

Standard Terms and Conditions

The following terms and conditions are made a part of the purchase order ("Purchase Order") to which they are attached regarding the purchase of certain goods ("Goods") by Nuvera Fuel Cells, Inc. ("Buyer") from the seller ("Seller") named in the Purchase Order. These Terms and Conditions are incorporated by reference into all written and electronic orders between Buyer and Seller as if expressly set forth therein.

- 1. Terms and Conditions.** Any proposal for additional or different terms or any attempt to vary in any degree any of the terms of this offer (unless covered by an existing and current Supply Agreement between the Buyer and Seller) and Seller's acceptance or acknowledgement hereof is hereby objected to and shall not be binding upon Buyer. IF FOR ANY REASON THIS ORDER SHALL BE DEEMED AN ACCEPTANCE OF A PRIOR OFFER MADE BY SELLER, SUCH ACCEPTANCE IS EXPRESSLY CONDITIONED UPON SELLER'S ASSENT TO THE TERMS CONTAINED HEREIN. BUYER WILL PROCEED WITH THIS TRANSACTION ONLY IF SELLER ASSENTS TO THE TERMS CONTAINED IN THIS PURCHASE ORDER.
- 2. Delivery.** Shipment shall be made in the quantities and at the time or times specified in this Purchase Order or in supplementary schedules furnished by Buyer. Unless otherwise stated herein, time is of the essence. If at any time Seller has reason to believe that deliveries will not be made as scheduled, it shall immediately give Buyer written notice setting forth the cause or causes of the anticipated delay. Late deliveries, deliveries of products which are defective or which do not conform to this Purchase Order, and failure to provide Buyer, upon request, of reasonable assurances of future performance shall be causes allowing Buyer to terminate this Purchase Order for cause, and Seller shall be liable for all damages to Buyer by reason of such events that caused termination.
- 3. Inspection, Risk of Loss and Title.** All Goods shall be received subject to Buyer's right of inspection and rejection. Buyer shall have a reasonable amount of time to inspect Goods, depending upon the method of packaging and the quantity purchased. Payment for Goods delivered hereunder shall not constitute acceptance of such Goods, and all payments shall be made with a reservation of rights by Buyer for defects, including, without limitation, defects apparent on the face thereof. When Goods are made to Buyer's instructions, specifications or other requirements, Buyer may inspect such Goods at Seller's plant and any other place of manufacture during production without waiving its rights subsequently to reject or revoke acceptance of such Goods for undiscovered or latent defects. Seller, at its expense, shall furnish or cause to be furnished, facilities and assistance reasonably necessary to insure the safety and convenience of each such inspection. Unless otherwise agreed, title to the Goods covered by this Purchase Order and the risk of their loss or damage shall pass from Seller to Buyer upon the completion of unloading of the Goods at the destination specified on the front of this Purchase Order, subject in all cases to Buyer's right of inspection and rejection within a reasonable time after arrival.
- 4. Cancellation.** Buyer reserves the right to terminate this Purchase Order or any part hereof for its sole convenience. In the event of such termination, Seller shall immediately stop all work hereunder and shall immediately cause its suppliers or subcontractors to cease such work. Seller shall be paid a reasonable termination charge reflecting the percentage of work performed prior to the notice of termination, plus actual direct costs resulting from termination. Seller shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Seller's suppliers or subcontractors which Seller could have reasonably avoided.
- 5. Warranties.** Seller expressly warrants that all Goods covered by this Purchase Order will: (a) conform to any and all final specifications, drawings, plans, instructions, samples or other description, whether expressed or implied, furnished by Buyer or by Seller, (b) be fit and sufficient for the purpose(s) for which they were manufactured and sold, and if Seller knows or has reason to know of any other particular purpose for which Buyer intends to use such Goods, the Goods will be fit for such particular purpose, (c) be new and merchantable, and (d) be of good material and workmanship and free from defects, whether latent or patent. The foregoing warranty shall survive Buyer's inspection, acceptance, use and subsequent disposition or sale of the Goods. Seller hereby extends to Buyer any and all warranties received from Seller's suppliers and agrees to enforce such warranties on Buyer's behalf. All Seller's warranties shall run to Buyer, its successors, assigns, customers and users of products sold by Buyer. Seller agrees to promptly correct all defects in any Goods not conforming to the foregoing warranties, or replace such Goods, without expense to Buyer, when notified by Buyer. In the event of Seller's failure to correct or replace such defective or non-conforming Goods, Buyer may, after reasonable notice to Seller, make such correction or replacement at Seller's expense. The foregoing warranties and remedies shall be in addition to any warranties and remedies of additional scope herein or otherwise provided by Seller to Buyer or otherwise provided by law, including, but not limited to, any and all warranties provided in the Uniform Commercial Code. Seller shall compensate, indemnify and hold Buyer harmless from and against any and all damages, including incidental and consequential damages, claims, liabilities, and expenses (including court costs and attorneys' fees) arising out of or relating to or resulting in any way from a breach of any warranty, whether express or implied, or from any act or omission of Seller, its officers, agents, employees or subcontractors.
- 6. Price Warranty.** Seller warrants that the prices for the Goods are not less favorable than those currently extended to any other customer of Seller for the same or similar Goods in similar quantities. If Seller reduces its price for such Goods prior to final delivery of the Goods to Buyer, Seller shall reduce the price or prices in this Purchase Order in a corresponding manner.
