



**DAYTON T. BROWN, INC.**  
**TERMS AND CONDITIONS OF PURCHASE**

**1. THIS ORDER** is subject to the conditions appearing both on the face hereof and hereafter.

**2. ACCEPTANCE:**

Acceptance of the offer represented by this purchase order is expressly limited to the terms of this purchase order. Signing and returning the acknowledgment copy of this purchase order or, in any event, commencement of performance hereunder shall constitute unconditional acceptance of purchase order. The purchase order is the entire contract and no changes are binding on Purchaser unless they are in writing and signed by an authorized representative of Dayton T. Brown, inc.'s Purchasing Department. Notwithstanding any references in this purchase order to Seller's quotation, this order is not in response to or an acceptance of such quotation, and any references to or attachment of Seller's terms and conditions, or any over stamping on the acknowledgment or invoicing of this order shall not alter the terms hereof and shall be disregarded by Purchaser, and are hereby rejected. This order expressly limits acceptance to the terms stated herein.

**3. QUALITY AND WORKMANSHIP:**

All material and workmanship shall be of the kind and quality specified, or if no quality is specified shall be of the best quality, standards and shall otherwise be in strict conformance with the requirement of this order. When drawings or specifications are referred to in this order, Seller agrees that such drawings and/or specifications are an integral part hereof including all general as well as specific provisions of such drawings and specifications applicable to the work called for by this order. All material and workmanship shall, whether or not any previous payment has been made thereon, be subject to inspection and test at all reasonable times and places, either before, during, and/or after manufacture by inspectors designated by the Purchaser and/or by Purchaser's customer, at Purchaser's option and if this order is issued pursuant to U.S. Government Contract, by inspectors of the Government service in charge thereof. The exercise of this right of inspection and test shall in no way relieve Seller of its obligation to furnish all goods in strict accordance with this order. When Inspection is to be made on premises of Seller, Seller shall furnish without additional charge all

reasonable assistance and facilities (including all necessary gauges, instruments and tools) required for the convenience and safety of the inspectors. Final payment against this order shall be subject to final inspection and acceptance by Purchaser, and if this order is issued pursuant to Government contract, by the Government.

#### **4. REJECTIONS:**

In case any articles or materials are found to be defective in material, or workmanship or otherwise not in strict conformance with this order, Purchaser shall have the right at its option, in addition to any other rights which it may have under warranties or otherwise, to reject the goods or to require that they be corrected or replaced promptly by Seller with satisfactory materials and workmanship. In case of rejection, Purchaser may at its option return the rejected goods to Seller, or may hold the same for such disposition as Seller shall indicate without notice to any person other than Seller, All transportation charges (including handling charges of Purchaser) for the return to Seller of defective or rejected goods and for the redelivery of corrected or replacement goods shall be borne by the Seller. Seller shall promptly refund any payments made by purchaser on account of rejected goods.

#### **5. PERFORMANCE AND DELIVERY TIME IS OF THE ESSENCE FOR THIS ORDER:**

All deliveries and field installation (if required) shall be in strict conformance with the requirements hereof, Deliveries are to be made both in quantity, and at times specified in schedules as released or approved by Purchaser. If at any time Seller has reason to believe that deliveries will not be made as scheduled, written notice setting forth the cause of delay shall immediately be forwarded to the Purchaser. If Seller shall fail to deliver goods complying with this order or fail to do so within the specified time, or if the goods delivered by Seller are rejected by Purchaser, or when returned by Purchaser for replacement are not promptly and satisfactorily corrected or replaced, Purchaser at its option may terminate this order for default as to such goods and all other goods remaining undelivered hereunder. Purchaser may replace or correct such goods itself or from other sources, in either event Seller shall be liable to Purchaser for all costs and damages thereby incurred by Purchaser except that Seller shall not be liable for default if such failure rises out of causes beyond the control and without the fault or negligence of Seller. Such causes shall include: Acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, and freight embargoes, but in every case the failure to perform must be without the fault or negligence of the Seller. Purchaser's failure to execute the said option as to any shipment shall not constitute a waiver with respect to other or subsequent shipments. Unless otherwise agreed in writing, Seller shall not make material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet

Purchaser's delivery schedule. It is Seller's responsibility to comply with this schedule, but not to anticipate Purchaser's requirements. Goods shipped to Purchaser in advance of schedule may be returned to Seller at Seller's expense.

