



**MILLER  
CASTINGS**

Controlling Document

Control Document MCI-0001 Rev. N/C  
Terms and Conditions of Purchase

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<b>MILLER CASTINGS, INC. Controlling Documents</b>	<b>MCI-0</b>	<b>Originator: Date:</b>	<b>Melissa R. 04/05/2018</b>
<b>MCI-0001 Terms and Conditions of Purchase</b>	<b>Revision N/C</b>	<b>Revised By Date:</b>	

## Terms and Conditions of Purchase

### 1 **Scope**

- 1.1 Supplier acknowledges and agrees that these Terms and Conditions of Purchase (the “Terms and Conditions”) are incorporated in, and made part of each purchase order, outside processing shipper, requisition, work order, specification or other document, whether expressed in written form, by electronic data interchange or other tangible format provided to Supplier (the “Purchase Order”). The Terms and Conditions shall be applicable to all purchases made by Miller Castings Inc. and any entity controlling, controlled by or under common control with it (“Buyer”), from the Supplier, whether purchases are for tooling, machines, parts, raw materials, or other various goods or services (the “Supplied Goods”).
- 1.2 The Purchase Order and Terms and Conditions (the “Contract”) shall constitute the entire agreement applicable to and binding on Buyer for the Supplied Goods, and expressly excludes any application by the Supplier to substitute any terms of sale as well as any documents issued now or in the future by the Supplier relating, directly or indirectly, to the Supplied Goods. Any proposal, offer, counter-offer, or other attempt by the Supplier to vary any of the Terms and Conditions are rejected, and Supplier agrees that any such additional or inconsistent terms shall have no force and effect unless expressly agreed to in writing by Buyer. Notwithstanding the foregoing, any typographical or clerical errors to the Contract are subject to correction by Buyer.

### 2 **Acceptance**

- 2.1 Any of the following by the Supplier shall constitute acceptance of this Contract and all its terms and conditions: executes and returns an acknowledgement copy of the Purchase Order, otherwise indicates its acceptance of the Purchase Order, prepares to or begins performance of the Purchase Order, delivers to Buyer any of the items ordered, or renders for Buyer any of the services ordered.

### 3 **Price, Invoicing and Conditions of Payment**

- 3.1 All prices for Supplied Goods shall be as stated on the Purchase Order. Supplier shall be solely responsible for all transport and unloading costs, customs charges, taxes and insurance costs, unless otherwise specified on the Purchase Order.
- 3.2 Supplier’s invoice shall include all information appearing on the Purchase Order necessary for identification and origin of the Supplied Goods. The invoice shall be sent by the method and to the location specified by Buyer.

- 3.3 No payment shall be made by Buyer in advance of receipt of the Supplied Goods. Unless otherwise agreed to in writing or stated on the Purchase Order, the Supplier's invoice shall be payable, sixty (60) days from the date of invoice.
- 3.4 Payment for Supplied Goods shall not constitute final acceptance of the Supplied Goods or waive Buyer's right to reject the Supplied Goods. Buyer may reject the Supplied Goods and hold the Supplier in default if, at any time, Buyer, or any of its customers, discovers the Supplied Goods to be defective or otherwise not conforming with the requirements of the Contract.
- 3.5 In addition to any right of set off provided by law, all amounts due to Supplier shall be considered net of indebtedness of Supplier and its affiliates/subsidiaries to Buyer, and Buyer shall have the right to set off against or to recoup any amounts due to Supplier and its affiliates or subsidiaries from Buyer.
- 3.6 Supplier may not assign any accounts receivable from Buyer to third parties without the prior written approval of the Buyer.
- 3.7 Supplier warrants that the prices on the Purchase Order are complete and that no other charges will be added without Buyer's written consent.
- 3.8 Buyer has the right to audit and review all records of Supplier to enable Buyer to verify the accuracy of the amount charged for the Supplied Goods, assess Supplier's ongoing ability to perform its obligations under a Contract or to verify any claim submitted to Buyer in accordance with these Terms and Conditions. Supplier agrees to maintain all records relating to the Supplied Goods for a period of seven (7) years following final payment under any Purchase Order.

