

TERMS AND CONDITIONS

In the event the articles, supplies, materials and/or services covered by this purchase order are intended to be used directly or indirectly in the performance of this contract with the United States Government, or with a prime or a sub-contractor of said government, this order shall be deemed to include, in addition to all terms and conditions set forth herein, all applicable provisions of such contracts, laws, executive orders and regulations of the United States required to be incorporated in this type of contract.

- 1) **Acceptance**-This purchase order shall not constitute a binding agreement until accepted by the seller by acknowledging receipt and acceptance by immediately returning to the buyer the acknowledgement form properly executed. Acceptance of a purchase order will constitute acceptance of these terms and conditions set forth herein. If the buyer does not receive the acknowledgement copy of the purchase order duly executed by the seller, any shipment or performance by the seller pursuant to a purchase order will constitute an acceptance of the purchase order, including its terms and conditions. No modification of the purchase order will be binding on the buyer unless agreed to in writing.
- 2) **Prices**- The price indicated on the purchase order includes packing and shipping costs unless otherwise specified. Unless otherwise indicated on the purchase order, prices include all Federal, State and local taxes and duties.
- 3) **Packing and Shipping**- Damage to any merchandise not packed to insure proper protection to same, if accepted by the buyer, will be charged back to the seller. The seller will not insure shipment made F.O.B. sellers plant, unless specifically requested in writing by the buyer.
- 4) **Warranty**- Seller expressly warrants that all articles, materials, and work or services ordered are to specification will conform there to and to the specifications, drawings, samples or other description furnished by the buyer. This warranty shall run to the buyer and/or its vendors, and shall survive delivery and shall not be deemed waived, either by reason of inspection and/or acceptance thereof, or by payment thereof by the buyer. Any materials delivered under a purchase order to the buyer which is rejected by the buyer may be held by the buyer after notice of rejection to the seller, at the sellers risk and expense and subject to the sellers order or, at the option of the buyer, may be returned for credit, transportation collect. The seller will pay the cost of the buyer material which may be damaged by any defective workmanship by the seller. Where the seller delivers material not in accordance with the warranty contained herein, the buyer shall have the option of canceling the purchase order either in whole or part of or, if in the opinion of the buyer the non-compliance of the seller may retard the buyers production schedule, the buyer may take all necessary steps in order to maintain production schedules.
- 5) **Inspection**- All articles, supplies and materials furnished under a purchase order are subject to inspection and test by the buyer and/or the buyers customers to the extent practicable at all times and places, including the period of manufacture and, in any event, prior to final acceptance. If inspection and test is made on seller's premises, or that of its supplier, the seller shall furnish all reasonable facilities and assistance without additional charges. If government source inspection is required by the purchase order, a document bearing government source inspection approval must accompany each shipment.
- 6) **Priority Ratings**- When a priority system(e.g., DO-A1) appears on the purchase order, the seller is required to follow the provisions of the Defense Priorities and Allocation Systems Regulation (15 CFR Part 350) in obtaining controlled materials and other products and materials needed to fulfill the purchase order.(Move paragraph #6 before paragraph #23)
- 7) **Delivery**- The date or dates of delivery herein specified must be strictly adhered to. The buyer may refuse any deliveries if prevented by strikes, casualties or other causes beyond its control from receiving or using it. If the seller refused or fails to make deliveries of the materials or supplies ordered within the time specified, or any extension thereof agreed to by the buyer in writing, the buyer may terminate by written notice the right of the seller to proceed with deliveries with out cost to the buyer. In such event, the seller agrees to hold the buyer harmless from any damage resulting from the sellers refusal or failure to make deliveries as specified, including, but not limited to the excess cost of repurchase to the buyer, provided however, that the