1. None of the instructions, terms and conditions contained in this Purchase Order may be added to, modified, superseded or otherwise altered except by a written instrument signed by an authorized representative of Purchaser. Each shipment received by Purchaser from Seller shall be deemed to be only upon the instructions, terms and conditions contained in the Purchase Order notwithstanding any instructions, terms and conditions that may be contained in any acknowledgment, invoice or other form of Seller and notwithstanding Purchaser’s act of accepting or paying for any shipment or similar act of Purchaser.
2. No charges of any kind, including but not limited to charges for freight, boxing or cartage, will be allowed unless specifically agreed to in writing by an authorized representative of Purchaser.
3. Time is of the essence of the agreement between Seller and Purchaser as evidenced by this Purchase Order. Seller is liable for any and all damages Purchaser incurs, without limitation, due to any failure or delay in Seller’s delivery or performance. Seller may not allocate, defer, delay, or cancel the shipment of all or any part of Purchase Order without liability to the Purchaser.
4. If any of the goods are found at any time to be defective in material or workmanship or otherwise not in conformity with the requirements of this Purchase Order, Purchaser, in addition to all other rights and remedies available to Purchaser, shall have the right to reject and return such goods at Seller’s expense.
5. The Seller shall not assign this Purchase Order or delegate the Seller’s responsibilities under this Purchase Order without the prior written consent of the Purchaser.
6. Seller shall comply with all applicable federal, state and local laws, regulations, and rules.
7. Seller agrees to indemnify, protect and defend Purchaser with respect to any claims, action, proceeding or judgment for patent infringement arising out of the purchase or use of the goods covered by this Purchase Order.
8. This Purchase Order and all matters connected with the performance of the parties under this Purchase Order shall be governed and interpreted in accordance with the laws of the State of Massachusetts.
9. Seller hereby represents and agrees that all goods shipped to Purchaser under this Purchase Order will be produced in compliance with the federal Fair Labor Standards Act.
10. Seller hereby expressly warrants that all the goods, materials, and articles covered by the Purchase Order or other description or specification furnished by Purchaser will be in exact accordance with such order description or specification and free from defects in material and/or workmanship, shall be merchantable and shall be fit for the purpose for which the goods, materials, and articles are purchased. This warranty shall survive delivery and shall not be deemed waived either by reason of Purchaser’s acceptance of said goods, materials, and articles, or by payment.
11. Seller assumes all liability and/or obligation to Purchaser for any claim, loss, damage, or expense caused in whole or in part by (a) any inadequacy, deficiency, or defect in goods or services (whether or not covered by any warranty), (b) the use or performance of any goods or services, or (c) any failure or delay in Purchaser’s performance hereunder, or for any special, indirect, incidental, cost of replacement of goods or services, rework, loss of data, consequential, exemplary or punitive damages, howsoever caused, including Seller’s negligence, whether or not Seller has informed Purchaser of the possibility or likelihood of any such damages. In no event will Seller’s liability be waived regardless of basis.
12. Purchaser reserves the right to cancel all or any part of the undelivered portion of this Purchase Order if Seller does not make deliveries as specified, time being of the essence of this agreement, or if Seller breaches any of the terms hereof.
13. Purchaser’s rights and remedies will be cumulative and not exclusive. Seller is responsible for all losses, costs, and expenses, including attorney’s fees, incurred by Purchaser in collecting any sums Seller owes. Purchaser shall be entitled at all times to set-off any amount owing at any time from Seller to Purchaser against any amount payable at any time by Purchaser to Seller. Purchaser further reserves the right to suspend or terminate Seller’s access to any goods or services, and such suspension or termination by Purchaser does not modify the amounts due under the transaction.
14. **Federal Subcontractors: The Reporting Requirements Clause of 41 CFR 61-300.10 and the Employee Notice Clause of Appendix A to Subpart A of 29 CFR 471 apply to this contract. dataCon, Inc. is committed to affirmative action for minorities, females, individuals with disabilities, and protected veterans and requests that the Seller take appropriate action regarding its own employment practices.**
15. **Federal Subcontractors: This contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4, 41 CFR 60-300.5(a), and 41 CFR 60-741.5(a). These regulations prohibit discrimination against qualified protected veterans, qualified individuals on the basis of disability, and individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. These regulations also require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities and to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin.**
16. If F.O.B. point on face of this Purchase Order is shipping point, please prepay and add freight charges to your invoice, provided that preapproval from the Purchaser is obtained.