

## **PURCHASE ORDER TERMS AND CONDITIONS**

1. **TERMS OF ORDER.** These terms and conditions (which include the terms and conditions on the face of the applicable Purchaser's Purchase Order ("Order")) set forth the entire understanding between the Vendor and Purchaser and supercede (i) all other prior agreements, written or oral, between the Vendor and Purchaser with respect to the subject matter of this Order (except where the Order explicitly incorporates or references a written agreement between Vendor and Purchaser, in which case the terms and conditions of that written agreement apply and supercede these standard Purchase Order Terms and Conditions) and (ii) any additional or conflicting terms contained on Vendor's acknowledgment, confirmation, invoice or similar documents. Any additional or conflicting terms will have no effect.
2. **REPRESENTATIONS AND WARRANTIES.** Vendor represents, warrants and covenants that:
  - (i) the goods (and the manufacture, packaging, storage, handling, transportation and delivery thereof) supplied:
    - a. will comply with all applicable laws, rules, regulations, codes and ordinances of the country(ies) of manufacture and of delivery,
    - b. will conform to the specifications, drawings, samples or other descriptions contained in the Order or provided or approved by Purchaser,
    - c. will be merchantable, of satisfactory quality, of good material and workmanship and free from defects,
    - d. if ordered for a specific purpose, will be fit for their intended purpose, and
    - e. in the absence of contrary specifications, will be of the highest grade and quality;
  - (ii) the services provided will be performed (i) in a professional and workmanlike manner and (ii) in compliance with all applicable laws, rules, regulations, codes and ordinances, and all of Purchaser's safety and other requirements communicated to Vendor;
  - (iii) Vendor will:
    - a. deliver the goods and perform the services that are the subject of the Order by the delivery and performance dates set forth on the face of the Order;
    - b. at its own cost, initiate, maintain and supervise all environmental and safety precautions and programs in connection with the services and comply with all of Purchaser's environmental, health and safety rules;
    - c. at its own cost, obtain and maintain all necessary permits, license or other approvals and give all notices legally required to provide the services;
    - d. at its own cost, provide all labor, materials, machinery, equipment, tools, transportation and other facilities and services needed for the

- proper execution and completion of the Order, unless otherwise provided on the face of the Order;
- e. be solely responsible for all methods and procedures of delivering and coordinating all portions of the services, unless otherwise provided on the face of the Order;
  - f. be solely responsible for the handling, transportation and disposal of all materials, substances and chemicals that Vendor or any subcontractor brings onto Purchaser's premises and any waste generated or resulting from the use thereof;
  - g. not dispose or permit the release of any materials, substance or chemical (or any waste generated or resulting from the use thereof) on Purchaser's premises;
  - h. inspect any Purchaser-supplied equipment, tools, scaffolding and/or other materials ("Purchaser Materials");
  - i. not use any Purchaser Materials unless they are suitable for their intended use and will return all Purchaser Materials to Purchaser in a like condition in which they were borrowed;
  - j. accept full responsibility for safety and management over persons and property within that portion of Purchaser's premises where the services are being performed ("Service Location") and to the extent possible, physically separate the Service Location from the remainder of the Purchaser's premises;
  - k. warn its subcontractors and its and their respective employees, agents, representatives, guests and visitors of any risks, hazards, or dangers, whether latent or patent, ("Dangers") associated with the Service Location and the rest of the Purchaser's premises;
  - l. at least once daily, inspect the Service Location for any Dangers and eliminate any Dangers or, to the extent any Dangers cannot be eliminated, advise the Purchaser and warn its employees and visitors of these Dangers;
  - m. keep the Service Location and other parts of Purchaser's premises free from accumulations of materials and refuse and, upon completion of the services, promptly remove same and all of Vendor's machinery, tools, and equipment and any unused materials, substances or chemicals and return Purchaser's premises to their original state;
  - n. remove Vendor employees, representatives and other personnel providing services from Purchaser's premises upon request of Purchaser.
- (iv) no liens or claims will be filed, maintained or enforced by Vendor or its suppliers or subcontractors for any service performed or materials provided;
  - (v) where applicable, Vendor shall comply with the requirements of the Fair Labor Standards Act of 1938, as amended, in performing the services hereunder. To the extent applicable to the Vendor's work for, or on

behalf of Purchaser, Vendor also agrees to comply fully with all applicable federal, state, and local laws and regulations concerning nondiscrimination and affirmative action, including those enforced by the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) and/or the U.S. Equal Employment Opportunity Commission (EEOC). As applicable, Vendor agrees to comply with Executive Order 11246, as amended. Purchaser is an equal opportunity employer, and the Order is subject to the rules and regulations imposed upon contractors and subcontractors pursuant to 41 CFR Chapters 60 and 61. Unless this Order is exempt, there is incorporated herein by reference 41 CFR 60-1.4 and 61-250.10. Also, 29 C.F.R. Part 471, Appendix A to Subpart A is incorporated herein by reference. **This contractor (Purchaser) and subcontractor (Vendor) shall abide by the requirements of 41 CFR 60-300.5 and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.**

