

MOHAWK INDUSTRIES, INC.  
AND ITS SUBSIDIARIES AND AFFILIATES

TERMS AND CONDITIONS OF PURCHASE

**ACKNOWLEDGEMENT:** Mohawk Industries, Inc. and its subsidiaries and affiliates, as applicable ("Purchaser") may amend these terms from time to time without notice. Seller's acknowledgment on standard forms, containing terms and conditions differing from those terms and conditions set forth herein, shall not indicate any intention to vary, add to or distract from the terms and conditions hereof, and Purchaser specifically rejects such differing terms and conditions. No terms and conditions other than the terms and conditions set forth in this purchase order shall be binding upon Purchaser unless Purchaser indicates its acceptance in writing.

**PAYMENT/SETOFF:** Purchaser has the right to delay payment to Seller, without loss of discount, if any, and without breaching any term contained herein, in the event Purchaser has reason to believe that an event exists that may give rise to a breach of this purchase order by Seller. Such remedy shall not constitute any waiver of Purchaser's additional rights or remedies against Seller in the case of late delivery. Payment terms are net sixty (60) days. Purchaser may set off any amount owed from Purchaser to Seller against any amount which may be due and payable from Seller to Purchaser.

**RISK OF LOSS:** Unless otherwise agreed to by the parties, all purchases are FOB Purchaser's designated destination, and risk of loss shall remain with the Seller until possession, ownership and full legal title to the articles, work and deliverables are transferred to and accepted by Purchaser.

**DELIVERY, INSPECTION, ACCEPTANCE, AND RETURNS:** Seller agrees to make shipments in the quantities and on the dates mutually agreed to meet the requirements of the applicable purchase order and in conformity with the specifications of the applicable purchase order. Seller agrees to Purchaser measurement system for on-time deliveries. Seller's on time delivery and inventory management may be measured via a supplier scorecard. Purchaser will have the right to audit, test and inspect any services performed, products supplied (inclusive of any documents pertaining to the services performed) or any other equipment and materials furnished by Seller and its subcontractors at any time during the term of this purchase order. Purchaser reserves the right, without liability and at its sole discretion, to take any or all of the following actions if for any reason Seller does not comply with its delivery obligations, including without limitation, delivering quantity in excess of the quantity ordered or otherwise nonconforming to the specifications of the purchase order: (i) return to Seller some or all of the products in the shipment at the Seller's risk and expense, including without limitation warehouse, transportation, restocking or handling costs, (ii) charge up to 10% of purchase order value or \$100, whichever is more, for late delivery, over shipment or wrong product shipment unless authorized in writing by purchaser, (iii) charge up to 1% or \$25, whichever is more, for invoice inaccuracies, (iv) purchase substitute products or services elsewhere, (v) assess a late delivery fee of no more than 1.0% per day of the invoice amount of late deliveries of products or services, (vi) submit a revised purchase order and/or release, (vii) terminate the purchase order and purchase the products or services elsewhere, and Seller shall be liable for any resultant loss, (viii) direct Seller to ship by a method other than that indicated in this purchase order, work such overtime or do whatever is necessary to avoid the delay, and pay any and all transportation charges, concessions to Purchaser's customers, liquidated damages, and any other costs and expenses incurred by Purchaser, (ix) seek specific performance of Seller's obligation to deliver, or (x) repair, replace or accept return for full credit for any nonconforming or defective goods and be reimbursed by Seller for all reasonable costs and damages incurred by Purchaser as a result of such nonconformance or defect or related to Seller's provision of services to Purchaser. Seller agrees to notify the Purchaser immediately if Seller has any reason to believe that any services will not be timely performed as requested, products will not be delivered as ordered, or a shipment will not be made as scheduled. There shall be no extra charges, including charges for boxing and cartage, unless Purchaser agrees to such charges in writing. The right of Purchaser to require strict performance and observation of any obligations of this purchase order shall not be affected in any way by any previous waiver, forbearance or course of dealing.

**CHANGES/CANCELLATION/TERMINATION:** No change, modification or extension of this purchase order shall be effective against Purchaser unless it is made in a writing making specific reference to this purchase order and is signed by an authorized representative of Purchaser. Purchaser reserves the right to make changes to this purchase order in whole or in part, or to cancel such purchase order. No additional charges, fees or penalties shall be allowed unless Purchaser agrees to such charges, fees or penalties in writing. Upon cancellation, Seller shall immediately discontinue performance. In the event of termination of this purchase order, Purchaser shall not be liable to Seller for any amount, and Seller shall be liable to Purchaser, in addition to any other relief available under the terms of this purchase order, at law or in equity, for any and all damage sustained by reason of the default that gave rise to the termination.