- 7. Intellectual Property.** Seller warrants that manufacture or use of the Goods and the sale or offer for sale of such Goods will not infringe any United States or foreign patent, copyright or trademark of either Seller or any third party. Seller agrees to defend, indemnify and hold harmless Buyer, its directors, officers, employees, successors, assigns, customers and users of its Goods, from and against any damages, claims, liabilities, losses, costs and expenses (including, without limitation, court costs, attorneys' fees, profits, penalties or punitive damages) arising out of or relating to any actual or alleged infringements of such patent, copyright or trademark, or any unfair competition resulting from similarity in design, trademark or appearance, by reason of the manufacture, use, sale or offer of sale of the Goods. Buyer reserves the right to control, actively participate in or monitor, through its own counsel, at Seller's expense, any such claim of infringement or other such action brought against it.
- 8. Buyer's Right to Make Changes.** Buyer shall have the right to make changes to this Purchase Order at any time in: (a) drawings, designs or specifications; (b) the method of shipment or packing; and (c) the place or time of delivery, including temporary suspension of shipments. If such changes cause an increase or decrease in the cost of performing this Purchase Order, or in the time required for its performance, an equitable adjustment will be made by the parties and the Purchase Order shall be modified in writing accordingly.
- 9. Extra Compensation.** Before proceeding with any work or shipping any Goods upon or for which Seller may have a possible claim for extra compensation above the price specified on the Purchase Order, Seller shall submit to Buyer a detailed statement of such items, together with the prices thereof. If Buyer desires to have the work done or the Goods furnished at the prices so stated, its purchasing agent will issue written instructions to the Seller. Claims for compensation above the prices specified in this Purchase Order shall be allowed by Buyer only upon the presentation of such written instructions of its purchasing agent.
- 10. Tools and Materials Owned by Buyer.** Seller shall keep in good condition, be responsible for and protect against loss of or damage to materials, tools, dyes, molds, and other articles owned by Buyer (including such items made or provided by Seller at Buyer's cost) that are in the possession or control of Seller, provided, however, that Seller shall not be responsible or liable for normal loss of or damage to such items arising from processing or manufacturing in accordance with good shop practices. Seller shall not use such items except for performance of work hereunder or as authorized by Buyer in writing. All such items shall be plainly marked or otherwise adequately identified by Seller as property of Buyer and shall be safely stored separately and apart from Seller's property. Unless otherwise directed by Buyer, Seller, upon completion of deliveries made on this Purchase Order, or upon cancellation of this Purchase Order for any reason, shall return all such items to Buyer at Buyer's direction and expense. In addition, Buyer shall have the right to take possession of any such items and the right of entry for such purpose.
- 11. Indemnity & Insurance** Seller agrees to indemnify and hold harmless Buyer and Buyer's directors, officers, employees, successors, assigns, customers and users of its Goods from and against any and all damages, claims, liabilities, losses, costs and expenses (including, without limitation, court costs, attorneys' fees, penalties, or punitive damages) arising out of or relating to resulting in any way from (a) any actual or alleged death or injury to any person, damage to any property or any other damage or loss that results, or is claimed to result, in whole or in part, from any actual or alleged (i) defects, whether latent or patent, in the Goods sold to Buyer including, without limitation, actual or alleged improper construction or design; (ii) breach of any express or implied warranty, or (iii) violation by such Goods or their manufacture, possession, use or sale of any law, statute, or ordinance of any governmental or administrative Purchase Order, rule or regulation, (b) any breach of any covenants and agreements contained in this Purchase Order, or (c) any act or admission of Seller, its directors, officers, employees, agents or subcontractors. Seller will maintain such public liability insurance, including without limitation, products liability insurance, and other insurance as will adequately protect Buyer against such damages, claims, liabilities, losses, and expenses (including without limitation court costs, attorneys' fees, penalties or punitive damages). Seller agrees to submit certificates of insurance evidencing its insurance coverage when requested by Buyer.
- 12. Confidentiality.** Seller shall consider all specifications, plans, instructions, samples and other information furnished by Buyer, or prepared by Seller specifically for Buyer in connection with this Purchase Order to be confidential and shall not (i) disclose any such information to any other persons, or (ii) use such information itself for any purpose other than performing this contract. Without Buyer's prior written permission, Seller shall not advertise or publish the fact that Buyer has contracted to purchase Goods from Seller, disclose information relating to the Purchase Order, nor use the name of Buyer, or any of its customers, in advertising or other publication.
- 13. Applicable Law; Venue.** The rights of all parties hereunder and the construction of every provision hereof shall be governed by the laws of the Commonwealth of Massachusetts, without giving affect to principles of conflicts of law. The parties agree that any action arising out of this agreement or in connection with the Goods covered hereunder shall be brought in the federal, state, or local court located in or otherwise having jurisdiction over Middlesex County in the Commonwealth of Massachusetts and the parties hereby consent to personal jurisdiction in such courts and waive any objection based on jurisdiction or venue of any such action.
- 14. Force Majeure.** Discontinuance of, or substantial interference with Buyer's business, in whole or in part, by reason of fire, flood, earthquake, tempest, strikes, war, Acts of God, embargo, civil commotion, governmental regulation, or other causes beyond Buyer's control whether like or unlike the foregoing, shall give Buyer the option of canceling all or any part of the undelivered Goods without liability in respect of the Goods so cancelled.
- 15. Packing and Cartage.** No extra charge will be allowed for packing, cartage or containers unless so specified in the Purchase Order.