

## TERMS AND CONDITIONS FOR PURCHASE ORDERS

Vendor agrees that the following Terms and Conditions ("Terms and Conditions") are incorporated into and govern all purchase orders (the "Purchase Order") between Vendor and Company (as identified on the face of the Purchase Order):

**PURCHASE ORDER NUMBERS** – Purchase Order numbers must appear on all documents and correspondence, including, without limitation, all quality certifications, packaging sheets, and invoices.

**PRICE** - If price terms are omitted from the Purchase Order, the price of the goods shall be the price last quoted to or paid by the Company. Vendor represents that the price is no higher than the lowest price that Vendor has sold the goods to any third party in the last twelve (12) months.

**TAXES** – Unless otherwise expressly set forth in the Purchase Order or required by applicable law, all prices include all applicable taxes and duties.

**PAYMENT & INVOICING** – Company (as defined below) shall pay Vendor's invoices (i) within thirty (30) days of receipt of an accurate and approved invoice; and (ii) upon completion of the services or delivery of the goods specified in the Purchase Order. Vendor shall set forth on each invoice the following: (a) Purchase Order number; (b) number of cartons in shipment; (c) Vendor's invoice number; (d) Vendor store number; (e) taxes, if applicable; and (f) make, model number, serial number and type of product or service. Until Company receives Vendor's invoice containing all of the above information, no prompt payment time limits shall commence. In no event shall Company be liable to Vendor for interest or other late payment charge.

**DELIVERY** - All products and services must be delivered as specified in the Purchase Order. In the absence of specific shipping instructions, shipment shall be routed via the most economical mode of commercially reasonable transportation available. Time is of the essence with respect to delivery of products or services listed in the Purchase Order. Vendor must immediately advise Company if any product or service cannot be delivered as ordered by the stated date. Company shall be liable only for the shipping charges identified on the face of the Purchase Order. If Company is responsible for some or all of the shipping charges, shipping terms and rates must be agreed upon in advance. If Vendor elects a more expensive shipping method to meet a required delivery date, Vendor will be responsible for any increased shipping expense.

- **Partial Shipment:** At Company's option, in the event of shipment or receipt of less than all products or services ordered, Company may either accept shipment and pay only for the products or services received, pro rata based on the unit price of the item ordered, or reject the entire shipment.
- **Late Shipment:** Company reserves the right to cancel the Purchase Order or any portion thereof if delivery is not made when and as specified and charge Vendor for any loss sustained as a result of such cancellation, including, but not limited to, shipping charges. Further, Company may reject the late delivery without cancellation of the Purchase Order as to other subsequent required deliveries. Each shipment required under the Purchase Order is to be considered separately, and Company's right to reject a late delivery shall not be affected by acceptance of other late deliveries by Vendor. All such cancelled shipments shall be returned to Vendor at Vendor's expense.
- **Early Shipment:** Products delivered prior to the date specified, at Company's option, may be subject to anticipation and warehouse charges, payable by Vendor, or may be returned to Vendor, at Vendor's expense, to be held until proper shipping date.

**INSPECTION AND TESTING** - All products and services shall be subject to inspection and approval by Company after delivery. Company reserves the right to reject any products or services that it deems non-conforming, defective, stale, unsafe, unfit, in excess of the Purchase Order quantities or in any other way unsuitable for its purposes. Company reserves the right to require replacement of rejected products or services as well as payment of damages, at Vendor's expense. Vendor shall, at Company's option, either (i) promptly repair or replace the defective goods or services at the Vendor's cost, or (ii) issue a full refund (including shipping and any other expenses incurred by Company). If Vendor does not replace rejected goods or services within a reasonable time, Company may purchase substitute goods or services elsewhere. If the cost of purchasing such substitute goods or services exceeds the price stated in the order, then Vendor shall pay the difference to Company. This payment shall not prejudice any other rights Company may have against Vendor. Vendor must provide Material Safety Data Sheets (MSDS) for products as required by law. All provisions and remedies of the Uniform Commercial Code relating to both implied and expressed warranties are herewith referred to and made a part of this Purchase Order.

**ACCEPTANCE** - Acceptance of the Purchase Order may be evidenced by Vendor's written notice of acceptance or by Vendor's commencement of performance.

