

NEWBERRY TANKS & EQUIPMENT, LLC
PURCHASE ORDER TERMS AND CONDITIONS

1. **Terms of Agreement.** This offer expressly limits acceptance to the terms of this offer. Notification of objection is hereby given to any term in response to this offer that does not exactly match the terms of this offer.

2. **Deliveries, Time.** Purchaser's production schedules are based upon the agreement that materials will be delivered to the Purchaser by the date specified on the face of the Purchase Order. Time is, therefore, of the essence of this Purchase Order. If deliveries are not made at the time agreed upon, the Purchaser reserves the right to cancel or to purchase elsewhere, and to hold Seller accountable therefore.

3. **Prices and Quantities.** Seller's price and shipments must equal exact amounts ordered unless otherwise agreed to by the Purchaser.

4. **Warranty.** Seller warrants all materials and services delivered hereunder to be free from defect of material or workmanship and to conform strictly to the specifications, drawings, or samples specified or furnished by Purchaser. This Warranty shall survive any inspection, delivery, acceptance, or payment by the Purchaser of the materials or services.

5. **Inspection and Rejection.** Final inspection shall be on Purchaser's premises, and any materials rejected as being non-conforming to the Purchase Order, or as otherwise defective, shall be returned at Seller's expense, including transportation and handling costs.

6. **Termination for Convenience of Purchaser.** Purchaser may terminate this Order or any part hereof with immediate effect at any time with or without cause for undelivered goods upon providing written notice of such termination to Seller. Seller shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by sellers, suppliers, subcontractors which Seller could reasonably have avoided.

7. **Proprietary Information.** Seller shall consider any and all information furnished to it by Purchaser as being proprietary information and shall not be disclosed to any third party.

8. **Force Majeure.** Neither party shall be liable to the other for any delay or failure in performing its obligations under the Purchase Order to the extent that such delay or failure is caused by an event or circumstances beyond the reasonable control of that party.

9. **Insurance.** Seller represents that it has and shall maintain in full force and effect general liability insurance, including product liability, in sufficient amounts and with financially sound and reputable insurers, and shall provide a Certificate of Insurance to the Purchaser, upon request.

10. **General Indemnification.** Seller shall defend, indemnify, hold harmless Purchaser against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, costs, or expense including attorneys' fees arising out of or occurring in connection with any defect in the goods or services purchased hereunder.

11. **Compliance with Laws.** Seller agrees that all goods shipped to the Purchaser under this Agreement will be produced in compliance with all applicable federal and state laws.

12. **Choice of Law.** This Purchase Order and any contract formed hereunder shall be governed by and construed under the internal laws of the State of Arkansas.

13. **Assignment.** Seller shall not assign, transfer or delegate, or subcontract any of its rights or obligations under this Purchaser Order without the express written consent of the Purchaser.

14. **Complete Agreement.** This Purchaser Order Terms and Conditions, together with the amounts and prices to be charged contained on the fact of this Purchase Order contain the entire Agreement between the parties.