

# PMX INDUSTRIES, INC.

## TERMS AND CONDITIONS

1. **Acceptance of Buyer's Offer.**

This Order represents an offer by PMX (hereinafter called "Buyer") to purchase the materials, services and articles, all of which are herein called "Items", which are described elsewhere in this order. Acceptance of this offer is expressly limited to the exact terms slated on the face of this Purchase Order, any attachment incorporated into the Purchase Order, and the General Terms and Conditions stated herein. Seller's execution of the Acceptance copy of this Purchase Order constitutes acceptance of this offer. If 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 therefore 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 goods 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 Seller.

4. **Payment.**

Unless otherwise specified, Seller's performance in accordance with the terms of this Purchase Order must be complete before payment by Buyer shall become due. The cash discount period, if any, shall begin to run on the date of Buyer's receipt of a correct invoice or on the date of Buyer's receipt of the goods 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 buyer unless Buyer shall furnish Seller with proper evidence of non-taxability of the purchase.

6. **Warranty.**

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 or replace at its expense, all goods found to be defective in material or workmanship and not in conformity with agreed specifications. However, in lieu of Seller's obligations 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 representations 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, judgements, fines and penalties arising out of or caused by a breach or violation of the aforesaid warranties.

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 this Purchase Order. Further inspections 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 attorneys' 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 Seller shall become insolvent, make a general assignment for benefit of creditors, have a petition or any proceeding under the 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 Seller's business or any part thereof, or if any attachment or execution be levied against Seller or any of its assets, and be not released or discharged in ten days, Buyer may, at its option, cancel this Purchase Order.

12. **Waiver of Contractual Right.**

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 Agreement.**

This Purchase Order contains the complete and final agreement between Buyer and Seller. This Purchase Order supercedes 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 Disclosure 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.

19. **Contractor EEOC Statement.**

See AGREEMENT AND CERTIFICATION OF COMPLIANCE WITH FEDERAL LAW AND REGULATION on the following page.

## AGREEMENT AND CERTIFICATION OF COMPLIANCE WITH FEDERAL LAW AND REGULATION

I. EXECUTIVE ORDER II246-Equal Opportunity Clause (if the contract is for \$10,000 or more)

Contractor agrees to include the Equal Employment Opportunity Clause by reference in every contract, agreement and purchase order entered into with subcontractors or suppliers as required by 41 CFR 60-14(d).

II. CERTIFICATION OF NON SEGREGATED FACILITIES-(if the contract exceeds or will exceed \$10,000)

Contractor certifies that they do not maintain or provide for their employees any segregated facilities at any of their establishments, and that they do not permit their employees to perform their services at any location under their control where segregated facilities are maintained. They certify further that they will not maintain or provide for their employees any segregated facilities at any of their establishments and that they will not permit their employees to perform their services at any location under their control where segregated facilities are maintained. Contractor agrees that a breach of their certification is a violation of the Equal Opportunity Clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, creed, color, or national origin, because of habit, local custom or otherwise. Contractor further agrees that (except where they have obtained identical certifications from proposed subcontractors for specific time periods) they will obtain identical certifications from proposed subcontractors prior to the award of such subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, that they will retain such certifications in their files and that they will forward notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

**NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENTS FOR CERTIFICATIONS OF NON  
SEGREGATED FACILITIES.**

A Certification of Non-Segregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity Clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e. quarterly, semiannually or annually).

III. EMPLOYER INFORMATION REPORT EEO-1

Contractor further agrees and certifies that if the value of any contract or purchase order is \$50,000 or more and the Contractor has 50 or more employees, Contractor will file a complete and accurate report on Standard Form 100 (EEO-1) with the Joint Reporting Committee at the appropriate address per the current instructions within thirty (30) days of the contract award and otherwise comply with and file such other compliance reports as may be required under Executive Order II246, as amended, and Rules and Regulations adopted thereunder.

IV. WRITTEN AFFIRMATIVE ACTION PROGRAM

Contractor further agrees and certifies that if the value of any contract or purchase order is \$50,000 or more and the Contractor has 50 or more employees, Contractor will develop a written affirmative action compliance program for each of its establishments as required by Title 41, Code of Federal Regulations, Section 60-1.40 and Section 60-2.

V. VETERANS EMPLOYMENT CLAUSE (if the contract is for \$10,000 or more)

Contractor agrees to abide by and comply with the provisions of the Affirmative Action Clause, Section 60-250.4 of 41 CFR unless exempted as therein provided and which provisions are incorporated herein by reference to the same extent as though set forth herein in full.

VI. EXECUTIVE ORDER 11758-EMPLOYMENT OF HANDICAPPED PERSONS (if the contract is for \$10,000 or more)

Contractor agrees that it will abide by and comply with the provisions of the Affirmative Action Clause.