**CHANGES** - Company reserves the right at any time prior to shipment to make changes as to: (i) specifications; (ii) methods of shipment or packaging; (iii) place of delivery; (iv) schedule of delivery; or (v) the quantities ordered. If any such changes cause an increase or decrease in the cost of or the time required for performance of a Purchase Order, an equitable adjustment may, in the Company's sole discretion, be made in the contract price and/or the delivery schedule. Any claim by Vendor for adjustment under this clause shall be deemed waived unless asserted in writing within ten (10) days from receipt by Vendor of the change. If the cost of property made obsolete or excess as a result of such change is paid for by Company, Company shall prescribe the manner of disposition of such property.

**CANCELLATION** - Company may, after giving written notice to Vendor, cancel the Purchase Order prior to delivery. Upon a default by Vendor of any its obligations hereunder, Company may, in addition to any other rights or remedies it may have, cancel the Purchase Order and seek damages from Vendor. If Vendor becomes insolvent, a petition is filed for reorganization of Vendor or for its adjudication as a bankrupt, Vendor makes an assignment for the benefit of its creditors, or a receiver or trustee is appointed for any of Vendor's assets or any other type of insolvency proceeding or formal or informal proceeding for dissolution, liquidation or winding down of the affairs of the Vendor is commenced, Company may cancel this Purchase Order

and seek damages from Vendor in accordance with law. In the event of any cancellation hereunder, Vendor shall cease any work or delivery and observe any instruction from Company as to work in progress.

**INDEMNIFICATION** - Vendor shall indemnify, defend, and hold harmless the Company, all of its affiliates, subsidiaries and parents, and their respective agents, officers, directors, managers, and employees from and against any and all claims, damages (including, without limitation, court costs, investigative costs and reasonable attorneys' fees), judgments, liabilities, fines, costs and expenses (including, without limitation, legal expenses) as a result of (i) any claim or action arising out of any actual or alleged death or injury to any person, or any damage or destruction of property attributable to Vendor's products or services; or (ii) any willful misconduct or negligence of Vendor or an authorized Vendor representative. Such indemnification obligations shall survive the cancellation or expiration of the Purchase Order.

**INSURANCE** - If insurance requirements are not specified in the Purchase Order, Vendor represents that as of the date of the Purchase Order, Vendor maintains comprehensive general liability insurance in an amount not less than \$1,000,000 combined single limit, worker's compensation insurance as required by law and automobile liability insurance for all vehicles to be used by Vendor in the performance of services or delivery of products under the Purchase Order. Upon request, Vendor shall provide proof of such insurance coverages naming the Company certificate holder and additionally insured in respect to their operation and representatives. Company reserves the right to increase the mandatory insurance limits.

**PREMISES** – Vendor must comply with all reasonable regulations and policies communicated by Company to Vendor concerning Vendor's conduct on Company's premises.

**LIMITATION OF LIABILITY** – In no event shall Company be liable for any claim of any kind, for any loss, or for any damage arising out of, in connection with, or resulting from the Purchase Order in excess of the price allocable to the products or services giving rise to such claims. Any action resulting from Company's default as to the Purchase Order must commence within one year after the cause has accrued. Notwithstanding anything herein to the contrary, Company shall have no liability for any consequential, special, punitive, incidental or indirect damages.

**CONFIDENTIALITY** – Vendor acknowledges that it is, may be or will be privy to Confidential Information (as defined below). Vendor agrees it will use the Confidential Information only in furtherance of its work under this Purchase Order and shall not transfer or otherwise disclose the Confidential Information to any third party except as provided for herein. Vendor shall: (i) give access to such Confidential Information solely to those of its employees with a need to have access thereto in furtherance of or in connection with this agreement or as required by applicable law; and (ii) take the same security precautions to protect against disclosure or unauthorized use of such Confidential Information that Vendor takes with its own confidential information but, in no event, shall Vendor apply less than a reasonable standard of care to prevent such disclosure or unauthorized use. As used herein, "Confidential Information" means any and all information relating to Company, and any of its respective affiliates that may be received by or be provided to Vendor from time to time, including, without limitation, equipment and business specifications, business records or data, trade secrets, and confidential planning or policy matters, business strategies, internal policies, and procedures, matters subject to attorney-client privilege, and any financial or accounting information, the existence of this or any other agreements or communications between Vendor and Company, and the terms of any such agreement, and all data, reports, interpretations, forecasts and records containing or otherwise reflecting information concerning any such person or entity, together with analysis, compilations, studies or other documents, whether prepared by Vendor or Company, which contain or otherwise reflect such information. Vendor shall not use the Company's name, or the names of its respective subsidiaries or affiliates, in any sales or marketing publication or advertisement, without the prior written consent of Company.

