



PURCHASE ORDER TERMS AND CONDITIONS

1. Acceptance Agreement.

These terms and conditions, along with the purchase order to which they are attached, constitute an agreement between the Buyer and Seller identified on the face of such purchase order. Seller's commencement of work on the goods/services subject to this purchase order or shipment of such goods, whichever occurs first, shall be deemed an effective mode of acceptance of this purchase order. Any acceptance of this purchase order is limited to acceptance of the express terms contained on the face and back hereof. If this purchase order shall be deemed an acceptance of a prior offer by Seller, such acceptance is limited to the express terms contained on the face and on the back hereof. Any proposal for additional or different terms or any attempt by Seller to vary in any degree any of the terms of this offer is hereby objected to and rejected, but such proposals shall not operate as a rejection of this offer unless such variances are in the terms of the description, quality, or delivery schedule of the goods, but shall be deemed a material alteration thereof, and this offer shall be deemed accepted by Seller without said additional or different terms.

2. Termination for Convenience.

Buyer reserves the right to terminate this order or any part hereof at any time for its sole convenience. In the event of such termination, Seller shall immediately stop all work hereunder, and shall immediately cause any of its suppliers or subcontractors to cease such work. Seller shall be paid a reasonable termination charge consisting of a percentage of the order price reflecting the percentage of the 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 reasonably have avoided.

3. Termination for Cause.

Buyer may terminate this order or any part hereof for cause in the event of any default by the Seller, or if the Seller fails to comply with any of the terms and conditions of the offer. Late deliveries of products which are defective or which do not conform to this order, and failure to provide Buyer, upon request, of reasonable assurances of future performance shall all be causes allowing Buyer to terminate this order for cause. In the event of termination for cause, Buyer shall not be liable to Seller for any amount, and Seller shall be liable to Buyer for any and all damages sustained by reason of the default which gave rise to termination.

4. Proprietary Information – Confidentiality – Advertising.

Seller shall consider all information furnished by Buyer to be confidential and shall not disclose any such information to any other person or use such information itself for any purpose other than performing this contract, unless Seller obtains written permission from Buyer to do so. This paragraph shall apply to drawings, specifications, or other documents prepared by Seller for Buyer in connection with this order. Seller shall not advertise or publish the fact that Buyer has contracted to purchase goods/services from Seller, nor shall any information relating to the order be disclosed without Buyer's written permission. Unless otherwise agreed in writing, no commercial, financial or technical information disclosed in any manner or at any time by Seller to Buyer shall be deemed secret or confidential and Seller shall have no rights against Buyer with respect thereto except such rights as may exist under patent laws.

5. Warranty.

Seller expressly warrants that all goods or services furnished under this agreement shall conform to all specifications and appropriate standards, will be new, free from defects in material or workmanship, and will be provided in a safe, workmanlike fashion in full compliance with all applicable laws and regulations. Seller warrants that all such goods or services will conform to any statements made on the containers or labels or advertisements for such goods or services and that any goods will be adequately contained, packaged, marked and labeled. Seller warrants that all goods or services furnished hereunder will be merchantable, and will be safe and appropriate for the purpose for which goods or services of that kind are normally used. If Seller knows or has reason to know that particular purpose for which Buyer intends to use the goods or services, Seller warrants that such goods or services will be fit for such particular purpose. Seller warrants that goods or services furnished will conform in all respects to samples. Inspection, tests, acceptance or use of the goods or services furnished hereunder shall not affect the Seller's obligation under this warranty, and such warranties shall survive inspection, test, acceptance and use. Seller's warranty shall run to Buyer, its successor, assigns and customers, and users of products sold by Buyer. Seller agrees to replace or correct defects of any goods or services not conforming to the foregoing warranty promptly, without expense to Buyer, when notified of such nonconformity by Buyer, provided Buyer elects to

provide Seller with the opportunity to do so. In the event of failure of Seller to correct defects in or replace nonconforming goods or services promptly, Buyer, after reasonable notice to Seller may make such corrections or replace such goods and services and charge Seller for the cost incurred by Buyer in doing so. Seller warrants that Seller has absolute and good title to and full right to dispose of the goods and that there are no liens, claims, or encumbrances of any kind against the goods. Seller shall indemnify and save Buyer harmless from any breach of these warranties, and no limitations on Buyer's remedies in Seller's documents shall operate to reduce this indemnification.

