



## **TERMS AND CONDITIONS**

### **ACCEPTANCE**

This Purchase Order is an offer by the Buyer to the Vendor which will become a binding contract, including these terms and conditions, upon acceptance by Vendor. Vendor may accept by: (1) signing the acknowledgement copy hereof and returning same to Buyer; or (2) performing under the Purchase Order. Acceptance is expressly limited to the stated terms and conditions contained herein. All Vendors who are signatory to our Master Service Agreement (MSA), Master Time Charter Agreement (MTA) or other governing service agreement should refer to that document as it governs this purchase order. In no event shall any terms or conditions contained in Vendor's acknowledgment forms, invoices, billing statements or other documents become a part of this contract, whether or not signed by Buyer's representatives, except in accordance with the Paragraph captioned "GENERAL" below.

### **REPRESENTATIONS AND WARRANTIES**

1. By accepting this Order, Vendor represents and warrants to Buyer, in addition to all warranties implied by law, that each article or service described on the face hereof (the "articles" or "services" as the case may be) shall: (a) be merchantable and fit for Buyer's intended purpose; (b) be free from defects in material, workmanship and design and with respect to services, be performed in a first class, workmanlike manner; (c) conform to all drawings, specifications and other descriptions, if any, referred to or set forth herein and all articles, if any, accepted by Buyer as samples; (d) be suitable for use, be manufactured or performed, as the case may be, in accordance with and, where required, be registered under all applicable Federal, state and local laws, and all orders and regulations promulgated thereunder, including, without limitation, the Fair Labor Standards Act of 1938, as amended, and the "Equal Opportunity" clause and the "Certification of Non-Segregated Facilities" provision of the Federal Acquisition Regulations in effect as of the date of this contract; and (e) not infringe or encroach upon third parties' personal contractual or proprietary rights. Upon Buyer's request, Vendor shall furnish to Buyer a certified report detailing the materials and workmanship incorporated into the articles or utilized in connection with the performance of the services. Further, upon Buyer's request, Vendor shall provide completed Material Safety Data Sheets (OSHA Form 20) for those substances which have been identified by the U.S. Occupational Safety and Health Administration as hazardous or potentially hazardous chemicals. Vendor's representations and warranties shall survive the performance of the services or the delivery of the articles, or of products containing or incorporating such articles, to Buyer, and any resales thereof by Buyer. The warranties contained herein shall be in addition to, and shall not be construed as restricting or limiting any warranties or remedies of Buyer, express or implied, which are provided by contract or by law. Any attempt by Vendor to limit, disclaim or restrict any such warranties or remedies of Buyer, by acknowledgement or otherwise, in accepting this Order, shall be null and void and ineffective without Buyer's written consent.

2. BUYER MAKES NO REPRESENTATIONS OR WARRANTIES CONCERNING THIS ORDER EXCEPT AS EXPRESSLY CONTAINED HEREIN.

### **PATENTS**

Vendor shall defend any suit or proceeding brought against Buyer or its customers so far as based on a claim that any article or apparatus or any part thereof constituting goods furnished under this Order, as well as any device or process necessarily resulting from the use thereof, constitutes an infringement of any patent of the United States, if notified promptly in writing and given authority, information and assistance (at Vendor's expense) for the defense of same, and Vendor shall pay any damages and costs awarded therein. In case that article or apparatus, any part thereof, or any device or process necessarily resulting from the use thereof, is in such suit held to constitute infringement and the use of said article or apparatus, part or device is enjoined, Vendor shall at its own expense and at its option, either procure for Buyer the right to continue using said article or apparatus, part or device, or replace same with non-infringing article or apparatus, or modify it so it becomes non-infringing; or remove said article or apparatus and refund the purchase price and the transportation and installation costs thereof. The foregoing states the entire liability between Vendor and Buyer with respect to patent infringement involving said article or apparatus or any part thereof.

### **INDEMNITY & INSURANCE**

1. If Vendor's work under this Order involves any operation by Vendor on the premises of Buyer or one of

its customers, Vendor shall take all necessary precautions to prevent injury or death to persons or damage to property during such operation. Vendor shall indemnify, defend and hold harmless Buyer and its customers from any and all claims which may result in any way from any act or omission by the Vendor, its agents, employees, or subcontractors arising out of any such operation.

