

## GENERAL TERMS AND CONDITIONS

**1. Parties.** The purchaser of goods and/or services will be referred to as “Buyer” and the supplier of goods and/or services under this “Purchase Order” will be referred to as “Seller.” Seller and Buyer shall individually be referred to as a “Party” and collectively as the “Parties.”

**2. Entire Agreement.** The Purchase Order for the purchase of goods or performance of services by Buyer from Seller and these General Terms and Conditions (hereinafter, “Agreement”), which are incorporated into and made a part of such Purchase Order, are collectively referred to as the “PO.” Seller’s acceptance of Buyer’s order and shipment made pursuant thereto are subject to and expressly conditioned upon Buyer’s acceptance of the terms and conditions herein unless this transaction is subject to a previously applicable contract executed in writing by Seller. Buyer shall be deemed to have assented to the provisions hereof in all respects by its acceptance of any goods shipped or services rendered or by failure to give Seller written notice of objection within five business days of Buyer’s receipt of this Agreement. No Buyer terms and conditions (whether included in its PO or otherwise), confirming orders, or other documentation, written or oral, modifies, alters, or changes the express written terms of this Agreement. Unless agreed to in writing by Seller in an amended PO, change order to the PO, or any other amendment or writing modifying the original PO, any and all additional or different terms proposed by Buyer with (or in response to) a PO submitted in accordance with the terms of this Agreement shall be considered material alterations of Seller’s offer and are hereby rejected and objected to by Seller whether inserted by Buyer into a previously executed PO or included or referred to in a separate ordering document, purchase acknowledgement, shipping release, order acceptance letter or confirmation or other preprinted forms, or elsewhere, and no such additional or different terms shall in any event be considered part of this Agreement, the PO or applicable to sales or purchases hereunder. Any references to a quote or proposal submitted or prepared by Seller by number or otherwise in a Buyer Purchase Order, ordering document, change order, or otherwise, shall not incorporate any general terms and conditions attached therein and the same shall not be part of the Purchase Order or this Agreement. If any additional or different terms are proposed by Buyer in its request to purchase the goods or services, or Seller while accepting this PO, including strikeouts of language, such additional or different terms will be considered as a proposal by either Buyer or Seller for a modification of this PO and will be effective only if expressly accepted in writing by both Parties.

**3. Change Orders, Invoicing, and Payment.** (a) Buyer may request changes to the PO in writing, and Seller shall use commercially reasonable efforts to effect such change. If, as a result of Buyer’s requested change, an adjustment in price or time is necessary, Buyer and Seller shall mutually agree upon such adjustment in a change order executed by both Parties. Seller shall have no obligation or liability to proceed or fulfill any requested change without a mutually agreed upon change order executed by both Parties. (b) If while Seller is performing services under this PO it appears that the cost will exceed the purchase price set forth in the PO, then Seller shall (i) promptly notify Buyer, and (ii) await authorization via a change order to this PO. (c) Payment terms are net 30 days from the date of invoice. (d) Should Buyer dispute in good faith the accuracy or amount of any invoice, Buyer may withhold payment of the disputed amount of the invoice without penalty or interest, and will promptly notify Seller specifying the reasons therefore. In the event of such dispute, an audit shall be conducted by Buyer in order to arrive at the amount mutually determined and agreed to by both Parties. Seller shall continue to be obligated to perform its work, services, and other obligations under this PO pending resolution of any such good faith dispute.

**4. Compliance.** (a) Seller warrants that all goods, which Seller will deliver, and services, which Seller will perform under this PO, will be accomplished in compliance with all applicable standards, codes, specifications, and federal, state, and local laws, rules and regulations. (b) With respect to trade and export control, (i) each of Buyer and Seller shall comply with all national and international export and control regulations, and goods, equipment, technology and technical data shall not be exported, resold, diverted, re-exported or disposed of in other than the country of ultimate destination (currently approved by the United States Government), without the prior approval of the United States Department of State or Department of Commerce or other agency of the United States government, whichever is appropriate, (ii) Seller shall assume no liability in the event that an export license is not approved or later withdrawn by the United States government or other applicable government; (iii) where Buyer requests a routed transaction (meaning it will, along with its U.S. freight forwarder, accept responsibility as U.S. Exporter of Record to attain such applicable government approvals) it shall supply all required documentation to Seller including the required routed transaction letters from both Buyer and its designated U.S. designated forwarder/agent. Buyer shall assist Seller in complying and documenting compliance with any applicable U.S. export laws, regulations and executive orders. Buyer represents that it is not, and to the best of Buyer’s knowledge, its customers, its customers’ end-users and its agents are not, subject to any U.S. or other government sanction or restriction that would prohibit the sale or export by Seller of the goods or services. Upon Seller’s request, Buyer shall provide all end-user and end-use information of which it is aware or which it could obtain with commercially reasonable efforts. Each party agrees to indemnify, defend and hold harmless the other party from and against all claims, demands, causes of action, and proceedings of every kinds and character without limit with respect to the failure of any member of the indemnifying party’s group to comply with this Section 4(b). This Section 4(b) shall survive termination or cancellation of the PO.

