**Poseidon Barge, LTD Terms & Conditions- Purchase Orders**

**(These terms and conditions apply to purchases made by Poseidon Barge. to new and existing suppliers)**

1. TERMS OF PURCHASE

 These terms and conditions of purchase (this “*Purchase Order”* or this “*Agreement”*) exclusively governs the purchase of all components, parts, accessories, products and/or services (the *“Product*(s)*”*) sold by *Seller* to Poseidon Barge. (*“Buyer”*). Whether this form is deemed an offer, an acceptances or a confirmation, *Buyer* expressly conditions its purchase of *Product*(s)on *Seller’s* assent to these terms, notwithstanding any difference, additions, or conflicting terms contained in the terms proposed by *Seller.* This *Purchase Order* contains the entire agreement between the *Buyer* and the *Seller.* No modifications or additions to the terms set out in this *Purchase Order* shall be valid unless in writing and signed by and authorized representative of *Buyer* and *Seller*. *Seller* is an independent contractor and under no circumstances may *Seller* represent itself as an agent for the *Buyer.*

2. ACCEPTANCE OF TERMS AND CONDITIONS OF PURCHASE ORDER

2.1 This *Purchase Order* constitutes *Buyer’s* offer to *Seller* to buy *Product*(s) and shall become a binding agreement subject to the descriptions, terms, and conditions set forth on both sides of this document upon acceptance by *Seller. Seller’s* acceptance shall be indicated either (i) *Seller’s* signing or returning the acknowledgement copy of this *Purchase Order;* or (ii) *Seller’s* commencement of services or delivery of materials, either in whole or in part.

2.2 *Buyer* shall have no obligation or liability with respect to any and all *Product*(s) delivered in excess of the amount or otherwise not in conformity with this *Purchase Order*. At *Buyer’s* options, such *Product*(s)may be returned to *Seller* at *Seller’s* sole expense.

2.3 *Seller* shall provide *Buyer* with written notice prior to making any change in the services or *Product*(s)furnished pursuant to this *Purchase Order,* particularly any modifications in any design specifications, assembly procedures, or changes in any raw materials or component parts of any of *Seller’s Product*(s), to allow *Buyer,* at its sole discretion, to determine whether to accept such changes, based on any adverse effect on the quality of *Buyer’s* own final products, processes, or services.

3. BUYER DESIGNED ARTICLES; QUALITY

 All materials used in the *Product*(s) delivered under this *Purchase Order* shall be in conformity with applicable drawings, specifications, and requirements with respect thereto. *Seller* shall maintain test data to substantiate compliance with the foregoing, and *Seller’s* manufacturing processes and inspection system shall be subject to on site review and verification by *Buyer’s* representatives.

4. CANCELLATION OF PURCHASE ORDER

4.1 *Buyer* shall have the right, at its option, to modify or cancel this *Purchase Order* or any part thereof, to refuse delivery of any *Product*(s) and return to, or hold for the account of, *Seller* any *Product*(s) already received by *Buyer*: (i) upon *Seller’s* failure to make any delivery in accordance with the terms of this *Purchase Order* or to comply with shipping and instructions of *Buyer*; (ii) in the event that any *Product*(s) supplied by *Seller*: (a) do not meet the specifications; (b) are defective; (c) are not satisfactory to *Buyer*; or (iii) on account of any unforeseeable cause beyond the control of *Buyer*, including any act or demand of the United States or any state or local government body, act of God, or of the public enemy, fire, flood, epidemic, quarantine restriction, strike, embargo, failure of usual means of transportation and any other case which in the judgment of *Buyer* may adversely affect the manufacture or sale of any product by *Buyer*.

4.2 In the event any institution of proceedings by or against *Seller* in bankruptcy or insolvency, or under any provision of the United States Bankruptcy Act, or the appointment of a receiver or trustee or and assigned for the benefit of creditors of *Seller*, *Buyer* may cancel this *Purchase Order* forthwith, without waiving any of its remedies.

