

STANDARD PURCHASE ORDER FOR SERVICES - TERMS AND CONDITIONS

These Standard Terms and Conditions shall apply to all purchases of Services under purchase orders or other similar documents (hereafter each such purchase of Services referred to, with the appropriate cover page, order form, or similar or other documentation, as a "**Purchase Order**"), unless otherwise agreed to in writing by Buyer, as follows:

"**Agreement**" means: the Statement of Work issued by _____ to Buyer dated _____, 201_ ("SOW") together with these Standard Terms and Conditions which are incorporated into the SOW.

"**Seller**" means: (i) _____

"**Services**" includes all labor, work and other services to be provided by Seller to Buyer under the Agreement and as more particularly set out in the SOW.

1. PERFORMANCE

- (a) Seller shall diligently and carefully perform the Services in strict accordance with this Purchase Order and the SOW and shall furnish all labor, supervision, tools, materials and equipment necessary therefor and, if directed by Buyer, shall provide all goods required in connection with the Services.
- (b) Unless otherwise agreed to in writing by Buyer, Seller shall immediately upon completion of the Services remove from Buyer's premises all its equipment, surplus materials and debris and shall leave such premises in a clean and tidy condition.
- (c) Title to all work product resulting from the Services shall pass to Buyer as such work product is completed. *Notwithstanding the foregoing*, the Services and all work product shall remain at the risk of Seller until completion of all the Services hereunder and acceptance of those Services by Buyer.

2. WARRANTY

- (a) Seller represents and warrants to Buyer that:
 - (i) Seller shall perform the Services in a timely, professional and workmanlike manner, in accordance with the industry's highest standards of care, thoroughness, and competence;
 - (ii) Seller shall perform the Services in full compliance with all applicable laws, regulations and rules, and the SOW (including all specifications, drawings and other documents furnished by Buyer), or as otherwise agreed to by Buyer and Seller in writing;
 - (iii) Seller shall employ only persons who may lawfully work at the site where the Services are to be performed;
 - (iv) Seller shall employ only trained, qualified, competent and experienced personnel to perform the Services; and
 - (v) All work product resulting from the Services shall be of the kind and quality specified herein, free from fault in design, workmanship and material.
- (b) The above warranties shall continue in full force and effect for a period of twelve (12) months after completion of the Services. Seller shall, during such period, re-perform all Services that were performed incorrectly or otherwise do not fully comply with the above warranties.
- (c) Where Services are re-performed under the above warranties, such Services shall be warranted for a new period of twelve (12) months from the date re-performance is completed.
- (d) Seller shall bear all costs for re-performance of the Services under the above warranties.
- (e) Seller shall assign to Buyer the benefit of all warranties or similar obligations provided by any subcontractor or supplier to Seller (each and collectively "**Supplier Warranties**"). Seller shall ensure that all Supplier Warranties are assignable to Buyer without the consent of the subcontractor or supplier, or shall obtain the necessary consents before completing the Services. Seller shall fully assist Buyer in making any claim under any Supplier

Warranty. Any claim by Buyer under a Supplier Warranty shall not: (i) prevent Buyer from (A) making a claim under any other warranty or (B) otherwise seeking to protect its rights; and (ii) limit or restrict Buyers rights or remedies in law or at equity.

3. SELLER'S PERSONNEL AND EQUIPMENT

If Buyer determines in its sole discretion that any of Seller's personnel or equipment do not comply with applicable safety and security requirements or for any other legally permitted reason, Buyer may refuse to permit such personnel or equipment to enter upon any of Buyer's premises. Seller shall promptly replace such personnel or equipment and shall indemnify defend and hold harmless Buyer from any and all claims, causes of action, petitions, demands, loss or expenses (including court costs, interest and attorney's fees) of every kind arising out of Buyer's refusal to permit any of Seller's personnel or equipment to enter upon any of Buyer's premises.

4. BOND

At Buyer's request, Seller shall furnish Buyer with a performance bond in an amount designated by Buyer. The form and content of the bond and the surety shall be subject to prior approval by Buyer.

