effect.
22. **ASSIGNMENT:** None of the sums due or to become due nor any of the work to be performed under this contract shall be assigned nor shall Seller subcontract for completed or substantially completed materials called for by this contract without Buyer's prior written consent.
23. **FORCE MAJEURE:** Any delay or failure of Shiloh to perform its obligations under this Agreement will be excused to the extent that it is caused by an event or occurrence beyond Shiloh's reasonable control, such as, by way of example and not by way of limitation, acts of God, actions by any government authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, labor problems (including lockouts, strikes and slowdowns), inability to obtain power, material labor, equipment or transportation, or court injunction or order affecting Shiloh, Shiloh Vendors or Shiloh's designated agents.