

# Service Purchase Order General Terms and Conditions

## 1. ENTIRE AGREEMENT

1.1. Seller, by signing this Purchase Order, delivering the supplies, or performing the requirements indicated herein agrees to comply with all the terms and conditions and all specifications and other documents that this Purchase Order incorporates by reference or attachment (if any). Buyer hereby objects to any terms and conditions contained in any acknowledgement of this Purchase Order that are different from or in addition to those mentioned in this document. Failure of Buyer to enforce any of the provisions of this Purchase Order shall not be construed as evidence to interpret the requirements of this Purchase Order, nor a waiver of any requirement, nor a waiver of the right of Buyer to enforce each and every provision.

1.2. This supersedes any and all proposals, correspondence and oral agreements made prior to the date hereof, and without limitation it is expressly agreed that all provisions of quotations, brochures, sales proposals, proposal forms and other documents provided by Seller shall be void to the extent they are in any way inconsistent with this.

## 2. INVOICING AND PAYMENT

2.1. Seller shall be paid the prices set forth herein, less deductions, if any, after delivery and acceptance by the Buyer and upon the submission of proper invoices according to the terms expressly stated in this Purchase Order. Failure to submit invoices in the format required by this clause will result in withholding of payment.

2.2. Payment may be withheld if Seller fails to submit any submittals if required by this Purchase Order. Any payments made for Articles delivered prior to final acceptance of the Articles shall not constitute final acceptance of the Articles. Delays in receiving invoices as well as errors and omissions thereon will be considered just cause for withholding payment without losing discount privileges. Sellers invoices shall submit properly prepared invoices to the address shown on the face of the Purchase Order indicating 1) the Purchase Order number, 2) an itemized listing of items, 3) transportation charges, if any, listed separately, 4) where applicable, all costs associated with taxes incurred shall be clearly detailed on each invoice, and listed separately, 5) all copies of appropriate bills of lading, and the freight waybill, when applicable, should be attached to the invoice.

2.3. TERMS, AS SPECIFIED ON THE FIRST PAGE OF THE PURCHASE ORDER:

2.3.1. NET-30 TERMS: Seller shall submit invoices within 30 days of completion. Payment for an acceptable invoice shall be mailed to the Seller's address Net 30 days unless otherwise stated herein. Payment will be made on partial deliveries accepted by the Buyer, according to terms stated in this Purchase Order.

2.3.2. PAID-WHEN-PAID: Buyer shall make payment to the Seller within seven (7) working days of Buyer's receipt of payment by Client, for whom all work hereunder is being performed. Payments are conditioned on and subject to (as an express condition precedent) receipt of payment by Buyer from Owner covering the corresponding monthly estimate of Buyer, including the approved portion of Seller's invoice. Seller specifically waives any claims against Buyer for failure or delays in payment by Owner.

2.3.3. SPECIAL TERMS: See Statement of Material Purchased, Item 5.

2.4. As a prerequisite for final payment, Seller shall submit a "Lien Waiver and Release Upon Final Payment" attached hereto for the amount previously received by the Seller and its lower-tier subcontractors, vendors or suppliers, if any, utilized for the Work and must be signed by a duly authorized company representative. Final payment shall not be made until the lien waivers have been properly executed by the Seller and all of its lower-tier subcontractors (if any). Seller's failure to obtain the Lien Waiver and Release from all lower-tier subcontractors, vendors, and suppliers will constitute a waiver of any kind against Buyer and its sureties resulting from nonpayment to any lower-tier subcontractor, vendor, or supplier not disclosed to Buyer. Release and lien waivers must be submitted using the forms attached hereto. No other forms will be accepted. Facsimile or other electronic transmittals of the forms are acceptable, however, the sender is responsible for ensuring receipt and only legible copies will be accepted.

