

## General Purchase Terms and Conditions

**1. Acceptance** - This purchase order is an offer by the company identified on the face of this purchase order (the "Buyer") for the purchase of the goods (the "Goods") or services (the "Services") specified, from the party to whom the purchase order is addressed (the "Seller") in accordance with and subject to these terms and conditions (the "Terms"; together with the terms and conditions on the face of the purchase order, the "Purchase Order"). This Purchase Order will be deemed accepted by the Seller upon the first of the following to occur: (a) Seller making, signing, or delivering to Buyer any letter, form, or other writing or instrument acknowledging acceptance; (b) any performance by Seller under the Purchase Order; or (c) the passage of ten (10) days after Seller's receipt of the Purchase Order without written notice to Buyer that Seller does not accept. This Purchase Order, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the Purchase Order and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Purchase Order, unless a separate overriding written contract has been entered into and signed by the parties. The Purchase Order expressly limits Seller's acceptance to the terms of the Purchase Order. These Terms expressly exclude any of Seller's terms and conditions of sale or any other document issued by Seller in connection with this Purchase Order.

**2. Delivery** - Seller shall deliver the Goods and/or perform the Services at the delivery point (the "Deliver Location"), and on the date(s) specified in this Purchase Order (the "Delivery Date"). If no delivery date is specified, Seller shall deliver in full receipt of the Purchase Order. If Seller fails to deliver the Goods or Services in full, on the Delivery Date, Buyer may terminate the Purchase Order immediately and Seller shall indemnify Buyer against any losses, damages, and reasonable costs and expenses attributable to Seller's failure to deliver.

**3. Inspection** - Buyer reserves the right to inspect the Goods on or after the Delivery Date. Buyer, at its sole option, may reject all or any portion of the Goods if it determines the Goods are defective or nonconforming. If Buyer requires replacement of the Goods, pursuant to Section 4, Seller shall promptly replace the nonconforming Goods. If Seller fails to timely deliver replacement Goods, Buyer may replace them with goods from a third party and charge Seller the cost thereof and terminate this Purchase Order for cause pursuant to Section 8. Any inspection or other action by Buyer under this Section shall not affect Seller's obligations under the Purchase Order, and Buyer shall have the right to further inspection after Seller takes remedial action.

**4. Cumulative Remedies** - The rights and remedies under this Purchase Order are cumulative and are in addition to any other rights and remedies available at law or in equity or otherwise. If Seller is in breach of the warranties set out in Section 9, Seller will, at its sole cost, replace or repair the Goods or re-perform Services to Buyer's satisfaction.

**5. Price and Payment** - The price of the Goods or Services is the price stated on the face of this Purchase Order (the "Price"). Seller shall invoice Buyer for the Purchase Order within thirty (30) days of delivery. Unless otherwise stated in the Purchase Order, Buyer shall pay all properly invoiced amounts due to Seller within sixty (60) days after receipt of such invoice, except for any amounts disputed by Buyer. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under the Purchase Order notwithstanding any such dispute. Without prejudice to any other right or remedy, Buyer reserves the right to set off any amount owing to it by Seller against any amount payable by Buyer to Seller. Payment of an invoice is not evidence or admission that the Goods or Services meet the requirements of the Purchase Order.

**6. OVERSHIPMENT** Over-shipment of goods not approved by Purchaser in writing will be returned, at Seller's expense, if such over-shipment exceeds 10% of the total order price or \$500.00, whichever is smaller

**6. Hazardous Wastes** - If at any time Seller generates any hazardous waste(s) on Buyer's property or site, as defined in 40 C.F.R. §261.3, Seller will immediately notify Buyer and Seller will comply with Buyer's policies and practices, and any applicable law, regarding management of hazardous wastes.

**7. Change Purchase Order** - Buyer may, from time to time, initiate changes by issuing to Seller written notices (each, a "Change Purchase Order") that alter, add to, or deduct from the Goods or Services, but that are otherwise subject to the Terms of this Purchase Order. Seller will promptly comply with the terms of any Change Purchase Order.