**LIMITATION OF LIABILITY:** IN NO EVENT SHALL PURCHASER BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS ARISING OUT OF OR RELATED TO THIS PURCHASE ORDER, WHETHER BASED IN TORT, CONTRACT OR ANY OTHER THEORY AND REGARDLESS OF WHETHER PURCHASER WAS INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.

**DELAYS:** Time of delivery and performance is of the essence.

**ALLOCATION:** In the event of a partial failure of Seller's sources of supply of products or items purchased hereunder, Seller will first meet all of Purchaser's requirements hereunder prior to any allocation among customers under Section 2-6145 of the Uniform Commercial Code.

**WARRANTY:** Seller warrants that the articles and work supplied under this purchase order will be in full conformity with all specifications, drawings or samples related to the goods or services subject to the purchase order; will be fit and sufficient for the purpose intended; will be merchantable, of good quality and free from defects in material and workmanship; and will conform with applicable governmental standards, rules and regulations, if any. Seller also warrants that (a) Seller shall perform all services in a professional manner and in accordance with the highest standards of Seller's industry, (b) Seller has the expertise necessary to provide the services, and (c) the services will strictly conform to Purchaser's instructions and specifications set forth in the applicable purchase order or otherwise communicated to or provided to Seller. In addition, with respect to product purchased hereunder to be included as part of Purchaser's finished goods, Seller warrants for the term of any corresponding warranty offered by Purchaser to Purchaser's customers

that the product included in the finished goods shall be free from defects in material and workmanship and shall conform to the finished good specifications.

Seller specifically agrees to indemnify, defend and hold harmless Purchaser, its successors and/or assigns from any and all demands, claims (founded or unfounded), losses, suits, liabilities and expenses (including, but not limited to, attorney fees) for personal injury, death, property damage, or other harm arising out of an actual or alleged defect in goods or any act or omission of Seller or Seller's breach of these terms and conditions. In addition, Seller shall indemnify, defend and hold harmless Purchaser, its successors and/or assigns from any and all demands, claims (founded or unfounded), losses, suits, liabilities and expenses (including, but not limited to, attorney fees) arising from all labor, and/or mechanic's or materialmen's liens upon any products or Seller's property arising in favor of laborers, materialmen, subcontractors and suppliers, or out of the purchase order and shall keep said property free and clear of all other liens, claims and encumbrances arising from the performance of Seller or its subcontractors. Seller is not granted a security interest in the products from Purchaser and may not file a UCC-1 financing statement in relation to the products. Upon request, Seller shall furnish a good and sufficient release or waiver of lien from Seller and every laborer, and/or subcontractor, materialman and other person furnishing labor, and/or services and materials in connection with the products.

Seller further warrants that the products, goods or articles furnished and services performed pursuant to this purchase order will not infringe upon any patent, trademark, or any other intellectual property right. Seller shall indemnify, defend and hold harmless Purchaser, its successors and/or assigns, its customers and/or the users of said products, goods, articles or services against all claims (founded or unfounded), losses, damages, costs, expenses and liabilities (including, but not limited to, attorney fees) involving actual or alleged infringement of any patent, trademark or other intellectual property or proprietary right of any other person or entity.

**INTELLECTUAL PROPERTY AND UNPATENTED PROCESSES:** All work product performed by Seller for Purchaser under this purchase order (whether or not complete and including all notes related thereto) shall be considered works made for hire and thus shall be owned by Purchaser. If any such work product may not be considered a work made for hire under applicable law, Seller hereby irrevocably assigns to Purchaser without further consideration or action, all of Seller's right, title, and interest in and to such work product, including United States and foreign copyrights, patents or other intellectual property rights. Seller acknowledges that Purchaser and the successors and assigns of Purchaser shall have the right to obtain and hold in their own name any and all intellectual property rights in and to such work product. Seller agrees to promptly execute any documents or instruments and take any other actions reasonably requested by Purchaser to effectuate the purposes of this Section "Intellectual Property." In the event that Seller discloses any unpatented method, processes or information concerning the product sold, it shall be considered to be a part of the product sold and included in the selling price, unless Seller clearly expresses otherwise in writing at the time of sale or prior thereto and the same is thoroughly understood and accepted by Purchaser in writing. Seller specifically waives any right to assert any claim for any relief and/or recovery based upon Purchaser's actual or alleged use of such methods, processes or information.