6. Price Warranty.

Seller warrants that the prices of the articles sold Buyer hereunder are not less favorable than those currently extended to any other customer for the same or similar articles in similar quantities. In the event Seller reduces its price for such articles during the term of this order, Seller agrees to reduce the prices hereof, correspondingly. Seller warrants that prices shown on this purchase order shall be complete, and no additional charges of any type shall be added without Buyer's express written consent. Such additional charges include, but are not limited to shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing, and/or crating.

7. Force Majeure.

Buyer may delay delivery or acceptance occasioned by causes beyond its control. Seller shall hold such goods at the direction of the Buyer and shall deliver them when the cause affecting delay has been removed. Buyer shall be responsible only for Seller's direct additional costs in holding the goods or delaying performance of this agreement and Buyer's request. Causes beyond Buyer's control shall include, but not be limited to, government action or failure of the government to act when such action is required, strike or other labor trouble, fire, or unusually severe weather.

8. Intellectual Property.

The Seller warrants that it has the requisite intellectual property rights to provide full use of the goods/services to Buyer and hereby grants Buyer a nonexclusive, irrevocable, royalty free license to make full use of the goods/services. The Seller will defend, at its own expense, any suit or claim that may be instituted against Buyer for alleged infringement of any intellectual property rights relating to the maintenance, sale or use of items or services furnished pursuant to this order, except for any such infringement resulting from detailed designs provided by Buyer, and the Seller shall indemnify Buyer for all costs and damages arising out of such alleged infringement. Buyer may be represented by and actively participate through its own counsel in any such suit or proceeding if it so desires, and the costs of such representation shall be paid by Seller. Buyer shall have the right, at no additional charge, to use and/or reproduce the Seller's prints, drawings, training manuals and other similar supporting documentation and sales literature. Seller agrees to advise Buyer of any updated information relative to foregoing literature and documentation with timely notifications in writing.

9. Risk of Loss.

The risk of loss from any casualty to the goods, regardless of the cause of the casualty, shall be on the Seller until the goods have been accepted by Buyer. In the event that Seller's obligations hereunder require or contemplate performance of services by Seller's employees or persons under contract to Seller to be done on Buyer's property or property of Buyer's customers, the Seller agrees that all such work shall be done in accordance with the safety rules of the Buyer, and as an independent Contractor and that the persons doing such work shall not be considered employees of the Buyer.

10. Indemnification and Insurance.

(a) Seller assumes the entire responsibility and liability and will indemnify and hold harmless Buyer, its officers, directors, agents, servants and employees, from and against any and all losses, expenses, demands and claims of whatsoever character that may be claimed or asserted, or suits brought against Buyer, its agents, servants and employees by any person, firm or corporation, including any employees or officers of Seller or its subcontractor(s), if any, on account of any actual or alleged; (i) illness, bodily injury, or death occurring to any person (including, but not limited to, both parties and their respective officers, agents and employees) or (ii) loss of, or damage to, property (regardless of ownership and including Buyer's property in Seller's or a subcontractor's care, custody or control) arising out of, in connection with, or resulting from the actual or alleged activities of Seller or any subcontractor and their respective officers, agents and employees in the performance of this Order. Seller further agrees to indemnify, protect and defend Buyer against any claim asserted, or suit brought against Buyer by



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virtue of the action of Seller or any subcontractor as set forth herein and pay any judgment rendered in any such action(s) provided, however, that Buyer shall have the right, if it so elects, to participate at its own expense in the defense of any such claims or suits. Buyer's participation shall not operate to affect contractor's liability and obligations hereunder.

(b) Seller shall procure and maintain, at its expense, the following types of insurance coverages:

(i) General Liability: A minimum of \$2 million per occurrence and aggregate. It should include contractual liability and be on a broad form basis.

(ii) Auto Liability: A minimum of \$2 million per occurrence and covers all company vehicles used in the work.

(iii) Workers' Compensation: The contractor should provide a certificate that verifies the statutory required limits with the Employer's Liability set at a minimum of \$2 million.

Seller shall provide Buyer with a certificate of insurance evidencing at least the minimum coverages described above and shall name Buyer, its parents, affiliates, and subsidiaries as an additional insured to the General and Auto Liability Insurance in (i) and (ii) above. All policies shall be endorsed with a waiver of subrogation in favor of Buyer, its parents, affiliates, and subsidiaries.

