

PURCHASE ORDER TERMS & CONDITIONS

1. **Acceptance:** Any of the following acts by Seller shall constitute acceptance of this Order and all of its terms and conditions: (i) signing, initialing and returning a copy of this Order, (ii) delivery of any goods ("Goods") to Buyer, or (iii) Seller's commencement of performance of services ("Services"). No terms and conditions other than those set forth herein shall be binding upon Buyer unless Buyer indicates its acceptance in writing.

2. **Price/Payment/Setoff:** Seller shall furnish the Goods or Services stated on this Order in accordance with the price, delivery and terms stated on its face. All prices include all applicable taxes required by law to be paid by Seller. Buyer has the right to delay payment to Seller, without loss of discount, if any, and without breaching any term contained herein, in the event Buyer has reason to believe that an event exists that may give rise to a breach of this Order by Seller. Such remedy shall not constitute any waiver of Buyer's additional rights or remedies against Seller in the case of late delivery. Payment terms are net sixty (60) days. Buyer may set off any amount owed by Buyer to Seller against any amount which may be due and payable by Seller to Buyer.

3. **Risk of Loss:** Unless otherwise agreed to by the parties, all purchases are FOB Buyer's designated destination, and risk of loss shall remain with Seller until possession, ownership and full legal title to the Goods or Services are transferred to and accepted by Buyer.

4. **Quantities/Inspection:** Seller agrees to make shipments in the quantities and on the dates in this Order. The quantity order must be delivered in full. Any unauthorized quantity is subject to rejection and return at Seller's expense. All Goods or Services shall be received subject to Buyer's right of inspection and rejection. Defective Goods or Services not in accordance with Buyer's specifications will be held for Seller, at Seller's risk, and if Seller directs, will be returned at Seller's expense. Payment for Goods or Services on this Order prior to inspection shall not constitute acceptance thereof and is without prejudice to any and all claims that Buyer may have against Seller.

5. **Warranty.** Seller warrants that the Goods or Services sold by Seller to Buyer hereunder will be of merchantable quality; will conform to applicable specifications, drawings or descriptions furnished by Buyer; will be free from defects in material and workmanship; will be sufficient and fit for the purposes intended by Buyer; and will conform with applicable governmental standards, rules and regulations. Buyer's approval of design furnished by Seller shall not relieve Seller of its obligation hereunder. The warranties of Seller, together with its service guarantees, shall run to Buyer and its divisions, subsidiaries and affiliates.

6. **Indemnification.** Seller agrees to indemnify, defend and hold harmless Buyer, its successors and/or assigns from any and all demands, claims, losses, suits, liabilities and expenses (including attorneys' fees) for personal injury, death, property damage, or other harm arising out of an actual or alleged defect in the Goods or Services or any act or omission of Seller or Seller's breach of these terms and conditions. In addition, Seller shall indemnify, defend and hold harmless Buyer, its successors and/or assigns from any and all demands, claims, losses, suits, liabilities and expenses (including attorneys' fees) arising from all labor, and/or or mechanic's or materialmen's liens upon any Goods arising in favor of laborers, materialmen, subcontractors and suppliers, or out of this Order and shall keep said Goods free and clear of all other liens, claims and encumbrances arising from the performance of Seller or its subcontractors. Seller shall furnish at Buyer's request, waivers by Seller and all other persons entitled to assert any lien rights in connection with the performance of this Order. Seller is not granted a security interest in the Goods purchased by Buyer under this Order and may not file a UCC-1 financing statement in relation to the Goods.

7. **Intellectual Property.** Seller warrants that the Goods or Services will not infringe upon any patent, trademark, or any other intellectual property right. Seller shall indemnify, defend and hold harmless Buyer, its successors and/or assigns, its customers and/or users of the Goods or Services against all claims, losses, damages, costs, expenses, liabilities (including attorneys' fees) involving actual or alleged infringements of any patent, trademark or other intellectual property or proprietary right of any other person or entity.