**INDEPENDENT CONTRACTOR:** Seller's relationship with Purchaser shall be that of an independent contractor and nothing in this purchase order shall be construed to create a partnership, joint venture, agency or employer-employee relationship between the parties.

**LIABILITY:** If Seller performs any services for Purchaser on Purchaser's premises, Seller agrees that it is solely and independently responsible for the direction, supervision and control of its employees, subcontractors and for any other persons or firms that Seller engages to assist in the completion and performance of this purchase order. Seller shall maintain adequate safeguards and shall use reasonable care to protect Purchaser's employees, invitees and property on or near the premises. Seller shall provide its employees, subcontractors, and agents and work vehicles with identification in accordance with current Purchaser requirements. Purchaser may require removal from its premises of any of Seller's employees, subcontractors and agents that violate Purchaser's rules related to contractors.

**COMPLIANCE WITH LAWS; CORRUPTION:** Seller shall comply with all federal, state and local laws at all times, and Seller shall perform its obligations under any purchase order in a manner that complies with all applicable laws, regulations, ordinances and codes, including identifying and procuring required permits, certificates, approvals and inspections. Without limiting the foregoing, in connection with the performance of this Agreement, neither Seller nor any person acting on its behalf shall: (i) take any action in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment or giving of money, property, gifts or anything else of value, directly or indirectly, to any government official for the purpose of obtaining or retaining business for or with, or directing business to, Seller or Buyer; (ii) make any bribe, rebate, payoff, influence payment, kickback or other unlawful payment; or (iii) use any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity. Neither Seller nor any director, officer, agent, employee or affiliate of Seller has violated or is in violation of any anti-corruption law, rule or regulation applicable to Seller, including the U.S. Foreign Corrupt Practices Act.

**INSURANCE:** Seller shall maintain the following levels of insurance coverage with a reputable and financially sound insurance carrier: (a) Commercial General Liability, including contractual liability coverage, with limits of at least \$1,000,000 Per Occurrence Bodily Injury and Property Damage / \$1,000,000 Personal & Advertising Injury / \$1,000,000 Products/Completed Operations / \$2,000,000 General Aggregate; (b) Commercial Automobile Liability with a combined single limit of at least \$1,000,000 per occurrence; (c) Employer's Liability with limits of at least \$1,000,000 each accident/\$1,000,000 each employee by disease/\$1,000,000 policy limit by disease; (d) Excess Umbrella Liability, with limits of at least \$4 million Per Occurrence Bodily Injury and Property Damage; (e) Workers' Compensation, meeting the requirements of state law but with limits of at least \$1,000,000 Per Occurrence Bodily Injury; and (f) All Risks Property insurance (if applicable) on a replacement cost basis insuring the Contractor's real and personal property. Purchaser and its affiliates shall be named as additional insureds under such policies to the extent its interests may appear. Seller will provide Purchaser an insurance certificate from its insurance carriers for each of the required foregoing insurance coverages. Failure of Purchaser to demand such certificates or to identify any deficiency in the insurance provided shall not be construed as or deemed to be a waiver of the Seller's (or its agents' or subcontractors') obligation to maintain such insurance. In the event that Purchaser's property is in the possession of Seller, Seller assumes full responsibility for such property while it is in Seller's possession and shall insure such property accordingly. For any claims relating to this purchase order, Seller's insurance shall be deemed to be primary and not contributing to or in excess of any similar coverage purchased by Purchaser. All policy deductibles will remain the responsibility of Seller, its agents or its subcontractors. If Seller fails to maintain the insurance as set forth herein, Purchaser shall have the right, but not the obligation, to purchase said insurance at Seller's expense and to deduct the premiums therefore from any amounts otherwise due to Seller.

**BANKRUPTCY:** In the event of bankruptcy or insolvency of Seller, either voluntarily or in the case of a receiver having been appointed for the benefit of creditors, Purchaser may elect to terminate this purchase order herewith, without any liability to Seller except for deliveries previously made for goods covered by the purchase order then completed and subsequently delivered in accordance with the terms of this purchase order.