**6. NON-ASSIGNABILITY:**

The Seller shall not sublet any portion of the work hereunder, nor assign it or any interest therein including any payment due or to become due with respect thereto without Purchaser's prior written consent.

**7. PACKING:**

No charge will be allowed for packing, boxing, or handling unless so stated in this order, but damage to any shipment not packed to insure proper protection shall be at Seller's risk. Each package must contain a shipping memo showing name of shipper, contents and this purchase order number. Packing slips must in all instances, identify items with Purchaser's purchase order part numbers and descriptions.

**8. INVOICES:**

Seller's invoices in duplicate together with properly executed original bills of lading or express receipts shall be mailed within twenty-four (24) hours after shipment. Separate invoice must be rendered for each shipment and for each order, if any part of more than one order is included in one shipment.

**TERMS OF PAYMENT.** Unless otherwise specifically agreed herein, terms of payment shall be 2% cash discount 10 days, net thirty (30) days. All discounts are taken with dating starting as of receipt of invoice or of merchandise, whichever is later.

**9. TAXES:**

Unless otherwise specifically agreed herein and in the absence of statutory provisions to the contrary, Seller agrees to pay or reimburse Purchaser for any tax or taxes which may be levied in connection with this transaction.

**10. QUANTITY:**

The quantity of any material, as indicated on the face hereof, shall not be exceeded or decreased without obtaining written consent from the Purchaser. If the quantity called for by this order is to be delivered in part shipments of specified intervals over the life of the order, the Seller shall not exceed the specified rate of such part shipments unless otherwise agreed in writing.

## **11. PURCHASER'S MATERIALS, TOOLS, ETC:**

All tools, gauges, jigs, fixtures, dies, patterns, plates, cuts, equipment and materials of any kind, the cost of which is included in the price of the work hereunder (whether separately stated or otherwise) is paid for by Purchaser, and all of such tools, etc., equipment and materials furnished to Seller by Purchaser, together with any replacements thereof and materials affixed or annexed thereto, shall be and remain the personal property of Purchaser, and shall be plainly marked or otherwise adequately identified by Seller as "Property of Dayton T, Brown, Inc." All of such property of Purchase, while in Seller's custody or control shall be held at Seller's risk and expense, shall be maintained in good order, and shall be kept adequately insured by Seller at its expense by liability damage and fire insurance in favor of Purchaser. Said property shall be subject to removal at Purchaser's written request, in which event Seller shall at its expense prepare such property for shipment and redeliver to the same Purchaser in the same condition as received by Seller reasonable wear and tear excepted. All such property belonging to Purchaser at the completion, cancellation or other termination of this order including (but not limited to scrap salvage, spoiled materials, etc.) shall be set aside, properly segregated, weighed, identified with purchase order number and shall forthwith be reported to Purchaser on forms supplied by Purchaser. If Purchaser so elects but nothing herein shall, prevent Purchaser from requiring delivery or other disposition of any, and all property prior to completion, cancellation or termination. Where material has been supplied by Purchaser for the performance of the work hereunder, Seller agrees that the value of such material spoiled in excess of the permissible spoilage allowance shall be charged to him at cost or market price, whichever is lower. If no permissible allowance is stated the customary amount of such allowance as established by trade custom shall apply. In the event that this order includes processing to be performed by Seller on material which has been fabricated in whole or in part by Purchaser, should Seller through negligence or otherwise damage the same, then Seller undertakes to repair or replace such damaged material if after reasonable notice Seller has not made repair or replacement to Purchaser's satisfaction, then Purchaser shall have the right to proceed with repair or replacement and charge Seller with all costs in connection therewith.

## **12. PATENTS:**

Seller hereby agrees to protect and hold Purchaser and Purchaser's customer harmless and free from any loss or damage cost or expense due to or growing out of any infringement or alleged infringement of patent rights by Seller with respect to any articles furnished hereunder except in the case of a particular design and on construction which is specifically required by Purchaser and which in itself constitutes the infringement or alleged infringement.