#### 4 **Compliance**

- 4.1 Without prejudice to the provisions of §4.2. the Supplied Goods shall be manufactured/provided in compliance with these Terms and Conditions.
- 4.2 Supplier shall comply with all applicable Federal, State and local laws, regulations and ordinances. Supplier shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Contract. Supplier shall comply with all export and import laws of all countries involved in the sale of goods under this Contract or any resale of goods by Supplier, if applicable. Supplier assumes all responsibility for shipments of goods requiring any government import clearance. Buyer may terminate this Contract if any governmental authority imposes duties or any other penalties on Supplied Goods. In addition, Supplier will cooperate fully upon the request of Buyer with respect to any laws, regulations or ordinances that Buyer must or may comply with that arise out of or relate to this Contract.
- 4.3 At the request of the Buyer, Supplier shall provide an appropriate certificate stating the country of origin of the Supplied Goods.

#### 5 **Right of Entry/Access**

5.1 Buyer reserves the right to Supplier's facility – at any time during performance of this Contract for the purposes of inspecting any or all the material included in the Purchase Order or the records associated with the material; or having given reasonable notice, for auditing Supplier's quality system or quality of work. Buyer also reserves these rights for authorized representatives of its customers and/or the Government or Regulatory Agencies. This applies to all facilities involved in the performance of this Contract and to all applicable records.

## 6 **Packaging and Transport**

6.1 All goods shall be packaged, marked and otherwise prepared in accordance with good commercial practices to provide adequate protection of the goods. Supplier shall mark on containers, handling and loading instructions and shall attach shipment information to the outside of the container. An itemized packing list shall accompany each shipment.

6.2 Materials provided by Buyer for a service to such materials shall be packaged in the same format and in the same containers as received by Supplier.

## 7 **Delays in Delivery**

7.1 Supplier shall strictly adhere to the delivery and completion schedules specified on the Purchase Order, and agrees time is of the essence in the delivery of all Supplied Goods. If, at any time, Supplier believes that it may be unable to comply with the required delivery or completion schedules, Supplier shall immediately notify Buyer in writing of the probable length of any anticipated delay and the reasons for it and shall continue to notify Buyer of any significant change in delivery status. In the event of such notice of or an actual failure by Supplier to comply with the delivery or completion schedules, buyer may, in addition to all other remedies, require Supplier, at Supplier's expense, to ship Supplied Goods via expedited routing to avoid or minimize delay.

## 8 **Ownership of Supplied Goods**

8.1 Notwithstanding §9, all right, title and interest in and to the Supplied Goods shall be transferred to Buyer immediately upon its identification in the Contract. Supplier shall not impose or permit to be imposed any lien, encumbrance or security interest or similar reservation of title on the Supplied Goods.

8.2 All supplies, materials, tools, jigs, dies, gauges, fixtures, molds, patterns, equipment, ancillary products, materials and other items (collectively "Tools") purchased by or furnished by Buyer, in whole or in part, or by third parties on Buyer's behalf, to Supplier under this Contract, or for which Supplier has been reimbursed by Buyer, shall remain the property of Buyer and shall not be pledged to any third party. Supplier shall provide Buyer with drawings, technical specifications, FMEA's and control plans for the Tools. Supplier shall bear the risk of loss and damage to the Tools. The Tools shall at all times:

8.2.1 Be properly stored, operated and maintained by Supplier;

8.2.2 Not be used by Supplier for any purpose other than the performance of this Contract or a later instance for the same Supplied Goods;