**CONFIDENTIALITY/NO PUBLICITY:** All data and other information obtained by Seller from Purchaser in connection with this purchase order shall be held in strict confidence by Seller and used solely for the purposes originally intended in connection with this purchase order. Seller shall treat such data, information and resulting work product with the same degree of care and confidence that it uses to protect its own proprietary or confidential information (but not less than a reasonable standard of care) and shall ensure that each of its employees to whom such data, information or work product is known is held to a similar standard. Seller shall not use Purchaser's name in advertising or publicity of any kind without Purchaser's prior express written consent. Goods ordered to be made with use of Purchaser's confidential information, trademarks and trade names or Purchaser's customer's trademarks or trade names shall be furnished by Seller exclusively to Purchaser. Any excess of such inventory shall be destroyed by Seller at its own expense, or sold with written authorization from Purchaser. The parties agree that nothing in these Terms and Conditions is intended to transfer ownership of any Purchaser confidential information or intellectual property and Seller shall have no ownership interest in any such information.

**GOVERNING LAW:** This purchase order shall be governed in all respect by the laws of the State of Georgia, without regard to its conflict of laws principles, and all actions commenced pursuant hereto shall be brought in a court of competent jurisdiction in Cobb County, Georgia, or in federal court in the Northern District of Georgia.

**NAFTA:** With respect to goods to be incorporated into Purchaser's product and distributed in the North American Free Trade zone, this purchase order is placed with Seller based on Seller's representations to Purchaser consisting of (1) Seller's current NAFTA Certificate of Origin issued to Purchaser that the product(s) ordered in this purchase order qualify(ies) as NAFTA originating; and (2) the NAFTA Origin Indemnification Certification Agreement between Seller and Purchaser. It is a condition of this purchase order that (1) Seller must notify Purchaser prior to supplying any product against this purchase order that does not qualify as NAFTA originating; and (2) Seller must obtain written confirmation from Purchaser's Director of Purchasing waiving this condition prior to shipping any non-NAFTA originating product to Purchaser. Purchaser will hold Seller fully liable for all consequential expenses incurred for failure to conform to these conditions. In addition, Seller shall indemnify, defend and hold harmless Purchaser, its successors and/or assigns from any and all demands, claims (founded or unfounded), losses, suits, liabilities, expenses (including, but not limited to, attorney fees) and amounts required to be paid to governmental authorities for taxes, penalties or interest of any kind under the laws of Canada or Mexico arising from or related to Seller's failure to conform to the conditions set forth in this "NAFTA" Section.

**INTERPRETATION:** In the interpretation and construction of this purchase order, the parties acknowledge that the terms of this purchase order reflect extensive negotiations between the parties and that this purchase order shall not be deemed, for the purpose of construction and interpretation, to have been drafted by either party hereto. Any provisions of the UN Convention on Contracts for the International Sale of Goods that are less favorable to Purchaser than the terms and conditions set forth in this purchase order or the Uniform Commercial Code are specifically excluded from this purchase order.

**ASSIGNMENT:** The rights, obligations, and other interests of Seller shall not be assigned by Seller, in whole or in part, without the prior written consent of Purchaser and any purported assignment of same shall be void and ineffective.

**CLAIMS:** Notwithstanding any provision to the contrary Seller agrees to bring any claim or dispute against Purchaser within one year after the occurrence of the event giving rise to such dispute or waive such claim.

**ARBITRATION:** Any dispute, claim or controversy arising out of, relating to or concerning this Agreement or the parties' business relationship shall, at the sole election of Purchaser, be fully and finally settled by binding arbitration administered by the American Arbitration Association pursuant to the Commercial Arbitration Rules. Any arbitration shall be conducted in Atlanta, Georgia before a single arbitrator. The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. Purchaser, at its sole discretion, may elect to submit any claims to court(s) of competent jurisdiction. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Any dispute, claim or controversy as to the arbitrability of a matter shall be decided by the arbitrator.

Claims may only be brought by a party in its individual capacity and not as a plaintiff or class member in any purported class or representative proceeding, and the arbitrator may not consolidate more than one person's claims or otherwise preside over any class or representative proceeding. Each party will bear its own costs, fees and expenses associated with any arbitration, except that the parties agree to split equally the costs and expenses of the arbitrator and the conduct of the arbitration itself.