seller shall not be charged with any such costs paid by the buyer when the delay of the seller in making deliveries is due to causes beyond the control and without the fault of negligence of the seller including, but not restricted to Acts of God, strikes, freight embargoes, further provided, however, that the seller shall notify the buyer in writing of any anticipated delay within one week after first obtaining notice that such delay may occur. The buyer may at any time, place a hold or stop order with respect to any deliveries to be effected under this purchase order. In such event, the delivery schedule will be extended to reflect any delay in delivery solely attributable to such order upon written request therefore by the seller within 30 days after placing of such hold or stop order by the buyer. No cost consequences, however, may be imposed upon the buyer as a result thereof.
- 8) **Changes**- The buyer may, at any time, by written order and without notice to any sureties or assignees of the seller, change the amount or quantity of the work covered by the purchase order or make changes in, or additions to, the drawings and specifications. If such changes cause a material increase or decrease in the amount of character for such work or in time required for its performance, an equitable adjustment of the prices and /or delivery schedule applicable to the purchase order shall be modified accordingly. Any claim for an increase in price or an extension of delivery by the seller under this clause must be asserted by the seller within 30 days from the date on which the change is ordered and shall set forth the amount involved together with a breakdown and such other information as the buyer may request to justify the said claim, provided that the buyer may consider and act upon any such claim at any time prior to the date of final settlement of the purchase order if the buyer determines that the facets justify such action. Nothing contained in this clause shall excuse the seller from proceeding with performing the purchase order as changed.
- 9) **Indemnity**- The seller agrees to protect, indemnify, and hold harmless the buyer, its successors, assigns, customers and users of its products, against any liability, loss, damage or expense whatsoever, resulting from any infringement of any United States or Canadian patent, trade names or trade marks (except those owned by the buyer) by anything or material design, composition or processing of the sellers origin or practice supplied by the seller under this purchase order. The buyer agrees to notify the seller of any claim, demand of suit for infringement involving any such thing or material within a reasonable time.
- 10) **Subcontracts**- no subcontract shall be made by the seller with any other party for furnishing any of the completed or substantially completed materials, articles, spare parts or work herein contracted for, without the written approval of the buyer. For the purpose of this clause, the term "subcontracts" includes only contracts for the production or work upon an item, component, assembly manufactured according to Government specifications of the buyer and does not include, any purchase of a standard commercial or catalog item, any purchase of a basic raw material, any purchase of supplies or services for the general operation of the seller's plant, and any purchase from a parent, subsidiary or affiliate of the seller.
- 11) **Assignment**- None of the monies due or to become due for any of the work to be performed under this purchase order shall be assigned without the written consent of the Buyer having been obtained beforehand, and the Buyer shall not be bound by any assignment made without such consent and shall have the right to make any payment which may be due hereunder to the seller without incurring any obligation to such assignee.
- 12) **Setoffs**- The Buyer shall have the right at any time to set off any amounts now or hereafter owing, whether or not due and payable, by the Seller to the Buyer under this agreement or otherwise, against amounts which are then or may thereafter become due and payable under this purchase order or any other purchase order.
- 13) **Insolvency**- The Buyer reserves the right to cancel this purchase order at no cost to the Buyer by notice thereof to the Seller if the Seller takes or becomes subject to ant proceeding based on insolvency or reorganization.
- 14) **Disputes**- Except as may be otherwise provided herein, any dispute arising under this purchase order, which is not disposed of by mutual agreement, shall be submitted to arbitration under the rules of the American Arbitration Association and judgement upon any resulting award thereon may be entered in any court of competent jurisdiction.