3. ACCEPTANCE. Purchaser will have a reasonable period of time after delivery or performance within which to inspect and accept the goods or services. The receipt of goods or services, the inspection or non-inspection of or payment for the goods or services, will not constitute acceptance of the goods or services and will not impair Purchaser's right to (i) reject nonconforming goods or services, (ii) recover damages and/or (iii) exercise any other remedies to which Purchaser may be entitled. Further, acceptance of goods or services will not waive any rights or remedies accruing to Purchaser as a result of any breach of the Order. Rejected goods may be returned to Vendor or otherwise disposed of at Vendor's cost and expense.
4. PRICE AND TAXES. Price and delivery terms are as stated on the face of the Order. Vendor is responsible for notifying Purchaser if there is a change in the price prior to shipment so that the Order may be corrected before receipt of the goods or services. Purchaser will not be responsible for any price increase if Purchaser is not notified of such increase in advance of the shipment. Unless otherwise provided on the face of the Order, the price includes (i) all costs to comply with the terms and conditions of the Order, (ii) any and all taxes, including sales, use, excise, value added and other taxes, and (iii) fees, duties, or other governmental impositions on the sale of the goods or services covered by the Order. If Purchaser is required to pay any taxes or other impositions, Vendor will promptly reimburse Purchaser.
5. INVOICING AND PAYMENT. Vendor will invoice Purchaser for the amounts due under the Order. Except as otherwise set forth on the face of the Order, Purchaser will pay Vendor all undisputed amounts within sixty (60) calendar days after receipt of the applicable invoice or receipt of the goods (or performance of the services), whichever is later or within such lesser period of time as is required by Law. Vendor agrees to reconcile all charges, invoices, costs, expenses or other amounts due from Purchaser in writing within one hundred twenty (120) days of the initial invoice or one hundred twenty (120) days after the receipt of the goods (or performance of the services), whichever is earlier. Vendor agrees that if it does not bring said charges, invoices, costs, expenses or other amounts due from Purchaser to Purchaser's attention in writing within such time

frame, it thereby waives any rights associated with such claims, regardless as to the validity of the claims.

6. **PROPRIETARY INFORMATION AND MATERIALS.** All drawings, specifications and other copyrightable documents and any molds, dies, tools, equipment, recipes, trade secrets, patents, trademarks or the like furnished by or on behalf of Purchaser are for use solely with respect to the Order. Vendor (i) will not have any rights to, property or interest in the same except to the extent necessary to execute the Order, (ii) will be responsible for maintaining the same in proper working order subject only to normal wear and tear and (iii) upon completion (or earlier cancellation or termination) of the Order, will promptly destroy or return these items, as requested by Purchaser.
7. **OWNERSHIP OF INVENTIONS.** With respect to new or modified goods/services, the parties agree that all rights, titles, and interest in any and all inventions (including discoveries, ideas, or improvements, whether patentable or not), which are conceived or made during or after the term of the Order and are (i) based upon or arising from Purchaser's information, or (ii) developed specifically for Purchaser hereunder, will belong to Purchaser. In the event that Vendor produces works of authorship specifically for Purchaser under the Order ("Works"), the Works will be deemed "works made for hire" and Purchaser will receive all rights, title, and interest thereto. However, if any Works are not determined to be "works made for hire", Vendor agrees to assign, and hereby assigns to Purchaser and its successors the entire right, title, and interest, in and to the Works. Nothing in the Order will affect the pre-existing intellectual property rights of the parties.
8. **CONFIDENTIALITY.** Vendor agrees to keep confidential the terms and conditions of the Order and all proprietary information disclosed by or on behalf of Purchaser or otherwise learned or obtained by Vendor in connection with the Order or the performance hereof. Vendor will not use any of this information other than in connection with the performance of the Order and will not disclose any of this information except to the extent required by law and then only after prior notice to Purchaser.
9. **AUDIT.** Subject to reasonable confidentiality obligations, Purchaser will have the right to audit and inspect the records and facilities of Vendor and Vendor's agents, representatives and subcontractors used in performance of the Order or relating to the goods or services to the extent reasonably necessary to determine Vendor's compliance with the Order. Vendor will provide Purchaser or its third party designee conducting the audit or inspection with reasonable assistance, including without limitation access to buildings, appropriate personnel and work space. Purchaser's audit/inspection, or failure to conduct any audit or inspection, will not release Vendor from any of Vendor's obligations.
10. **RISK OF LOSS.** Except as otherwise set forth in the delivery terms on the face of the Order, Vendor will retain the risk of loss and/or damage to the goods until the goods are physically delivered to Purchaser.
11. **INDEMNIFICATION.** Vendor agrees to indemnify and hold harmless Purchaser, its affiliates and their directors, officers, employees, agents, and representatives from and against any and all liability, loss, damage, fine, penalty, cost or expense (including reasonable attorneys' fees) to the extent arising out of or resulting from (1) any non-conforming good or services; (2) any alleged or actual, direct or contributory infringement or misappropriation of any patent, copyright, trade secret or other proprietary right arising from the purchase, use or sale of the goods or services provided by Vendor; (3) any leak or spill of any materials, substances or chemicals while being

