



## Purchase Order Terms & Conditions

1. **CONTRACT:** This Purchase Order constitutes an offer to contract for sale between Buyer, Virginia Panel Corp, (VPC) and Seller which upon acceptance shall be a contract made in and governed by the laws of the State of Virginia. Seller agrees that this Purchase Order constitutes the entire contract between VPC and Seller and that any delivery of goods ordered or other indication of an intent to accept shall constitute an acceptance of this offer in strict accordance with these terms, notwithstanding any prior agreement. This Purchase Order is revocable, in whole or in part, by VPC any time prior to acceptance.

2. **DELIVERY, QUALITY, QUANTITY, RISK OF LOSS:** VPC'S production schedule and warranties to its customers are based upon the agreement that deliveries of goods occur on the required delivery date shown on the face hereof. TIME IS OF THE ESSENCE, and Seller shall be responsible for all damages of any kind incurred or suffered by VPC and by the ultimate purchasers and users proximately caused by delay of Seller beyond the delivery date. Seller agrees to notify VPC immediately if at any time it appears that Seller may not meet the delivery schedule. Such notification shall include the reasons for the delay, actual or potential, the steps being taken to remedy the constraint and the schedule Seller believes it will be able to meet. Such notification shall not be considered approval of the delay or a waiver of the delivery schedule of this Purchase Order. Unauthorized advance shipments and shipments other than for the quantity ordered are returnable at Seller's expense. Delivery shall not be deemed complete until the goods have been actually received by VPC or at the destination it directs, notwithstanding any agreement to pay freight or other charges for transportation or insurance, the risk of loss in transit shall be upon Seller and shall not pass to VPC until VPC actually takes physical possession of the goods.

3. **WARRANTIES, PATENT PROTECTION INDEMNITY:** All warranties of Seller, whether created expressly by law or in fact are incorporated herein by reference and shall include, and be hereby supplemented by the following express warranties of Seller: a) The goods shall comply with any and all specifications, drawings, samples, or other descriptions furnished or adopted by VPC and attached hereto and made a part hereto; b) goods shall be sellable, of good material and workmanship, free from defect, and suitable for their intended purposes; and c) except in the case of goods by VPC, and disclosures by Seller to VPC in any manner hereunder shall not infringe upon or violate the legal or equitable rights of any person, corporation or partnership arising out of any license or franchise, or out of any patent, trademark or other proprietary right, now or hereafter in effect. All obligations of Seller shall survive acceptance of and payment for the goods.



4. **INSPECTION:** VPC reserves the right to inspect all goods prior to shipment by Seller, and Seller shall permit employees or representatives of VPC to have access to Seller's facilities at all reasonable hours. If a Government Contract Number appears on the face of this order, the same right is reserved for authorized Government Representatives. All goods shall nevertheless be received subject to inspection and approval by VPC after delivery and prior to payment and may be rejected if they are nonconforming.

5. **PACKING AND SHIPPING:** a) Ship only as specified herein, and in strict conformity with governing tariff rules and regulations; b) Pack or otherwise prepare all goods to meet carrier requirements and safeguard against damage from weather and transportation; c) Unless otherwise specified herein, goods must be shipped prepaid at Seller's expense; d) Mark each package to show Purchase Order number and include a packing sheet in each package; e) The expense of returning all goods for whatever reason returned shall be the responsibility of the Seller.

6. **PRICE:** Except as otherwise specified herein, or as prohibited by law, Seller shall pay all sales, use, excise or ether taxes, federal, state, or local, that may be imposed upon any of the goods or the parties hereto, by reason of the sale, delivery or use of the goods. If any tax or portion thereof which is included or added to the price paid to Seller for the goods is subsequently refunded to Seller, Seller shall then immediately pay VPC the amount of such refund. Seller warrants that the price charged for the goods is no higher than that charged other purchasers for similar quantities of commodities of like grade and quality.

