



## Standard Terms and Conditions of Purchase

### **(1) Acceptance of Buyer's Offer**

This Order represents an offer by PMX Industries (hereinafter called "Buyer") to purchase the materials, articles, and services, all of which are herein called "items" which are described elsewhere in this Order. Acceptance of this Order is expressly limited to the exact items stated on the face of the Purchase Order, any attachment incorporated into the Purchase Order, and the General Terms and Conditions stated herein.

Electronic communication through email, fax, text or other means and receipt of and opening of said electronic documents does not constitute acceptance on the part of the Buyer of any price, terms or conditions therein. Reply confirmation or acknowledgement of receipt of electronically transmitted documents do not constitute acceptance of any portion, nor all of the pricing, terms and conditions stated therein and are subject to acknowledgment which supersedes electronically documented specifications, pricing, terms and conditions whether transmitted in writing, electronically or referenced via internet/web site. The Seller's execution of the acceptance copy of this Purchase Order constitutes acceptance of this offer. If the Seller uses its own form of acknowledgement, any provisions thereof which would otherwise modify, conflict with, or contradict the provisions of this Order shall be deemed to be waived.

### **(2) Delivery**

Time is of the essence under this Order. Seller agrees to perform the services or to deliver the items, in the quantities specified, according to the delivery schedule specified, in accordance with specifications (and approved samples, if furnished) and at the prices specified on the face hereof. Any changes to the stated delivery schedule must be approved by the Buyer in writing, in advance of any shipment. Items received more than thirty (30) days before schedule may, at Buyer's option, be returned at Seller's expense, or be accepted and payment withheld until the scheduled delivery date. Any actual or reasonably anticipated default shall entitle Buyer to cancel the Order, in addition to any other rights or remedies. Buyer shall be relieved of all obligations for any nonconforming or undelivered portion. However, acceptance of any items after the scheduled delivery date or nonconforming in any other manner shall not constitute a waiver of such right to refuse acceptance, reject such items or cancel this Order as to future deliveries.

### **(3) Packaging**

No packaging, boxing, cartage or transportation charges will be allowed other than as indicated on the face of this Order. Seller is responsible for proper packaging of any items ordered hereunder so the items will arrive at the destination without damage. Any damage sustained due to improper packaging will be charged to the Seller.

### **(4) Payment**

Unless otherwise specified, Seller's performance in accordance with the terms of this Purchase Order must be complete before payment by the Buyer shall become due. The cash discount period, if any, shall begin to run on the date of the Buyer's receipt of correct invoice or on the date of the Buyer's receipt of the items at the shipping destination specified, whichever occurs later.

### **(5) Taxes**

Any federal, state or local sales/use taxes applicable to the materials, goods or services covered by this Order shall not be included in the prices stated herein. Seller shall set forth such applicable taxes as separate items on invoices to be paid by the Buyer unless the Buyer shall furnish the Seller with proper evidence of non-taxability of the purchase.

**(6) Warranty**

The Seller warrants that all goods purchased hereunder shall be free of defects in material and workmanship and in conformity with agreed specifications. Seller agrees to repair and replace at its expenses, all goods found to be defective in material or workmanship and not in conformity with agreed specifications. However, in lieu of Seller's obligation for repair or replacement, Buyer shall have the option to return such defective goods for full credit including transportation and handling costs. The warranties herein shall run to Buyer, its affiliates and subsidiary companies, successors, assignees, customers and users of the goods involved. The warranties herein shall be considered as conditions as well as warranties, and the representation and conditions herein contained shall not be deemed to exclude implied warranties. Seller shall indemnify and hold Buyer harmless from any and all loss, expenses, including attorneys' fees, costs, damages, judgments, fines and penalties arising out of or caused by a breach or violation of the aforesaid warranties.

**The above stated warranties and remedies are exclusive and in lieu of any other warranties or remedies whether express or implied including any warranty of merchantability or fitness for a particular purpose.**

**(7) Inspection**

The Seller shall provide and maintain an inspection system which will assure that all supplies and services furnished to Buyer conform to the requirements of the Order, whether manufactured or processed by the Seller or procured from subcontractors or vendors. The Seller's inspection system, including processes, products, and inspection records shall be documented in order that Buyer may determine from the Seller's records that the items furnished comply with the requirements of this Purchase Order. The Seller's inspection system shall be subject to survey, review and evaluation by Buyer prior to the initiation of production and throughout the life of the Purchase Order. Further inspection and tests may be made by Buyer at any time before, during or after Buyer receives the goods.

**(8) Patent, Trademark and Copyright Indemnity**

Seller agrees to indemnify, hold harmless and protect Buyer, its affiliates, and subsidiary companies, successors, assignees, customers and users from and against all claims, demands, suits at law or equity, and all expenses including attorney fees, involving infringement or alleged infringement of any patent, trademark or copyright resulting from the purchase, use or sale of the goods or services to be delivered hereunder.

**(9) Quantities**

Shipments must equal the exact quantity ordered unless otherwise specifically agreed to in writing.

**(10) Compliance with Law and Regulations**

Seller shall comply with all applicable federal, state, and local laws and regulations.

**(11) Insolvency**

In the event the Seller becomes insolvent, makes a general assignment for benefit of creditors, has a petition or any proceeding under bankruptcy laws filed by or against it or under any other law relating to debtor's relief, or if a receiver is appointed to take control of the Seller's business or any part thereof, or if any attachment or execution be levied against the Seller or any of its assets, and is not released or discharged within ten days, Buyer may, at its option, cancel this Purchase Order.

**(12) Waiver of Contractual Rights**

Buyer's rights and remedies provided hereunder shall be cumulative and any such rights and remedies herein specified do not exclude any rights and remedies allowed by law or equity. A waiver of a breach of any provisions of this Order shall not constitute waiver of any other breach of the same or any other provision. Acceptance of any item or payment therefore shall not waive any breach.

**(13) Entire Agreements**

This Purchase Order contains the complete and final agreement between Buyer and Seller. This Purchase Order supersedes any prior written or oral agreement between the parties.

**(14) Amendments**

This Purchase Order may be modified or amended only by a written instrument signed by both Buyer and Seller.

**(15) Public Disclosures of Information**

Except with the prior written consent of Buyer, which consent shall not be unreasonably withheld, the Seller shall not release, publish, or cause to be published or communicate any information or data relating to this Purchase Order or the work to be performed hereunder in the form of letters, speeches, photographs, sketches, advertising, sales promotion material, publicity releases, sales presentations or any other form of communication of such information or data. The use of Buyer's name in any such communication by the Seller, without the prior written consent of the Buyer, is also prohibited.

**(16) Liens**

Seller shall furnish, if requested by Buyer, all necessary lien waivers, affidavits or other documents required, in form satisfactory to Buyer, to release Buyer and any goods purchased herein from liens or claims for liens, arising out of the furnishing of the goods or services purchased herein.

**(17) Assignment**

Seller shall not assign or transfer this Order, or any part thereof, without the prior written consent of Buyer, and any such assignment or transfer without such written consent shall be null and void.

**(18) Applicable Law**

This Order shall be governed by and construed and enforced in accordance with the law of the State of Iowa, including its provisions of the Uniform Commercial Code. Any international order shall be governed by the provisions of the 1980 United Nations Convention on Contracts for the International Sale of Goods.