2.5. RETENTION FOR DEFAULT: Buyer shall have the right, on three (3) days written notice, to withhold payments due Seller. Buyer may withhold payment due for, but not limited to, the following reasons:

2.5.1. Claims or liens filed against Seller or evidence that a claim or lien will be filed. If such claims or liens are deemed to affect Buyer, Buyer's Client, or the Project, then Buyer is authorized to use whatever means deemed appropriate to cause such claims or liens to be removed or dismissed and the cost thereof, together with attorney's fees, shall be immediately due and payable by Seller to Buyer;

2.5.2. Buyer's failure to provide Seller with proof of insurance as required herein.

2.5.3. Failure to submit certified payrolls when required and/or requested;

2.5.4. Failure to submit a Final Lien Release and Waiver, when required; and

2.5.5. Failure to submit other required Subcontract Documents, including, but not limited to warranties, guaranties, instruction manuals, spare parts, extra material, and other required documents. The listing of specific documents herein is not all-inclusive or limiting to any other documents not referenced.

2.6. A completed W-9 form must be submitted before any payments hereunder can be made.

## 3. CHANGES

3.1. The Buyer may at any time prior to final delivery under this Purchase Order by notice make changes within the general scope hereof in any one or more of the following: (1) drawings, designs or specifications where the Articles to be furnished are to be specially manufactured for the Buyer in accordance therewith; (2) method of shipment or packing; (3) the place of delivery; (4) description of services to be performed, (5) time of performance of the services (e.g.), hours of day, day of the week and place of performance of the services, and (6) the delivery schedule. If any such change causes an increase or decrease in the cost or time required for performance of this Purchase Order, an equitable adjustment shall be made in the price or delivery schedule or both, and this Purchase Order shall be modified accordingly. Any claim by the Seller for adjustment under this clause must be asserted within fifteen (15) days from the date of notification of the change; provided, however, that the Buyer, if the Buyer decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment of the Purchase Order. Failure to agree to an adjustment shall not excuse the Seller from proceeding with the Purchase Order as changed.

3.2. If the Purchase Order is placed under a Government prime contract, the cost principles set forth in Federal Acquisition Regulation (FAR), Part 31, or the Department of Defense (DOD) FAR Supplement (DFARS) Part 231 shall be applicable in the determination and negotiation of any equitable adjustment of price hereunder.

3.3. Whether made pursuant to this clause or by mutual agreement, changes shall not be binding upon the Buyer unless directed in writing by the Buyer's Authorized Signer.

# Service Purchase Order General Terms and Conditions

## 4. WARRANTY

4.1. Seller hereby expressly warrants that it has clear title to all items furnished under this Purchase Order, and that they are being delivered free and clear of any encumbrances. Seller further warrants that all such items shall conform to the specifications, drawings, and descriptions herein provided, and to the sample(s) furnished by Seller, if any, and further, that such items shall be merchantable and fit for Buyer's or its customer's intended use, and that such items shall be free from defects in design, material, and workmanship (collectively, the "Seller's Warranty").

4.2. All of Seller's services hereunder shall be performed within generally accepted standards of professional care and shall be compliant with all requirements detailed in the Contract Documents. Seller will obtain any specified required permits and licenses at Seller's expense, and Seller will pay for all taxes, charges, or fees associated with the performance of Seller's services. Neither approval by Buyer of the Seller's design, nor acceptance of the goods, shall release or discharge Seller from liability for damages resulting from a breach of Seller's Warranty. In the event of a conflict between the specifications, drawings, and descriptions, Seller shall seek clarification from Buyer. The aforesaid warranties shall survive acceptance and payment, and shall run to Buyer, its customers, and their successors in title, and shall not be deemed to be exclusive, but shall be in addition to Buyer's other rights under the terms of this Purchase Order or at law or equity.