5. ENVIRONMENT, HEALTH AND SAFETY.

Without limiting the provisions of Sections 20 and 25 below:

- (a) Seller shall, and shall be responsible for ensuring that its employees, agents and subcontractors at all times comply with all applicable laws, regulations, by-laws, permits, approvals or other lawful requirements imposed or issued by any Federal, State, or local governments, including those relating to environmental protection as well as any environmental policies or procedures imposed by Buyer from time to time.
- (b) Buyer may at any time evaluate Seller's environmental practices and procedures and may, from time to time, require the assistance of Seller in completing evaluations in this regard.
- (c) Seller shall, and shall be responsible for ensuring that its employees, agents and subcontractors at all times comply with all applicable Federal, State, or local occupational health and safety laws and regulations as well as any additional safety rules imposed by Buyer from time to time.

6. SITE INSPECTION

Seller acknowledges that prior to its acceptance of the Purchase Order it has, and shall be deemed to have, examined thoroughly and familiarized itself with and considered the location and all conditions of the work to be performed as part of the Services including, without restricting the generality of the foregoing, topography, access to the work site, the right-of-ways, the character and quantity of surface and subsurface conditions, the uncertainties of weather, the availability of labour and other requisite elements such as power, water and transportation and the type and quantities of necessary equipment and materials (each and collectively "**Site Conditions**"). Seller shall report to Buyer any proposed changes to the Purchase Order resulting from Site Conditions.

7. PAYMENT TERMS

Unless otherwise specified by the parties in writing, the payment terms shall be as set forth in the SOW.

8. DRAWINGS AND SPECIFICATIONS

Unless otherwise agreed to by the parties, all drawings, blueprints, specifications, dies, patterns and tools, whether supplied by Buyer or prepared or constructed by Seller as required for the completion of this Purchase Order, or for repair, replacement or re-performance pursuant to the warranty provisions hereunder, shall be the property of Buyer.

9. PRICE

- (a) All prices quoted by Seller shall be quoted in United States Dollars. Prices shall be as quoted in the SOW and shall not change without written agreement of Buyer. Prices for Services shall include all expenses, charges and costs for all equipment, goods and materials necessary to complete the Services.
- (b) No payment or acceptance of Services by Buyer hereunder shall constitute a waiver with respect to any provisions of this Purchase Order, nor shall anything herein contained be construed to limit any warranties or conditions implied by law.



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- (c) If any error is discovered in an invoice by Buyer, such error shall be adjusted within thirty (30) days from the date of discovery of such error, provided however, that there shall be no adjustment made for any error discovered by Seller more than twelve (12) months after receipt of an invoice by Buyer.
- (d) Unless otherwise specifically provided for in this Purchase Order, Seller assumes exclusive liability for and shall pay before delinquent, all sales, use, customs and excise, import, export (from country of origin), value added and other taxes, charges, duties, levies, imposts or contributions of any kind or with respect to or measured by the Services supplied hereunder (Collectively "**Sales Taxes**"). **Seller shall indemnify, defend and hold harmless the Buyer Indemnified Parties, as defined herein, from any claims Causes of action, costs and expenses (including court costs and expenses and attorney's fees) arising out of Seller's failure to pay any Sales Taxes that are Seller's responsibility under this Section.**
- (e) Unless otherwise specifically provided for in this Purchase Order, Seller assumes exclusive liability for and shall pay before delinquent all Federal, State and local income taxes, pension benefits, social security taxes, employment, disability and other customary insurance and for any other taxes or payments which may be due and owing by Seller or which are the result of fees or amounts paid by Buyer to Seller under this Purchase Order (each and collectively "**Income Taxes**"). **Seller shall indemnify, defend and hold harmless the Buyer Indemnified Parties, as defined herein, from any claims Causes of action, costs and expenses (including court costs and expenses and attorney's fees) arising out of Seller's failure to pay any Income Taxes that are Seller's responsibility under this Section.**
- (f) Buyer shall furnish Seller any applicable, valid and effective tax exemption certificates and Seller shall collect Sales Taxes and other taxes only in accordance with those tax exemption certificates.
- (g) Any applicable Sales Taxes and other government charges shall be separately listed on Seller's invoice.

10. TIMELY PERFORMANCE AND COVER

- (a) Seller understands and agrees that time is of the essence and Seller shall perform all Services in a timely manner and in accordance with time schedules, if any, referred to in the SOW or otherwise agreed to by the parties.
- (b) If Seller fails to perform all Services within the time specified above, Seller shall reimburse Buyer for any additional costs resulting therefrom including, but not limited to, the full cost of cover for the Services not timely performed by Seller.

