

# BROOKVILLE EQUIPMENT CORPORATION (“Brookville”)

## *Purchase Order Standard Terms and Conditions*

**Contract:** Seller shall provide all items, materials, articles, products, or goods and related services, if any, and shall deliver the same to Brookville’s location within the time or schedule and for the compensation set forth in this Purchase Order and shall meet requirements stipulated by Brookville’s customers who purchase equipment into which Seller’s products are incorporated.

**Payment:** Unless otherwise stated, all payments shall be net 30 days from receipt of invoice payable in United States Dollars. Seller is requested to forward an invoice for all goods supplied or services rendered no later than the day following the delivery of the goods or the rendering of the service.

**Contract Forms:** This contract is limited to the items in the Purchase Order and its attachments. Whether these terms are included in an offer or an acceptance by Brookville, such offer or acceptance is conditioned on Seller’s assent to these terms. All other terms and conditions proffered by Seller in any other written or oral communication are deemed specifically rejected; failure to object to any such other terms and conditions shall not operate as a waiver of these terms. The terms and conditions contained in this Purchase Order including without limitation specifications, terms, and conditions, may not be added to, modified, superseded, or otherwise altered except by written instrument signed and dated by Brookville’s authorized representative. Each shipment received by Brookville from Seller shall be deemed to be only upon the terms and conditions contained in this Purchase Order and Purchase Order Standard Terms and Conditions, notwithstanding any terms and conditions that may be contained in any acknowledgement, invoice, or other form of Seller, and notwithstanding Brookville’s act of accepting or paying for any shipment, or similar act of Brookville. This Purchase Order and the documents specifically referred to herein supersede all prior documents, prior correspondence, and other prior agreements whatsoever passing between, or given, or signed, or otherwise delivered by either of the parties to the other, save and except the extent to which any such documents are specifically referred to in this Purchase Order.

**Order Numbers:** Brookville will communicate an eight-digit Purchase Order number (e.g., Xxxx-xx) to Seller by telephone, fax, or email. Seller shall include the Purchase Order number on every package, packing sheet, invoice, and every other communication related to this order.

**Packing and Shipping:** All items must be properly prepared for shipment to secure lowest transportation rates and comply with carrier regulations. No charges will be paid by Brookville for packing, boxing, crating, or cartage, insurance, taxes, duties, documentation, or other extras unless so stated in the Purchase Order. All shipments to be forwarded on one day via one route and must be consolidated. To the extent practicable, items ordered under separate purchase order numbers shall be

segregated within the pallet, box, or shipping container. A separate packing sheet for each order included in a shipment, showing Purchase Order number, must be included with each shipment. The Brookville Equipment Corporation part number and Purchase Order number must be referenced on all packing and shipping documents and invoices. Seller shall be solely responsible for risk of loss to any materials, goods or products shipped to Brookville until said materials, goods or products are received, inspected, and accepted by Brookville.

**Shipment or Delivery; Quantity:** Because Brookville is obligated to deliver equipment to its customer on schedule, time is of the essence to shipment or delivery and to any other performance required of Seller. Shipment or delivery shall be in accordance with the schedule set out in the Purchase Order (as such schedule may be adjusted to accommodate project complications or variations) and in exact quantities ordered. If it appears Seller will not meet such schedule or if Seller fails to meet such schedule, Seller shall, upon request of Brookville, ship via expedited routing necessary to either meet such schedule or to recover the maximum possible time lost by failure to ship or deliver on schedule, and the difference between the expedited routing cost and the Purchase Order routing cost shall be borne by Seller. If Seller fails to meet such schedule and thereby causes Brookville not to deliver equipment to its customer on schedule, Seller shall also pay any late delivery penalty or liquidated damage stipulated by Brookville’s customers who purchase equipment into which Seller’s products are incorporated. Brookville reserves the right at Seller’s expense to return any goods shipped in advance of the schedule set out in the Purchase Order. The specific quantity ordered must be delivered in full and not changed without Brookville’s consent in writing. Any unauthorized quantity is subject to Brookville’s rejection and return at Seller’s expense. Unauthorized “overages” will be returned at Seller’s expense.

**Hazardous Materials:** Before any chemical, material or equipment that contains a chemical is permitted to be brought into a Brookville facility, a Material Safety Data Sheet (MSDS) must be forwarded to Brookville’s Safety Manager who will complete a review and approve or reject the acceptance of the shipment(s). If Seller does not follow this procedure, Shipment(s) made to any Brookville facility will be rejected at Brookville’s dock and returned to Seller at its sole expense and liability.

**Receipt:** Brookville shall be deemed to have received goods procured hereunder when such goods have been deposited at the Brookville’s dock and all bills of lading or other shipping documents that require signature have been signed.