### **13. TERMINATION:**

Purchaser, by written notice, may terminate this order, in whole or in part. In the event this order is terminated as a result of Seller's default, the Seller shall be liable for damages, including the excess of re-procuring similar items. If this order is terminated for the convenience of Purchaser, Seller shall be compensated proportionately to the extent that items have been shipped or services rendered prior to the effective date of termination. Other than to this extent, Purchaser shall not be liable to Seller for damages on account of its failure to accept all of the items or services ordered. Purchaser may be entitled to a refund of any progress payment made to the date of termination.

### **14. INSURANCE:**

All property of Purchaser in Seller's possession whether consisting of raw material, tools, or equipment shall at all times be insured by Seller to its full value against loss by fire, theft and damage. In the event that any of Seller's employees shall be engaged in work on Purchaser's premises or at the site of any job in which Purchaser is engaged, Seller agrees to carry Workman's Compensation, Public liability and Property Damage insurance on such employees, in form and amount acceptable to Purchaser. On request, Seller shall furnish Purchaser with certificates of a Carrier approved by Purchaser, which shall state that five days advance written notice will be given to Purchaser in case of cancellation of the policy.

### **15. PURCHASER'S DRAWINGS AND DESIGNS:**

Supplier shall not use or disclose any data, drawings, designs, or other information belonging to or supplied by or on behalf of Purchaser, which is proprietary to Purchaser and is so labeled when delivered to Supplier. Upon Purchaser's request, such data, designs, or other information, and any copies thereof shall be returned to Purchaser. Notwithstanding any other provisions of this Purchase Order, to the extent the Government has the right to authorize such use by Supplier, Supplier may utilize Purchaser's data and information in the manufacture of articles for direct sale to the Government, providing that Supplier shall (I) Give Purchaser prior written notice of each such article as being manufactured by Supplier for direct sale to the Government, and (II) Make no claim against Purchaser which arises out of use by Supplier of such data and information. Where Purchaser's data, designs, or other information are furnished to Supplier's vendors for procurement of supplies by Supplier for use in the performance of Purchaser's orders, Supplier shall insert the substance of this provision in its orders to such vendors.

["Notwithstanding this or any other provision of this purchase order, upon written notice to the Buyer and to the extent such use will not interfere with the Seller's Performance of purchase orders with](#)

Buyer in effect at the time, Seller with the U.S. Government's authorization may use on other contracts all Buyer furnished designs, drawings, special tooling, equipment, material, engineering data or other technical proprietary information, etc. which the U.S. Government owns or has the right to authorize the use thereof."

**16. PRODUCTS, METHODS AND MANUFACTURING PROCESSES:**

Any unpatented knowledge or information concerning Seller's products, methods or manufacturing processes disclosed to Purchaser in connection herewith shall, unless otherwise specifically agreed to in writing be deemed to have been disclosed as a part of the consideration for this order; and Seller agrees not to assert any claim against Purchaser by reason of Purchaser's use or alleged use thereof and if this order involves experimental research or development work, Seller also agrees to grant Purchaser an irrevocable, non- exclusive and royalty-free license to make, have made, use and sell any inventions resulting from the work under this order.

**17. WARRANTIES:**

Seller expressly warrants that all articles, material or work covered by this order will conform to the specifications, drawings, samples, and other descriptions furnished or specified by the Purchaser, and will be merchantable of good material and workmanship and free from defect and that all the material covered by this order which is the product of Seller or which is in accordance with Seller's specifications, will be fit and sufficient for the purposes intended. Seller further agrees that this warranty shall survive acceptance and payment for the articles, material or work that it will run to Purchaser, its successors, assigns, customers and users of its products, and also agrees to save Purchaser harmless for any loss, damage or expense whatsoever, including attorney fees that may be suffered as a result of any breach of such warranty. The aforesaid express warranties shall be in addition to any warranties expressed or implied in law and any standard warranty or guaranty of Seller, and/or manufacturer.

**18. INSOLVENCY:**

If Seller for any reason (including inability to meet its obligations as they mature) ceases to conduct its operations in the normal course of business or if any proceeding under the bankruptcy or insolvency laws is brought by or against Seller, or a receiver for Seller is appointed or applied for, or an assignment for the benefit of creditors is made by Seller, Purchaser may terminate the order without liability except for deliveries previously made, or goods covered by the order then completed and subsequently delivered in accordance with the terms of the order.

