



Purchase Order Terms & Conditions

As used herein, "Seller" includes Seller, its subsidiaries and affiliates; "Insitu" includes The Insitu, Inc. and its subsidiaries and affiliates. Seller and Insitu hereby agree as follows:

1. **Goods and Services.** Seller agrees to provide the goods and or services described in this purchase order (the "Goods" and or the "Services") in accordance with the requirements set forth on the face of the applicable purchase order (the "P.O.") and these terms and conditions. The P.O. and these terms and conditions constitute and are collectively referred to as the "Agreement".

This Agreement may not be added to, modified, superseded or otherwise altered, except by writing signed by an authorized Insitu representative. Any terms or conditions contained in any acknowledgment, invoice or other communication of Seller, which are inconsistent with the terms and conditions herein, are hereby rejected. To the extent that this Agreement might be treated as an acceptance of Seller's prior offer, such acceptance is expressly made on condition of assent by Seller to the terms of this Agreement and shipment of the Goods by Seller shall constitute such assent. Insitu hereby reserves the right to reschedule any delivery or cancel any purchase order issued at any time prior to shipment of the Goods. Insitu will not be subject to any charges or other fees as a result of such cancellation, unless Insitu pre-authorizes termination liability in writing.

2. **Delivery.** Goods delivered pursuant to the terms of this Agreement shall be suitably packed for shipment in suitable containers to permit safe transportation and marked for shipment by Seller to the shipping destination specified in the applicable purchase order. All packages must be accompanied by a packing list detailing the contents. Insitu's P.O. number must appear on all packing lists and/or bills of lading. Seller shall ship and deliver all Goods to Insitu if international, DDP (Delivered Duty Paid, Incoterms 2000) or if domestic FOB: Destination, Bingen, Washington, USA unless otherwise stated in the purchase order. If any Goods are not shipped within thirty (30) days after the shipping date specified in the applicable purchase order, then Insitu may cancel the applicable purchase order with respect to any such Goods by giving Seller written notice of such cancellation, and any such cancellation shall be without any cost, penalty or liability to Insitu. Seller shall promptly refund any purchase price and other amounts paid by Insitu with respect to the cancelled Goods.

3. **Identification, Risk of Loss & Destruction of Goods.** Title to the Goods and risk of loss shall pass to Insitu at delivery (Bingen, Washington). If the Goods ordered are destroyed prior to title passing to Insitu, Insitu may at its option cancel the Agreement or require delivery of substitute Goods of equal quantity and quality. Such delivery will be made as soon as commercially practicable. If loss of Goods is partial, Insitu shall have the right to require delivery of the Goods not destroyed.

4. **Payment.** As full consideration for delivery of the Goods and Services and the assignment of rights to Insitu as provided herein, Insitu shall pay Seller the amount agreed upon and specified in the P.O. Seller's invoice shall separately state all applicable taxes and other charges such as shipping costs, duties, customs, tariffs, imposts and government imposed surcharges. Seller shall consider payment made when Insitu mails its check to Seller. Payment shall not constitute acceptance unless otherwise stated herein. All personal property taxes assessable upon the Goods prior to receipt by Insitu of Goods conforming to the P.O. shall be borne by Seller. Seller shall invoice Insitu for only Goods delivered and Services completed. Unless otherwise specified on the face of the P.O., Insitu will pay the invoiced amount within thirty (30) days after receipt of acceptable invoice. Seller will not be entitled to any royalty or other remuneration on the production or distribution of any products developed by Insitu in connection with or based on the Goods.

5. **Warranties.** Seller warrants that all Goods or Services furnished under this contract shall conform to all specifications and requirements of this contract and shall be free from defects in materials and workmanship for a period of one year. To the extent Goods are not manufactured pursuant to detailed designs and specifications furnished by Buyer, the Goods shall be free from design and specification defects. Seller warrants that all Goods provided will be new and will not be used or refurbished unless so specified on the P.O. Additionally, Goods purchased shall be subject to all written and oral express warranties made by Seller's agents. All warranties and Service guaranties shall not be exclusive and shall run both to Insitu and to its customers.

If Insitu identifies a warranty problem with the Goods during the applicable warranty period, Insitu will promptly notify Seller of such problems and will return the Goods to Seller, at Seller's expense. Within five (5) business days of receipt of the returned Goods, Seller shall, at Insitu's option, either repair or replace such Goods, or credit Insitu's account for the same. Replacement and repaired Goods shall be warranted for the remainder of the warranty period or six (6) months, whichever is longer. Warranty is transferable to Insitu's customer. If Services are to be performed as part of this Agreement, Seller warrants that is qualified to perform such Services and warrants all Services in accordance with standards referenced in the Statement of Work.