2. (a) Vendor agrees to indemnify and hold harmless Buyer and Buyer's agents and employees from and against any and all losses or claims for losses, liability, damage or expenses, including counsel and other legal fees, which arise out of or result from any of the following: (1) any injury to person or property arising or resulting from any actual alleged defect in any of the articles or services, or any act or omission of Vendor or Vendor's agents or employees, or of any of Vendor's subcontractors, with respect to any of the articles or services; (2) the alleged existence of any state of facts concerning the articles or services which, if true, would constitute a breach of any representation, warranty or other obligation of Vendor under this Agreement; (3) the non-fulfillment of any agreement on the part of Vendor contained in this contract, or (4) any and all actions, suits, proceedings, investigations, demands, assessments or judgments incident to the foregoing.

(b) In the event that any action or proceeding based upon any of the matters referred to in subparagraph (2) (a) above is brought against Buyer or its agents, Buyer will promptly notify Vendor and Vendor shall, if Buyer so requests, resist and defend such action or proceeding by reputable counsel retained at Vendor's expense. In addition, Buyer may appear and be represented of its own choosing at Buyer's expense.

(c) Vendor agrees that any controversy between itself and Buyer concerning Vendor's obligations under this indemnity may be litigated in the same forum as, and concurrently with, any lawsuit against Buyer to which such controversy may relate, and Vendor agrees to voluntarily appear in such forum and submit to the jurisdiction thereof.

3. Vendor agrees to maintain, and when requested by Buyer, to furnish certificates acceptable to Buyer evidencing adequate Worker's Compensation, public liability, comprehensive general liability, product liability, property damages and other applicable insurance coverage. Maintenance of such insurance shall not relieve Vendor of liability under the indemnity provisions set for herein.

#### **PERFORMANCE SCHEDULE**

Time and rate of deliveries are the essence of this contract, and, if delivery of articles or performance of services is not completed by the time provided for in this Order, Buyer reserves the right, without liability, in addition to any other rights and remedies which Buyer may have under this contract or otherwise, to terminate this contract by notice effective when received by Vendor as to articles not yet delivered, or services not yet rendered and to purchase substitute articles or services elsewhere and charge Vendor with any loss incurred, plus incidental expenses. If requested by Buyer, Vendor will use an expedited method of shipment with respect to late deliveries, at Vendor's expense. Articles shipped to Buyer in advance of the scheduled date may be returned by Buyer to Vendor, at Vendor's expense, and Buyer shall not be liable for fabrication or shipment of articles in excess of authorized quantities nor obligated to accept tender thereof.

#### **CHANGES**

1. Vendor shall not make any changes in the specifications, physical composition of, or process used to manufacture the goods hereunder without Buyer's prior written consent
2. Buyer shall have the right to make changes in (a) the specifications, drawings and samples, if any; (b) the method of performance, shipment or packaging; (c) the place and time of performance; and (d) the services, articles and material, including the quantities thereof, to be furnished by Vendor. If any such change causes an increase or decrease in the cost or the time required for performance of this contract, an equitable adjustment shall be made in the contract price or performance schedule, or both. Any claim by Vendor for adjustment under this clause must be asserted in writing within thirty (30) days from the date of receipt by Vendor of the notification of change, after which time such claim shall be deemed to have been waived by Vendor.

#### **CANCELLATION**

1. Buyer shall have the right to terminate and rescind all, or any part, of this contract, by notice to Vendor, in the event that (a) Vendor breaches or fails to perform any of its obligations hereunder; (b) any of the representations or warranties of Vendor contained herein shall be incorrect or untrue when made or at the time of delivery of any of the articles or rendering of any of the services to Buyer hereunder; or (c) Vendor becomes insolvent or seeks relief under any bankruptcy or insolvency law, or if any bankruptcy, reorganization, arrangement, receivership or other insolvency proceeding shall be commenced by or against Vendor. Such termination shall become effective immediately upon receipt of such notice by

Vendor, and Vendor will stop work immediately on the terminated portion of this contract, immediately notify subcontractors to stop work, and protect property in Vendor's possession in which Buyer has, or may acquire, an interest. In the event of such termination, Buyer agrees to pay Vendor the stipulated price for all articles or services which have been completed by Vendor and delivered to and accepted by Buyer, subject to Buyer's rights of revocation of acceptance.

