

# PURCHASE ORDER

## LAS CRUCES MACHINE MFG & ENGINEERING, INC. (LAS CRUCES MACHINE)

**1. Acceptance of Terms** This PO is expressly conditioned on Seller's acceptance of all the terms and conditions set forth herein. Las Cruces Machine expressly objects to any additions, deletions or differences in the terms or conditions contained in Seller's quotation, proposal, acknowledgment or other document, whether or not such additions, deletions or differences materially alter this PO.

**2. Performance** Time is of the essence in the performance of this PO and if the goods are not delivered or the services not provided in the manner and at the times specified, Las Cruces Machine reserves the right without liability and in addition to its other rights and remedies to take either or both of the following actions: (a) direct expedited delivery of the goods or performance of services, with any difference in cost caused by such change paid by Seller, and/or (b) purchase substitute goods and charge Seller with any loss or additional costs Las Cruces Machine incurs. Seller will provide Las Cruces Machine with certifications of compliance with regard to raw materials (with heat lot, chemical and physical properties), outside processing (specification of process with revisions, part numbers, and WO reference), and calibration suppliers (identifying standards used and tracing to NIST. ISO 17205 Certified preferred).

**3. Inspection** All goods and services purchased hereunder are subject to inspection by Las Cruces Machine at all reasonable times and places notwithstanding the terms of payment, and in any event, prior to final acceptance. No inspection made prior to final acceptance will relieve Seller from responsibility for failure to meet the requirements of this PO. In the event the goods or services do not meet the applicable specifications and instructions, Seller will promptly re-perform the nonconforming services or provide replacement goods satisfactory to Las Cruces Machine at Seller's sole expense. If Seller is unable to accomplish the foregoing, Las Cruces Machine may procure such goods or services from another source and charge to Seller's account all costs, expenses and damages associated therewith. Las Cruces Machine will have the right to enter and inspect all facilities involved with the materials and services subject to this PO, and the right to inspect all associated records for the purpose of monitoring product quality.

**4. Payment** Invoices must contain the following information: PO number, part numbers, description of services, prices, extended totals and attach all supporting documentation, if any. To the extent applicable, all invoices must include any tax amounts, listed separately. Invoices submitted hereunder will be paid Net 45 days after receipt of a correct invoice or acceptance of goods or services by Las Cruces Machine, whichever occurs later. Any adjustments in Seller's invoices due to late performance, rejections or other failure to comply with the requirements of this PO may be made by Las Cruces Machine before payment. Payment does not constitute final acceptance. Las Cruces Machine may offset against any payment hereunder any amount owed to Las Cruces Machine by Seller or its affiliates.

**5. Changes** Las Cruces Machine may, by written notice to Seller make changes to any one or more of the following: (a) specifications for services or goods, (b) quantity, and (c) place and/or time of performance. For any reason, Las Cruces Machine may also direct Seller to suspend in whole or in part the provision of goods or the performance of services hereunder permanently or for such period of time as may be determined by Las Cruces Machine to be necessary or desirable. If any such change or suspension causes an increase or decrease in the cost or time required for the performance of services or provision of goods hereunder, an adjustment may be made in the price or delivery schedule, or both, and the PO will be modified in accordance with Section 22. Any claim for

adjustment by Seller will be deemed waived unless asserted in writing within ten (10) days from receipt by Seller of the notice of change. No change may be made by Seller without the prior express and written approval of Las Cruces Machine.

