

# **DORSTENER WIRE TECH, INC. (DWT) PURCHASING TERMS AND CONDITIONS**

## **GENERAL**

Prompt acceptance of this Order is requested, but, in any event, any delivery hereunder shall constitute an acceptance hereof and of all its terms. This Order is a final, complete and exclusive statement of the agreement between the parties and may not be modified, supplemented, explained or waived by parole evidence, Seller's acknowledgements, a course of dealing, usage in the trade, or in any other way except in writing signed by an authorized representative of Buyer. Any references in this Order to Seller's Proposal or Quotation are only to describe the materials or work covered hereby and do not constitute an acceptance of any terms set forth therein. All Orders shall be governed by and construed in accordance with the laws of the State of Texas, especially the Uniform Commercial Code thereof. Dorstener Wire Tech (DWT) value the confidence and good will of its customers and suppliers. We offer our products only on their merit and we expect our customers to judge and purchase our products and services solely on the basis of quality, price, delivery and service. Likewise, we buy only on merit, and we judge and purchase solely on the basis of quality, price, delivery and service. This policy of ours applies in all relationships with our customers and suppliers.

1 **PERFORMANCE BY SELLER** Time is of the essence for this Order and it is essential it be performed and filled on the specified date(s) and that the work progress in a timely fashion. Seller warrants that material and work furnished hereunder shall be of the highest grade and quality, unless otherwise specified. At Buyer's option, any part of the materials or work not complying with the requirements hereof, expressed or implied, may be returned at Seller's risk and expense, including transportation both ways, for prompt correction of defects. This Order is issued to Seller in reliance on Seller's personal performance, and Seller may not assign this Order or the partial payment of any sums due hereunder, or subcontract any substantial part of the performance of work other than for standard commercial supplies. Seller warrants and certifies that, in the manufacture, production, acquisition, sale and delivery of materials purchased hereunder, it has complied with all applicable provisions of federal, state and local law, including but not limited to, the Fair Labor Standards Act of 1938, Title VII of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, the Vietnam Era Veterans Readjustment Assistance Act of 1974, Executive Order 11246, and the Occupational Safety & Health Act of 1970, as any of the foregoing are amended, together with regulations promulgated pursuant thereto, and all required provisions of the foregoing are hereby incorporated herein by reference, as if set forth herein word for word. Seller warrants and represents that the sale or use of its products does not infringe any United States or foreign patent, and undertakes to indemnify Buyer against all judgments, decrees, costs and expenses resulting from alleged infringement, and agrees that Seller will, upon request of Buyer and at Seller's own expense, defend any suit or action which may be brought against Buyer, or those selling or using any product of Buyer, by reason of any alleged infringement of any patent in the sale or use of Seller's products. Seller warrants and represents that, on or about the time of this Order, Seller has not, nor will not, sell any goods of the kind, in quality and quantity, described in this Order, to any other customer at a price which is lower than the price named herein. If, on or about the time of this Order, Buyer is able to purchase from a seller goods of like quality and in a quantity not more than herein specified, and upon like terms and conditions, at a price lower than the price named herein, Seller shall meet such lower price. Seller shall defend, indemnify and hold Buyer harmless from and against any and all claims, liabilities and causes of action connected with or arising out of Seller's performance hereunder, even if the same is caused or contributed to by the negligence, an act or omission, or a contractually assumed obligation of Buyer. Seller's foregoing indemnity obligation shall be supported by adequate liability insurance furnished by Seller in the amount of at least One Million Dollars (\$1,000,000.00).

2 **CERTAIN CHARGES OR EXPENSES NEGATED** Unless otherwise specifically provided herein, (i) no charges for transportation, packing, crating, cartage, storage or containers, shall be allowed, (ii) Seller shall pay, and the price includes, all applicable sales and similar type taxes which are not imposed by law on the Buyer, and (iii) any information or data disclosed or furnished to Buyer by Seller hereunder shall be deemed sold as part of the price hereof, nonproprietary and free of all restrictions whatsoever.

3 **NONCONFORMING GOODS/DEFECTS** Buyer may reject nonconforming goods and is not required to accept replacements or substitutes or permit cure of defects in any goods rightfully rejected.

