



## **Terms and Conditions of Purchase**

### **1. DEFINITIONS**

As used in these Terms and Conditions of Purchase ("Terms and Conditions"), Domaille Engineering, LLC. shall be referred to as "Domaille Engineering," the company supplying goods or services under this purchase order (the "Purchase Order") shall be referred to as "Supplier," and the term "goods" means the goods, pieces, merchandise, materials, equipment, supplies, and products or services ordered.

### **2. OFFER TO PURCHASE**

This Purchase Order, provided that it is not a blanket order that provides merely an estimate of amounts to be purchased within a defined time period, is an offer to purchase the goods. To the extent this Purchase Order is in any way deemed to be an acceptance of a quotation or other offer by Supplier, any such acceptance is expressly conditioned upon the consent of Supplier to the Terms and Conditions.

### **3. ACCEPTANCE**

Any of the following acts by Supplier shall constitute acceptance of this Purchase Order: signing and returning a copy of this Purchase Order; commencement of performance or informing Domaille Engineering in any manner of commencement of performance; or returning Supplier's form of acknowledgement. Acceptance of this Purchase Order constitutes agreement by Supplier to these Terms and Conditions and agreement by Supplier to deliver as specified under the Terms and Conditions. Notwithstanding provisions of section 2-207 of the Minnesota UCC, no term or condition included in any writing of acceptance by Supplier shall be deemed to be part of the agreement between the parties unless Supplier has requested and received written assent thereto by an authorized representative of Domaille Engineering. Any acceptance of this Purchase Order is limited to acceptance of the express terms of the offer contained herein.

### **4. VARIATION OR MODIFICATION**

Additional or different terms, or any attempt by Supplier to vary in any degree any of the terms of this Purchase Order, shall be deemed material and shall be rejected. No variations or modifications in the provisions of this Purchase Order including, without limitation, the description, quantity, price, or delivery schedule will be effective against Domaille Engineering unless agreed to in writing and signed by Domaille Engineering's authorized representative.

### **5. INTENTIONALLY LEFT BLANK**

## **6. DELIVERY**

The delivery and performance requirements and specified dates of this Purchase Order shall be strictly adhered to and shall not be changed or modified without Domaille Engineering's prior written consent. In the event of failure to deliver or perform by the dates specified in a Purchase Order, Domaille Engineering reserves the right to cancel such Purchase Order in total or any unexecuted part of such Purchase Order. If no delivery date is shown, delivery shall be made within a reasonable time. Domaille Engineering's count shall be accepted as conclusive on all shipments not accompanied by a packing slip.

## **7. PACKAGING**

Goods shall be packed to meet carrier requirements and to ensure the lowest transportation rates consistent with adequate protection. Any extra expenses affecting delivery of goods not so shipped will be charged to Supplier. Domaille Engineering shall not be liable for any packaging charges, unless otherwise agreed to in advance in writing. All goods, wrappers, and containers must bear markings and labels required by applicable federal, state, and municipal laws and regulations.

## **8. SHIPPING DOCUMENTS AND CONTAINERS**

The shipping destination for goods must appear on all shipping containers and on all documents, invoices, and correspondence. Supplier shall forward to Domaille Engineering with the invoice the express receipt or bill of lading signed by the carrier, evidencing the fact that shipment has been made. All expenses incurred by Supplier's failure to furnish necessary shipping documents shall be charged to Supplier.

## **9. FOB; DAMAGE DURING DELIVERY**

Delivery of goods under this Purchase Order shall be by FOB: Domaille Engineering, Rochester, Minnesota, and unless otherwise agreed and/or stated in this Purchase Order, the risk of loss or damage shall remain with the Supplier until actual delivery to Domaille Engineering. Supplier shall be responsible for damages sustained during delivery. Any resulting claims against carriers shall be the responsibility of the Supplier. Replacement of any damaged goods shall be the sole responsibility of Supplier.

## **10. PAYMENT AND TERMS**

Unless otherwise stated in this Purchase Order, terms of payment shall be 30 days net, or as negotiated by Domaille Engineering and Supplier. Payment and cash discount periods shall start with the date of receipt of proper invoice or date of delivery, whichever is later. Domaille Engineering shall not, by making prompt payment or payment prior to inspection, be deemed to have accepted any goods or to have waived any claim for adjustment or any other claim against Supplier.

## **11. INSPECTION**

Goods shall be subject to inspection, test, and count by Domaille Engineering after receipt at destination. If any goods shall be defective in material or workmanship or otherwise not in conformity with the requirements of this Purchase Order, Domaille Engineering, in addition to its

other rights, may reject same for full credit or require prompt correction or replacement at Supplier's expense, including replacement costs for any raw material or semi-finished products or components supplied, labor and transportation. Goods which are defective or of an unauthorized quantity or not in accordance with specifications will be held for 30 days from and after date of discovery of defect by Domaille Engineering for Supplier's instruction at Supplier's risk; and if Supplier so directs or if no instructions are sent within 30 days, goods will be returned at Supplier's expense. If inspection discloses that part of the goods received are not in accordance with Domaille Engineering's specifications, Domaille Engineering shall have the right to cancel any unshipped portion of its order.