**5. Delivery; Storage.** Unless the PO specifies otherwise, Seller shall use commercially reasonable efforts to meet the agreed upon delivery dates set forth in the PO. Title and risk of loss to the goods purchased will pass from Seller to Buyer either in accordance with the applicable Incoterms set forth in the PO or upon Buyer’s payment for the goods, whichever is earlier. Seller warrants that Seller has good and clear title to the goods delivered. All items will be packaged according to good commercial practice sufficient to prevent damage. All containers will be properly marked.

Unless otherwise agreed by Seller in writing, holding shipment or storing ordered goods on behalf of Buyer for more than 30 days after requested delivery date is prohibited. Seller at its sole discretion may charge Buyer commercially reasonable storage fees if Buyer extends delivery, require prepayment of the full order, or cancel the order without penalty or further obligation or liability to Buyer.

**6. Inspection; Acceptance.** From the date of delivery of the goods, Buyer will have ten (10) days (“Inspection Period”) to evaluate the goods to determine whether they substantially conform to the PO and any specifications provided to Seller by Buyer as part of the PO. Within the Inspection Period, Buyer shall provide its written acceptance of the goods or, pursuant to the Warranty herein, provide notice of Defects (defined below) to Seller. In the event Buyer neither provides its notice of acceptance of the goods, nor a notice of rejection of the Defective Goods (defined below) within the Inspection Period, Buyer shall be deemed to have accepted the goods. In the event delivered goods contain a Defect, the Parties shall comply with the warranty obligations set forth in Section 7(a) herein. Except as expressly set forth in this Section 6, acceptance of the goods, or deemed acceptance thereof, by Buyer shall not relieve Seller of its warranty obligations set forth in Section 7(a) below.

## 7. Warranties.

(a) *Goods.* For twelve (12) months from delivery of the products or goods (the “Goods Warranty Period”), Seller warrants that the goods which Seller delivers will be new (unless otherwise specified), and conform to the description stated in the PO. If, during the Warranty Period, Buyer finds non-conformities with the above warranties (“Defects” or “Defective Goods”) with the products or goods provided by Seller, Buyer shall give prompt written notice to Seller during the Goods Warranty Period of such alleged Defects and allow Seller to inspect and/or test the products or goods alleged to have a Defect, at Seller’s cost and expense. If, during the Goods Warranty Period, any of the products or goods are determined to have a Defect, Seller shall, in its reasonable discretion, promptly repair or replace, without cost to Buyer, any Defective Goods. Seller shall have no obligation to repair, replace, or accept rejected goods that do not contain a Defect. Seller shall have no obligations or liability, warranty or otherwise, with respect to Buyer-provided property, items, goods, or other work. Excluding actions or inactions by Seller, the warranty set forth herein shall not apply to defects resulting from the failure to store, install, operate, maintain (including replacement of consumable items or wear components), inspect and/or lubricate the goods in accordance with sound industry practice, or from improper use, or abuse of the goods or work by Buyer, Buyer’s end customer, or any third party. Normal wear and tear and misuse by Buyer, Buyer’s customer, its or their employees, representatives, contractors of any tier, agents and third parties are excluded from the warranty herein. No substitution of any goods will be made without Buyer’s written approval.