**Inspection; Rejection; Termination:** All items are subject to final inspection and acceptance or rejection by Brookville at the shipping destination notwithstanding any prior payment or inspection at shipping source. All goods that are rejected as

defective or otherwise not in conformity with Brookville's specifications or the terms and conditions of the Purchase Order are rejected at Seller's expense. Said rejected goods shall be returned to Seller at Seller's expense and Seller's risk of loss. If inspection discloses that part of the goods received are not in accordance with Brookville's specifications or the terms of the purchase order, Brookville shall have the right to cancel any unshipped portion of the order. Payment for goods on this Purchase Order prior to inspection shall not constitute acceptance thereof and is without prejudice to any and all claims that Brookville might have against Seller. Brookville's acceptance of any items shall not be deemed to alter the obligations of Seller or the rights of Brookville and its customers under any provision of this Purchase Order. Brookville specifically reserves any and all legal rights and remedies it may have in contract, trespass, or otherwise against Seller for Seller's breach of the contract. No waiver by Brookville of any breach of the contract by Seller shall be considered as a waiver of any subsequent breach of the same or any other provision. Failure analysis reports are required for all system and component non-conformances.

**Cancellation:** If Seller fails to make shipment as herein specified, time being of the essence of this agreement, Brookville may cancel this order, procure the material elsewhere, and hold Seller responsible for any damages sustained by Brookville. Brookville reserves the right to cancel all or part of the undelivered portion of this Purchase Order if Seller breaches any of the terms hereof including, without limitation, the warranties of the Seller.

**Performance:** If any installation is involved, Seller shall prosecute the same with all diligence, and if, in Brookville's opinion, Seller unreasonably delays the work, Brookville may order Seller to cease work and, at Brookville's option, complete or secure the completion of the work at Seller's risk and expense.

**Warranty:** Seller expressly warrants that all materials, articles, products, and goods covered by this Purchase Order or other description or specification, furnished by Brookville shall be in exact accordance with such order, description, or specification, shall be free from all defects in material or workmanship, and shall be merchantable and fit for the purposes for which they are intended. Such warranty shall survive delivery and shall not be deemed waived either by reason of Brookville's acceptance of said materials, articles, and goods, or by payment for them. Should any item provided by Seller not meet the warranty stated in this section, Seller shall provide a replacement item that shall meet such warranty. In the case of liens, demands, or claims, Seller shall immediately satisfy the same.

**Insurance:** Seller at a minimum shall, at all times during its performance hereunder, carry insurance sufficient to protect Brookville from losses related to Seller's products as follows: workmen's compensation and employer's liability (and any other coverages required by similar liability acts); comprehensive general liability including contractual liability; and automotive liability. Seller's insurance shall name Brookville and its affiliates, officers, employees, representatives, successors, and assigns as additional

insureds on a primary and non-contributory basis, shall provide for waiver of subrogation, and shall meet insurance requirements stipulated by Brookville's customers who purchase equipment into which Seller's products are incorporated.

**Indemnification:** Seller agrees to indemnify and hold Brookville, its affiliates, officers, employees, representatives, successors, and assigns harmless from and against any and all claims, causes of action, demands, damages, liabilities, losses, deficiencies, suits, proceedings, fines, penalties, and judgments, including attorney's fees and other costs and expenses incident to any claim, suit, action, or proceeding, in contract, trespass, assumpsit, or otherwise, caused by, relating to, or resulting from injuries to any person or persons (including death) or damage to any property of any kind in connection with seller's performance hereunder or resulting from materials, goods, or products supplied by Seller hereunder, or resulting from Seller's failure to comply with any condition imposed upon Seller hereunder.

**Patents, Trademarks, Intellectual Property:** Seller guarantees that the sale or use of the materials, goods, and its products purchased hereunder shall not infringe on any united states or foreign patent or trademark or any other party's intellectual property, and covenants and agrees to save harmless and indemnify Brookville, its successors, assigns, customers, and users of the materials or goods against any and all claims, demands, judgments, decrees, fines, penalties, costs, and expenses, including legal fees, resulting from any alleged infringement, and covenants and agrees that Seller, upon Brookville's request and at Seller's own expense, defend or assist in the defense of any suit or action that may be brought against Brookville or those using any product of Brookville by reason or any alleged infringement or any patent in the sale or use of Seller's materials, goods, and products.