- 8.2.3 Be deemed to be the personal property of Buyer or of a third party specified by Buyer;
  - 8.2.4 Be conspicuously identified as property of the Buyer or the party otherwise specified by the Buyer with relevant part numbers;
  - 8.2.5 Not be commingled with other property of Supplier or with that of a third party; and,
  - 8.2.6 Not be moved from Supplier's premises without Buyer's prior written approval.
- 8.3 Supplier shall insure the Tools for damage and loss (including theft) in an amount not less than replacement value and shall maintain general liability insurance regarding operation of the Tools in amounts and coverage reasonable in the circumstances and acceptable to Buyer.
- 8.4 Upon the request of Buyer, the Tools shall be delivered to Buyer by Supplier, either:
- 8.4.1 F.O.B. transport equipment at Supplier's plant, properly packed and marked in accordance with the Contract and requirements of the carrier selected by Buyer; or,
  - 8.4.2 To any location designated by Buyer, provided that Buyer shall pay Supplier the reasonable cost of delivering the Tools to the location. Buyer has the right to enter Supplier's premises at all reasonable times to inspect the Tools and Supplier's records with respect to the Tools.
- 8.5 Buyer does not guarantee the accuracy of any Tools or the availability or suitability of any Tools furnished by Buyer to Supplier, including any warranty, either express or implied, as to fitness, condition, merchantability, design or operation or fitness for a particular purpose. Supplier agrees to check carefully and approve all Tools supplied by Buyer prior to use. Supplier shall assume all risk, loss, damages, injuries or expenses arising, either directly or indirectly, from the use, maintenance or repair of Tools, including any interruption of service or loss of business, profits or any other indirect, special or consequential damage and/or personal injury or death.
- 8.6 In any dispute involving ownership of Tools, there is a rebuttable presumption that Buyer is the sole owner of the Tools and Supplier grants Buyer a security interest in the Tools to secure Supplier's obligations under these Terms and Conditions. Supplier authorizes Buyer, at Buyer's sole option, to file financing statements to evidence Buyer's interest in the Tools.
- 8.7 Supplier grants Buyer an exclusive, irrevocable option to purchase any Tools owned by Supplier and used in the manufacture of the Supplied goods at a price agreed upon in writing by the parties, but in no event greater than the replacement cost of the Tools less depreciation. Buyer may exercise this option at any time, provided that Supplier does not utilize the Tools owned by the Supplier for staple goods for third parties. Supplier shall obtain any applicable waiver, release or approval from financing sources so that Buyer may exercise its rights under this §8.7.

9 **Risk of Loss**

- 9.1 Risk of loss with respect to the Supplied Goods shall remain with the Supplier until the Supplied Goods have been delivered to and accepted by Buyer, or an agent or consignee duly designated by Buyer, at the location indicated on the Purchase Order.

10 **Acceptance of Supplied Goods**

- 10.1 Buyer reserves the right to reject or revoke acceptance of nonconforming Supplied Goods, which includes but is not limited to defects or defaults revealed by inspection, analysis or subsequent manufacturing operations, even though such items previously may have been accepted, noncompliance with the Contract or noncompliance with the date and hours of delivery at any time.
- 10.2 In addition to §10.1 and any other remedies Buyer may have, at its option, Buyer may:
- 10.2.1 Correct or have corrected the nonconforming Supplied Goods at Supplier's expense;
  - 10.2.2 Reject and return the Supplied Goods at supplier's risk and expense; or,
  - 10.2.3 Instruct Supplier to retrieve the nonconforming Supplied Goods at its expense within eight (8) days of notification of rejection or revocation of acceptance. Buyer shall be permitted to dispose of the Supplied Goods upon Supplier's failure to retrieve the nonconforming Supplied Goods. If defects or deficiencies in the Tools provided by Supplier are discovered by Buyer prior to a successful runoff and final acceptance, Buyer shall be entitled to, among other remedies, a return of all sums paid to date under this Contract.
- 10.3 Supplier shall be responsible for the design and manufacture of the Supplied Goods to the extent designated by Buyer in the Purchase Order or as otherwise agreed to in writing by the parties, regardless of any assistance provided by Buyer or approval by Buyer.

## 11 **Corrective Action Request**

- 11.1 Acceptance of this Contract obligates the Supplier to perform, upon request, a corrective action investigation when nonconforming Supplied Goods are identified by the Buyer. A written report shall be furnished which is specific and conclusive to prevent recurrence of the nonconformance within thirty (30) calendar days.

## 12 **Nonconformance Notification**

- 12.1 Supplier shall notify Buyer of any proposed deviation or change (before the fact), or any departure (after the fact), from component definition, specifications, or other requirement of the Contract for consideration by the buyer or its customers. No changes in materials, processes, procedures, design interfaces or software which might affect fit, form, function, safety, weight, maintainability, service life, reliability, or interchangeability of the Supplied Goods to be delivered to the Buyer will be made without prior written approval from the Buyer. Additionally, the Buyer shall be notified prior to any major plant rearrangement or plant relocation.