11. Changes.

Buyer shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation. If any such changes cause an increase or decrease in the cost, or the time required for the performance, an equitable adjustment shall be made and this agreement shall be modified in writing accordingly. Seller agrees to accept any such changes subject to this paragraph. In the event of a documented business downturn beyond Buyer's reasonable control or a documented corporate divestiture, either of which materially reduces the volume of goods/services required by Buyer, Buyer, upon providing thirty (30) days written notice, shall be entitled to an equitable adjustment in order quantities.

12. Inspection/Testing.

Payment for the goods/services delivered hereunder shall not constitute acceptance thereof. Buyer shall have the right to inspect and to reject any or all of said goods/services which are, in Buyer's judgment, defective or nonconforming. Goods/services rejected and goods/services supplied in excess of quantities called for herein will be held for disposition at Seller's risk and maybe returned to Seller at its expense and in addition to Buyer's other rights. Buyer may charge Seller all expenses of unpacking, examining, repacking and reshipping such goods/services. In the event Buyer receives goods/services whose defect or nonconformity is not apparent on examination, Buyer reserves the right to require replacement, as well as payment of damages. Nothing contained in this purchase order shall relieve in any way the Seller from the obligation of testing, inspection, and quality control.

13. Entire Agreement.

This purchase order, and any documents referred to on the face hereof, constitute the entire agreement between the parties.

14. Assignments and Subcontracting.

No part of this order may be assigned or subcontracted without the prior written approval of Buyer.

15. Setoff.

All claims for money due or to become due from Buyer shall be subject to deduction or setoff by the Buyer by reason of any counterclaim arising out of this or any other transaction with Seller.

16. Shipment.

If, in order to comply with Buyer's required delivery date, it becomes necessary for Seller to ship by a more expensive way than specified in the purchase order, any increased transportation costs resulting therefrom shall be paid for by Seller unless the necessity for such rerouting or expedited handling has been caused by Buyer.

17. Waiver.

Buyer's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or Buyer's waiver of any breach hereunder shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type.

18. Delivery.

Time is of the essence of this contract, and if delivery of items or rendering of services is not completed by the time promised, Buyer reserves the right, without liability and in addition to its other rights and remedies, to terminate this contract by notice effective when received by Seller as to items not yet shipped or services not yet rendered and to purchase substitute items or services elsewhere and charge Seller with

any loss incurred.

19. Limitation on Buyer's Liability – Statute of Limitations.

In no event shall Buyer be liable for anticipated profits or for incidental or consequential damages. Buyer's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this agreement or from the performance or breach thereof shall in no case exceed the price allowable to the goods or services or unit thereof which gives rise to the claim. Buyer shall not be liable for penalties of any description. Any action resulting from any breach on the part of Buyer as to the goods or services delivered hereunder must be commenced within one year after the cause of action has occurred.

20. Gratuities.

It shall be deemed a default subject to termination if it is found that Seller made, directly or indirectly, bribes, kickbacks, discounts or other payment, regardless of form, whether in money, property, or services, to any corporate officer or employee of any third party acting on behalf of Buyer, to obtain favorable treatment in securing business or to otherwise obtain special concession, or to pay for favorable treatment for business secured for special concessions already obtained.

21. Taxes.

Seller agrees that all excise, occupational, sales, use and other taxes applicable to the sale or purchase of materials or articles, applicable to Seller's work or to Seller's receipts for the performance of the work covered by this order shall be paid by Seller, and Seller shall indemnify and save Buyer harmless from and against all liability for such taxes.

22. Compliance with Laws.

In performance of this order the Seller shall comply with all Federal, State and local laws, rules and regulations including, but not limited to all applicable requirements of the Fair Labor Standards Act, Equal Opportunity and Affirmative Action Statutes, and Environmental Protection Statutes and Regulations to include Executive Order 11246, as amended, 38 U.S.C. §4212, and Section 503 of the Rehabilitation Act of 1973, as amended.

23. Law to Apply.

The validity, interpretation and performance of this order shall be governed and construed in accordance with the Laws of the Commonwealth of Massachusetts and the parties agree to submit to the jurisdiction of the courts of the Commonwealth of Massachusetts for any disputes arising under this order.

SELLER: _____

Signature

Print Name

Title

Date:

BUYER: _____

Signature

Print Name

Title

Date: