

Purchase Order Terms and Conditions

1. **APPLICATION AND ACCEPTANCE.** The terms and conditions set forth herein shall apply to the transaction described in this purchase order (the "Order") unless the parties hereto have a prior agreement (including any statement(s) of work, that covers such transaction, in which case the terms and conditions of such prior agreement shall apply. The party identified as the Vendor on the preceding page (the "Vendor") has agreed to provide goods and/or services to the party identified under "Bill To" on the preceding page, and/or one or more of its affiliates (collectively, the "Buyer") pursuant to this Order. Vendor shall be deemed to have accepted this Order upon the earliest to occur of: (1) Vendor's express acceptance of Buyer's offer as set forth in this Order, (2) commencement of work on goods and/or services subject to this Order, and (3) shipment of ordered goods. Such acceptance is limited to acceptance of the express terms contained herein; any additional or different terms proposed by Vendor are hereby objected to and rejected by Buyer. Any such additional or different terms will not operate as a rejection of Buyer's offer unless such terms relate to the description, quantity, price or delivery schedule of the goods and/or services, but will be deemed a material alteration of this Order, and this Order will be deemed accepted by Vendor without such additional or different terms. If this Order is deemed an acceptance by Buyer of a prior offer by Vendor, such acceptance is expressly conditional on Vendor's assent to any additional or different terms contained herein and such assent will be deemed to exist upon the earliest to occur of: (1) Vendor's express acceptance of Buyer's additional or different terms, (2) commencement work on ordered goods and/or services subject to this Order, or (3) shipment of ordered goods.

2. **PAYMENT.** Payments are due 45 days after the later of: (1) acceptance of goods or services by Buyer and (2) Buyer's receipt of invoice. Cash discount periods will commence on the later of (1) acceptance of goods or services by Buyer and (2) Buyer's receipt of invoice. Cash discounts will be deducted on the invoice's face and the new amount shown. Buyer will not accept C.O.D. shipments or pay any penalties. Amounts otherwise payable to Vendor are subject to deduction or setoff by the Buyer by reason of any counterclaim arising out of this or any other transaction with Vendor. All invoices are subject to correction for errors by Buyer..

3. **TRANSPORTATION, DOCUMENTATION, PACKAGING.** Goods will be routed as instructed by Buyer and will be suitably packaged and shipped as required by common carriers. Goods will be described on the bill of lading or other shipping receipt. Unless otherwise indicated on the face of this Order, (1) all freight shipments are F.O.B. Buyer's place of delivery; (2) no charges are allowed for containers, crating, boxing bundling, dunnage or drayage; and (3) Vendor will bear transportation and insurance costs and will bear all risk of loss prior to acceptance by Buyer. Title to goods will pass to Buyer upon the earlier of: (1) Buyer's acceptance of the goods and/or services and (2) payment of the purchase price specified in this Order.

4. **CONFIDENTIALITY.** Vendor will hold in confidence all information furnished by Buyer (including this Order and terms) and all drawings, specifications or other documents prepared by Vendor for use by Buyer in connection with this Order. Vendor will not advertise or publish the fact that is a supplier to Buyer without Buyer's prior written consent.

5. **WARRANTY.** Vendor warrants to Buyer that goods and services provided pursuant to this Order will be delivered to Buyer free and clear of any claim, lien or encumbrance of any third party; will be free from defects in materials or workmanship; will be merchantable; will be suitable for the use intended where Vendor knows or should know of such use; and will conform to applicable specifications, drawings, samples or other descriptions provided to Buyer, and, if such goods and services are by Vendor's design, will be free from design defects. Vendor warrants that such items are in complete and strict compliance with the provisions of the Occupational Safety and Health Act, as amended, and all regulations issued pursuant thereto, as well as any state or local laws or regulations pertaining to safety requirements. The foregoing warranties are in addition to all other warranties, express, implied or statutory. All warranties will survive inspection, test acceptance and use.