## 13 **Changes**

- 13.1 Buyer shall have the right, by written notice, to suspend work or make changes in the Supplied Goods to be provided by Supplier under a Contract, or the delivery thereof. If any such change causes an increase or decrease in the cost of or time required for performance of a Contract by Supplier, an equitable adjustment shall be negotiated promptly and in good faith by the parties, and the Purchase Order modified in writing accordingly.

14 **Work on Premises**

- 14.1 If Supplier's work under this Contract involves operations by Supplier on the premises of Buyer or one of its customers, Supplier shall take all necessary precautions to prevent the occurrence of any injury to person or property during the progress of such work and except to the extent that any such injury is due solely and directly to Buyer's or its customer's negligence, as the case may be, shall indemnify Buyer against all loss which may result from any act or omission of the Supplier, its agents, employees, or subcontractors, and Supplier shall maintain Public Liability, Property Damage and Employee's Liability and Compensation and Occupational Disease Acts.
- 14.2 Without in any way limiting Supplier's responsibility under this §14 when on the premises of Buyer or Buyer's customer, Supplier's employees shall be subject to and will follow the work site safety rules and regulations.

15 **Product and Service Provision**

- 15.1 The Supplier shall implement production and service provision for the Supplied Goods under controlled conditions that shall include as applicable:
- 15.1.1 The availability and use of suitable monitoring and measuring equipment;
  - 15.1.2 the implementation of actions to prevent human error;
  - 15.1.3 the establishment of criteria for workmanship;
  - 15.1.4 the accountability for all products during production;
  - 15.1.5 the availability of evidence that all production and inspection/verification operations have been completed as planned, or as otherwise documented and authorized;
  - 15.1.6 the provision for the prevention, detection, and removal of foreign objects.
- 15.2 The Supplier shall plan, implement, and control processes, appropriate to the Supplier and the Supplied Goods for the prevention of counterfeit or suspect counterfeit part use and their inclusion in product(s) delivered to Buyer

16 **Termination**

- 16.1 Buyer may, by notice in writing, terminate this Contract, in whole or in part, at any time without liability in the event of any suspension of payment or the institution of any proceedings by or against supplier, voluntary or involuntary, in bankruptcy or insolvency, or under any provisions of the U.S bankruptcy code, or the appointment of a receiver or trustee or an assignee for the benefit of Supplier's creditors, or in the event of Supplier's breach of any provisions hereof, including Supplier's warranties. In the event of partial termination, Supplier is not excused from performance of the non-terminated balance of work under the Contract. In the event of Supplier's default hereunder, the buyer may exercise any or all rights accruing to it, both at law or in equity. Supplier's obligations, including but not limited to obligations under the warranty, proprietary rights, infringement, and indemnity against claims provisions of this Contract, shall survive such termination.
- 16.2 Buyer may, by notice in writing, terminate the Purchase Order or work under the Purchase Order for convenience and without cause, in whole or in part, at any time, and such termination shall

not constitute default. In the event of partial termination, Supplier is not excused from performance of the non-terminated balance of work under the Purchase Order. In the event of termination for convenience by Buyer, Supplier shall be reimbursed for actual, reasonable, sustained and allowable costs; provided, however, that the total amount of any reimbursement shall in no event exceed the total Purchase Order price reduced by the Purchase Order price of the work not terminated. Buyer may take immediate possession of all work so performed upon written notice of termination to Supplier. Supplier's obligations, including but not limited to obligations under the warranty, proprietary rights, infringement, and indemnity against claims provisions of this Purchase Order, shall survive such termination.