2. Buyer shall also have the right to terminate and rescind all, or any part of this contract, other than as a result of default of Vendor, by giving Vendor notice of its election to do so. Such termination shall become effective immediately upon receipt of such notice by Vendor, and Vendor will stop work immediately on the terminated part of this contract, immediately notify subcontractors to stop work, and protect property in Vendor's possession in which Buyer has, or may acquire, an interest. In the event of such termination, Buyer agrees to pay Vendor the stipulated price for all articles or services which have been completed by Vendor and delivered to and accepted by Buyer, subject to Buyer's right of revocation of acceptance. In addition, with respect only to terminations pursuant to this paragraph 2, Buyer agrees to pay Vendor for Vendor's reasonable out-of-pocket costs necessarily incurred by Vendor in the performance of this contract which are properly allocable to the terminated portion of this contract under recognized commercial accounting practices, provided, however, that Vendor must, in good faith, use its best efforts to mitigate its said out-of-pocket costs by commercially reasonable means. Any claim for payment of such out-of-pocket costs incurred by Vendor must be submitted in writing to Buyer within thirty (30) days of receipt of Buyer's notice of termination, thoroughly documented by invoices or other applicable documents, after which time such claim shall be deemed to have been waived by Vendor. Buyer shall have the right to audit all elements of any termination claim and Vendor shall make available to Buyer on request, all books, records and papers relating thereto, in a form readable by Buyer.

3. The remedies provided in paragraphs 1 and 2 above shall be Vendor's exclusive remedies for Buyer's termination and/or rescission of this contract and Vendor shall have no other remedy, including, but not limited to, specific performance or loss of profits. Vendor will deliver to Buyer any property in which Buyer has an interest and for which Buyer shall make written request at or after termination and Buyer will pay Vendor the fair value of any such property so requested and delivered.

#### **PACKAGING AND SHIPPING**

Buyer shall have the right, at its option, to control and select the method of transportation of articles ordered. All delivered articles shall be packed and packaged in accordance with the instructions or specifications attached hereto, or referred to in drawings or specifications for the articles hereunder; in the absence of any such instructions or specifications, Vendor shall comply with the best commercial practice for domestic and/or international shipments, adequate for safe arrival at destination and storage, for protection against weather and transportation, for compliance with carrier regulations and for securing the lowest transportation costs. No charge shall be made by Vendor for cartage or packing unless authorized by Buyer in writing. Truck shipments must be made only by carriers authorized under applicable federal and state law or will be subject to rejection. All packages and containers must bear Vendor's name and Buyer's purchase order number, indicate the contents, and show quantity, gross and net weights. Multiple containers must be labeled as such. Country of origin must be clearly marked on each article, box, and carton. Any omission or failure in marking country of origin will be the responsibility of Vendor. A bill of lading or other shipping manifest must be mailed to Buyer the same day that shipment is made by Vendor.

#### **INSPECTION AND RIGHTS OF REPAIR AND REJECTION**

1. The articles and services shall be received subject to Buyer's rights of inspection, rejection and revocation of acceptance. Any article or service which is not in conformity with Vendor's representations and warranties set forth in this contract, or implied warranties of Vendor or which is otherwise defective, may be returned by Buyer to Vendor, at Vendor's expense, and will be promptly repaired or replaced by Vendor on demand at no additional cost to Buyer, or, upon Buyer's request and at Vendor's expense, Vendor shall promptly send a repair person to Buyer's premises to repair or replace such articles or services, or, at Buyer's option, such articles or services may be repaired by Buyer, at Vendor's expense. Vendor shall bear all costs of packing, shipping and transporting all defective or nonconforming articles. Payment of the purchase prior to inspection shall not constitute acceptance by Buyer of the articles or services.