6. **COMPLIANCE WITH LAWS AND REGULATIONS.** Vendor warrants that all goods and services provided hereunder will conform to all applicable city, state, and federal laws, ordinances and regulations. Without limiting the foregoing, Vendor warrants and certifies that in supplying goods and services hereunder it has complied with paragraphs (1) through (7) of Section 202 and with Section 203 of Executive Order Ill 1246 of September 24, 1965 with respect to Equal Employment Opportunity. Vendor agrees to supply any necessary Certification of Non-Segregated Facilities with respect to any non-exempt purchase orders which exceed \$10,000 and to provide to Buyer any Certification of Non-Segregated Facilities which may be required in connection with any nonexempt subcontract(s) which exceed \$10,000. The following clauses, where applicable, are incorporated in this Order by reference as if herein fully set forth: 41 CFR 60-1.40, 41 CFR 60-250.5(a), 41 CFR 60-741.5(a) and 41 CFR 60-300.5(a); which regulations prohibit discrimination against individuals on the basis of certain characteristics, qualified protected veterans and qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment for such individuals, qualified protected veterans and qualified individuals with disabilities. Vendor will comply with all applicable federal, state and/or local laws and regulations relating to hazardous substances, and containers for such substances will be clearly labeled with the chemical or common name (or trade name if no common name exists), hazard warning as to the specific nature of hazard

arising from the substance in the container, and the name, address and telephone number of the manufacturer of such substance.

7. TERMINATION. Buyer may terminate all or any part of this Order if delivery is not made when and as specified (time being the essence of this Order), or for any other breach or default by Vendor of its obligations under this Order. Buyer may pursue any remedies which it may have at law or in equity for such breach or default. Buyer may also terminate this Order or any part hereof for reasons of convenience or necessity, in which case Vendor will be paid a reasonable termination charge reflecting the percentage of the work performed prior to notice of termination plus actual direct costs resulting from termination which Vendor could not reasonably have avoided.

8. INSPECTION. Payment for goods or services will not constitute acceptance of such goods and services. Goods and services are subject to inspection by Buyer. In addition to any other rights or remedies, Buyer may: (1) reject any or all defective or nonconforming goods and goods supplied in excess of quantities called for in this Order, in each case at Vendor's expense (including incidental expenses and damages), (2) require replacement of goods with defects or nonconformities not apparent on examination; and/or (3) inspect the provision and result of services provided by Vendor and to reject any which are unacceptable, in which case Vendor will provide such services again at Vendor's expense and at an acceptable level. Nothing in this Order will relieve Vendor from any obligations of testing, inspection or quality control which it may otherwise have.

9. INDEMNIFICATION AND INSURANCE. Vendor agrees to defend, indemnify and hold harmless Buyer from and against all losses, claims demands, damages, costs and liabilities (including attorney's fees and legal expenses) which Buyer may suffer or to which Buyer may become subject by reason of (i) any breach by Vendor of its obligations under this Order; (ii) failure of any goods and/or services provided pursuant to this Order to conform to Vendor's warranties or by reason of any other defects; (iii) any actual or alleged infringement of any patent, trademark copyright, trade secret or other proprietary right of any third party by reason of the manufacture sale or use of the goods and/or services covered by this Order unless such infringement results from manufacture according to a design supplied solely by Buyer; (iv) personal injury, death or property damage allegedly sustained by any person(s) resulting from work done or services performed pursuant to this Order; or (v) any failure of goods or services covered by this Order to comply with the provisions of applicable law. Vendor will maintain all necessary insurance coverage, including without limitation, product liability and workers compensation insurance.

10. CHANGES OR DELAYS. Buyer may at any time make changes in drawings, specifications, materials, packaging, time and place of delivery and method of transportation. If any such changes result in an increase or decrease in the cost or the time required for the performance, an equitable adjustment will be made and this Order will be modified in writing accordingly. Vendor agrees to accept any such changes subject to this Section. Buyer may delay delivery of acceptance of goods and services provided pursuant to this Order due to causes beyond its control or reasons of convenience. Vendor will hold such goods and delay the performance of such services at Buyer's direction and will deliver them when the reason for delay has been removed. Buyer will be responsible only for Vendor's direct additional costs in holding the goods or delaying performance of the services at Buyer's request.

11. LIMITATION OF LIABILITY: STATUTE OF LIMITATIONS. In no event will Buyer be liable for lost or anticipated profits or for indirect, 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 Order or from the performance or breach of this Order will in no case exceed the price allocable to the goods or service or unit thereof which gives rise to the claim. Buyer will 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 under this Order must be commenced within one year after the cause of action has occurred.

12. MISCELLANEOUS. Unless otherwise agreed, Vendor agrees to pay any taxes imposed by law upon, or on account of, the goods, services and materials provided hereunder. Neither this Order nor any part hereof may be assigned or subcontracted to a third party(ies) without the prior written approval of Buyer. This Order contains the entire agreement between the parties and may be modified only in a writing signed by authorized representatives of each party. Buyer's failure to insist on performance of any of the terms or conditions of this Order or to exercise any right or privilege or Buyer's waiver of any breach with this Order will not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type. This Order will be governed by the applicable laws of the state in which the Buyer resides.