



TMS INTERNATIONAL SERVICIOS DE MEXICO, S. DE R.L. DE C.V.

TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND SERVICES (4.10.19)

1. **CONTRACT.** These terms and conditions, together with the terms set forth in the Purchase Order (collectively, this "Agreement"), (a) constitute the entire contract between the seller / service provider named in the Purchase Order ("Seller") and TMS International Servicios de Mexico, S. de R.L. de C.V. ("TMS") with respect to the transaction (whether for sale of goods and / or performance of services) described in the Purchase Order, regardless of whether Seller has acknowledged acceptance of the Purchase Order and / or these terms and conditions, and (b) expressly limit Seller's acceptance to the terms of this Agreement. If the Purchase Order is construed as an acceptance or a confirmation acting as an acceptance, then TMS's acceptance is EXPRESSLY CONDITIONAL ON SELLER'S ASSENT TO ANY TERMS AND CONDITIONS CONTAINED HEREIN THAT ARE DIFFERENT FROM OR ADDITIONAL TO THOSE CONTAINED IN SELLER'S WRITING. Further, if the Purchase Order is construed as the offer, acceptance thereof is EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS CONTAINED HEREIN AND TMS HEREBY EXPRESSLY OBJECTS TO ANY ADDITIONAL OR INCONSISTENT TERMS OR CONDITIONS; NO SUCH ADDITIONAL OR INCONSISTENT TERMS OR CONDITIONS SHALL BE BINDING ON TMS UNLESS AGREED TO IN WRITING BY TMS. TMS's acceptance of Seller's sales confirmation or other writing, or commencement of performance (including payment for goods or services) shall not constitute acceptance of any of Seller's terms and conditions. Any use of Seller's documentation to administer the sale of goods and / or performance of services hereunder shall be for convenience only and all terms and conditions set forth on such documentation shall be null and void and not binding on TMS unless agreed to in writing by TMS. TMS's failure to object to any terms contained in any subsequent communication from Seller will not be a waiver or modification of the terms set forth herein. In any event, Seller's assent to the terms of this Agreement shall be conclusively presumed from Seller's: (a) delivery to TMS of a signed copy of this Agreement (including by facsimile or electronic means); (b) receipt of the Purchase Order without written objection sent to TMS within ten (10) days after receipt of same; (c) procurement, preparation, shipment and / or delivery of any of the goods to be sold hereunder and / or preparation for and or commencement of any of the services to be provided hereunder, in either case, after receipt of the Purchase Order; or (d) acceptance of all or any part of TMS's payment for the goods and / or services ordered.
2. **REPRESENTATIONS & WARRANTIES.** Seller represents and warrants that all goods sold, and / or delivered hereunder (including goods purchased / delivered in the performance of services) shall: (a) be conveyed with good title and free of any liens or encumbrances; (b) be merchantable, new and of first grade quality; (c) be free of defects in design, workmanship and material; (d) be fit for the purposes for which they are purchased; (e) strictly conform with (i) TMS's descriptions and specifications incorporated herein; and (ii) all applicable federal, state and local laws, ordinances, rules, regulations, standards (including but not limited to official Mexican standards or NOMs) and orders (each and all a "Law"); and (f) be free of hazardous materials, including, without limitation, petroleum products, explosives, radioactive materials, hazardous or toxic substances, PCBs or related or similar materials, asbestos or any material containing asbestos, or any other substance or material that may be defined or listed as a hazardous or toxic substance, or otherwise regulated by any Law, except to the extent that (i) any of the foregoing hazardous materials are known to TMS to be an essential part of the goods and (ii) TMS grants its express written consent to receive any goods containing the foregoing hazardous materials. In such case, Seller shall comply with all applicable Laws for the sale, handling and delivery of any such materials. Seller further represents and warrants that all services performed hereunder shall be performed in a skillful and workmanlike manner, with the highest degree of skill and care, in accordance with generally recognized commercial practices and standards for similar services, and in compliance with all Laws. If Seller, its employees, subcontractors, agents, or any other party under Seller's control (collectively, "Seller Parties") will deliver goods and / or perform services hereunder at TMS premises or the premises of a third party as directed by TMS (in either case, the "TMS Site"), Seller represents, warrants, and agrees that Seller shall, and shall cause all Seller Parties to: (y) comply with all rules and regulations (whether of TMS or a third party) of the TMS Site; and (z) keep materials and the TMS Site (including all property and fixtures thereon) free and clear of any liens for material and labor incident to the sale of goods or performance of any services by Seller hereunder. If requested by TMS, Seller shall execute and deliver to TMS a waiver/release of lien as a condition of payment hereunder. Each of the foregoing representations, warranties, and agreements shall expire twelve (12) months from the later of the date goods sold hereunder are put into service or the date on which services provided hereunder are completed. In the event of a breach of any of the foregoing representations, warranties, or agreements, Seller shall promptly, safely and expeditiously correct such breach by, at the option of TMS, removal, replacement and reinstallation or repair, modification or adjustment of the nonconforming goods or services. Acceptance by TMS of goods or services shall not relieve Seller of any of its warranty obligations hereunder.
3. **PRICING; SHIPPING & DELIVERY; TAXES.** Prices for goods and / or services shall be as set forth on the Purchase Order; the Purchase Order shall not be filled at higher prices than last quoted or charged to TMS, without prior written approval from TMS. All prices are FOB (TMS Site). Unless progress payments are agreed to by TMS, payment of undisputed amounts due hereunder shall be made within forty-five (45) days after receipt of Seller's invoice, provided that Seller's invoice may not be delivered until all goods are delivered and / or services are performed hereunder, and provided further that Seller's invoice must reference the TMS Purchase Order number. Despite any shipping terms or arrangement, Seller shall have risk of loss for all goods shipped until received and accepted by TMS (or its customer, if applicable), at which time title to and risk of loss with respect to the goods shall pass to TMS (or its customer, if applicable). Partial shipments, if agreed to by TMS, shall be identified as such on the shipping memoranda and on invoices, and marked "PARTIAL" for the preliminary shipments and "FINAL" for the completing shipment. The quantity of goods delivered shall not exceed the quantity set forth on the Purchase Order without prior written approval from TMS. There shall be no charges for boxing or crating unless previously authorized in writing by TMS. If the Purchase Order requires Seller to furnish goods or services for a lump sum amount, Seller shall furnish TMS with any analysis of such amount that TMS may reasonably request. Without prejudice to any other right or remedy it may have, TMS reserves the right to set off at any time any amount owing to it by Seller against any amount payable by TMS to Seller under this Agreement or any other contract between the parties or their affiliates. The parties agree that the Seller is responsible for the payment of any sales, use or other taxes, tariffs, or similar charges arising from the sale of goods and / or performance of services pursuant to this Agreement, and that any such taxes are included in the price set forth in the Purchase Order. Seller will reimburse TMS if it pays any such taxes, tariffs or other charges directly to the relevant authorities, including any interest and / or penalties thereon.
4. **INSPECTION & ACCEPTANCE.** All goods and services furnished hereunder are subject to inspection and testing by TMS, and if applicable, its ultimate purchaser, at manufacturer's plant. Final payment shall not be due until final inspection and acceptance by TMS at the TMS Site. TMS shall either accept or reject the goods and / or services within thirty (30) days of delivery of such goods and / or completion of such services. Notwithstanding anything herein to the contrary, rejected goods remain Seller's property at Seller's risk and subject to Seller's disposition.
5. **INSURANCE.** For the duration of this Agreement, Seller shall maintain, at its own expense, and shall require its subcontractors, if any, to maintain insurance coverage meeting or exceeding the requirements set forth below, unless TMS provides other insurance requirements to Seller in connection herewith, in which case such other requirements shall govern.