5. SHIPMENTS

5.1 Unless there are prior agreed upon shipping terms set forth by *Buyer* and *Seller, Buyer* shall designate proper procedure on how *Product*(s) are to be shipped. If in order to comply with *Buyer’s* required delivery date it becomes necessary for *Seller* to ship by a more expensive way than specified in this purchase order, any increased transportation costs resulting therefrom shall be paid for by *Seller* unless the necessity for such rerouting or expedited handling has been caused by *Buyer.*

5.2 All risk of loss shall be upon *Seller* until such time as the *Product*(s) ordered shall be delivered to the final destination specified in the *Purchase Order* and are accepted by *Buyer*. This shall be so without regard to the FOB point.

5.3 No charge will be allowed for packing, crating, drayage, or storage unless agreed upon in writing by *Buyer* and *Seller* at time of purchase. Shipments must be packed to conform to the requirements of the carriers.

5.4 All shipments must be forwarded to *Buyer* at the time and place and in the manner indicated on the *Purchase Order*. Time is of the essence. *Buyer* requires timely delivery. In the event of any variance, all additional expenses to which *Buyer* may be subjected shall be borne by the Seller. *Buyer* may purchase replacement *Product*(s) elsewhere and *Seller* shall be liable for any difference in price *Buyer* must pay, as well as any actual and reasonable out of pocket costs *Buyer* may incur to obtain the replacement parts.

5.5 *Product*(s) shipped to *Buyer* from abroad shall be securely packaged and braced for export, as light as possible, and the smallest cubical bulk consistent with safe carriage by ocean vessel, railroad, or craft (as the case may be). All packaging and boxing costs shall be borne by the *Seller*. *Seller* shall be in compliance with all requirements set forth by the United States Government to import any products covered by this *Purchase Order* including: proper packaging, labeling, documentation, and insurance *Buyer* will indicate method of shipping.

5.6 An itemized packing slip bearing *Buyer’s Purchase Order* number as shown herein must accompany each delivery; and each container must be marked to show *Buyer’s Purchase Order* number. *Buyer’s* count will be accepted as conclusive on all shipments.

5.7 After shipment of the *Product*(s), *Seller* shall submit a separate invoice to *Buyer* at the address indicated under the “Bill To” section of this *Purchase Order.*

5.8 All *Product*(s) are subject to inspection and may be rejected in accordance with the criteria specified in this *Purchase Order*. Upon request of *Buyer*, *Seller* shall issue a refund, repair, or replacement of any rejected *Product*(s) as determined by *Buyer*, without additional cost or charge and in a timely manner. In the event the *Buyer* receives *Product*(s) whose defects or nonconformity is not apparent upon inspection, the *Buyer* reserves the right to require replacement, as well as payment of damages.  Nothing contained in this *Purchase Order* shall relieve in any way the *Seller* from the obligation of testing, inspection and quality control. Payment will not be deemed acceptance by *Buyer*.

6. PRICE; DISCOUNTS; PAYMENT; TAXES

6.1 *Product*(s) not priced on this *Purchase Order* will be supplied at the lowest price last charged by *Seller* for equal quantity, and shall not exceed current prices quoted or charged by *Seller* for similar items and quantity. *Seller* will refund to *Buyer* any amounts in excess of such price. *Seller* warrants that the prices for the *Product*(s) supplied to *Buyer* hereunder are not less favorable than those currently extended to any other customer for the same or similar *Product*(s) in similar quantities.

6.2 *Seller* agrees that *Buyer* shall receive the benefit of any reduction in the price for any *Product*(s) or service described herein which shall be make or in effect at the time of the shipment, or delivery, or furnishing thereof to *Buyer* and that in any such case the price therefore provided in this *Purchase Order* shall be reduced accordingly.

6.3 It is understood that the cash discount period will date from the receipt of the *Product*(s) or from the date of the invoice, whichever is later.

6.4 The price, per the negotiated terms between *Buyer* and *Seller*, of the *Product*(s) sold hereunder shall not be due and payable until delivery and acceptance of the *Product*(s).

6.5 *Seller* shall separately state on all invoices and confirmations the applicable sales taxes imposed by federal, state or local governments, unless and exemption is available.