(b) *Services.* For services provided, Seller warrants that the services will be and have been completed in accordance with the terms of the PO. Seller will use commercially reasonable efforts to ensure that all service personnel are competent and will attempt to perform the services requested; however, because of the nature of the services to be performed, the results of such services cannot be and are not guaranteed. Seller warrants the services provided hereunder will be performed in a workmanlike manner for a period of ninety (90) days (the “Services Warranty Period”). In the event Buyer determines that the services have not been performed in conformity with the foregoing warranty, then during the Services Warranty Period, Buyer shall notify Seller in writing of any alleged non-conformance, and in such event Seller’s exclusive obligation, and Buyer’s exclusive remedy, shall be re-performance of the services by Seller. NO WARRANTY IS GIVEN WITH RESPECT TO THE RESULTS OF ANY SERVICES PROVIDED BY SELLER.

(c) *Exclusive Remedies; Disclaimer.* **THE WARRANTIES HEREIN PROVIDE THE SOLE AND EXCLUSIVE REMEDIES FOR ALL CLAIMS BASED ON THE FAILURE OF, DEFECT IN OR NON-CONFORMITIES WITH THE SERVICES AND GOODS, REGARDLESS OF WHEN THE FAILURE, DEFECT OR NON-CONFORMANCE ARISES, AND WHETHER A CLAIM, HOWEVER, DESCRIBED, IS BASED ON CONTRACT, WARRANTY, INDEMNITY, TORT/EXTRA-CONTRACTUAL LIABILITY (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. EXCEPT AS SET FORTH HEREIN, SELLER MAKES NO WARRANTY, AND EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING, USAGE, OR TRADE PRACTICE.**

**8. Indemnification.** Seller shall protect, defend, indemnify and hold Buyer, its parent, partners, subsidiaries, affiliates, successors and assigns and each of their respective directors, officers, agents and employees (“Buyer Indemnitee”) harmless from and against any costs (including reasonable attorneys’ fees and expert witness fees), losses, liabilities, claims, demands, damages, or causes of action (hereinafter “Claim(s)”) of third parties, of every kind and character, arising out of or resulting from the performance or nonperformance of Seller, its affiliates and subcontractors of any tier (hereinafter “Seller Group”), provided that any such Claim is attributable to bodily injury, sickness, disease, or death, or injury to or destruction of property, but only to the extent caused by a grossly negligent act, omission, or willful misconduct of the Seller Group. Buyer shall protect, defend, indemnify and hold Seller, its parent, partners, subsidiaries, affiliates, successors and assigns, and each of their respective directors, officers, agents and employees (“Seller Indemnitee”) harmless from and against any Claims of third parties, of every kind and character, arising out of or resulting from the performance or nonperformance of Buyer, its affiliates and contractors of every tier (excluding Seller) (hereinafter, “Buyer Group”), provided that any such Claim is attributable to bodily injury, sickness, disease, or death, or injury to or destruction of property, but only to the extent caused by a negligent act, omission, or willful misconduct of Buyer Group.

**9. Insurance.** (a) Seller will carry at all times insurance sufficient to cover the risks and liability of the PO any other insurance coverage and at limits consistent with best practice in Seller’s industry; (b) Prior to commencing services, Seller shall furnish certificates of insurance to Buyer evidencing the insurance required herein. Seller shall provide Buyer with thirty (30) days’ notice of cancellation of, or material change in, insurance coverage or endorsements. Buyer, its members, partners, subsidiaries, and affiliated companies and their respective employees, officers, and agents shall be named as an additional insured in each of Seller’s policies except Workers’ Compensation; however, such extension of coverage shall be limited to this PO and shall not apply with respect to any obligations, if any, for which Buyer has specifically agreed to indemnify Seller.

**10. Returned Goods.** Products and goods cannot be returned for credit without written authorization. Products or goods returned due to an error made by Seller will be credited to Buyer at the invoice price. Products or goods returned to Seller due to (i) error by Buyer, or (ii) any cause for which Seller is not directly responsible, including, but not limited to, manufacturing defects, will incur a restocking fee of up to one-hundred percent (100%) of the invoice price, as reasonably determined by Seller, plus transportation expenses. All products and goods authorized for return by Seller must be in as good condition as delivered to Buyer by Seller.