## **19. CHANGES:**

Purchaser shall have the right by written notification to make changes in the drawings, designs or specifications and in the dates for delivery, as specified on the face hereof. If such changes cause an increase or decrease in quantities deliverable under the order or in Seller's cost of performance, an equitable adjustment of price shall be made. In case of quantity reduction, Purchaser shall have no liability to Seller for lost or anticipated profits. No additional charges by reason of any change will be allowed against Purchaser unless the change is made by written order of Purchaser and Seller submits a written claim, together with cost breakdown in a form acceptable to Purchaser within thirty (30) days after the change is ordered. Seller shall not make changes or substitutions without written approval of Purchaser.

## **20. IN GENERAL:**

Purchaser shall be entitled at all times to set off any amount owing to Seller from Purchaser or any of its affiliated companies against any amount due or owing to Seller with respect to this order, This contract represents the entire agreement of the parties. No modification or waiver of any part thereof shall be binding on Purchaser unless confirmed in writing with the signature of an authorized official or agent of Purchaser. The invalidity in whole or in part of any provision of this order shall not affect the validity of any other provision. The remedies herein reserved shall be cumulative and additional to any other remedies accorded by law. No waiver of a breach of any provision hereof shall constitute a waiver of any other or subsequent breach of the same or any other provision. Where so stated Seller is hereby notified that the work and materials covered by this order are intended to form a part of work under a United States Government contract and that under such contracts Purchaser has no authority to waive or alter certain of the conditions of this order, which are prescribed by United State Laws and regulations and or the stipulations of the basic or prime contract. Purchaser to be notified immediately if Purchase Order requiring attached Addendum is received by Seller without same. Seller shall not assign this contract or any rights, nor delegate any duties. Any attempt to do so will be void. No waiver of any default by either part shall act as a waiver of a subsequent or different default. Section headings are for convenience only and shall have no legal or interpretive effect. This order shall be governed by and construed under the laws of the State of New York, except its choice of laws rules. The parties submit to the nonexclusive jurisdiction of the federal courts located in, and the state courts of the State of New York.

## **21. COMPLIANCE WITH LAWS:**

Seller agrees to comply with all applicable federal, state, and local laws, and with all applicable rules, orders and regulations of any governmental department, agency or bureau. Without limiting the

generality of the foregoing, Seller in accepting this order represents that goods furnished or services rendered shall be in compliance with: All Applicable requirements of Sections 6, 7 and 12 of the Fair Labor Standard Act of 1938 as amended and of all valid and applicable regulations and orders of the Administrator of the Wage and Hour Division issued under Section 14 thereof; (B) Walsh-Heavy Public Contracts Act (4 U.S. Code 35-45) and Eight-Hour *Law* of 1912 as amended. Whenever reference is made in any condition of this order, to any designated statute, regulation, rule or order, the reference shall be deemed without further act of the parties hereto to include and apply to any subsequent amendments thereof and to any subsequent statutes, regulations, rules or orders however designated relating to the same subject matter.

## **22. EQUAL OPPORTUNITY:**

The clause set forth in Section 202 of Executive Order 11246 of Sept. 24, 1965(20 F.R. 12319) is made a part hereof. The purpose of this clause is to achieve equal opportunity for all qualified persons, without regard to race, color, creed or national origin employed by or seeking employment with government contractors or subcontractors. Where used therein, the terms "Contractor" and "Contract" shall mean "Seller" and "Purchase Order" respectively. Seller shall include the same clause (Par. (1) through (7)) in every subcontract or purchase order unless exempted by rules and regulations of orders of the Secretary of Labor and Executive Order 11246. In addition the Seller agrees to comply with Executive Order 10925 as amended.

## **23. SOURCE APPROVAL:**

No contract regardless of the amount thereof, shall be made by the Seller with any other party for furnishing any of the completed or substantially completed articles, spare parts or work herein contracted for without the written approval as to source by a Contracting Officer of the Government agency responsible for the prime contract under which this order is placed. This will not apply, however, to any contract for the furnishing of standard or commercial articles or raw material.

## **24. LABOR DISPUTES:**

Whenever an actual or potential labor dispute delays or threatens to delay timely performance of this order, Seller will immediately notify Purchaser of such dispute and furnish all relevant details. Seller will include the substance of the provision in each subcontract hereunder and immediately transmit any such notice to Purchaser.