8. **Limitation of Liability.** IN NO EVENT SHALL BUYER BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS ARISING OUT OF OR RELATING TO THIS ORDER, WHETHER BASED IN TORT, CONTRACT OR ANY OTHER THEORY AND REGARDLESS OF WHETHER BUYER WAS INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.

9. **Cancellation:** Buyer reserves the right to cancel all or any part of the undelivered or unperformed portion of this Order, without liability, if Seller does not make deliveries or perform as specified, *time being of the essence of this Order*, or if Seller breaches any of the terms hereof, including, without limitation, the warranties of Seller. Upon cancellation, Seller shall immediately discontinue performance.

10. **Compliance with Laws:** Seller warrants that it is and will remain in full compliance with applicable federal, state and local statutes, regulations, rules, and orders, including without limitation and to the extent applicable to the Goods or Services, environmental and hazardous materials laws. If Goods shipped to Buyer contain hazardous materials as defined by federal law, Seller must provide Buyer a Material Safety Data Sheet prior to, or at the time of delivery to Buyer's address designated in this Order.

11. **Insurance:** During the term of this Order, Seller shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum of no less than \$5,000,000 per occurrence with carriers rated "A" or better by A.M. Best in Class VII or larger.

12. **Confidentiality/No Publicity:** All data and other information obtained by Seller from Buyer in connection with this Order shall be held in strict confidence by Seller and used solely for the purposes of fulfilling this Order. Seller shall not use Buyer's name, nor any of Buyer's trademarks or tradenames in advertising or publicity of any kind without Buyer's express written consent.

13. **Arbitration/Claims:** Any dispute, claim or controversy arising out of, relating to or concerning this Order or the parties' business relationship shall, at the sole election of Buyer, be fully and finally settled by binding arbitration administered by the American Arbitration Association pursuant to the Commercial Arbitration Rules. Seller must bring any claim or dispute against Buyer, including without limitation, claims for payment of Goods or Services described in this Order, within one year from the date of this Order. Venue for the arbitration shall lie in Memphis, Tennessee.

14. **Governing Law/Jurisdiction:** With the exception of arbitration which is governed by and construed in accordance with the Federal Arbitration Act, this Order shall be governed in all respects by the laws of the State of Tennessee without regard to its conflict of laws and principles. All actions commenced pursuant hereto shall be brought in the state and federal courts located in Memphis, Tennessee.

15. **Audit:** Seller shall maintain complete and accurate records of and supporting documentation regarding provision of the Goods or Services under this Order, including the amounts billable to and payments by Buyer hereunder in accordance with generally accepted accounting principles. Seller's records relating solely to this Order shall be open to Buyer's representative for purposes of an independent audit for two (2) years after delivery of the Goods or Services. If the audit discloses any overcharges to Buyer, Seller shall reimburse Buyer for such overcharges and shall pay the reasonable expenses of the audit if the error rate exceeds 5%.

16. **Notices:** Any notice or communication from one party to the other shall be in writing and shall be effective when personally delivered to the other party, upon confirmation of receipt when sent via facsimile or overnight courier and addressed to such other party at the address designated on the face of this Order. No change of address shall be binding upon the other party hereto until written notice thereof is received by such party at the address shown herein. All notices shall be in English.

16. **Miscellaneous:** If any term or provision of this Order is declared to be illegal or void, or if for any reason is declared to be invalid or of no effect, the remaining terms and provisions shall be in no manner affected thereby and shall remain in full force and effect. Notwithstanding anything to the contrary in this Order, cancellation of this Order or delivery of the Goods or Services described in the Order shall not affect any of the parties' rights or obligations that are specifically intended by the parties to survive such cancellation or delivery. Except in the case where the parties have entered into a written agreement relating to the Goods or Services, in which case, such written agreement shall govern in all respects, this Order supersedes any prior agreement between the parties hereto, whether written or oral, relating to the subject matter hereof.