**SUBCONTRACTING:** Seller may subcontract or otherwise delegate its obligations under this purchase order only after it has acquired written permission of Purchaser. In all such cases Seller shall remain responsible for obligations performed by subcontractors to the same extent as if such obligations were performed by Seller. Seller shall be solely responsible for any and all costs and other liabilities owing to the subcontractor. Use of any subcontractor shall not result in any increased cost or liability to Purchaser, shall not relieve Seller of any of its obligations under any purchase order and shall not result in any extension to delivery dates or other time schedules. Seller shall be Purchaser's sole point of contact regarding the articles and the work, including with respect to payment. Seller shall have its subcontractors agree in writing to abide by the terms of Sections "Confidentiality/No Publicity," "Intellectual Property and Unpatented Processes," and "Supplier Code of Conduct."

**CODES OF CONDUCT:** Seller has reviewed Purchaser's "Supplier Code of Conduct" and "Contractor Safety Handbook" and agrees that it will comply with all requirements of the Supplier Code of Conduct and Contractor Safety Handbook, additional copies of which may be obtained at [www.mohawkind.com](http://www.mohawkind.com). Seller's failure to comply with the Supplier Code of Conduct and Contractor Safety Handbook shall constitute Seller's breach of these Terms and Conditions. Purchaser may, at its sole option, terminate any purchase order immediately without further liability in the event of Seller's breach.

**SANCTIONS.** Seller represents and warrants that it is not designated on, or associated with, any party designated on any of the U.S. government restricted parties lists, including without limitation, the U.S. Commerce Department Bureau of Industry and Security (“BIS”) Denied Persons List; Entity List or Unverified List; the U.S. Treasury Department Office of Foreign Assets Control (“OFAC”) Specially Designated Nationals and Blocked Persons List; or the U.S. State Department Directorate of Defense Trade Controls (“DDTC”) Debarred Parties List. Seller shall comply with all applicable U.S. economic sanctions and export control laws and regulations, including without limitation, the regulations administered by OFAC, the Export Administration Regulations administered by BIS, and the International Traffic in Arms Regulations administered by DDTC.

**MOST FAVORED CUSTOMER:** Seller represents, warrants, and agrees that the charges paid by Purchaser will at all times be no higher than the charges currently being paid for similar products by any other customer of Seller. Seller shall equitably adjust all charges payable by Purchaser in order to comply with this Section “Most Favored Customer.” At any time Purchaser so requests, Seller’s chief financial officer shall certify in writing to Purchaser that Seller is in compliance with this Section “Most Favored Customer” and shall provide all information that Purchaser reasonably requests in order to verify such compliance. In the event Purchaser finds a third party willing to sell a like product to Purchaser at a price lower than the price being paid to Seller hereunder, then Purchaser shall notify Seller of such lower price and Seller shall have ten (10) business days to meet such lower price. In the event Seller fails to meet such lower price within ten (10) days, then Purchaser shall have the option to terminate this purchase order with no further liability hereunder.

**AUDIT:** Seller shall maintain complete and accurate records of and supporting documentation regarding provision of the goods and services under this purchase order, including the amounts billable to and payments made by Purchaser hereunder in accordance with generally accepted accounting principles applied on a consistent basis, and shall retain such records for seven (7) years after final payment. Seller agrees to provide Purchaser with documentation and other information with respect to the goods and services provided under this purchase order and each invoice as may be reasonably requested by such Purchaser to verify accuracy and compliance with the provisions of this purchase order. Purchaser and its authorized agents and representatives shall have access to such records for purposes of audit during normal business hours during the term of this purchase order and during the period for which Seller is required to maintain such records.

**SURVIVAL:** The rights and obligations of the parties under ‘Risk of Loss,’ ‘Delivery,’ ‘Limitation of Liability,’ ‘Warranty,’ ‘Intellectual Property and Unpatented Processes,’ ‘Liability,’ ‘Confidentiality/No Publicity’ ‘Governing Law,’ ‘Interpretation,’ ‘Arbitration,’ ‘Most Favored Customer’ and ‘Severability’ shall survive any termination of this purchase order.

**SEVERABILITY:** If any section, paragraph, sentence, clause, phrase or any part of this purchase order is declared to be illegal or void, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no manner affected thereby but shall remain in full force and effect.

Purchaser is a government contractor subject to the requirements of Executive Order 11246, as amended, Section 402 of the Vietnam Era Veterans Readjustment Act of 1974, as amended, 41.CFR-60.250.4, 5 Section 503 of the Rehabilitation Act of 1973, as amended, 41.CFR-60.741.4 Public Law 95-507 and related rules and regulations of the Department of Labor and the Office of Federal Contract Compliance Programs.