



Acromil, LLC

18421 Railroad Street, City of Industry, CA 91748-1233, Ph.: (626) 964-2522, Fax: (626) 810-6100

PURCHASE ORDER TERMS AND CONDITIONS - Rev. 02-15-2016

1. IMMEDIATE RETURN OF SIGNED ACKNOWLEDGEMENT COPY IS REQUIRED.
2. NO DEVIATION IN PRICE, QUANTITY OR DELIVERY SCHEDULE PERMITTED WITHOUT APPROVAL OF THE PURCHASING DEPT.
3. ALL OUTSIDE PROCESSING SOURCES MUST BE APPROVED BY ACROMIL.
4. THREE COPIES OF INVOICES ARE REQUIRED, ONE OF WHICH MUST BE MARKED AS "ORIGINAL." IF AN ORDER CARRIES A GOVERNMENT CONTRACT NUMBER ON ITS FACE, SUCH CONTRACT NUMBER MUST APPEAR ON ALL COPIES OF INVOICES.
5. ALL CERTIFICATION(S) AND TEST REPORTS MUST BE IN TRIPPLICATE.
6. THESE GENERAL TERMS AND CONDITIONS ARE ALSO PART OF THE ORDER TO WHICH THE VENDOR AGREES BY ACCEPTANCE OF THE ORDER.
- *7. **ITEMS CERTIFIED FOR NATIONAL DEFENSE UNDER DMS REG. NO. 1.** IF A PRIORITY RATING SYMBOL IS INDICATED YOU ARE REQUIRED TO FOLLOW THE PROVISIONS OF MDS REG. 1 AND OF ALL OTHER APPLICABLE REGULATIONS AND ORDERS OF BDSA IN OBTAINING CONTROLLED MATERIALS AND OTHER PRODUCTS AND MATERIALS NEEDED TO FILL ANY SUCH ORDER.

PURCHASE ORDER TERMS AND CONDITIONS

1. **DEFINITIONS.** As used throughout these Terms and Conditions, and any other Order referencing these Terms and Conditions, the following definitions apply.
 - a. "Acromil" means Acromil, LLC, a California limited liability company and any parent or subsidiary thereof.
 - b. "Seller" or "Supplier" means the contracting party with whom an Order is placed for Supplies.
 - c. "Order" means, but is not limited to, any and all purchase orders, agreements, contracts and/or long term agreements used as the authorized ordering mechanism placed by Acromil with Seller for Supplies.
 - d. "Supplies" means any and all work, materials, components, assemblies, intermediate assemblies, parts and end products, manuals, instructions, materials, information and technical data ordered by Acromil and/or services to be performed by Seller.
 - e. "FAR" means the Federal Acquisition Regulation in effect on the date of an Order.

2. **ACCEPTANCE.** Any Order becomes a binding contract subject to the terms and conditions herein, when accepted by and acknowledgement and/or commencement of performance thereon by Seller. Commencement of performance is an acceptance of these terms and conditions regardless of whether an acknowledgement form with different terms and conditions is submitted. No change, modification or revision of an Order shall be valid unless in writing and signed by Acromil's purchasing agent or executive management. In case of any conflicts between the terms on the face of an Order and the terms and conditions set forth herein, the terms on the Order shall control.

3. **PACKING.** No charges shall be made by Seller for transportation, handling, boxing or packing, or for the materials used in connection therewith, unless stated in the Order. Supplies shall be packed to secure lowest transportation costs and must comply with carrier regulations. All shipments must be packed in a manner that will provide for efficient handling and prevent damage to the Supplies in shipment and in storage including, without limitation, protection against atmospheric deterioration and fungus growth. Damages to any Supplies resulting from improper packing will be charged to Seller.

4. **WARRANTIES.** Seller expressly warrants that the Supplies furnished in accordance with any Order will be merchantable, free from defects in material and workmanship, suitable and usable without restriction for the use intended and will conform to applicable specifications, drawings, samples and descriptions. If the Supplies are from a design other than Acromil's, Seller warrants that the Supplies will also be free from design defects.

These warranties shall remain in effect for eighteen (18) months after the date on which the Supplies are delivered by Acromil to its customers or two (2) years from the date the Supplies are accepted by Acromil, whichever first occurs. This warranty period is extended for an additional period equal to the time elapsed from the date that Seller has been notified to repair or replace defective supplies until delivery is made to Acromil of corrected Supplies or replacements.

Seller agrees, at its expense, to repair or replace any Supplies having any defect or defects until the Supplies are in a form satisfactory to Acromil and/or Acromil's customer.