**8. Termination** - Buyer may terminate this Purchase Order, in whole or in part, for any reason upon thirty (30) days' prior written notice to Seller. In addition to any remedies provided herein, Buyer may terminate this Purchase Order with immediate effect, either before or after acceptance of Goods or Services, if Seller has breached any of the Terms herein. If the Seller becomes insolvent, commences or has commenced by it or against it bankruptcy proceedings, receivership, reorganization or assignment for the benefit of creditors, then the Buyer may terminate this Purchase Order. If Buyer terminates the Purchase Order for any reason, Seller's sole and exclusive remedy is payment for the Goods or Services received and accepted by Buyer prior to the termination.

**9. Warranties** - Seller warrants to Buyer that for a period of eighteen (18) months from the Delivery Date, all Goods, Services or Goods furnished in connection with Services will: (a) be new and free from any defects in workmanship, material and design; (b) conform to applicable specifications; (c) be fit for their intended purpose and operate as intended; (d) be free and clear of all liens, security interests or other encumbrances; and (e) not infringe or misappropriate any third party's intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance. If Buyer gives Seller notice of noncompliance, Seller shall, at its own cost and expense, promptly replace or repair the nonconforming Goods or Services.

**10. Indemnification** - Seller shall defend, indemnify, and hold harmless Buyer and Buyer's parent company, its subsidiaries, affiliates, successors or assigns and its respective directors, officers, shareholders, and employees (collectively, "Indemnitees") against any and all loss, injury, death, damage, liability, claim, action, judgment, interest, penalty, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder (collectively, "Losses") arising out of or occurring in connection with Seller's performance of its obligations or Seller's negligence, willful misconduct or breach of the Terms of this Purchase Order or possession of the Goods infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. Seller shall not enter into any settlement without Buyer's or Indemnitee's prior written consent.

**11. Confidential Information** - All non-public, confidential or proprietary information of the Buyer, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, pricing, discounts or rebates, disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the Purchase Order is confidential, solely for the use of performing the Purchase Order and may not be disclosed or copied unless authorized by Buyer in writing. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) rightfully and legally known to the Seller at the time of disclosure; or (c) rightfully and legally obtained by the Seller on a non-confidential basis from a third party.

**12. Insurance** - Seller shall, at its own expense, maintain, and carry insurance in full force and effect with financially sound and reputable insurers, which includes: (a) commercial general liability (including product liability) in a sum no less than \$1,000,000 for each occurrence and \$2,000,000 in the aggregate; (b) workers' compensation insurance in compliance with the applicable laws of each jurisdiction affected by the Purchase Order; (c) if the Seller will use or provide for use of motor vehicles in providing and/or performing the Purchase Order, automobile (motor vehicle) insurance covering all liabilities for personal injury and property damage arising from the use of such vehicles, with limits of no less than \$1,000,000. Upon Buyer's request, Seller shall provide Buyer with a certificate of insurance evidencing the coverage specified in this Purchase Order.

**13. Compliance with Law** - Seller warrants and represents to Buyer that it is in compliance with and shall remain in compliance during performance of this Purchase Order and ensure that its employees, agents, contractors and subcontractors (the "Personnel") comply with all applicable laws, regulations and ordinances, including, without limitation, Occupational Safety and Health Act, Toxic Substances Control Act, and Foreign Corrupt Practices Act. Seller has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits required by law to carry out its obligations under the Purchase Order. Seller shall comply with all export and import laws of all countries involved in the sale of Goods under this Purchase Order. Seller assumes all responsibility for shipments of Goods requiring any government import clearance. If Seller fails to comply with the laws, orders, rules, ordinances and regulations and as a result Buyer is fined, Seller agrees to pay the fine and costs incident thereto or reimburse Buyer for payment. To the extent that Seller's Personnel are required to enter onto Buyer's site or property, Seller shall ensure that Personnel comply with Buyer's health, safety and environmental policies and standards.