11. INDEPENDENT CONTRACTOR

- (a) The parties acknowledge and agree that Seller is an independent contractor and nothing contained in this Purchase Order or otherwise nor any past relationships or course of dealings between the parties shall be construed as constituting a joint venture or partnership or establishing a relationship of principal and agent, master and servant, franchisor or franchisee, or employer and employee. Seller shall be solely responsible for the performance of the Services and such Services shall be performed by Seller according to its own methods and at its own risk, subject only to compliance with the provisions of this Agreement.
- (b) Seller, in keeping with its independent status, shall cause itself and any of its employees when applicable, to be registered with the appropriate government agencies for the purpose of workers' compensation, unemployment insurance, social security or equivalent and income tax. Seller shall indemnify the Buyer Indemnified Parties in accordance with Section 16 (e) *Price* for failure to pay any aforementioned taxes.
- (c) Seller shall ensure that all Seller personnel and subcontractors have received all training regarding health and safety or any other matters required by applicable law or applicable governmental regulations or authorizations. Training or implementation of any additional health and safety measures appropriate for the work will be specified by Buyer. Upon Buyer's request Seller shall provide Buyer written documentation of said training and worker qualifications.

12. SUBCONTRACTORS

- (a) Seller may not subcontract any part of this Purchase Order without the prior written approval of Buyer and if granted such approval shall not operate to relieve Seller of any liability to Buyer under this Purchase Order.
- (b) Seller shall enter into written contracts with subcontractors that include provisions requiring them to perform in accordance with and subject to the terms and conditions of this Purchase Order.
- (c) Seller shall be fully responsible to Buyer for any and all acts and omissions of its employees, agents or subcontractors and their employees or agents of any tier.

13. INDEMNIFICATION

- (a) Seller shall defend, indemnify and save Buyer its members, shareholders, managers, directors, officers, employees, agents and affiliates (each and collectively “**Buyer Indemnified Parties**”) harmless from and against any and all losses, liabilities or expenses (including legal fees and expenses), suits, actions, claims, demands, damages of all kinds and descriptions (including punitive damages) on account of bodily injury, sickness, disease or death of any person or persons, or damage to or destruction of tangible property, including the loss of use resulting therefrom arising out of or related to the performance of the Services, including but not limited to, latent defects which Buyer Indemnified Parties may suffer or incur by reason of, arising from, relating to, or in connection with:
 - (i) any breach of this Agreement by Seller or any employee, agent or subcontractor of Seller;
 - (ii) any violation of applicable law by Seller or any employee, agent or subcontractor of Seller; or
 - (iii) any other act or omission by Seller or any employee, agent or subcontractor of Seller.
- (b) Without limiting the obligations of Seller in Section 13(a), Seller shall release Buyer Indemnified Parties of any liability for, and shall protect, defend, indemnify, and save Buyer Indemnified Parties harmless from and against any and all losses, liabilities or expenses (including legal fees and expenses), suits, actions, claims, demands, damages of all kinds and descriptions (including punitive damages) in favor of Seller’s employees (including leased employees) or Seller’s contractors or their employees or Seller’s invitees on account of bodily injury, death or damage to property without limit and without regard to the cause or causes thereof, including without limitation, the negligent acts or omissions of any party or parties, arising out of or related to this Agreement or relating in any way to the performance of the Services. Seller’s indemnity shall be without regard to and without any right to contribution from any insurance maintained by Buyer.

14. INSURANCE

- (a) Seller shall, at its own expense, obtain and maintain during the term of this Agreement, with insurers having an A.M. Best rating of A VII or better, the following minimum coverages which may be increased at Buyer’s reasonable discretion:
 - (i) commercial general liability insurance (including contractual, products, and completed operations coverages) of not less than \$5,000,000 per occurrence covering bodily injury, death and property damage including coverage for blanket contractual liability, broad form property damage, sudden and accident release, personal injury liability, independent contractors and completed operations arising out of or relating to the acts or omissions of Seller in performance of the Services, which insurance shall include Buyer as an additional insured, provide a waiver of subrogation in the Buyer’s favor and provide thirty (30) days’ notice of cancellation or material change;
 - (ii) insurance of not less than \$5,000,000 per occurrence and \$10,000,000 in the aggregate covering bodily injury, death and property damage arising out of the ownership or operation of a motor vehicle used or to be used in connection with the performance of the Services by Seller and which insurance shall include Buyer as an additional insured, provide a waiver of subrogation in the Buyer’s favor and provide thirty (30) days’ notice of cancellation or material change; and
 - (iii) Seller shall furnish evidence of its and its permitted subcontractor’s compliance with Worker’s Compensation or similar legislation applicable at the site(s) where the Services shall be performed.
- (b) Seller shall ensure that its permitted subcontractors comply with the above insurance requirements and each permitted subcontractor shall provide Buyer with evidence of the above coverages and endorsements prior to the commencement of the performance of Services hereunder.