**6. Warranty** Seller expressly warrants that the goods or services provided under this PO will be performed in accordance with Las Cruces Machine's specifications and instructions. Seller further warrants that the goods and services will be merchantable, non-infringing, free from defects and fit and sufficient for the purpose intended. Further, the services will be performed with the highest degree of skill and judgment exercised by recognized professionals performing the same or similar services. These warranties are in addition to all other warranties, express, implied or statutory. Payment for, inspection of, or receipt of the goods or services does not constitute a waiver of any breach of foregoing warranties. In the event of any breach of the foregoing warranty, Seller will, at its own expense and at Las Cruces Machine's option either: (a) provide replacement goods satisfactory to Las Cruces Machine, (b) re-perform the nonconforming services to the satisfaction of Las Cruces Machine, or (c) refund to Las Cruces Machine the total amount paid for such goods or services. Seller will extend all warranties it receives from its suppliers to Las Cruces Machine and to Las Cruces Machine's customers.

**7. Records** Seller shall maintain, and make available to Las Cruces Machine, all records associated with processing this PO for a period of not less than seven (7) years after completion of the contract, or as otherwise may be reasonably requested by Las Cruces Machine. When Seller disposes of records after the minimum retention period, it shall delete all electronic records from servers/databases and shred all physical records.

**8. Quality Control** Seller shall have or shall implement a quality control system which assures compliance with supplied documentation, including the purchase order, drawings, WO, and specifications, and which prevents the use of counterfeit parts (see AS9100D / ISO 9001 section 8.1.4). Compliance with ISO 9001, AS9100, and/or Nadcap is preferred. Las Cruces Machine may validate Seller's quality control system by confirming the sustained certification approval, quality surveys, and/or by on-site observations and audits. Seller will ensure that all employees or others involved in work pursuant to this PO are aware of their contribution to the materials or service and conformity to the terms of the PO, their obligations towards product safety, and the importance of ethical behavior. Seller will maintain an approved calibration system (where applicable) which ensures valid measurements within the appropriate degree of accuracy, and which is traceable to the NIST.

**9. Conflict Minerals.** Supplier must provide material that is "DRC conflict free" as defined by applicable SEC rules. Any required conflict mineral content must be from recycled or scrap sources or originate from outside of the DRC Covered Countries. Material that contains conflict minerals that originated in a DRC Covered Country will be deemed non-conforming and unacceptable.

**10. Confidential Information** Las Cruces Machine and Seller acknowledge that in their course of dealings, Seller may acquire from Las Cruces Machine confidential and proprietary information about Las Cruces Machine, its business activities and operations, its employees, trade secrets or any other information which by its sense or nature should reasonably be considered confidential (the "Confidential Information"). The confidential information of Las Cruces Machine will only be disclosed to Seller's employees, agents or consultants with a need to know and who are under a written obligation to keep the information confidential. Seller will not disclose the Confidential Information to any third parties. Seller will use the same degree of care but no less than a reasonable degree of care that it uses with regard to its own confidential information to prevent the disclosure of Las Cruces Machine Confidential Information.

**11. Termination For Convenience** Las Cruces Machine may terminate this PO in whole or in part at any time and without cause. Upon notice of termination, Seller will inform Las Cruces Machine of the extent to which it has completed its performance under this PO as of the date of the notice and collect and deliver to Las Cruces Machine any goods or Work Product, as defined in Section 11, which then exists. Las Cruces Machine will pay Seller for goods or services accepted and performed through the effective date of termination provided that Las Cruces Machine will not be obligated to pay more than the payment that would have been due had Seller completed or provided the goods or services. Las Cruces Machine will have no further payment obligation in connection with any termination.

**12. Indemnification** Seller will indemnify, defend and hold Las Cruces Machine, its officers, directors, resellers, employees, agents and customers harmless from and against any and all losses, liabilities, costs, claims, damages and expenses (including attorneys' fees and costs) arising out of or related to this PO including but not limited to the provision of goods or services under this PO or Seller's breach of any term or provision of this PO, including any claims that any such goods or services infringe any patent, copyright, trademark, trade secret or any other proprietary right of any third party.