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6. **Inspection and Acceptance.** Insitu or its customer shall have reasonable access to Seller's facilities and records as requested to inspect Seller's facilities, documentation, processes and Goods. Insitu shall have a reasonable time after receipt of Goods and before payment to inspect Goods for conformity with this Agreement and Insitu's specifications and/or drawings (the "Specifications"), and Goods received prior to inspection shall not be deemed accepted ("Acceptance") until Insitu has run an adequate test to determine whether the Goods conform to this Agreement and the Specifications. Payment or use of a portion of the Goods for the purpose of testing shall not constitute an Acceptance of the Goods. If Goods tendered do not wholly conform to the provisions of this Agreement and the Specifications, Insitu shall have the right to reject such Goods. Nonconforming Goods will be returned to Seller freight collect and risk of loss will pass to Seller upon Insitu's delivery to the common carrier. Upon Acceptance, title to all Goods, and if Goods are customized for Insitu, documentation, engineering and modifications to Goods shall transfer to Insitu. Services shall be considered Accepted upon payment of Seller's invoice.

7. **Custom Products.** All Work, if any in customizing Seller's product for Buyer's use shall, to the extent permitted under the United States Copyright Act, be deemed a "Work made for hire," with all copyrights therein vesting in Buyer. Other than where Work created hereunder is considered a "Work made for hire," Seller agrees to, and hereby grants, conveys and assigns to Buyer license rights to all copyrights, trade secrets, patents and other intellectual property rights in all such work, and all originals and copies of such work shall be provided to Buyer upon Buyer's request or the termination or expiration of this Agreement. The Work shall be the sole and exclusive property of Buyer, and Buyer shall own all rights therein, including without limitation the copyright therein, throughout the world. Seller further agrees to provide Buyer with information and assistance and to execute all such additional instruments and documents as may be required to vest and evidence all such right in Buyer, including, without limitation, any Copyright Assignment Agreements that may be requested. To the extent that Buyer has a "look and feel" created under this Agreement ("Look and Feel"), Seller represents and warrants that the Look and Feel shall belong to the Buyer.

8. **Diminishing Manufacturing Sources & Material Shortages.** Seller shall identify obsolete parts, diminishing manufacturing sources and material shortages. Criteria used in evaluating such parts shall include availability of the part(s) the life cycle use of the part and available suppliers. Seller shall monitor the parts and materials that have the potential to adversely affect Insitu's supply of such parts production or life cycle supportability. Seller shall provide Insitu with a minimum of 30 days written notice any time a part is identified as an at risk part or material. Seller's notice shall address part cost, where and how often parts are used in the Goods, and how many parts are affected. Seller's notice shall also include a recommendation to Insitu stating how the parts will be supported in the future.

9. **Insurance.** Seller shall be solely responsible for maintaining such adequate health, auto, workers' compensation, unemployment compensation, disability, liability, product insurance, and other insurance, as is required by law or as is the common practice in Seller's businesses, whichever affords greater coverage. Upon request, Seller shall provide Insitu with certificates of insurance or evidence of coverage before commencing performance under this Agreement. Seller shall provide adequate coverage for any Insitu property under the care, custody or control of Seller.

10. **Indemnity.** Seller shall indemnify, hold harmless, and at Insitu's request, defend Insitu, its officers, directors, customers, agents and employees, against all claims, liabilities, damages, losses and expenses, including attorneys' fees and cost of suit arising out of or in any way connected with the Goods provided under this Agreement. Seller shall not settle any such suit or claim without Insitu's prior written approval. Seller agrees to pay or reimburse all costs that may be incurred by Insitu in enforcing this indemnity, including attorneys' fees.

11. **Confidentiality / Export.** Any written, printed, graphic, or electronically or magnetically recorded information furnished by Insitu for Seller's use are the sole property of Insitu ("Proprietary Information"). Proprietary Information includes, but is not limited to, Specifications, customer requirements, customer lists, marketing information, and information concerning Insitu's employees, products, services, prices, operations, and subsidiaries. Seller will keep Proprietary Information in the strictest confidence, and will not disclose it by any means to any person except with Insitu's approval, and only to the extent necessary to provide the Goods under this Agreement. This prohibition also applies to Seller's employees, agents, and subcontractors. On termination of this Agreement, Seller will return any Proprietary Information in his, her or its possession to Insitu. Seller acknowledges that the Proprietary Information and any other information transferred to Seller is subject to export controls of the US Government, and agrees not to transfer, export or reexport such information without the written permission of the US Government and Insitu. Transfer, export, or reexport for which US Government and Insitu permission is required includes, but is not limited to, transfer to foreign nationals. Insitu shall reasonably assist Seller in securing the permission described in this paragraph.



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12. Termination. Insitu may terminate this Agreement upon written notice to Seller if Seller fails to perform or otherwise breaches this Agreement, files a petition in bankruptcy, becomes insolvent, or dissolves. In the event of such termination, Insitu shall pay Seller for those conforming Goods delivered to Insitu through the date of termination, less appropriate offsets.