- transported or delivered to Purchaser or while on Purchaser's premises; (4) any breach by Vendor of any term or condition contained in the Order; (5) the use of any Purchaser Materials or any person in the employ of Purchaser to perform any of the services under the Order and/or (6) the negligent acts or omissions, or willful misconduct of Vendor, Vendor's subcontractor's, employees, agents, representatives and any person performing services under the Order. Without limiting the foregoing, Purchaser may require Vendor to re-deliver against non-conforming goods or re-execute non-conforming services at Vendor's cost and expense.
12. CANCELLATION/TERMINATION. Except to the extent prohibited by applicable law, Purchaser (i) may cancel an Order for any reason or no reason prior to shipment of the applicable goods or performance of services by providing written notice to Vendor and (ii) may immediately terminate the Order, even after shipment, by providing written notice to Vendor if Vendor breaches any term or condition of the Order or becomes insolvent or subject to any proceeding under any bankruptcy or any insolvency law.
  13. FORCE MAJEURE. Each party will be excused from a failure to perform or a delay in performance to the extent caused by events beyond its reasonable control. The party claiming excuse from performance must take reasonable efforts to remove the cause of its inability to perform or its delay in performance. The party claiming excuse from performance must give prompt written notice to the other party of the event, specifying its nature and anticipated duration. If Vendor's performance is excused or delayed for more than twenty (20) calendar days, Purchaser may terminate the Order by giving Vendor written notice, which termination will become effective upon receipt of notice. If Purchaser terminates the Order, Purchaser's sole liability will be to pay any balance due for conforming goods and services delivered by Vendor before receipt of Purchaser's termination notice.
  14. ORIGIN CONTROL CLAUSE. Vendor agrees that the goods and services will not in any way directly or indirectly originate from or be provided by any country (including Cuba), person or entity which would cause Purchaser to be in violation of or be penalized by U.S. or other applicable economic sanctions laws.
  15. GOVERNING LAW. The laws of the jurisdiction of the address of the Purchaser on the face of the Order, disregarding any conflict of law rules in that jurisdiction, will govern the Order. Any dispute arising from the Order will be resolved in the courts in the jurisdiction of the Purchaser.
  16. EXCLUSION OF CONVENTIONS The following international conventions will NOT apply to the Order: (i) the Uniform Law on the Sale of Goods and the Uniform Law on the Formation of Contracts for the International Sale of Goods, (ii) the United Nations Convention on Contracts for the International Sale of Goods of 1980 and (iii) the United Nations Convention on the Limitations Period in the International Sale of Goods, concluded in New York on 14 June, 1974, and the Protocol Amending the Convention on the Limitations Period in the International Sale of Goods, concluded in Vienna on 11 April, 1980.
  17. WAIVER. Purchaser's failure or delay in exercising any right or remedy with respect to the Order will not operate as a waiver of that right or remedy. Any waiver of a right or remedy must be in writing and signed by Purchaser.
  18. ASSIGNMENT/SUBCONTRACTING. Vendor may not assign or subcontract its rights and obligations under the Order without the prior written consent of Purchaser.

19. SEVERABILITY. If any provision of the Order is held by any court to be invalid, illegal or unenforceable, either in whole or in part, that holding will not affect the validity, legality or enforceability of the remaining provisions, or any part thereof, of the Order, all of which will remain in full force and effect.

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