2. Vendor, at its own expense, shall furnish any parts price lists, maintenance and repair instructions and sectional drawings requested to Buyer for articles supplied hereunder. Vendor's facilities, materials and equipment and the articles to be shipped hereunder (including adequate data showing the presence in each article of the physical and chemical properties, including all components and raw materials incorporated

therein, required by the applicable specifications), shall at all reasonable times and places, be subject to examination by Buyer, and Vendor also shall impose the same requirements on his subcontractors. On orders placed on a time and material basis, Vendor shall retain its cost records, and all ancillary business records, for at least one (1) year following delivery of the articles or completion of the services to Buyer and such records shall at all times be subject to inspection by Buyer's representatives. All materials and workmanship incorporated into the articles and/or services shall be subject to Buyer's inspection and testing at all times and places (such inspection and testing to be conducted, when practical, during the manufacture of the articles or the rendering of the services); and, if any such inspection or testing is to be made on the premises of Vendor, Vendor will furnish, without additional charge, all reasonable facilities, testing equipment and assistance for safe and convenient inspection or testing.

#### **BILLING, PRICE AND PAYMENT**

1. The articles shipped or services rendered pursuant hereto must not be invoiced at a higher price than that shown on the face of this contract without Buyer's prior written consent. The price on the face of this contract includes packing, crating and freight, express or cartage, unless otherwise shown on the face hereof. Invoices must itemize applicable transportation charges, taxes and custom duties, if any, as separate items. Invoices must be rendered as close to date of shipment of articles, or completion of services, as is possible, but not before such date of shipment or completion.

2. Vendor warrants that the prices for the articles and/or services to be furnished to Buyer hereunder are not less favorable than those currently extended to any other customer for the same or similar articles and/or services in similar quantities. If Vendor's net prices to the other customer for articles and/or services similar to those furnished to Buyer hereunder are below the price stipulated herein, Vendor agrees to give Buyer the benefit of such reductions while they are in effect and to notify Buyer promptly of all such changes in prices.

3. Unless specified otherwise on the face hereof, the date of payment will be calculated from the date that acceptable invoices are received by Buyer, or from the date that the articles shipped hereunder are received by, or the services rendered hereunder are completed for Buyer, whichever shall be the later date, both for the calculation of cash discounts and for the scheduling of payment of net invoices. Buyer has the discretion of determining what constitutes an acceptable invoice.

4. Buyer will, at its option, exercise all discounts provided by Vendor.

5. Buyer may set-off against amounts payable to Vendor hereunder all present and future indebtedness of Vendor to Buyer arising from this or any other transaction or occurrence.

6. Buyer shall not be responsible for any over-time charges unless Buyer provides its written authorization to Vendor.

7. Vendor agrees to withhold and pay to the proper governmental authorities all social security taxes and unemployment compensation taxes in any and all jurisdictions, as may be required by law, and to hold Buyer harmless against any claims for non-payment or insufficient payment of same.

#### **MATERIALS, TOOLS AND EQUIPMENT PAID FOR OR FURNISHED BY BUYER**

Title to all tools, equipment, dies, jigs or other materials, if any, either paid or furnished by Buyer, as well as replacements therefore and attachments thereto, in connection with this contract, shall at all times remain with Buyer. Such property shall be maintained by Vendor in good and usable condition, reasonable wear and tear excepted, and Vendor shall be responsible for any loss or damage thereto and shall at all times keep the same insured for its full insurable value. Vendor shall not include any charge (including amortization or depreciation) for such property in the price of any article manufactured, or service rendered, by or with the use of said property. Such property shall be plainly marked or otherwise adequately identified by Vendor as the property of Buyer and shall be stored separate and apart from Vendor's property to the extent possible. Said property shall not be removed from Vendor's premises, nor used for any purpose other than that for which furnished or acquired, without the prior written approval of Buyer. Buyer shall have the right, at all reasonable times, to inspect such property and Vendor's records with respect thereto and to take possession of such property on demand with or without legal process and without liability. Vendor agrees to waive, and does hereby waive, any lien that it may have or may hereafter have on such property and agrees to execute one or more Uniform Commercial Code financing statements with respect to such property showing Buyer's title thereto whenever so requested by Buyer. Such property shall be deemed to be moveable chattels and shall not become annexed.

#### **CONFIDENTIALITY**

1. Any designs, specification, drawings, reprints, technical information data ("Confidential Information")

furnished by Buyer to Vendor hereunder shall remain Buyer's property, shall be kept confidential by Vendor, shall be used only with respect to articles manufactured or services rendered for Buyer and shall be returned to Buyer at Buyer's request. Buyer may use the Confidential Information in articles manufactured and/or services rendered by others and may obtain such legal protection as may be available for the Confidential Information.