## **12. QUANTITY**

Shipments must equal exact amounts ordered unless otherwise agreed to by Domaille Engineering.

## **13. TIME IS OF THE ESSENCE**

Time of delivery and of all other aspects of performance hereunder is of the essence of this Purchase Order. If any goods are not received, or any element of service not performed by the date specified, Domaille Engineering may, at its option and without notice to Supplier, either approve a revised date or cancel all or a portion of the Purchase Order or obtain the goods elsewhere.

## **14. CHANGES BY DOMAILLE ENGINEERING**

Domaille Engineering shall have the right, by giving notice to Supplier, to make changes in the drawings, designs, specifications for the goods, or the method of shipment or packing or the place of inspection, delivery, or acceptance. Upon receipt of any such notice, Supplier shall proceed promptly to make such changes in accordance with the terms of such notice. Supplier shall deliver to Domaille Engineering, within 15 days, a statement showing the effect of any such change in the cost of, or the time required for, performance of this Purchase Order, and an equitable adjustment shall be made in the price or delivery schedule or both.

## **15. CANCELLATION AND RESCHEDULING**

Domaille Engineering may cancel this Purchase Order in whole or in part without charge prior to shipment of the goods or commencement of performance of the services by written notice to Supplier. Equitable payments/adjustments may be made for work performed prior to cancellation. Domaille Engineering may reschedule the time and place of delivery of goods under this Purchase Order in whole or in part without charge prior to shipment of the goods or commencement of services by written notice to Supplier. Cancellation or rescheduling under this Section shall not be deemed to be a breach of contract.

## **16. DISCREPANCIES**

In case of any discrepancies or questions, Supplier shall refer to Domaille Engineering for decision, instruction, or interpretation.

## **17. CONFIDENTIAL INFORMATION**

All drawings, data, designs, specifications, tools, materials, and other property furnished by Domaille Engineering shall be confidential, shall remain Domaille Engineering's property, shall be used by Supplier only in the performance of this Purchase Order, and together with all copies thereof, shall be redelivered to Domaille Engineering or destroyed by Supplier as Domaille Engineering specifies. Supplier assumes all risks of loss or damage to any such drawings, specifications, tools, materials, or other property, and shall redeliver the same to Domaille Engineering (when specified by Domaille Engineering) in the same condition as when received by Supplier except for reasonable wear and tear of utilization in the performance of this Purchase Order. This Purchase Order is confidential between Domaille Engineering and Supplier, and it is agreed by Supplier that none of the details connected herewith shall be published or disclosed to any third party without Domaille Engineering's written permission.

## **18. WARRANTIES**

Supplier expressly warrants that all goods will conform to any applicable specifications, drawings, samples, or other descriptions and will be merchantable, of good workmanship and material, fit for the purpose for which intended, and free from defect. Such warranties shall survive inspection, test, acceptance, and payment. Acceptance of this Purchase Order shall constitute an agreement upon Supplier's part to indemnify and hold Domaille Engineering harmless from all liability, loss, damage, and expense including reasonable attorneys' fees incurred or sustained by Domaille Engineering by reason of the failure of the goods to conform to such warranties. Such indemnity shall be in addition to any other remedies provided by law.

## **19. INDEMNIFICATION**

**19.1** If any work or services are to be performed on any premise of Domaille Engineering pursuant to this Purchase Order, Supplier shall indemnify Domaille Engineering and hold Domaille Engineering harmless against and from any and all losses, liabilities, and claims, including costs and expenses for property loss or damage or bodily injury or death resulting directly or indirectly from the performance of such work or services. Supplier shall give Domaille Engineering a policy or certificate of public liability insurance, with such insurance carrier and with such limits as Domaille Engineering may reasonably require, insuring Domaille Engineering, primary to any other insurance available to Domaille Engineering, against any and all such losses, liabilities, and claims.

**19.2** If Supplier is furnishing any goods, or products which become a part of any goods or product of Domaille Engineering or others, then Supplier will further indemnify and save harmless Domaille Engineering, its employees, agents, and representatives from and against any and all demands of every nature and kind including without limitation reasonable attorneys' fees, and disbursements incurred in defense of any claim or demand arising out of injury to or death of or property damage to any third person if said injury, death, and/or property damage is in any way caused from any act or omission on the part of Supplier, its agents, employees, or subcontractors except to the extent that any loss or damage is due solely and directly to the

gross negligence of Domaille Engineering. This indemnification includes but is in no way limited to any defect in goods, materials, products, or services in either manufacture or design.