**14. Shipping Terms** - Delivery shall be made in accordance with the Terms of this Purchase Order. The Purchase Order number must appear on all documents pertaining to the Purchase Order, invoices, packing lists, correspondence, and all shipping documents. Seller shall not substitute material or ship more than the quantity ordered. Supplier shall be solely responsible for and pay, all costs of delivering the Goods to the Delivery Location, including, without limitation, all shipping and freight costs and all duties, fees, tariffs or similar analogous taxes on imports/exports of the Goods ("Customs Duties"). Supplier will take all reasonable steps to minimize Customs Duties costs.

**15. Taxes** - Unless specified otherwise on the face of the Purchase Order, the prices are inclusive of, and Seller shall be solely responsible for and pay, all federal, state, and local taxes, including, but not limited to, value added tax, goods and services tax, sales, use or consumption tax. No sales or use tax shall be added when a valid tax exemption is indicated on the face of this Purchase Order by the Buyer.

**16. Title and Risk of Loss** - Unless otherwise specified in the Purchase Order, risk of loss of the Goods remains with Seller and title will not pass to Buyer until the Goods are delivered to and accepted by Buyer at the Delivery Location.

**17. 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 circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party ("Force Majeure Event"). Force Majeure Events include, but are not limited to, acts of God or the public enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, war, invasion, terrorist acts, riots, strike, or embargoes. Seller's economic hardship or changes in market conditions are not considered Force Majeure Events. Seller shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized and resume performance under the Purchase Order. If a Force Majeure Event prevents Seller from performance for a continuous period of more than fifteen (15) business days, Buyer may terminate this Purchase Order immediately by giving written notice to Seller.

**18. Waiver and Release of Liens** - Upon Seller receipt of amounts properly invoiced, Seller waives and releases all rights to, for itself and its subcontractors, and at its sole cost shall obtain prompt removal of any lien fixed against Buyer, for Goods or Services performed under this Purchase Order.

**19. Relationship of the Parties** - The Seller is an independent contractor of Buyer. Nothing contained herein shall be construed as creating any agency, partnership, employment or fiduciary relationship. Neither party shall have authority to bind the other party in any manner whatsoever.

**20. Governing Law and Venue** - All matters arising out of or relating to this Purchase Order shall at all times and in all respects be governed by the internal substantive laws of the State of New York without regard to the conflicts of laws provisions thereof. The federal and state courts located in the State of New York (the "New York Courts") shall have exclusive jurisdiction and venue over any and all disputes arising from or relating to this Purchase Order.

**21. Notices** - All notices, consents, claims, demands, waivers and communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of this Purchase Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (return receipt requested, postage prepaid). A Notice is effective only upon receipt of the receiving party, and if the party giving the Notice has complied with the requirements of this Section 21.

**22. Inconsistent Terms** - The terms found on the face of this Purchase Order shall govern over the terms and conditions herein. Any separate written overriding agreement signed by both parties shall govern over the terms of the Purchase Order.

**22. Services** - Any Seller that may perform Services represents itself as qualified and able to perform. Seller shall perform Services pursuant to the industry standard of care. Buyer will furnish materials, equipment and machinery only if and to the extent set forth in the Purchase Order. Seller will report immediately to Buyer any event or circumstance which Seller knows or reasonably suspects is, or results from, a violation of Buyer's policies or law set forth herein. Seller will, at its sole cost and expense, repair or replace any real or personal property belonging to Buyer that Seller, its employees or agents may damage, destroy or remove while performing or result from performing this Purchase Order.

**23. Survival** - Provisions of this Purchase Order which by their nature should apply beyond any termination of this Purchase Order will remain in effect for the period expressed within the Section but not longer than a period of two (2) years.

**24. Severability** - If any term or provision of this Purchase Order is found invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term of this Purchase Order or invalidate or render unenforceable such term in any other jurisdiction.

**25. Miscellaneous** - Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under the Purchase Order without Buyer's prior written consent. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment shall relieve the Seller of any of its obligations hereunder. No modification, alteration or amendment of the Purchase Order shall be binding unless agreed to in writing and signed by Buyer. No waiver by any party of any of the provisions of the Purchase Order shall be effective unless explicitly set forth in writing and signed by the party so waiving. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Purchase Order by Buyer shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or privilege hereunder preclude any other exercise of any additional right, remedy, or privilege.