**Work-Made-for-Hire.** Vendor acknowledges and agrees that all items, materials, articles, products, or goods, and their related patents, trademarks, and intellectual property, set forth in this Purchase Order shall be deemed a work-made-for-hire specifically ordered by Buyer. Vendor hereby further acknowledges and agrees that all of the said items, etc., are the sole property of Buyer for any and all purposes whatsoever. If the said items, etc., are found not to be a work-made-for-hire, Vendor (and any other interested person or entity) hereby irrevocably assigns, transfers, and grants all rights, including all exclusive exploitation rights, in and to such items, etc., to Buyer. If any such right, title, or interest cannot be assigned to Buyer, Vendor (and any other interested person or entity) hereby grants to Buyer, an exclusive, irrevocable, perpetual, transferable, royalty-free, fully paid-up world-wide license fully to use, copy, modify, replace, repair, maintain, improve, and otherwise exploit such right, title, or interest in any manner or form and for any purpose and to permit others to do so.

**Compliance With Laws:** Seller shall observe and comply with all applicable federal, state, and local laws and regulations. Any provision required to be included in a contract of this type by any applicable and valid federal, state, or local law or administrative rule or regulation having the effect of law shall be deemed to be

incorporated herein. Seller agrees to indemnify and hold Brookville harmless from any and all costs, liabilities, penalties, sanctions and fines related to non-compliance with applicable laws and regulations. Seller represents that the goods covered by this purchase order were not manufactured and are not being sold or priced in violation of any federal, state, or local law. Seller agrees that the goods shipped to Brookville under this Purchase Order shall be produced in compliance with the Fair Labor Standards Act.

**Employment Non-Discrimination:** For orders that exceed \$10,000 Seller and any subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status, or disability. The non-discrimination clauses contained in Section 202 of Executive Order 11246, as amended by Executive Order 11375, relative to equal employment opportunity for all persons without regard to race, color, religion, sex, or national origin, CFR 60-741 relative to the employment of qualified handicapped individuals, and CFR 60-250 relative to the employment of Vietnam era and disabled veterans, the non-discrimination clauses contained in the Americans with Disabilities Act relating to equal employment opportunity for disabled persons, and the implementing rules and regulations prescribed by the Secretary of Labor are incorporated herein. If the price hereunder exceeds \$50,000, Brookville's provisions required by Executive Order 11246 are incorporated by reference.

**Independent Contractor:** Seller shall perform as an independent contractor and not as Brookville's agent. Brookville shall not be responsible for nor bound by any of Seller's acts, obligations, or defaults, or for those of Seller's servants, agents, or employees.

**Force Majeure:** Neither Party shall be liable to the other or be deemed to be in breach of the contract by reason of delay in performing, or failure to perform, any of its obligations in relation to the materials and goods if the delay or failure is beyond the affected Party's reasonable control; *provided, however*, that to excuse Seller's performance, Seller's assertion of *force majeure* shall be acceptable to Brookville's customers who purchase equipment into which Seller's products are incorporated. Without limiting the foregoing, the following shall be regarded as causes beyond the affected Party's control: (1) events referred to as acts of God, explosion, flood, tempest, fire, accident, or pandemic; (2) war or threat of war, sabotage, insurrection, terrorist act, or civil disturbance; (3) acts, restrictions, regulations, prohibitions or measures of any kind on the part of any governmental, parliamentary, or local authority; (4) import or export regulations or embargos; (5) strike, lock-outs, or other industrial actions or trade disputes, whether involving employees of Brookville, Seller, or a third party; and (6) power failure or breakdown in machinery.

**Limitation of Liability:** Brookville's aggregate liability for all claims for any loss or damage arising out of or related to this Agreement shall in no case exceed the Contract Price of the Purchase Order from which such claim accrued, and shall, with respect to each cause of action, terminate one year after it arises. In no event shall Brookville be liable for any indirect, special, incidental, consequential, or punitive damages of any nature or kind including but not limited to delays, loss of use, loss of data, loss of profits, or loss of production, even if Brookville has been advised of the possibility of such damages.

**Binding Effect; No Assignment; Severability:** This agreement shall be binding on Brookville and Seller and their successors and assigns. Seller may not assign or transfer this contract to any other party. If any provision of these terms is held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

**Governing Law:** This Agreement and the rights, obligations, and remedies of the Parties under it shall be governed by the law of the State of Pennsylvania, including without limitation the provisions of the Uniform Commercial Code adopted by such state, without regard to its conflicts of law provisions; provided, however, that the provisions of the Convention on Contracts for the International Sale of Goods (CISG) of April 11, 1980 shall be excluded.. The Parties agree that any lawsuit, action, or other proceeding that in any way relates to this Agreement shall be brought only in a state or federal court located in Jefferson County, Pennsylvania. The Parties agree that any other mutually agreed upon mechanism of dispute resolution (including, without limitation, mediation, or arbitration) for purposes of resolving any dispute(s) that in any way relate to this Agreement shall occur only in Jefferson County, Pennsylvania, unless otherwise mutually agreed upon by all Parties. Seller waives all rights to a jury trial in any action or proceeding related in any way to these terms.