**19.3** Supplier agrees to indemnify and hold Domaille Engineering harmless against any and all losses, liabilities and claims that may be brought or assessed by any party whatsoever against Domaille Engineering as a result of Supplier's failure to complete its performance of this Purchase Order in full on or before the delivery date set forth in this Purchasing Order.

## **20. INTELLECTUAL PROPERTY INFRINGEMENT**

With respect to the goods provided under this Purchase Order, Supplier shall defend, indemnify and hold harmless Domaille Engineering, its directors, officers, employees, agents and affiliates for and against any and all liabilities, claims, damages, expenses and costs (including reasonable legal fees and expenses) arising from or related in any way to a violation or infringement of any patent, copyright, trademark, trade dress, and trade secret, or any other contractual right, proprietary right or intellectual property right, of any third party.

## **21. DEFAULT**

Domaille Engineering may, by written notice to the Supplier, terminate the whole or any part of this Purchase Order if (i) Supplier fails to make delivery of any goods within the time specified, or (ii) Supplier delivers any goods that do not conform to contractual requirements, or (iii) Supplier fails to perform any other provision of this Purchase Order, or (iv) so fails to make progress as to endanger performance of this Purchase Order in accordance with its terms, or (v) Supplier becomes insolvent or subject to proceedings under any law relating to bankruptcy or the relief of debtors. Domaille Engineering may, in addition to its other rights, procure upon such terms and in such manner as Domaille Engineering may deem appropriate substitute goods or services similar to the goods so terminated; and Supplier shall be liable to Domaille Engineering for any excess costs of such similar goods or services, except that Supplier shall not be liable for such excess costs if Supplier's default is due to a cause beyond its control and without its fault or negligence including Acts of God, force majeure, war, flood, fire, act of any government, or catastrophe. Acceptance of any part of the goods covered by this Purchase Order does not bind Domaille Engineering to accept future shipments nor deprive it of the right to return goods already accepted.

**22. SET-OFFS** All claims for money due or to become due from Domaille Engineering shall be subject to deductions by Domaille Engineering for any set-off or counterclaim arising out of this or any other of Domaille Engineering's purchase orders or agreements with Supplier, whether such set-off or counterclaim arose before or after any assignment by Supplier.

**23. TAXES** The prices for the goods include all federal, state, and local taxes imposed on the goods or the sale thereof; but no such tax shall be included for which an exemption is available. Supplier shall separately state on each invoice the amount of any such tax and shall indemnify Domaille Engineering against liability for any tax not so stated. In the event that it shall be determined that any tax included in any price was not required to be paid, Supplier will notify

Domaille Engineering, will make prompt application for the refund thereof, and will make prompt payment to Domaille Engineering of the amount of any refund.

#### **24. ASSIGNMENT**

No obligation under this Purchase Order shall be delegated or assigned by Supplier without the prior written consent of Domaille Engineering, and any purported subcontracting, delegation or assignment without such consent shall be void.

#### **25. ENTIRE AGREEMENT**

This Purchase Order, including the Terms and Conditions, and any document referred to herein constitute the entire contract between the parties relating to the subject matter hereof and supersede all prior understandings, transactions, communications, or writings in respect of such subject matter. It may not be modified or terminated orally; and no claimed modification, termination, or waiver shall be binding unless in writing and signed by the party against whom such claimed change, termination, or waiver is sought to be enforced.

#### **26. GOVERNING LAW, VENUE, WAIVER OF JURY TRIAL**

Any Domaille Engineering Purchase Order and these Terms and Conditions shall be governed by the laws of the State of Minnesota, excluding its choice of law rules. DOMAILLE ENGINEERING AND SUPPLIER EACH WAIVES ALL RIGHTS TO TRIAL BY JURY IN CONNECTION WITH ANY DISPUTE THAT ARISES OUT OF OR RELATES IN ANY WAY TO THIS PURCHASE ORDER.

#### **27. COUNTERFEIT PRODUCT**

Supplier shall only produce products or purchase components/hardware direct from the original component manufacture (i.e., OCM), original equipment manufacturer (i.e., OEM), through an authorized distributor (i.e., Franchised) or a Buyer's authorized source. Work shall not be acquired from independent distributors or brokers without written approval from Buyer. The Buyer must be notified immediately if the Supplier suspects they may have supplied counterfeit products. Work that is delivered that contains or includes counterfeit products will be replaced at the Supplier's expense, with certified genuine products.

#### **28. ETHICAL BEHAVIOR**

To supply top quality products and services responsibly, we understand and expect that our suppliers will have an internal code of ethics and business conduct; and will maintain compliance with all laws and regulations applicable to your operation of business.

#### **29. SPECIAL PROCESSES**

Suppliers providing special processing must maintain a system for validating processes similar to that of a NADCAP program, or other system as required by purchase order.