All warranties herein (i) shall be for the benefit of Acromil and Acromil's customers, (ii) shall be construed as conditions as well as warranties, and (iii) shall not be deemed to exclude any other rights or warranties which Acromil may have or obtain.

5. **INSPECTION.** Seller shall maintain an inspection system satisfactory to Acromil covering all manufacturing equipment, materials, methods, processes and Supplies, all of which shall be subject to inspection and testing by Acromil (and the Government or Acromil's customer, if applicable) at all times and places whether during or after manufacture.

All Supplies will be subject to final inspection and acceptance at destination notwithstanding prior payment thereof, or inspection and/or testing at the source by Acromil, as well as possibly the Government or Acromil's ultimate customer for the Supplies. Any rejected Supplies returned to Seller shall be at Seller's expense and no replacement of such defective Supplies shall be made unless specified by Acromil. Acromil reserves the right to reject all defective Supplies and return same to Seller for, at Acromil's option, full reimbursement or Supplies as replacement or correction, in either of which case Acromil shall be entitled to reimbursement for all expenses incurred by Acromil. If Seller fails to promptly replace and correct rejected Supplies to Acromil's satisfaction, Acromil may purchase or otherwise replace or correct such Supplies and Seller shall be liable to Acromil for any excess costs incurred thereby.

6. **CHANGES.** Seller shall make no changes in the Supplies ordered, including without limitation, the specifications, drawings, packing or shipment thereof, except as authorized in writing by Acromil's purchasing agent or executive management.

Acromil may at any time, by written order and without notice to sureties, make changes in the (1) drawings, designs, or specifications (2) methods of packing or shipment, (3) quantity of items ordered, (4) time of delivery, and/or (5) place of delivery. In such event, an equitable adjustment will be made in price and/or time of performance of an Order. Any claim by Seller for such adjustment must be made within 15 days from the date of receipt of a change order. Notwithstanding the foregoing, if Acromil enters into an agreement with a customer providing for no cost increases as a result of changes in delivery or work schedule, this same

7. **DELIVERIES.** Delivery must occur according to the schedule provided in an Order. No deviation from delivery schedules shall be allowed without the written authorization of Acromil. If Seller is delinquent in deliveries or it is reasonably determined by Acromil that Seller will be so delinquent and/or is delaying correction of previously rejected Supplies to the extent that such delay is affecting or reasonably threatens to affect Acromil's commitments to its customers, Acromil may, upon written notice, require Seller to submit acceptable Supplies within 10 days from the date of such notice, and failure to comply therewith shall constitute a default by Seller.

Over shipments, regardless of cause, may not be accepted except as provided on the face of an Order. In all cases of over shipment, either in quantity or in time, the excess may not be accepted and such excess may be returned at Seller's expense. Likewise, when under shipments result in excess costs, including among other things, shipping, handling and storage costs, such costs may be charged to Seller.

Acromil may, at any time, by written notice to Seller require Seller to stop all, or any part, of an Order for a period of 90 days after the Order is delivered to Seller, and for any further period upon agreement by Seller and Acromil. Upon receipt of the notice, Seller shall take all reasonable steps to minimize the cost impact of such suspension. Within the 90 day period, Acromil will either (i) cancel the suspension of work, or (ii) let the 90 day period expire, or (iii) terminate the work covered by the suspension either for default or for convenience in accordance with these terms and conditions and the underlying Order.

8. **SAMPLES AND FIRST ARTICLES.** If samples or first articles are required by an Order, Seller shall not forward quantity shipments until Acromil has approved in writing Seller's samples or first articles, which should be representative of the tooling and process methods to be used in quantity productions.

9. **EXCUSABLE DELAYS.** Either Seller or Acromil may suspend performance of an Order during the occurrence of an excusable delay. An excusable delay shall be any delay not occasioned by the fault or negligence of the delayed party and which results from the acts of God or public enemy, restrictions, prohibitions, priorities, or allocations imposed by governmental authority, embargoes, floods, fires, typhoons, earthquakes, epidemics, unusually severe weather, delays of similar nature or governmental causes, and strikes or labor disputes. Seller hereby warrants that it maintains a disaster recovery plan to facilitate the continuation of production in the event one of the foregoing circumstances occurs. Excusable delays do not include lockouts, shortages of labor, nonperformance of suppliers, lack of or inability to obtain raw materials, fuel or supplies or any other industrial disturbance.