**11. Confidential Information.** Both Parties shall keep confidential all information, drawings, specification, or data furnished by the disclosing party, or prepared by the disclosing Party directly in connection with the performance of this PO, and shall not divulge or use such information, drawings, specifications or data for the benefit of any other Party. The receiving Party shall not use, either directly or indirectly, any such data or any information derived therefrom for any purpose other than to perform this PO without obtaining the disclosing Party’s written consent. The receiving Party shall return all information, drawings, specification or data of the disclosing Party upon termination of this PO or upon the disclosing Party’s demand. The provisions of this Section 11 shall not apply to information which (i) is or becomes generally available to the public through no act or fault of the receiving Party; (ii) is already in the possession of the receiving Party prior to disclosure by the disclosing Party and was not received from the disclosing Party; (iii) is rightfully received from a third party who did not receive the same from the disclosing Party; or (iv) is required by law or

governmental agency to be disclosed, after the receiving Party notifies the disclosing Party of the disclosure requirements and affords the disclosing Party an opportunity to object to and minimize such disclosure.

**12. Independent Contractor.** Seller is an independent contractor in all respects with regard to the performance of the services. Seller, Seller's employees, or subcontractors performing the services will not be considered for any purpose to be Buyer's employees, agents, or representatives. Buyer is interested in the results of the services and will not direct or control the manner or method in which Seller performs the services.

**13. Audit.** Seller agrees to maintain its records relating to the quantity, quality, price, cost of, and payment for the goods sold or the services performed under this PO and, subject to compliance by Buyer with the provisions of Section 11 Confidentiality, allow Buyer to inspect, copy, and audit those records during normal business hours for a period of up to two (2) years following Seller's delivery of the goods or performance of the services.

**14. Termination.** This PO or any portion thereof is subject to cancellation by either Party upon thirty (30) calendar days written notice in the event the other Party fails to comply with its material obligations under this PO.. Upon exercising such right to terminate, Buyer's sole liability to Seller shall be to compensate Seller for (i) all amounts due and not previously paid to Seller for services performed or goods actually delivered as of the date of termination, (ii) reasonable amounts for any goods then in production, and (iii) actual and documented costs of settling and paying amounts due or claims arising out of the cancelled ordered, provided that Seller has made reasonable efforts to either obtain cancellation of the terminated orders to sub-suppliers or assign those orders to Buyer.

**15. Force Majeure.** If performance of the PO, or any obligation hereunder is prevented, restricted, or interfered with by any act or condition whatsoever beyond the reasonable control of the affected Party (including without limitation the failure of any suppliers to perform), the Party so affected, upon giving prompt notice to the non-affected Party, will be excused from such performance to the extent of such prevention, restriction, or interference. If performance is not possible within one-hundred eighty (180) consecutive calendar days from receipt of such notice, either Party may then terminate the unperformed portion of the PO and this Agreement with written notice to the other Party. Insufficient funds on the part of either Party shall not constitute a force majeure as described herein. In the event of termination under this paragraph, Buyer shall be obligated to pay Seller for Seller's cost and expense of any work in progress and to pay for all goods delivered and services performed as of the date of termination.

**16. Disclaimer of Consequential Damages; Limitation of Liability.** NOTWITHSTANDING ANYTHING CONTAINED IN THIS PO TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER AND EACH PARTY RELEASES THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE LOSS OR DAMAGE, OR CONSEQUENTIAL LOSS, INCLUDING, BUT NOT LIMITED TO, LOSS OF PRODUCTION, DELAY, LOSS OF PRODUCT, LOSS OF USE, LOSS OF BUSINESS AND BUSINESS INTERRUPTION, PROFIT OR ANTICIPATED PROFIT (WHETHER DIRECT OR INDIRECT), REGARDLESS OF WHETHER SUCH DAMAGES ARISE FROM A BREACH OF CONTRACT OR TORT (INCLUDING NEGLIGENCE), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE OR IF SUCH LOSS OR DAMAGE COULD HAVE BEEN REASONABLY FORESEEN. The liability of Seller with respect to claims arising out of the supply of products or goods, Seller's performance or non-performance of services or other obligations in connection pursuant to this PO, or any other claim arising in connection with this PO, whether based on contract, tort (including negligence) or by operation of law, shall not exceed the value of this PO.