4 **SETOFFS** Seller agrees that Buyer shall have the right to setoff against any amounts which may become payable by Buyer to Seller under this Order, or otherwise, any amounts which Seller may owe to Buyer, whether arising under this Order or otherwise.

5 **BUYER'S PROPERTY** Buyer retains title to all drawings, designs, specifications and technical data furnished to Seller for use with this Order and the same shall be treated as Buyer's Confidential Information, shall be used by Seller only to complete this Order, shall not be disclosed to anyone else, and shall be returned upon completion or termination of this Order, along with all copies or reproductions thereof, provided copies or reproductions shall be made only with Buyer's written consent. All materials, including tools, special dies and patterns, furnished or specifically paid for by the Buyer, shall be the property of Buyer, shall be returned to Buyer when no longer required hereunder, shall be used only to complete this Order, and shall be segregated and clearly identified as property of the Buyer. Seller assumes all risk and liability for loss or damage thereto, except for normal wear, and agrees to permit inspection and supply detailed statements of inventory upon request of Buyer.

6 **CHANGES** Buyer may at anytime by written notice, make changes within the general scope of this Order. If any such change affects the time for or cost of performance, an equitable adjustment shall be made in the delivery schedule, purchase price or both by agreement of the parties. All claims by Seller for adjustment under this clause must be asserted in writing and in full within thirty (30) days from the date of notification of the change or shall be waived. Nothing herein shall excuse Seller from proceeding with the Order as changed. No extras shall be allowed except pursuant to written changes and this clause.

7 **TERMINATION** Buyer may at anytime terminate this Order, in whole or in part, by written notice, whereupon Seller shall terminate work pursuant to the terms of such notice. Seller shall promptly advise Buyer of the quantities of applicable work and material on hand or purchased prior to termination and the most favorable disposition that Seller can make thereof. Seller shall comply with Buyer's instructions regarding disposition of such work and material. All claims by Seller, based on such termination, must be asserted in writing and in full within ninety (90) days from the date of notification of the termination, or shall be waived. Buyer shall pay Seller the purchase order price of finished work and the cost to Seller (excluding profit or losses) of work in process and raw material, less, however, (i) the agreed value of any items used or sold by Seller with Buyer's consent and (ii) the reasonable value or cost (whichever is higher) of any defective, damaged or destroyed work or material, and any items sold or used by Seller without Buyer's consent. Buyer will make no payments for finished work, work in process or raw material fabricated or procured by Seller unnecessarily in advance or in excess of Buyer's delivery requirements. Buyer shall not be liable for incidental damages. The payment provided under this clause shall constitute Buyer's only liability in the event this Order is terminated as provided herein. The foregoing provisions of this clause shall not apply to any termination by Buyer for default of Seller or under the following provisions of this clause, unless a court shall find such termination by buyer to be improper. To the extent this Order covers items normally carried in inventory by Seller (as distinguished from items specially made to Buyer's specifications), Buyer shall have no liability for any termination of this Order, in whole or in part, prior to actual shipment and for any termination, within ten (10) days after receipt by Buyer, its liability shall be limited to returning said items and reimbursing Seller for direct costs of handling and transportation. Buyer shall not be liable for incidental damages. Buyer shall not be liable for failure to take delivery of material or work, or render any other performance, in the event fire, accidents, labor difficulties, governmental actions, third party failures, or any other conditions beyond Buyer's reasonable control, render it commercially impractical for Buyer to do so.

8 **GOVERNMENT CONTRACTS**

If this Order is for material or work under a Government Contract or Subcontract, all contract provisions applicable hereto and required by law, order, regulation or Buyer's Government Contract or Subcontract, are hereby incorporated by reference, as fully as if set forth herein in full, where necessary to make the context of such provision or clauses applicable to this Order, the terms "Contractor", "Contract", and "Government" or "Contracting Officer" (or terms of similar import) shall mean respectively, Seller, this Order and Buyer.

9. **HAZARDOUS GOODS** All goods shall be free of Hazardous materials including but not limited to Lead, Mercury, Radioactive Elements, and chemical or items that may be harmful to human health. If hazardous materials are contained in any product ordered by DWT, proper documentation must be provided upon receipt of goods (IE: MSDS Sheets). All illegal or undeclared hazards are the responsibility of Seller .