**VENDOR REPRESENTATIONS AND WARRANTIES** – Vendor represents and warrants that: (a) Vendor owns all rights, title and interests in the products and services and has the legal authority to sell, license or otherwise transfer the right to use or sell such items to Company; (b) the products and services covered under the Purchase Order are of good and merchantable quality and free from defects in design, material, and workmanship, are safe and conform to applicable specifications, drawings, samples, descriptions, and associated documentation provided to Company in writing; (c) any consumable products are fresh and suitable for human consumption; (d) the products and services, and the production and sale thereof, and all warranties, guarantees, representations by Vendor made or authorized to be made in connection therewith are in all respects in compliance with all applicable international (including applicable import and export regulations), federal, state, local laws, rules, and regulations; (e) the goods are fit for the use intended; (f) neither the products and/or services, nor their sale or use will infringe any patents, trademarks, copyrights, trade secrets, or similar intellectual property rights of any third party; (g) unless otherwise specified in this Purchase Order, the goods are new and not used or reconditioned; and (h) Vendor will comply with all federal, state and local laws, ordinances, rules and regulations applicable to its performance under this Purchase Order. The foregoing representations and warranties shall survive inspection and acceptance by Company. Vendor agrees to indemnify and hold Company, and its affiliates, subsidiaries, employees, officers and directors, harmless from and against any and all claims, damages, demands, costs and losses which Company may suffer in the event Vendor breaches any of its obligations, representations and/or warranties under this Purchase Order and these Terms and Conditions.

**ASSIGNMENT AND SUCCESSORS** - Vendor shall not assign rights or delegate duties under the Purchase Order or these Terms and Condition, or subcontract any part of the performance required under the Purchase Order, without the express written consent of Company. No such consent shall be deemed to relieve Vendor of its obligations to comply fully with the requirements of the Purchase Order. Subject to the foregoing, the Purchase Order and these Terms and Conditions shall insure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

**GOVERNING LAW; SEVERABILITY** – The Purchase Order and these Terms and Conditions shall be governed by and construed in accordance with the laws of the State of West Virginia, without regard to its conflicts of laws provisions. In the event of a dispute hereunder, the parties agree to submit to the exclusive jurisdiction of the state courts of, and federal courts sitting in, the State of West Virginia. The invalidity of any provision of the Purchase

Order or these Terms and Conditions, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof, which will otherwise remain in full force and effect.

**ENTIRE AGREEMENT** - The Purchase Order and these Terms and Conditions constitute the entire agreement and understanding between the parties with respect to the subject matter contained in the Purchase Order and these Terms and Conditions, and Company shall not be bound by any other terms, including, without limitation, any terms that may be contained in any acknowledgement, contract, proposals, invoice form, Vendor's website or correspondence, or other act of Vendor and notwithstanding Company's purchasing department's act of accepting or paying for any shipment or similar act of the purchasing department.

**PRIVILEGED LICENSES** – The parties acknowledge that Company conducts a business that is subject to and exists because of, privileged licenses issued by governmental authorities. Vendor, therefore agrees that, in the event that Company shall determine, in Company's sole and exclusive judgment, that Vendor is, or likely to be, engaged in, or about to be engaged in, any activity or activities that jeopardize, or could jeopardize Company's business or such licenses or in the event that Vendor is not qualified or lacks the appropriate licenses or registration to do business with the Company, Company shall have the right to terminate immediately any Purchase Order(s) at no cost to Company, at which time the applicable Purchase Order(s) shall cease to be of any further force and effect.

**MATERIAL SAFETY DATA SHEETS** – As required by OSHA Guidelines, Vendor agrees that all goods delivered hereunder, which have a Material Safety Data Sheet, will be accompanied by a copy of the applicable Material Safety Data Sheet at the time of delivery. Vendor also agrees to fax a copy of the Material Safety Data Sheet to the Company's Safety Department at 304-387-8369 prior to delivery of the goods.