**17. Governing Law & Dispute Resolution.** This PO will be governed by the laws of the state of Texas without regard to its choice of law provisions. The rights and obligations of Buyer and Seller arising from this Agreement will not be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly disclaimed by the Parties. Seller and Buyer agree that any litigation involving this PO will be brought exclusively in federal or state courts located in Harris County, Texas. **EACH PARTY HEREBY CONSENTS TO PERSONAL JURISDICTION IN ANY FEDERAL OR STATE COURT WITHIN HOUSTON, HARRIS COUNTY, TEXAS AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW AND THE LAWS OF THE STATE OF TEXAS, ANY CLAIM OR OBJECTION THAT IT MAY NOW OR HEREFTER HAVE, THAT VENUE OR PERSONAL JURISDICTION IS NOT PROPER WITH RESPECT TO ANY SUCH DISPUTE.**

**18. Conflict of Interest.** Seller agrees that neither Seller nor any of Seller's employees, subcontractors and their employees, directors, or agents will give to or receive from Buyer, or its employees or agents, any gifts or entertainment of significant value or any commission, fee or rebate in connection with this PO. In addition, neither Seller nor any of Seller's directors or employees will enter into any business arrangement with any of Buyer's employees or agents who are not acting as Buyer's representative, without giving Buyer prior written notification.

**19. Assignments or Subcontracts.** Neither Party will assign or subcontract this PO in whole or in part without the other Party's prior written consent.

**20. No Waiver.** No failure, delay or indulgence given by Buyer or Seller in exercising any of its rights or remedies under this PO shall be deemed to be a waiver of that right or remedy, nor shall it operate to bar the exercise or enforcement of it at any time(s) thereafter.

**21. Anti-Corruption.** Seller or Buyer shall not pay or give, offer or promise to pay or give, authorize the payment or giving of any money, fee, commission, remuneration or other thing of value to or for the benefit of any Government Official in order to influence an act or decision of the Government Official in his, her or its official capacity, cause the Government Official to act or fail to act in violation of his or her lawful duty, or cause the Government Official to influence an act or decision of a governmental authority, for the purpose of assisting either Party in obtaining or retaining business or for the purpose of securing an improper advantage, or in violation of applicable law, including without limitation the Foreign Corrupt Practices Act and any other anti-corruption laws, applicable to either Party their directors, officers, employees, consultants or agents. In the event of a violation of this Article, either Party will have the right to terminate the PO immediately upon written notice without prejudice to other remedies which either Party may have under the PO or applicable law. "Government Official" means an official of government, an official of a government instrumentality, an official of a public international organization, a candidate for political office, an official of a political party, and an employee of an organization, which is owned in whole or in part or controlled by a government, government instrumentality, or public international organization.

**22. Electronic Copy.** The Parties specifically agree that an electronically-maintained, original, signed copy of this PO and any amendments thereto ("Electronic Copy") may be utilized for any and all purposes that an original, signed hard copy of this PO could be utilized, including but not limited to, evidentiary purposes in an administrative, legal or equitable proceeding. To that end, both Parties waive any and all objections that they have or may have to the introduction and use of an Electronic Copy of this PO in any administrative, legal or equitable proceeding under any rules of evidence, including but not limited to, the so-called "Best Evidence Rule."

**23. Future Trade Restrictions.** If, following the date of this PO, (i) there shall be imposed any import, export or other restrictions on interstate or international trade or commerce or there shall be enacted or otherwise issued any law, regulation, or order regulating or purporting to regulate any import, export or other restrictions on interstate or international trade or commerce in any way (such restrictions, laws, regulations and orders being hereinafter collectively referred to as "Trade Restrictions"), including, without limitation, any creation or increase (whether retaliatory or otherwise) of tariffs, import surcharges, antidumping or countervailing duties, fees, or any other form of charges whatsoever, or the imposition of any import or export quota or embargo, and (ii) Seller's ability to perform this PO is adversely affected thereby, or its underlying economic assumptions with respect to this PO become inaccurate in any respect, Seller shall have the option either (a) to terminate this PO in whole or in part by written notice to Buyer, without incurring any liability to Buyer thereby, or (b) to continue to perform all of its obligations hereunder in respect of deliveries of the goods or performance of the services, and in either case (except, if this PO is terminated in whole), Seller shall have the right to increase the price of the goods or services by an amount equal to the full amount of all such tariffs, surcharges, duties, fees, and other charges, and any other cost or expense, imposed on or incurred by Seller in connection with the sale of goods or the performance of services as a result of the imposition, enactment or issuance of any Trade Restriction.