## **25. ADEQUATE ASSURANCE:**

If the Seller's financial condition is found to be or becomes unsatisfactory to Purchaser during the term of this contract, or should Seller's ability to perform become doubtful, Purchaser may demand immediate assurance of performance and in the event that such assurance is not forthcoming within 5 working days, Purchaser may terminate this contract and also terminate all other contracts covering purchases by Purchaser of Seller's products whether or not Seller may otherwise be in default, and no rights shall accrue to Seller against Purchaser on account of such termination. Purchaser's duties hereunder are conditioned upon the continuance of the Seller's solvency and Seller's ability to perform within the delivery schedule.

## **26. REMEDIES:**

The remedies herein reserved shall be cumulative and additional to any other or further remedies provided in law or equity. No waiver of a breach of any provision of the contract resulting from this order shall constitute a waiver of any other breach, or of such provision.

## **27. LIENS:**

If this order covers job site work, Seller shall be solely responsible for all claims of whatever nature arising out of non-payment for services, labor and materials furnished or contracted for by Seller in performance of work hereunder, including all liens which may be levied against Purchaser or its customer. Before final payment, or at any time upon Purchaser's request, Seller shall furnish Purchaser with an affidavit conforming to the laws of the state in which the work is performed, or in absence of such law then an affidavit satisfactory to Purchaser setting forth the names and amounts due and remaining unpaid to all persons furnishing services, labor, or materials hereunder. Purchaser shall have the right to pay directly to all Sellers' creditors all such amounts as may be due them and deduct same from payments to Seller.

## **28. LAWS AND REGULATIONS:**

In furnishing goods and/or services required under this order or any amendment thereto, Seller represents, warrants, and agrees that it shall comply with the applicable federal, state, and local laws, regulations, and orders. Without limiting the generality of the foregoing, Seller specifically agrees to comply with the following: Occupational Safety and Health Act of 1970 as amended ("OSHA"); Toxic Substances Control Act as amended ("TSCA"); and the Fair Labor Standards Act of 1938 as amended ("FLSA").

### **29. APPLICABLE LAW AND DISPUTES:**

All purchase orders from Purchaser are issued with reference to the laws of the State of New York and the rights and duties of all persons, and the construction and effect of all provisions of such purchase orders shall be governed and construed according to the laws of New York.

### **30. INDEMNITY:**

**SELLER SHALL INDEMNIFY AND HOLD HARMLESS PURCHASER, ITS OFFICERS, DIRECTORS, AGENTS, REPRESENTATIVES AND EMPLOYEES FROM ANY AND ALL CLAIMS, LIABILITIES, DAMAGES, AND EXPENSES (INCLUDING ATTORNEY'S FEES ACTUALLY INCURRED) ON ACCOUNT OF DEATH OR INJURY TO ANY PERSON OR DAMAGE TO ANY PROPERTY ARISING FROM OR IN CONNECTION WITH ANY GOODS AND SERVICES SUPPLIED, EXCEPT TO THE EXTENT CAUSED BY PURCHASER'S SOLE NEGLIGENCE. THIS INDEMNITY SHALL APPLY WITHOUT REGARD TO WHETHER THE CLAIM, DAMAGE, LIABILITY OR EXPENSE IS BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT. THIS INDEMNITY SHALL SURVIVE DELIVERY AND ACCEPTANCE OF GOODS OR SERVICES.**

### **31. INSURANCE:**

Seller shall furnish Purchaser with certificates of insurance evidencing insurance for the types and in the amounts required by Purchaser's insurance department before the commencement of any work on Purchaser's premises. All such insurance certificates shall provide that they shall not be canceled or amended without thirty days prior written notice to Purchaser and shall be with insurance companies reasonably satisfactory to Purchaser's insurance department. Insurance shall be maintained for the period specified by Purchaser insurance department or so long as work on the premises is ongoing, if no period is specified.

### **32. CONFIDENTIALITY:**

The terms and existence of this purchase order and everything supplied in connection with it by Purchaser shall be held in confidence by Seller. Seller shall not publicly announce or disclose this purchase order or its contents without Purchaser's prior written consent. Seller shall not use Purchaser's name in anyway, including without limitation, a general or sample listing of Seller's customers, without Purchaser's prior written consent. Any violation of this paragraph shall be deemed a material breach.

**Issue Date 07/01/11**