7. WARRANTIES AND COMPLIANCE WITH LAWS

7.1 *Seller* expressly warrants that all *Product*(s) provided pursuant to this *Purchase Order* shall be: (i) merchantable; (ii) fit and safe for the purpose for which it is manufactured; (iii) free from defects in material and workmanship; (iv) in conformance with applicable specification, drawings, samples, and descriptions; and (v) that if of *Seller’s* design, shall be free from design defects. Additionally, *Seller* warrants that it has good title to the *Product*(s) supplied and that they are free and clear from all liens and encumbrances. These warranties shall survive acceptance and payment by *Buyer. Product*(s) not in accordance with these warranties may be returned to *Seller* and *Seller* shall pay for transportation both ways. *Buyer* shall have the option of returning such *Product*(s) to *Seller* at any time after delivery for credit or replacement at the price charged. The foregoing shall not be in limitation of any rights which *Buyer* may have at law or in equity by reason of any breach of warranties.

7.2 *Seller* herby guarantees that the *Product*(s) sold hereunder are not and will not be, on the date of shipment or delivery, either adulterated or misbranded within the meaning of the U.S. Food, Drug, and Cosmetic Act, as amended, or within the meaning of any applicable state or local law in which the definitions of adulteration and misbranding are substantially identical with those contained in the Federal Food, Drug, and Cosmetic Act, as said Act and such laws are constituted and effective at the time of such shipment for delivery, and that such *Product*(s) are not and will not be, on the date of such shipment or delivery, *Product*(s) which may not under the provisions of Section 404 or 505 of said Act, to be introduce into interstate commerce.

7.3 *Seller* warrants that the *Product*(s) purchased or provided hereunder have been produced and/or have been designed to and will comply fully with all applicable federal, state, and local standards in effect on the date of shipment, including, without limitations, the appropriate sections of the Occupational Safety and Health Standards Act and the Fair Labor Standards Act, as amended. *Buyer* may, upon notice, inspect *Seller’s* plant and facilities at reasonable times to determine compliance with the provisions set forth herein. In addition to any other remedies contained herein, *Buyer* shall have the right to immediately terminate this agreement and any other agreements with *Seller* if it determines that *Seller* is in violation of this section.

7.4 If this *Purchase Order* is issued pursuant to a contract with the United States Government, or any agency thereof, and such fact is communicated to *Seller* on this *Purchase Order* form or otherwise, then: (i) *Seller* agrees to allow access to any representative of the United States Government, or any agency thereof, to *Seller’s* manufacturing plants, materials, processes, relevant books, and records; (ii) all materials and workmanship is subject to inspection by the United States Government; and the United States Government, as well as the *Buyer*, has the right to reject any *Product*(s) found to be non-conforming or defective; and (iii) *Seller* performing work under this *Purchase Order* shall not discriminate against any employee or applicant because of race, creed, color, national origin or sexual orientation and shall include a similar clause in its subcontracts.

7.5 The following are hereby incorporated by reference and make a part of this *Purchase Order* as is fully set forth herein: (i) the provisions of the Equal Opportunity clause set forth in 41 CFR 60-1.4 (a) pursuant to the requirements of Executive Order 11246; (ii) applicable contractual requirements of the Rehabilitation Act of 1973 as set forth in 41 CFR 60-741.4; (iii) applicable contractual requirements of the Vietnam Era Veterans Readjustment Assistance Act of 1974 as set forth in 41 CFR 60-250.4; (iv) applicable contractual provisions of Public Law 95-507 concerning the utilization and employment of Small Business, Small Disadvantaged Business and Women-Owned Business Concerns; and (v) any law, order, or regulatory provision issued in addition, supplement or replacement of the foregoing concerning federal contractors.

8. INDEMNIFICATION

 *Seller* agrees to indemnify, defend, and hold harmless *Buyer,* its parent, subsidiaries, and affiliated companies; and its officers, directors, managers, agents, and employees, from and against any and all loss, cost, liability, damage, and expense (including without limitations, and reasonable attorneys’ fees, and other costs of litigations) arising out of or in connection with any *Product*(s) provided by *Seller* or *Seller’s* performance hereunder, for or on account of : (i) any injury, death, or damage to person or property, or any claim thereof; (ii) with respect to any *Product*(s) sold hereunder of its use, and infringement, or claim or infringement, of any patent, copyright, design, process, trademark, trade name or other intellectual property right; and (iii) any litigation based on or as a result of any of the foregoing.

