



Zidell Marine Corporation

1. TERMS AND ACCEPTANCE

This order becomes a contract (1) when signed acknowledgment is received by the Buyer, or (2) when shipment according to schedule of all or any portion of the goods covered by this order shall be made, or (3) when written approval is given to Seller by Buyer of the price and delivery schedule of the goods as stated by Seller if Seller's written acknowledgment of this order contains either: (a) a different price or delivery schedule or a different type of item, or (b) no price or no delivery schedule for the item or items to which Buyer's approval applies. Except as provided in the preceding sentence, it is a condition of this order that any provisions printed or otherwise contained in any acknowledgment hereof, inconsistent with or in addition to the terms and conditions herein stated, and any alteration in this purchase order shall have no force or effect and that the Seller by such acknowledgement thereby agrees that any such provisions therein or any such alterations in this order shall not constitute any part of this contract of purchase and sale. This contract contains the entire agreement of the parties, and failure of either party to enforce any of its rights hereunder shall not constitute a waiver of such rights or any other rights hereunder.

2. INSPECTION WARRANTY

Goods delivered (whether paid for or not) are subject to inspection, testing, and approval by Buyer before acceptance. The Seller expressly warrants that all articles, materials, and work will conform to the applicable drawings, specifications, samples, or other descriptions given in all respects, and that the goods delivered hereunder will be of good quality, material and workmanship, merchantable and free from defects. This warranty shall survive any inspection, delivery, acceptance, or payment by Buyer for the goods or services.

3. NONCONFORMING GOODS

All goods not fully up to standard and not in compliance with the specifications hereof or shipped contrary to instructions, or in excess of the quantities herein provided, or substituted for goods described or not shipped in containers conforming to Buyer's specifications (or, in the absence of such specifications in recognized standard containers), or allegedly violating any statute, ordinance, or administrative order, rule or regulation, may be rejected by Buyer and returned or held at Seller's expense and risk. Buyer may charge to Seller all expense of inspecting, unpacking, examining, repacking, storing and reshipping any goods rejected as aforesaid. The remedies herein above afforded to Buyer shall not be exclusive, but Buyer may hold Seller liable for any and all damages arising from any breach or default herein above set forth.

4. PRICE

Prices recorded in this order are not subject to increase. No additional amounts shall be chargeable to Buyer because of taxes or excises, presently or hereafter levied on Seller. If Seller's quoted prices for the goods covered by this order are reduced (whether in the form of a price reduction, close out, rebate, allowances, or additional discounts offered to anyone) at time of any shipment, Seller agrees that the price to Buyer for such goods will be reduced accordingly and that Buyer will be billed at such reduced prices. If price is not recorded on the face of this order, price shall be of last previous order given by Buyer to Seller, subject to the provisions of this paragraph. If price included taxes or excises and if such taxes or excises or any part thereof are hereafter refunded to Seller. Seller shall immediately pay Buyer the amount of such refund. Seller certifies that the prices herein are not higher than prices being charged to other organizations purchasing identical goods in smaller quantities at this particular time and do not discriminate against purchaser.

5. PRICE DISCRIMINATION

Seller represents that the prices and terms of purchase, and any allowances available shall be in full compliance with the Robinson-Patman Act.

6. PAYMENT

Terms of payment are as previously arranged, or if specified in this order, then as so specified in this order.

7. DELIVERY TIME OF ESSENCE

Buyer's schedules are based upon the agreement that the goods will be delivered to Buyer by the dates specified on the face of the purchase order. Time is therefore of the essence and if goods are not delivered within the time specified hereon, Buyer may reject such goods and cancel the order. The acceptance of late or defective deliveries shall not be deemed a waiver by Buyer of its rights to cancel this order, or to refuse to accept further deliveries.

8. WARRANTY AGAINST INFRINGEMENT

Seller warrants that the sale or use of goods of the Seller's design or Seller's patents covered by this order either alone, or in combination with other materials, will not infringe or contribute to the infringement of any patents or trademark or copyrights either in the United States or in foreign countries and the Seller covenants to defend every suit which shall be brought against the Buyer or any party selling or using the Buyer's product for any allegiance infringement or any patents, trademarks or copyrights, by reason of the sale or use of said materials either alone, or in combination with other materials and to pay all expenses and fees of counsel which shall be incurred in and about defending every such suit and all costs, damages, and profits recoverable in every such suit.

9. CONFLICTING TERMS

If terms on this order do not appear on or agree with the Seller's invoice as rendered, Seller agrees that Buyer may change invoice to conform to this order and make payment accordingly.

10. LAW GOVERNING

Interpretation of this order shall be in accordance with the laws of the state of Oregon.

11. ATTORNEY'S FEES

In the event any suit action or proceeding shall be commenced concerning this order the prevailing party in such suit, action or proceeding shall be entitled to recover from the non-prevailing party its reasonable attorney's fees incurred herein.