10. **TERMINATION.** Acromil reserves the right to cancel an Order or any part thereof if Seller breaches any of the provisions of an Order, if Seller becomes insolvent or is the subject of any proceedings under any law relating to bankruptcy of the relief of debtors, or if Seller defaults with respect to any of Seller's obligations hereunder.

In the event of such termination, Acromil may procure similar Supplies from another source and Seller shall be liable to Acromil for any excess costs on account thereof, except where the termination is a result of an excusable delay as defined in the preceding paragraph. Acromil's remedies provided in this paragraph shall be in addition to any other remedies provided in law or equity. Without affecting its right to cancel an Order for default, and regardless of whether it is related to a government contract, Acromil may terminate an Order or any part thereof in accordance with the provisions of the Termination Clause contained in FAR 52.249-2 (Termination for Convenience), which clause is incorporated herein by reference. In FAR 52.249-2, (i) the term "Contractor" shall be "Seller", (ii) the terms "Contracting Officer" and "Government" shall be "Acromil", (iii) the 1-year period in paragraph (d) shall be 60 days, and (iv) the 90 day period in paragraph (k) shall be 30 days. Seller shall use its best efforts to mitigate its costs arising from such a termination.

11. **DESIGNS, DATA, TOOLS, ETC.** Title to all material and information including, without limitation, tools, dies, patterns, equipment, designs, drawings, models, NC programs, engineering data or other technical or proprietary information, whether developed by Seller for Acromil or furnished by Acromil to Seller shall remain in Acromil or Acromil's customer, as the case may be. All such items shall be confidential. All such items shall be reported in writing to Acromil upon completion of an Order, maintained in good condition, and shall be subject at all times to disposition as Acromil may direct.

The items in the foregoing paragraph shall only be used in the production, manufacture or design of any Supplies for Acromil or those named in an Order from Acromil, unless Seller receives prior written consent of Acromil authorizing the use of the items for another party. Any such authorization must be explicit to name the buyer and the items being used for the benefit of such buyer. Seller shall not provide any Supplies to any other person or concern, without the prior written consent of Acromil. Acromil does not warrant the accuracy of tools and fixtures which may be furnished and, Seller must report any inaccuracies before commencing production. Seller agrees to indemnify Acromil against any loss, cost, damage or liability by reason of Seller's violation of this section.

12. **PATENT RIGHTS.** If any development of proprietary, patentable information, designs, software or technology, or if any experimental developmental or research work is called for or required under an Order, Seller agrees to disclose and, on request, to assign to Acromil each of the aforementioned items conceived or first reduced to practice in the performance of an Order.

13. **INFRINGEMENTS.** Acromil disclaims any responsibility for infringement of any patent or copyright by Seller in the production of an Order. Seller agrees to indemnify Acromil and its customers and users of any Supplies against liability, including costs and expenses on account of any infringement or alleged infringement of any patents or copyrights in the manufacture, use, sale or disposition of any Supplies called for hereunder or in an Order. Acromil shall notify Seller of any suit instituted against it and, to the full extent of its ability to do so, shall permit Seller to defend same or make settlement in respect thereof.

14. **RISK OF LOSS.** Seller assumes (1) all risks of loss or damages to all Supplies, work in process, materials and other things until the delivery thereof as provided in an Order, (2) all risks of loss or damages to all Supplies, work in process, materials and other things until the delivery thereof as provided in an Order, (3) all risks of loss or damage to any Supplies or part thereof rejected by Acromil or that Acromil has revoked its acceptance from the time of such rejection or revocation, and (4) all risks of loss or damage to any Supplies received from Seller or Acromil property held by Seller or Seller's suppliers for the account of or for Acromil or Acromil's customers, as the case may be.

15. **PRICES.** Seller represents that the price or prices specified in an Order do not exceed Seller's current selling prices for the same or substantially similar Supplies, whether to the Government or to any other buyer of the Supplies or items similar to the Supplies, taking into account the quantity under consideration. Seller warrants that it will not charge Acromil more for any Supplies than it charges its best customers under comparable conditions. Seller will refund to Acromil promptly upon demand any amounts paid by Acromil which reflect a breach by Seller of the foregoing sentence.

16. **FACILITIES.** Except as otherwise provided in an Order, Seller represents that it now has or can readily procure, without assistance of Acromil or the Government, all facilities necessary to the performance of an Order.

17. **SUBCONTRACTING.** Seller shall not subcontract the manufacture or production of Supplies covered by an Order in completed or substantially completed form without prior written approval of Acromil and if applicable, the Government contracting officer.