9. CONFIDENTIAL INFORMATION AND PUBLICITY

 *Seller* agrees to hold in strict confidence any confidential information disclosed by *Buyer* to *Seller* and to make no use of such information other than that authorized by Buyer. Advertising and promotional material used by *Seller* with respect to *Buyer* (including the use of *Buyer’s* name as a customer) must be approved by *Buyer* in writing prior to release.

10. OWNERSHIP

 *Seller* agrees that any work created as a result of this *Purchase Order* shall be considered a “work made for hire” and any copyright and other ownership of such work shall be owned solely, completely, and exclusively by *Buyer*. *Buyer* shall have the right to publish such work and/or register such copyright in the name of *Buyer* as sole and exclusive author and owner thereof. In the event such work is determined by a court of competent jurisdiction not to be a “work for hire” under the federal copyright laws, this *Purchase Order* shall operate as an irrevocable assignment by *Seller* to *Buyer* of the copyright and other exclusive ownership rights to the work, including all rights thereunder in perpetuity.

11. MATERIALS FURNISHED BY BUYER

11.1 Any artwork, negatives, positives, proofs, engravings, dies, tools, molds, and any other material or equipment furnished by *Buyer*, which shall be used for or in connection with the production of any *Product*(s) pursuant to this *Purchase Order*: (i) shall be and remain in the sole and exclusive property of *Buyer*; and (ii) shall only be used in connection with *Buyer’s* work and shall be held by *Seller* and promptly returned to *Buyer* by *Seller* in accordance with the instructions of *Buyer*.

11.2 *Seller* shall replace or restore to original, usable condition, free of any cost or expense to *Buyer*, any art work or any material described in Section 11.1 which shall be destroyed or become deteriorated or otherwise unusable for or on account of any act or omission of *Seller* contrary to the provisions thereof.

12. DELAYS

 Whenever *Seller* has knowledge that any actual or potential labor dispute or other problem is delaying or threatens to delay the timely performance of this *Purchase Order*, *Seller* shall immediately give notice thereof to *Buyer*, including all relevant information with respect thereto.

13. WAIVER

 Any waiver of strict compliance with any provision of the *Purchase Order* shall not be deemed a waiver of any subsequent breach or failure, nor of *Buyer’s* right to insist on strict compliance thereafter.

14. SEVERABILITY

 In the event that any provision of this *Purchase Order* is for any reason held to be invalid or unenforceable or contrary to public policy, such provision shall be treated as severable, leaving valid the remainder of this *Purchase Order*.

15. ASSIGNMENT

 *Seller* shall not assign this *Purchase Order*, or any part thereof, without written consent of *Buyer*. Such consent shall not release *Seller* from its obligations and liabilities. Any and all rights, benefits, and privileges under this *Purchase Order* including, without limitation the benefit of any and all warranties, shall insure to the benefit of any parent, subsidiary, or other affiliated corporation of *Buyer* to whom the *Product*(s) or services described herein, or any part thereof, shall be delivered or furnished or transferred, whether such delivery, furnishing, or transferal shall be accomplished by *Seller* or *Buyer* or otherwise.

16. ENFORCEMENT

 In the event *Buyer* takes or maintains any action to enforce its right hereunder and prevails and/or obtains a successful result thereafter, *Seller* shall reimburse *Buyer* for its reasonable costs and expenses incurred, including, without limitation, reasonable attorneys’ fees.

17. GOVERNING LAW

 This *Purchase Order* and the contract resulting from *Seller’s* acceptance hereof shall be construed in accordance with and governed by the laws of the State of Indiana. *Seller* and *Buyer* hereby further consent to the personal jurisdiction of the state and federal courts located in the State of Indiana in connection with the disposition of any controversy or action relating to or in any manner arising out of this *Purchase Order*, waive any argument that personal jurisdiction and venue in such forums is not proper or convenient for any reason, and agree Fort Wayne, Indiana Courts have venue over any litigation initiated either by *Seller* or *Buyer*.