17 **Force Majeure**

17.1 Any delay or failure of either party to perform its obligations under this Contract shall be excused if caused by an extraordinary event or occurrence beyond the control of the nonperforming party and without the nonperforming party's fault or negligence, such as fires, floods, windstorms, explosions, riots, natural disasters, wars, terrorist acts and sabotage. Written notice of the delay, including the anticipated duration of the delay, must be given by the nonperforming party within ten (10) days of the event. During the period of any delay or failure to perform by Supplier, Buyer, at its option, may purchase Supplied Goods from other sources and reduce its schedules to Supplier by such quantities, without liability to Buyer, or cause Supplier to procure the Supplied Goods from other sources in quantities and at times requested by Buyer and at the price set forth in the Purchase Order. If requested by Buyer, Supplier shall, within five (5) days of such request, provide adequate assurance that the delay shall not exceed a period of time that Buyer deems appropriate. If the delay lasts more than the time period specified by Buyer, or Supplier does not provide adequate assurance that the delay will cease within the time period, Buyer may, among its other remedies, immediately cancel the Purchase Order and seek damages against Supplier for nonperformance.

18 **Records**

18.1 Evidence of production and inspection/verification operations and its results ("Records") must be legible and reproducible. Records shall be maintained on file and subject to examination by Buyer. Records shall be maintained indefinitely unless otherwise specified by end user requirements and/or specifications, after delivery of Supplied Goods. Records must be retrievable within 48 hours of a request by Buyer.

18.2 Records shall not be changed or modified in such a way as to misrepresent or represent a direct falsehood of the Supplied Goods. Any updates and/or corrections to Records, including but not limited to certifications, shall be appropriately controlled to identify the update and/or correction.

19 **Express Warranty**

19.1 Supplier warrants that all Supplied Goods will strictly conform to all requirements of this Contract (including all applicable descriptions, specifications, and component definitions); and will be free from defects in material and workmanship; and to the extent not manufactured pursuant to



detailed designs furnished by Buyer, be free from all defects in design and will be merchantable and fit for the intended purpose(s).

- 19.2 The warranties in these Terms and Conditions shall be in addition to all other warranties afforded to Buyer by operation of law or by industry standards, except that no course of dealing or usage of trade shall be applicable unless expressly incorporated into these Terms and Conditions by a writing signed by the parties
- 19.3 These warranties shall survive the expiration or termination of the Contract and shall apply to Buyer, its successors, assigns, customers and the end-users of Buyer's Supplied Goods. These warranties may not be limited or disclaimed by Supplier.
- 19.4 Buyer's approval of Supplier's design, material, process, drawing, specifications or the like for the Supplied Goods shall not be construed to relieve Supplier of strict compliance with the warranties in these Terms and Conditions. For purposes of these Terms and Conditions, "Warranty Period" shall be the longer of the following time periods:
- 19.4.1 forty-eight (48) months from the date of the first use of the Supplied Goods by Buyer or acceptance by Buyer, whichever occurs later,
- 19.4.2 if the Supplied Goods are incorporated, in whole or in part, into products sold by Buyer to third parties, the latter of the following dates (a) eighteen (18) months after acceptance by such third parties, (b) the time period if warranty that such third parties give to their customers, or (c) the date on which any longer or broader federal, state or local law, regulations may require, including those regulations of jurisdictions in which the Supplied Goods is installed, used or sold.
- 19.5 Notwithstanding the expiration of the Warranty Period, if Buyer, its customers or the manufacturer of the finished product on which the Supplied Goods, or any parts, components or systems incorporating the Supplied Goods, are installed, voluntarily or pursuant to a government mandate, makes an offer to owners of such finished products to provide remedial action to address a defect that relates to finished product safety, personal safety, or the failure of the finished product to comply with any applicable law, safety standard or guideline (a "Recall"), Supplier shall nonetheless be liable for costs and damages associated with the recall to the extent that the costs and damages are based upon a reasonable determination that the Supplied Goods fails to conform to this Contract.

## 20 **Release of Public Information**

- 20.1 No public disclosure (including, without limitation, photographs, films, announcements, and denials or confirmations) with respect to this Contract, the subject matter, or any phase of any program, shall be made without the prior written approval of the Buyer.

## 21 **Relationship of Parties**

- 21.1 Supplier and Buyer are independent contracting parties and nothing in these Terms and Conditions shall make either party the agent or legal representative of the other for any purpose,

nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.