18. **ADVERTISING.** Seller shall not, without Acromil's prior written consent, in any manner advertise or publish anything concerning an Order or the purchase by Acromil of the Supplies therein. As to Supplies of Seller's standard manufacture, this paragraph shall not apply to general publicity or advertising concerning the Supplies only, but Seller shall not state Acromil or any of Acromil's customers without prior written consent.

19. **NOTICE OF LABOR DISPUTE.** Whenever any actual or potential labor dispute is delaying, or threatens to delay the timely performance of an Order, Seller shall immediately give notice thereof, including all relevant information with respect thereto, to Acromil and, if an Order is placed under a Government contract, to the nearest representative of the cognizant Department of the Government. Seller shall insert this clause or its substance in any subcontracts hereunder.

20. **ADDITIONAL CONDITIONS APPLICABLE IF AN ORDER IS PLACED UNDER A GOVERNMENT CONTRACT.** For an Order placed under a Government Contract, where applicable, each of the following clauses as set forth in the Federal Acquisition Regulations are incorporated herein and shall apply to Seller as though Seller was prime contractor and in such manner as will enable Acromil to meet its obligations with the Department of Defense, NASA, or other Government agency prime or subcontractor. If an Order is placed pursuant to a NASA or other Government agency contract, all references to the Government shall include NASA or such other Government agency and NASA or the applicable Government agency regulations will apply.

- 15.804-4 Certificate of Current Cost or Pricing Data
- 52.204-2 Security Requirements
- 52.208-1 Required Sources for Jewel Bearings and Related Items
- 52.208-7000 Required Sources for Miniature and Instrument Ball Bearings
- 52.208-7001 Required Sources for Precision Components and Mechanical Time Devices
- 52.210-5 New Material
- 52.212-B Priorities, Allocations, and Allotments
- 52.215-1 Examination of Records by Comptroller General
- 52.215-2 Audit - Negotiations
- 52.215-23 Price Reductions for Defective Cost or Pricing Data - Modifications
- 52.215-25 Subcontractor Cost or Pricing Data - Modifications
- 52.219-8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns
- 52.219-9 Small Business and Small Disadvantaged Business Subcontracting Plan
- 52.219-13 Utilization of Women-Owned Small Businesses
- 52.220-3 Utilization of Labor Surplus Area Concerns
- 52.222-1 Notice to the Government of Labor Disputes
- 52.222-4 Contract Work Hours and Safety Standards Act - Overtime Compensation - General
- 52.222-20 Walsh - Healey Public Contracts Act
- 52.222-26 Equal Opportunity
- 52.222-35 Affirmative Action For Special Disabled and Vietnam Era Veterans
- 52.222-36 Affirmative Action For Handicapped Workers
- 52.223-2 Clean Air and Water
- 52.225-3 Buy American Act - Supplies
- 52.225-10 Duty - Free Entry
- 52.225-11 Certain Communist Areas
- 52.225-7011 Preference for Domestic Specialty Metals
- 52.227-7031 Data Requirements
- 52.230-3 Cost Accounting Standards
- 52.230-4 Administration of Cost Accounting Standards
- 52.230-5 Disclosure and Consistency of Cost Accounting Practices
- 52.233-1 Disputes
- 52.246-2 Inspection Supplies - Fixed Price
- 52.246-23 Limitation of Liability
- 52.249-2 Termination for Convenience of the Government (Fixed Price)
- 52.249-8 Default (Fixed Price Supply and Service)



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21. **GOVERNMENT PROPERTY.** With respect to Government owned property in possession of Seller, Seller shall comply with the provisions of the appropriate Government manual for control of Government property in possession of contractors (e.g. Section C of FAR which is included herein by reference.)

22. **ASSIGNMENT.** No assignment of an Order, in whole or in part, of any moneys due or to become due hereunder may be made by Seller without the prior written consent from Acromil.

23. **COMPLIANCE WITH LAWS.** Seller agrees to comply with all applicable Federal, State and local laws and executive orders and regulations issued pursuant thereto and in the performance of an Order.

24. **NON-DISCRIMINATION IN EMPLOYMENT.** In accordance with Executive Order 11246, Seller agrees not to discriminate against any employee or applicant for employment because of race, creed, color or national origin. Seller will take affirmative action to ensure that Equal Employment Opportunity is implemented in employment, upgrading, demotion, or transfer or recruitment advertising, layoff or termination rates of pay or other forms of compensation, and selection of training including apprenticeship. All other applicable provisions of the Rules and Regulations of the Office of Federal Contract Compliance are herein incorporated by reference.