7. **INFORMATION DISCLOSED:** No information or knowledge, heretofore or hereafter disclosed to VPC in the performance of or in connection with this Purchase Order, shall be deemed to be confidential or proprietary, unless otherwise expressly agreed to in writing by VPC and any such information or knowledge shall be free from any restrictions, other than a claim for patent infringement, as part of the consideration for this Purchase Order. Seller shall not, without first obtaining consent of VPC in any manner advertise, publish or disclose the existence or acceptance of this Purchase Order nor any details connected herewith, or the content of any information or knowledge transmitted by VPC hereunder to any third party.

8. **DRAWINGS, MANUALS:** Seller, if required as part of its performance hereafter, shall, on or before delivery of any goods, supply any and all printed materials, such as catalogues, drawings, cuts, certified prints, characteristic curves, parts lists, service and technical manuals, and diagrams relating to such goods. The failure of Seller to deliver the foregoing printed material required shall constitute a basis for nonpayment of the price of the goods until delivery is made. All such printed materials supplied by, or specifically manufactured, made, or produced at the request of VPC shall at all times be and remain the property of VPC and shall be delivered to VPC on demand.



9. **IDEMNIFICATION:** To the extent that Seller's agents, employees or subcontractors enter upon premises occupied by or under the control of VPC, or any of its customers or suppliers, in the course of performance hereunder, Seller shall take all necessary precautions to prevent the occurrence of any injury, including death, to any person, or any damage to any property, arising out of any acts or omission of such agents, employees or subcontractors. Except to the extent that any such injury or damage is due solely and directly to VPC'S negligence, Seller shall indemnify and hold VPC harmless against all liabilities, losses, damages, and expenses, including VPC'S reasonable attorney's fees arising out of any act or omission of Seller, its agents, employees or subcontractors, and Seller shall maintain such Public Liability, Property Damage and Employee's Liability and Compensation insurance as will protect VPC from any claims under any applicable Workman's Compensation and Occupational Disease Acts.

10. **ASSIGNMENTS:** Seller shall not delegate any duties, nor assign any rights or claims hereunder without prior written consent of VPC, and any such attempted delegation or assignment shall be void. All claims for monies due or to become due from VPC shall be subject to deduction by VPC for any setoff or counterclaim arising out of this or any other of VPC'S Purchase Orders with Seller, whether such setoff or counterclaim arises before or after any such assignment by Seller.

11. **CHANGES-TERMINATION:** VPC may modify the terms or conditions hereof or terminate work hereunder, in whole or in part at any time by written or telegraphic notice, and upon the receipt thereof, Seller shall to the extent directed by VPC, stop both work and the placement of further orders or subcontractors, terminate work under orders and subcontractors outstanding, and take any necessary action to protect property in Seller's possession in which VPC has or may acquire an interest. Modification or termination shall be without prejudice to any claims which Seller may have against VPC. VPC shall pay Seller's reasonable cost in making settlement hereunder, and in protecting property in which VPC has or may acquire an interest, provided that total payments hereunder shall not exceed the aggregate price specified herein, and provided that such claims for payment must be asserted within thirty (30) days from the date of receipt of notice of such modification or termination. Nothing contained herein shall relieve Seller from proceeding without delay in the performance of this Purchase Order as modified. Notwithstanding anything to the contrary herein, and with respect to modifications hereof, in those instances where the face hereof bears a Government contract number. VPC may modify only the drawings and specifications, packing and packaging, place of delivery, quantities and delivery schedule. VPC may cancel and terminate this Purchase Order without any liability or obligation in the event of: a) the commencing of any proceeding under the Bankruptcy Act, federal or state, as amended, by or against Seller; b) Seller becoming insolvent; c) Seller making any assignment for the benefit of creditors; d) a writ of attachment or executing being levied on any property of Seller and not being released or satisfied within ten (10) days therefrom; e) a receiver being appointed in any proceeding or action to which Seller is a party; f) the failure by Seller to produce and deliver acceptable