2. Vendor shall not, without Buyer's prior written consent, in any manner, divulge the fact that Vendor has a contract to furnish the articles and/or services to Buyer. Vendor shall be responsible for the safeguarding of all secret, confidential, or restricted matters that may be disclosed or developed in connection with the work under this contract.

### **INTELLECTUAL PROPERTY**

The work product created, conceived, or developed by Vendor in connection with the Order, or which derive from information or materials vendor has received from Buyer, including but not limited to any writings of Vendor (the "Work Product") shall be and is the exclusive property of Buyer, including all copyrights and other intellectual property rights embodied therein. If any Work Product or any portion thereof, whether or not such Work Product was created at the direction of Buyer, is copyrightable, it shall be deemed to be a "work made for hire," as such term is defined in the United States Copyright Act. If, for any reason, any such copyrightable Work Product created by vendor is excluded from the definition of a "work made for hire," vendor hereby assigns and conveys to Buyer the entire right, title, and interest in and to such Work Product, including Work Product created prior to date of execution of the Purchase Order. Vendor shall cooperate with Buyer or its designees and execute document of assignment, declaration, and other documents which may be prepared by Buyer, and take other necessary actions as reasonably directed by Buyer, to effect the foregoing or to perfect or enforce any proprietary rights resulting from or related to this Purchase Order.

### **GENERAL**

1. All printed, stamped or written matter appearing on this Purchase Order shall be a part hereof.
2. The failure of Buyer to insist on the performance of any of the terms hereof, or to exercise any right or privilege hereunder, or Buyer's waiver of any breaches by Vendor hereof, shall not thereafter waive any such terms, conditions, rights or privileges that Buyer may have hereunder.
3. All rights and remedies granted to Buyer hereunder shall be cumulative and not exclusive and shall be in addition to and not in lieu of Buyer's rights arising under this contract or in law.
4. All of the terms and conditions hereof shall apply to additional quantities of articles and/or services ordered by Buyer except to the extent covered by a new contract.
5. This contract shall be governed by and construed in accordance with the laws of the State of Texas.
6. Should any of the provisions of this contract be declared by any court of competent jurisdiction to be invalid, such decision shall not affect the validity of any remaining provisions hereof.
7. None of Vendor's rights or obligations under this Order may be assigned without Buyer's prior written consent. Any attempt by Vendor to make such assignment shall be null and void and any such assignment by operation of law shall give Buyer the option to terminate the Purchase Order without further liability.
8. Vendor shall not be responsible for delays or defaults in deliveries or performance, nor Buyer for failure to receive, if occasioned by wars, strikes, fires, an act of God or the public enemy, labor or transportation difficulties or other causes beyond the control of the affected party.
9. Buyer's complete Order number must appear on all invoices, shipping notices, packing slips, containers, bills of lading, packages, and correspondence pertaining thereto.
10. All notices, requests, demands and other communications which are required to be, or may be, given by either party under this contract shall be in writing and shall be deemed to have been given or made if delivered or mailed by first class mail, postage prepaid, or sent by prepaid telegram, to the other party at the address of such other party indicated on the face of this contract.

11. In the rendering of all services hereunder, Vendor shall be an independent contractor, and Vendor shall not have any right or authority to act for, incur, assume or create any obligation, responsibility or liability, express or implied, in the name of, or on behalf of, Buyer or to bind Buyer in any manner whatsoever.

12. Any waiver of terms and conditions of this Purchase Order by Buyer shall not prevent Buyer from thereafter insisting upon complete compliance with this Purchase Order's terms and conditions with respect to subsequent deliveries of merchandise or services, and shall not constitute a waiver of any other terms and conditions.

13. This Purchase Order, and any documents referred to on the face hereof, constitute the entire agreement between the parties regarding the subject matter hereof and supersede all prior agreements, understandings and statements whether oral or written regarding such subject matter. No modification to, change in or departure from the provisions of this Purchase Order shall be valid or binding on Buyer, unless approved in writing by Buyer's authorized representative.