**13. Limitation on Liability** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL LAS CRUCES MACHINE'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS PO EXCEED THE TOTAL AMOUNT ACTUALLY PAID OR PAYABLE BY LAS CRUCES MACHINE TO SELLER FOR THE APPLICABLE GOODS OR SERVICES PROVIDED UNDER THIS PO NOR WILL LAS CRUCES MACHINE OR ITS RELATED LEGAL ENTITIES BE LIABLE FOR ANY LOST REVENUES, LOST PROFITS, INCIDENTAL, DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

**14. Patents and Data** All records, software, files, data, reports, information, work product, notes, plans, strategies, intellectual property and other information provided by Las Cruces Machine or prepared or developed by or for Las Cruces Machine pursuant to this PO ("Work Product") is the property of Las Cruces Machine and constitutes works made for hire under applicable law. Seller assigns all intellectual property rights in the Work Product to Las Cruces Machine and agrees to complete any documents requested by Las Cruces Machine to perfect its ownership in the Work Product. Seller waives all moral rights related to the Work Product. Seller grants to Las Cruces Machine an unlimited, nonexclusive license to use, copy, modify or create derivative works of any materials delivered to Las Cruces Machine which are developed prior to or outside of this PO. All materials, equipment and other information supplied to Seller by Las Cruces Machine will remain the property of Las Cruces Machine and be returned to Las Cruces Machine when no longer needed by Seller in the provision of services or goods and in any event upon the expiration or earlier termination of this PO.

**15. Relationship of the Parties** Seller is an independent contractor and nothing contained in this PO will be deemed or construed to create a partnership, joint venture, agency or other relationship other than that of supplier and customer. Seller is solely responsible for payment of all compensation owed to its employees as well as employment related taxes. Any agreements or commitments entered into by Seller are not binding on Las Cruces Machine and further Las Cruces Machine assumes no liability with respect to any agreements or commitments entered into by Seller with its employees, agents, suppliers and the like.

**16. Subcontracts and Assignments** Seller agrees to obtain Las Cruces Machine's approval before subcontracting this PO or any portion thereof. Any of Seller's suppliers and subcontractors will be subject to the terms and conditions set forth in this PO. This PO is not to be assigned or delegated by Seller without the prior written consent of Las Cruces Machine.

**17. Insurance** Seller will secure and maintain insurance providing sufficient coverage to comply with its obligations and duty to indemnify as required under this PO. Within five (5) days of receipt of a request from Las Cruces Machine, Seller agrees to provide Las Cruces Machine with a certificate of insurance evidencing Seller's insurance coverages.

**18. Publicity and Disclosure** Without securing the prior written consent of Las Cruces Machine in each instance, Seller will not use the name or logo of Las Cruces Machine or Las Cruces Machine's customer in any news release, public announcement, advertisement, or other form of publicity, or disclose any of the terms or subject matter of this PO to any third party except as may be required to perform this PO.

**19. Non-Waiver of Rights** The failure of Las Cruces Machine to insist upon strict performance of any of the terms and conditions in this PO or to exercise any rights or remedies hereunder will not be construed as a waiver of its rights to assert any of the same or any other terms and conditions under this PO.

**20. Remedies** Any rights and remedies specified under this PO are cumulative, non-exclusive and in addition to any other rights and remedies available at law or in equity.

**21. Governing Law** This PO is governed by and construed in accordance with the laws of the State of New Mexico without regard to its conflict of law provisions. Seller agrees that the state and federal courts in Dona Ana County, New Mexico, will have the exclusive jurisdiction and venue over any claims arising out of or related to this PO.

**22. Entire Agreement** This PO, including all documents incorporated herein by reference, constitutes the entire agreement and understanding between the parties and supersedes and replaces any and all prior or contemporaneous representations, agreements or understandings of any kind, whether written or oral, relating to the subject matter hereof. Except as provided herein, no change, modification or revision of this PO is valid unless agreed to in writing by Las Cruces Machine.

**23. Survival** Both parties agree that any term or condition of this PO which by its sense or nature should be deemed to survive the expiration or termination of this PO will so survive.