goods, or comply with any other instructions, terms, conditions, or warranties applicable hereto; g) any other event occurring which under the Uniform Commercial Code or other applicable law should entitle VPC to cancel and terminate this Purchase Order. In the event of termination for cause (a through g above), VPC may produce or purchase or otherwise acquire goods elsewhere on such terms or in such manner as VPC may deem appropriate, and Seller shall be liable to VPC for any excess cost or other expenses incurred by VPC. In the event Seller is entitled to recover damages hereunder, such damages shall not include any incidental damages as defined in Section 2-710 of the Uniform Commercial Code.

**12: CONSIGNMENT:** Unless otherwise provided herein, all supplies, materials, drawings, manuals, facilities, tools, figs, dies, fixtures, patterns or equipment furnished to Seller by VPC shall remain the property of VPC. Seller shall bear all risk of loss and damage thereto, normal wear and tear excepted, while such property is in Seller's actual or constructive possession. Such property shall at all times be properly housed and maintained by Seller, shall not be commingled with the property of Seller or others, shall not be moved from Seller's premises without prior written authority from VPC and shall, upon request by VPC, be immediately returned to VPC.

**13. NON-WAIVER, REMEDIES, COST AND ATTORNEYS' FEES:** The remedies herein reserved or created shall be cumulative and additional to any other or further remedies provided at law or in equity. VPC may remedy any breach of the terms or conditions hereof and may waive any breach of the terms or conditions hereof without waiving the breach remedied or without waiving any other prior or subsequent breach. Seller shall indemnify and hold VPC harmless from and against all liabilities, losses, and incidental damages, and expenses, including VPC's reasonable attorney's fees, resulting from a claim based upon either strict liability, or from the breach of any of the terms and conditions hereof, whether negligent or otherwise specifically including, but not limited to, the breach of any of Seller's warranties. Any action for breach hereof must be commenced within two years after the cause of action has accrued. For purposes hereof, a breach of warranty shall be deemed to accrue, not when the goods are tendered, but when the actual breach is discovered.

**14. INVOICE:** Unless otherwise provided in this Purchase Order, no invoice shall be issued and no payment shall be made prior to physical delivery and acceptance of goods, or completion of the rendering of services to VPC. Individual invoices, one copy only, showing this Purchase Order number description of goods as shown herein, number of cartons shipped, and carrier and weight, shall be issued for each shipment applying hereto. Shipping charges and all applicable taxes, or charges for which VPC has agreed to pay, and has not furnished an exemption certificate, shall be itemized separately on Seller's invoices. Unless such charges are itemized, VPC may take the applicable discount on the full amount of each



invoice. With respect to any discount offered, time shall be computed from the date of delivery or from the date correct invoice is received by VPC, whichever last occurs. When Seller has pre-shipped material, the discount period will begin on the date the goods were scheduled to be delivered. Payment is deemed to be made for the purpose of earning the discount, on the date VPC's check is mailed.

15. **SEVERERABILITY:** Any provisions of this Purchase Order prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remaining provisions hereof.

16. **FAIR LABOR STANDARDS ACT:** All invoices from Seller shall bear the following certification:

"The supplier herein represents that the goods and/or services covered hereby were produced in accordance with the requirements of the Fair Labor Standards Act of 1936 as amended."

17. **OCCUPATIONAL SAFETY AND HEALTH ACT:** Seller hereby warrants that all goods conform with the Occupational Safety and Health Act (OSHA). In the event that the goods do not conform and VPC is penalized for such nonconformance, Seller shall indemnify VPC for all penalties, costs and expenses including interest levied against VPC.

18. **EQUAL OPPORTUNITY EMPLOYER:** Virginia Panel Corporation is an Equal Opportunity Employer.

19. **INCORPORATED:** Virginia Panel Corporation is an at will employer registered in the State of Virginia and operates by Virginia State laws.

Last review 4/16/2020

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