POSIMECH, Inc.

Precision Machining and E/M Assemblies

- 15) **Buyer Furnished Material-** All tools, articles or property furnished by the Buyer to the Seller, including tools made by the Seller for the Buyer's account to process the material covered by this purchase order shall be retained and utilized by the Seller at the Seller's risk subject to the Buyer's examination and return to the Buyer on demand at the Seller's expense in as good condition as received, ordinary wear and tear expected, and shall be kept segregated and clearly marked by the Seller as the property of the Buyer, or if so instructed by the Buyer as the property of the government.
- 16) **Right of Access-** Right of access by Posimech, their customer, and regulatory authorities to all facilities involved in the purchase order and to all applicable records involved.
- 17) **Flow Down-** Requirements for the Seller to flow down to sub-tier suppliers the applicable requirements in the purchase order, including Key Characteristics.
- 18) **Damage-** The Seller will indemnify the Buyer against and save it harmless and defend it from all liability or loss, damage or injury to persons or property in any manner arising out of or incident to the performance of this purchase order including Seller's personnel entering Buyer's premises.
- 19) **Waiver-** The waiver of a breach of any provision of this purchase order shall not constitute waiver of any other breach or of such provision.
- 20) **Rework-** In the event rework is necessary, due to non-adherence to specifications, and only through the fault of the Seller, Buyer, at its discretion, may rework same and charge back to the Seller at the Buyer's prevail in burdened hourly cost.
- 21) **Non-Conformity-** Seller is to notify the Buyer of any known non-conformity to any product or service provided by, under this purchase order and hold said conforming product or service at Seller premises until approval or disapproval for shipment is received by the Buyer in writing.
- 22) **Non-Segregated Facilities-** Seller shall certify that Seller does not and will not maintain or provide for seller's employees any segregated facilities at any of the establishments and that Seller does not and will not permit employees to perform their services at any location, under the Seller's control, where segregated facilities are maintained. Seller shall understand and agree that a breach of this certification will be in violation of the Equal Opportunity Clause required by Executive Order 11246 of 24 September 1965, as amended. Segregated Facilities as used in this provision, means any waiting rooms, work area, restrooms and wash rooms, restaurants and other eating areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.
- 23) **Counterfeit Parts -** *The organizational plan is to implement and control processes that are appropriate to the organization and the product for the prevention of counterfeit parts supported on this PO.*
- 24) **Confidentiality-** All specifications, information, data, drawings, software and other items that are supplied by the Buyer obtained by the Seller and paid for by the Buyer for performance of this purchase order or which are to be furnished by the Seller on this purchase order shall be confidential. The Seller shall not disclose this information to any third party with Buyers prior written consent.
- 25) **Buyer's Property-** All confidential information plus drawings, tools, jigs, dies, fixtures, materials, and any other items supplied by the Buyer shall be and remain the property of the Buyer. All such items shall be used only in the performance of work under this purchase order unless the Buyer consents otherwise in writing. Material made in accordance with the Buyer's specifications and drawings shall not be furnished or quoted to any other person or concern without the Buyer's written consent.
- 26) **Release of Information-** Seller shall not publish any information developed under this purchase order, nor distribute it nor make any news release about the subject matter of this purchase order without prior approval from the Buyer.
- 27) **Compliance With Law; Gratuities-** Seller warrants that the materials to be furnished and the services to be rendered under this purchase order shall be manufactured, sold, and used in compliance with all relevant federal, state, and local laws and regulations. Seller certifies that all equipment and materials delivered under this purchase order are in conformance with the latest OSHA requirements. (Paragraph's 24-27 should be between paragraph's 14 – 16)
- 28) **Seller to notify buyer of any changes in manufacturing methods, facility or senior management.**

CLAUSE

FAR REFERENCE

Stop Work Order	52.212-13
Examination of Records	52.215-1
Utilization of Small Business	52.219-8/52.219-13
Notice of Labor Disputes	52.222-1
Walsh Healey Public Contracts Act	52222-20
Equal Opportunity	52.222-26
Affirmative Action	52.222-35/52.222-36
Clean Air and Water	52.223-2
Hazardous Material	52.223-3
Buy American Act	52.225-3
Taxes	52.229-3/52.229-05
Extras	52.232-11
Termination	52.249-1/52.249-2
Default	52.249-8 (a), (b), (e), (f), (g)
Anti-kickback	52.203-7

As used in the above clauses, the word "Contractor" shall be deemed to mean the word "Seller" the "Contracting Officer" or "Government" shall mean "Buyer", the word "Contract" shall mean this "Purchase Order"

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