25. **EFFECT OF INVALIDITY OR WAIVER.** The invalidity, in whole or in part, of any conditions of an Order shall not affect the validity of other conditions, nor shall the waiver of a breach of any provision of an Order constitute a waiver of any subsequent breach of the provision or the breach of any other provision.

26. **INDEMNITY AND INSURANCE.** Seller (including its contractors and subcontractors, if any) shall protect Acromil against and all liabilities, claims or demands arising directly or indirectly from or in connection with work performed or Supplies delivered hereunder, and shall indemnify Acromil and hold it harmless from all loss and damage, and shall defend Acromil against and all claims (including, but not limited to, injuries to persons or damage to property) arising from the failure of Seller (including its contractors and subcontractors, if any).

Seller (including its contractors and subcontractors, if any), shall maintain the following insurance with an insurance company or companies, authorized to do business under the law of the State in which the work is to be done or materials furnished.

Workmen's Compensation Insurance covering its obligations under the applicable law(s), and

Comprehensive General Liability Insurance (including Contractual Liability for the obligations assumed hereunder and in an Order) with bodily injury limits of at least \$100,000 per person and \$300,000 per accident and a property damage limit of at least \$100,000 per accident.

Upon request, Certificates of Insurance shall be filed with Acromil and shall provide for at least 30 days prior to written notice of cancellation of or material change in said insurance. The liability insurance limits shall in no way be construed as a limit on Acromil's right of indemnity hereunder.

27. **DANGEROUS GOODS.** Hazardous, dangerous, explosive, inflammable, or toxic goods will be safely and properly marked and packaged by Seller, and Seller assumes all liability, direct or indirect, resulting from its failure to do so.

28. **TOOLING.** Acromil will be the owner of any equipment, tooling or fixturing furnished or paid by Acromil (collectively, "Acromil tooling"). Seller will, to the extent feasible, identify Acromil tooling as Acromil directs and will dispose of Acromil tooling only in accordance with Acromil's written instructions. Seller assumes complete liability for any Acromil tooling and Seller agrees to pay for all repair, maintenance and replacement of Acromil tooling. Unless otherwise authorized in writing by Acromil, Seller will use Acromil tooling solely in the performance of Orders for Acromil. Acromil reserves the right to request and receive a list of Acromil tooling in Seller's possession and to audit such list against Acromil tooling at Seller's facilities.

29. **COMPLIANCE WITH LAWS, U.S. EXPORT CONTROLS.** In performing work under an Order, Seller and its subcontractors will comply with all applicable Federal, State and Local laws, and the rules and regulations of any government authority. This includes strict compliance with all applicable export control laws and regulations of the United States (including, but not limited to, the International Traffic in Arms Regulations [ITAR] and the Export Administration Regulations [EAR]) and all applicable trade regulations under U.S., foreign or other relevant jurisdictions. Acromil reserves the right to cancel any Order without penalty or liability to Acromil in the event Seller's performance under an Order does not comply with such laws, rules and regulations. Seller will defend, indemnify and hold Acromil harmless for any non-compliance by Seller or its subcontractors.

30. **CONSTRUCTION.** An Order and the terms and conditions herein shall be construed in accordance with the laws of the State of California. In the event any provision in an Order or herein shall be deemed unenforceable, then all other terms shall remain in full force and effect.

31. Industrial Change

Suppliers will not implement any industrial change without the prior agreement from Acromil. Suppliers shall immediately notify Acromil of Changes and Work Transfer as noted below, which includes: Changes in product and/or process, Changes of suppliers and Changes of manufacturing facility location.

- 31.1 In accordance with Acromil requirements, Supplier shall inform Acromil prior to any Industrial Change such as:
- 31.1.1 Work transfer (plant relocation, subcontracting, sub-tier supplier change),
 - 31.1.2 New manufacturing process and/or manufacturing process changes,
 - 31.1.3 Plant reorganization,
 - 31.1.4 New ERP, Enterprise Resources Planning Changes,
 - 31.1.5 Means and Tools Changes, etc.
 - 31.1.6 Other changes related to Supply chain topics (capacity, capability, etc.).

- 31.2 Supplier will provide to Acromil if required, at least:
- 31.2.1 Product identification,
 - 31.2.2 Change description,
 - 31.2.3 Reason for change,
 - 31.2.4 Product change implementation start,
 - 31.2.5 Risk identification and mitigation status,
 - 31.2.6 Associated schedule, and or schedule issues.