Insitu may terminate this Agreement for any other reason upon thirty (30) days' written notice to Seller. Seller shall cease to provide Goods under this Agreement on the date of termination specified in such notice. In the event of such termination, Insitu shall be liable to Seller only for accepted conforming Goods and if Goods are in accordance with Insitu specifications, any in-process Goods delivered to Insitu through the date of termination, less appropriate offsets.

Seller may terminate this Agreement upon written notice to Insitu if Insitu fails to pay Seller within ninety (90) days after Seller notifies Insitu in writing that payment is past due.

Upon the expiration or termination of this Agreement for any reason: (a) each party will be released from all obligations to the other arising after the date of expiration or termination, except for those which by their terms survive such termination or expiration; and (b) Seller will promptly notify Insitu of all Proprietary Information in Seller's possession and, at the expense of Seller and in accordance with Insitu's instructions, will promptly deliver to Insitu all such Proprietary Information.

13. Remedies. If Seller breaches this Agreement, Insitu shall have all remedies available by law and at equity. For the purchase of Goods, Seller's sole remedy in the event of breach of this Agreement by Insitu shall be the right to recover damages in the amount equal to the difference between market price at the time of breach and the purchase price specified in the Agreement. No alternate method of measuring damages shall apply to this transaction. Seller shall have no right to resell Goods for Insitu's account in the event of wrongful rejection, revocation of acceptance, failure to make payment or repudiation by Insitu and any resale so made shall be for the account of Seller.

14. Force Majeure. Neither party shall be liable for any failure to perform, including Insitu's failure to take delivery of the Goods as provided, caused by circumstances beyond that party's control which make such performance commercially impractical including, but not limited to, acts of God, fire, flood, acts of terrorism, acts of war, government action, accident, labor difficulties or shortage, inability to obtain materials, equipment or transportation. In the event performance is so excused, either party may terminate the Agreement and Insitu shall at its expense and risk, return any Goods received to the place of shipment.

15. Severability. If any provision of this Agreement shall be deemed to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

16. LIMITATION OF LIABILITY. IN NO EVENT SHALL INSITU BE LIABLE TO SELLER OR ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT, WHETHER OR NOT INSITU WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

17. Assignment; Waiver. Seller may not assign this Agreement or any of its rights or obligations under this Agreement, without the prior written consent of Insitu. Any assignment or transfer without such written consent shall be null and void. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of Insitu without restriction. A waiver of, or any default hereunder of any term or condition of this Agreement shall not be deemed to be a continuing waiver or a waiver of any other default or any other term or condition.

18. Nonexclusive Agreement. This is not an exclusive agreement. Insitu is free to engage others to provide Goods the same as or similar to Seller's. Seller is free to, and is encouraged to, advertise, offer and provide Seller's standard Goods to others; provided however, that Seller does not breach this Agreement.

19. Notices. Except for Purchase Orders which may be sent by local mail, facsimile transmission, or electronically transmitted, all notices, and other communications hereunder shall be in writing, and shall be addressed to Seller or to an authorized Insitu representative, and shall be considered given when (a) delivered personally, (b) sent by email, confirmed telex or facsimile, (c) sent by commercial overnight courier with written verification receipt, or (d) ten (10) days after having been sent, postage prepaid, by first class or certified mail.

20. Survival of Obligations. Any obligations and duties which by their nature extend beyond the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement, including but not limited to Confidentiality and Export.



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21. **Governing Law.** This Agreement shall be governed and construed in all respects in accordance with the domestic laws and regulations of the State of Washington, without regard to its conflicts of laws principles to the contrary. The parties specifically agree that the 1980 United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

22. **Entire Agreement; Modification.** This Agreement is the complete, final and exclusive statement of the terms of the agreement between the parties and supersedes any and all other prior and contemporaneous negotiations and agreements, whether oral or written, between them relating to the subject matter of this Agreement. This Agreement may not be varied, modified, altered, or amended except in writing, including a purchase order or a change order issued by Insitu, signed by the parties. The terms and conditions of this Agreement shall prevail notwithstanding any variance with the terms and conditions of any acknowledgment or other document submitted by Seller.

23. **Compliance with Laws.** Seller shall comply fully with all applicable federal, state and local laws in the performance of this Agreement including, but not limited to, all applicable employment, tax, export control and environmental laws. If Goods include hazardous materials, Seller represents and warrants that Seller understands the nature of any hazards associated with the manufacture, handling and transportation of such hazardous materials. Upon Insitu's request, Seller will promptly provide Insitu with a statement of origin for all Goods and United States Customs documentation for Goods wholly or partially manufactured outside of the United States.

24. **Compliance with Government Flowdown Clauses (FARs and DFARS).** Seller shall comply fully with all pertinent Government FAR and DFAR clauses applicable to this purchase. These include, but are not limited to the following: 52.225-13 Restrictions on Certain Foreign Purchases, 52.244-6 Subcontracts for Commercial Items, DFARS 252.225-7014 Preference for Domestic Specialty Metals, Alternate I. For a full list of flowdown clauses refer to the Insitu website at www.insitu.com and click on the Supplier Flowdown link: Attachment II.