Policy Type	Limit Type	Minimum Limits	Additional Insured	Waiver of Subrogation
General Third Party Liability Must include premises and operations, products and completed operations, loading and unloading, personal and advertising injury, contractual and sudden and accidental pollution coverage.	Each Occurrence Aggregate	\$5,000,000 USD \$5,000,000 USD	Yes	Yes
Automobile Liability Must include general liability, abroad liability, death liability, federal road liability and pollution liability coverage.	Mandatory General Liability Abroad Liability Death Liability Mandatory Federal Road Mandatory Pollution Liability	20,000,000 MXN 20,000,000 MXN 20,000,000 MXN 20,000,000 MXN 20,000,000 MXN	No	No

Seller shall furnish certificates evidencing the insurance coverage required hereby satisfactory in form and substance to TMS, naming TMS and its customer for the TMS Site as additional insureds, with a waiver of subrogation, and providing for at least thirty (30) days' prior written notice of cancellation or modification to TMS. The following endorsement verbiage is required on all such certificates: "TMS International Servicios de Mexico, S. de R.L. de C.V., and its subsidiaries and affiliates and [TMS steel mill customer name] are additional insureds and a waiver of subrogation to the benefit of TMS International Servicios de Mexico, S. de R.L. de C.V. and [TMS steel mill customer name] has been provided. Coverage must be primary and non-contributory." In addition, any Seller delivering fuel, oils, or other liquids, must include an endorsement that the policies provide coverage for cleanup of any spills. It is also required that TMS be named as a certificate holder on the required insurance policies using the following certificate holder language: "TMS International Servicios de Mexico, S. de R.L. de C.V., Avenida San Pedro #202, Miravalle, Monterrey, Nuevo Leon Mexico CP64660." In addition, all Seller Parties must be registered with the *Instituto Mexicano del Seguro Social* (IMSS).