22 **Code of Conduct**

- 22.1 Supplier shall use good judgement, adhere to high ethical standards and avoid situations that create an actual or perceived conflict between their interests and those of the Buyer.
- 22.2 Supplier shall not directly or indirectly solicit, receive or offer any form of bribe, kickback, or other corrupt payment.
- 22.3 When doing business with or conducting business on behalf of Miller Castings Inc., Supplier may, for legitimate business purposes: offer gifts or entertainment to suppliers, customers or other business associates, or accept gifts or entertainment offered by suppliers, customers or other business associates; provided, however, that in each instance the gift or entertainment:
  - 22.3.1 Is unsolicited;
  - 22.3.2 Is not illegal or in violation of this Code;
  - 22.3.3 Is not a bribe, kickback or other illicit payment;
  - 22.3.4 Is not given in exchange for any consideration;
  - 22.3.5 Would not embarrass Miller Castings Inc. if disclosed publicly; and
  - 22.3.6 Does not create the appearance (or an actual or implied obligation) that the gift is entitled to the preferential treatment, an award of business, better prices or improved terms of sale.

23 **Persons Performing Work:**

- 23.1 Shall be competent on the basis of appropriate education, training or experience and where applicable, qualified to the appropriate standards;
- 23.2 Shall be aware of their contribution to product or service conformity;
- 23.3 Shall be aware of their contribution to product safety; and
- 23.4 Shall be aware of the importance of ethical behavior.

24 **Waiver**

- 24.1 In no event shall Buyer be liable to Supplier for anticipated profits or for incidental or consequential damages. Buyer's liability for a claim of any kind or for any loss or damage arising out of or in connection with or resulting from this Contract or from any performance or breach, shall in no case exceed the price allocable to the Supplied Goods giving rise to the claim.
- 24.2 No action or inaction by Buyer to enforce the Terms and Conditions shall constitute a waiver of compliance with any if the provisions in these Terms and Conditions.

24.3 The failure of Buyer to insist on performance of any provision of this Contract shall not be construed as a waiver of that provision in any later instance.

## 25 **Indemnification**

25.1 To the fullest extent permitted by law, Supplier shall indemnify, hold harmless and defend Buyer, their directors, officers, employees, agents and customers from and against any loss, liabilities, costs, expenses, suits, legal actions, claims, investigations, or any threat of the same, and all other obligations and proceedings including without limitations, all judgements rendered against, and all fines and penalties imposed, and any cost incurred in connection therewith (including but not limited to fees and expenses of lawyers and other professionals incurred in investigating or defending the same and any cost of a Recall) arising out of a breach of this Contract. Suppliers obligation to indemnify Buyer shall not apply to any liabilities arising from Buyer's sole negligence.

## 26 **Insurance**

26.1 Supplier must furnish evidence of insurance that Supplier has and will maintain adequate insurance coverage during the duration of this Contract. Supplier must maintain the following insurance coverage:

26.1.1 Commercial General Liability insurance;

26.1.2 Workers Compensation insurance; and,

26.1.3 Business Automobile insurance coverage on any auto or vehicle (Including owned, hired and non-owned autos or vehicles)

## 27 **Applicable Law and Jurisdiction**

27.1 This Contract shall be governed by and construed in accordance with the laws of the United States Federal Government and/or the State of California, as applicable, without reference to conflicts of law principals.

27.2 If any provision of these Terms and Conditions is or becomes invalid or unenforceable under any law, the remaining provisions shall be in full force and effect as written.

## 28 **References**

28.1 SAE Aerospace AS9100, "Quality Management Systems – Requirements for Aviation, Space and Defense Organizations"

<b>MILLER CASTINGS, INC. Controlling Documents</b>	<b>CD 100</b>	<b>Originator: Date:</b>	<b>Melissa R. 04/05/2018</b>
<b>MCI-0001 Terms and Conditions or Purchase</b>	<b>Revision N/C</b>	<b>Revised By Date:</b>	

<b>REVISION STATUS RECORD</b>				
<b>REV.</b>	<b>REVISION DESCRIPTION</b>	<b>APPROVAL</b>	<b>DATE</b>	<b>TRAINING?</b>
N/C	Initial issue	Q.M.S. A. Macbain	04/05/18	No