15. CONFIDENTIALITY

Seller shall not use or disclose to any third person any business information, business plans, data, designs, drawings, specifications or other information, (collectively, the “**Confidential Information**”) belonging to or supplied by or on behalf of Buyer except in the performance of this Agreement. Upon the expiration or termination of the Agreement or upon Buyer’s earlier request, all Confidential Information, including any copies thereof, shall be returned to Buyer. Where Buyer’s Confidential Information is furnished to Seller’s subcontractors or suppliers in connection with the performance of this Agreement, Seller shall insert the substance of this provision in its orders and shall ensure compliance with such provision by its suppliers.

16. TERMINATION

Buyer may, in its sole discretion, terminate this Agreement at any time, in whole or in part by written notice to Seller. Upon receipt of such notice, Seller shall immediately discontinue any Services being performed in connection with this Agreement, except as directed by Buyer. Upon such termination, and subject to audit, Buyer shall reimburse Seller for Services actually provided to Buyer up to the effective date of termination. In no event shall Buyer be liable to Seller for lost or anticipated profits

17. SET-OFF

- (a) Buyer shall be entitled at all times to set-off against any amount due or owing to Seller under this Agreement, such amounts that, in the opinion of Buyer, are sufficient to: (i) cover any account owing from Seller to Buyer or to any of its affiliated companies, or (ii) protect Buyer from any losses or expenses arising from defects or deficiencies in the Services performed by Seller, or any other failures by Seller to comply with the requirements of this Agreement.
- (B) Buyer shall further have the right, but not the duty, to withhold any monies payable by it hereunder and apply same to the payment of: (i) any obligations of Seller to Buyer howsoever arising or (ii) any obligations of Seller to any other parties arising in connection with this Agreement.

18. FORCE MAJEURE

Neither party shall be liable for delays or defaults due to acts of God, terrorism, governmental authority or public enemy, war, fires, floods, epidemics, freight embargoes, or contingencies reasonably beyond its control. The party so affected shall use its good faith efforts to remediate such force Majeure as expeditiously as possible and, upon prompt written notice to the other party, shall be excused from making or taking deliveries hereunder to the extent of such prevention or restriction. Buyer may terminate this Agreement pursuant to Section 16 *Termination* herein in the event of such delay in performance.

19. LIENS

- (a) Seller shall keep Buyer's premises free and clear of any and all liens and charges arising in connection with the performance of this Agreement.
- (b) in the amount and for the time provided under all applicable laws, rules and regulations. In the event that any lien or charge is filed against Buyer's premises in connection with this Agreement or any claim shall exist in connection with this Agreement which may form the basis for any lien or charge against Buyer's premises, Seller shall take such steps as are necessary to immediately discharge the lien, charge or claim. If such lien, charge or claim has not been discharged within five (5) days of notice from Buyer, Buyer may in its sole discretion take such steps as it deems necessary to discharge such lien, charge or claim, including withholding amounts payable under this Agreement. Seller shall be liable for and shall indemnify and save Buyer harmless from any and all costs and expenses (including legal fees) and other liabilities arising from such lien, charge, or claim.

20. COMPLIANCE WITH LAWS AND POLICIES

Seller shall comply with all applicable laws, regulations, by-laws, permits, approvals or other lawful requirements imposed or issued by any Federal, State, or local governments. Seller shall also comply with any business conduct policies and safety and security rules imposed by Buyer from time to time. Seller shall ensure that its employees, subcontractors and agents are made aware of and comply with the above laws, regulations, by-laws, permits, approvals, policies and rules and shall furnish Buyer with such evidence of compliance as Buyer may require from time to time.