6. **COMPLIANCE WITH LAWS.** Seller agrees that it shall, and shall cause all Seller Parties to, at all times comply with all Laws and building codes that are applicable to the operation of its business, this Agreement, and its performance hereunder, including all applicable anticorruption laws. Without limiting the generality of the foregoing, Seller shall, and shall cause all Seller Parties to, at all times, at its own expense, obtain and maintain all certifications, credentials, authorizations, licenses and permits necessary to conduct its business relating to the performance of its obligations under this Agreement.
7. **DISCHARGE & DEFAULT.** If (a) Seller: (i) becomes insolvent; (ii) has a business failure, dissolves or is dissolved; (iii) enters (voluntarily or involuntarily) any bankruptcy, receivership, insolvency, *concurso mercantil* or reorganization proceeding; (iv) assigns assets for the benefit of its creditors; or (v) fails to maintain its account with TMS on a current basis; (b) at any time, TMS reasonably believes that Seller may fail to perform any of its obligations under this Agreement for any of the foregoing reasons; or (c) Seller has failed to substantially or timely perform any of its obligations under this Agreement or any other contract with TMS or its affiliates, then TMS may immediately terminate this Agreement without any liability whatsoever to Seller or any third party. In case of any default by Seller, TMS may obtain goods and services from other sources and hold Seller responsible for any damages occasioned thereby. TMS may also deduct from the amount due Seller the cost of replacement goods and services. The rights and remedies under this Agreement are cumulative and in addition to, not in substitution for, any other rights and remedies available at Law or otherwise.
8. **INDEMNITY.** Seller agrees to protect, defend, indemnify and save TMS, its parents, subsidiaries and affiliates, and their respective officers, directors, employees, contractors and agents (the "Indemnified Parties"), harmless from and against any and all actions, losses, liabilities, damages, claims, costs (including attorney's fees), charges, expenses, penalties, fines, or demands of any nature that arise out of, relate to or in connection with: (a) any breach of the terms of this Agreement by Seller; (b) any personal injuries (including death) or property damage (including contamination) arising from Seller's performance under this Agreement; (c) any claim by an employee or agent of Seller or any Seller Party for occupational illness due, or allegedly due, to exposure to the products or by-products of TMS's or TMS's customer's manufacturing process, arising out of, incident to, or resulting from, the performance by Seller hereunder; (d) any claim that the goods sold by Seller hereunder, or the sale or use thereof, infringe any patent, trademark or copyright; and (e) any claim that the goods sold by Seller hereunder violate any Laws for the sale, handling or delivery of such goods; in each case, whether or not due to the negligence of any of the Indemnified Parties, except that Seller shall have no liability for damages caused by the sole negligence of any of the Indemnified Parties.
9. **RELATIONSHIP OF PARTIES.** Seller acknowledges that there will be no labor relationship nor subordination link or supervision between its or Seller Parties' personnel involved in the activities relating to the performance of its obligations under this Agreement and TMS, and therefore, Seller assumes all liability arising from its or Seller Parties' labor relationship with its personnel and Seller releases and will indemnify TMS from any labor liability, social security contribution, and taxes arising from the aforementioned activities in connection with Seller's or Seller Parties' personnel.
10. **NOTICES.** All notices, consents, claims, waivers and demands under this Agreement (each, a "Notice") shall be in writing, addressed to the applicable party's address set forth on the Purchase Order, and delivered in person or by courier, or sent by internationally recognized overnight express service, or certified or registered mail, return receipt requested. Any such Notice shall become effective upon delivery if delivered in person or by courier, on the date of the delivery receipt if sent by internationally recognized overnight express service or the date of delivery set forth on the return receipt if sent by certified or registered mail, return receipt requested.
11. **AMENDMENT; NON-WAIVER.** The terms of this Agreement may not be modified, altered or waived, either orally, by usage of trade, course of performance or course of dealing. Any change to, deviation from, or waiver of the terms of this Agreement (whether in the Purchase Order or these terms and conditions) shall only be made pursuant to a writing signed by the party to be bound.
12. **SEVERABILITY; ASSIGNMENT / SUBCONTRACTING; CONFLICT.** If any term or provision of this Agreement is declared invalid, illegal or unenforceable in any jurisdiction, (a) the affected provision will be modified to conform to applicable Law, if possible, or omitted, and (b) such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Seller shall not assign or subcontract this Agreement, in whole or in part, or any rights or obligations hereunder without the prior written consent of TMS; no other term of this Agreement shall be construed as a right to subcontract without first obtaining such consent. In the event of a conflict between the terms in the Purchase Order and these terms and conditions, the terms in the Purchase Order shall prevail.
13. **LAW & DISPUTE RESOLUTION.** This Agreement and all related documents (including any quotation or any other document submitted in connection therewith), and all matters arising out of or related to this Agreement or any such documents, shall be governed by, and construed in accordance with, the provisions of the Mexican Commerce Code and the applicable federal Mexican laws. Any controversy or claim directly or indirectly arising out of or relating to this Agreement, or in connection herewith, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Claims shall be heard by a single arbitrator. The place of arbitration shall be Mexico City, Mexico, and the language of arbitration shall be English. The arbitrator shall award to the prevailing party, if any, as determined by the arbitrator, all of such party's costs and fees (including attorney's fees).