21. GOVERNING LAW

This Agreement shall be deemed to be an agreement made in the State in which the Buyer's corporate head office is located and shall be construed in accordance with the laws of that State pertaining to the provision of Services and without reference to that jurisdiction's choice or conflict of laws rules.



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22. WAIVER OF JURY TRIAL

EACH PARTY IRREVOCABLY WAIVES ANY AND ALL RIGHT SAID PARTY MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR CLAIM OF ANY NATURE RELATING TO THIS PURCHASE ORDER, ANY DOCUMENTS EXECUTED IN CONNECTION WITH THIS PURCHASE ORDER OR ANY TRANSACTION CONTEMPLATED IN THIS AGREEMENT OR ANY OF SUCH DOCUMENTS. EACH PARTY ACKNOWLEDGES THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.

23. JURISDICTION AND VENUE

Each Party hereby irrevocably agrees, submits and consents to, and expressly waives any right to contest or object to, the exclusive jurisdiction and venue of the federal or state courts in the State in which the Buyer's corporate head office is located on any basis, including but not limited to, *forum non conveniens*.

24. RECOVERY OF COSTS

In any suite to enforce any Arbitration award or otherwise brought on this Agreement, upon the entry of a final non-appealable order of a court of competent jurisdiction, the prevailing party shall be entitled to recover its costs and expenses, including attorney's fees, from the other party.

25. BUYER'S RIGHTS

- (a) Except as specifically set forth herein, all rights and remedies provided in favor of Buyer hereunder are in addition to and without prejudice to any other rights and remedies to which Buyer may lawfully be entitled, including without limitation, under and by virtue of the provisions of any Federal, State or local law governing the sale of goods.
- (b) The failure of Buyer to insist upon strict performance by Seller of any of the terms and conditions of this Agreement shall not be deemed a waiver of any rights or remedies that Buyer may have at law or in equity in respect thereof and shall not be deemed a waiver of any subsequent default by Seller.

26. ENTIRE AGREEMENT AND CHANGES

- (a) This Agreement shall constitute the entire, final, complete, and exclusive agreement between Buyer and Seller concerning the subject hereof and no terms or conditions, other than those stated herein, and no agreements or understandings, oral or written, in any way purporting to modify this Agreement, or customs or usages of trade shall be binding on Buyer unless documented by Buyer's written authorization.
- (b) Without limiting the generality of the foregoing, the quality and other specifications of the Services to be supplied hereunder shall not be changed from those referred to in the SOW unless such changes are agreed to by Buyer in writing.

27. MISCELLANEOUS

- (a) The headings contained herein are provided for convenience only and are not to be considered when interpreting or construing this Agreement.
- (b) No right, title, estate or interest in this Agreement and no obligations or duty or liability of Seller shall be transferred, assigned, set over, conveyed, pledged, hypothecated or otherwise disposed of without the prior written consent of Buyer, which consent may be given or withheld in the sole discretion of Buyer.
- (c) Each notice, statement and invoice to be given pursuant to this Agreement shall be in writing and shall be sent by prepaid ordinary or registered mail, by facsimile transmission or by recognized courier to the addresses and facsimile numbers for Buyer and Seller noted in the SOW. Notices, statements and invoices sent by mail or courier shall be deemed to have been received when actually received or refused, and those sent by facsimile transmission shall be deemed to have been received on the first business day following the day on which they were sent.
- (d) Buyer or any person designated by Buyer may at any and all reasonable times for a period of twenty-four (24) months after completion of delivery of the Services hereunder, have access to Seller's books and records relating to the reimbursable costs, if any, provided for under this Agreement, for the purpose of auditing and verifying such costs and Buyer may make copies of such books and records as reasonably required by Buyer in performing such audit. Seller shall promptly review and settle with Buyer all matters arising from such audit including the refunding of monies where applicable.



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- (e) If this and any other documents are transmitted by any means of electronic transmission, such transmission shall have the legal significance of a duly executed original delivered to Seller.
- (f) Seller shall not use Buyer's names, logos, trade names, trademarks or copyrights or the fact that Seller is performing Services for Buyer in any press release, media statement, advertisement or other public communications or otherwise publicize this Agreement without the prior written consent of Buyer.
- (g) The invalidity or unenforceability of any portion or provision of the Agreement shall in no way affect the validity or enforceability of any other portion or provision hereof. Any invalid or unenforceable portion or provision shall be severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain such invalid or unenforceable portion or provision.



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