## 5. INSPECTION

5.1. All Articles called for hereunder or portions thereof shall be subject to inspection and test by the Buyer and authorized Owner representatives, if applicable, at any point during the manufacture thereof and in any event prior to acceptance. Final inspection and acceptance shall be after delivery in accordance with this Purchase Order. The Buyer shall have the right to reject Articles found upon inspection not to conform to the Purchase Order, to require their correction (either in place or at Seller's plant, at the Buyer's option), or to accept nonconforming Articles at a reduction in price which is equitable under the circumstances. Buyer may, at its option, reject and return such materials and/or cause discontinuation of such services at Seller's expense. Such materials shall not be replaced or services continued without express written authorization from Buyer. Buyer may accept, without prejudice, a portion of any shipment and, at its option, repair or replace, or have Seller repair or replace, any non-conforming portion of the shipment, at Seller's expense. Buyer's acceptance does not constitute waiver of any claims Buyer may possess as a result of the defective materials and/or workmanship, nor does Buyer's granting Seller permission to repair or replace nonconforming portions serve as a waiver of its right to discontinue other services. The Buyer shall not be required to inspect or test Articles hereunder. It shall be the Seller's responsibility to adequately test and inspect the Articles to be tendered for acceptance to assure that such Articles are in strict conformance with all the requirements of this Purchase Order. By such tender Seller assures the Buyer that such Articles offered so comply. Except as otherwise provided in this Purchase Order, final acceptance shall be conclusive except as regards to latent defects, fraud, or such gross mistakes as amount to fraud.

## 6. ASSIGNMENT

6.1. Seller may not assign this Purchase Order nor any interest herein, in whole or in part, without the prior written consent of Buyer. However, Seller may assign rights to be paid amounts due to a financing institution if buyer is promptly furnished a written notice and a signed copy of such assignment. Seller shall perform all services hereunder with its' own personnel and shall not enter into a subcontract for any portion of the work without the prior written consent of the buyer. If assigned, all covenants, stipulations and promises of this Purchase Order shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

## 7. CONFIDENTIALITY

7.1. Seller shall keep confidential all information, drawings, specifications, or data, and return to the Buyer upon request all documents furnished by the Buyer and marked proprietary, and shall not divulge or use such information, drawings, specification, or data for the benefit of any other party except as required for the efficient performance of this Purchase Order. This Purchase Order, its entire contents, including but not limited to the scope of work and the nature of the business relationship between the parties, are private, trade secret, confidential, and proprietary and the existence of which shall not be disclosed without prior written approval by both parties.

## 8. TAXES

8.1. Seller shall, unless otherwise stated in this Purchase Order, pay all taxes, levies, duties, and assessments of every nature due in connection with the Work under this Purchase Order and shall make any and all payroll deductions and withholdings required by law and hereby indemnifies and holds harmless Buyer and its Client from any liability on account of any and all such taxes, levies, duties, assessments, and deductions. Unless otherwise provided herein, the price of the supplies/services includes all applicable federal, state and local taxes.

## 9. LABOR RELATIONS AND EQUAL OPPORTUNITY

9.1. This Purchase Order may be subject to prevailing and/or minimum wage requirements. Wage determinations and associated reporting requirements AS IDENTIFIED ON THE FIRST PAGE OF THIS PURCHASE ORDER. Seller shall not pay any worker less than the prevailing and/or minimum hourly wage rates and fringe benefits required by the Prime Contract and/or law.

9.2. Seller shall submit to Contractor the following for itself and for each agent of Seller that performs work on the Project: all Equal Opportunity (EEO) reports, certified payrolls, safety, and all other submittals, reports, notices and statements as required by the Purchase Order Documents and/or law.

9.3. Seller's attention is called to the Equal Opportunity Clause, the Affirmative Action Compliance Clauses, the Small Business Program Representations Clauses, and the Affirmative Action for Special Disabled and Vietnam Era Veteran's Clauses incorporated into the Purchase Order Documents. Seller shall comply with all such requirements and shall provide documentation of compliance including, but not limited to, certification, monitoring, and auditing of Seller's participation. Executive Order 11246 – 41 CFR 60-1.4(a), 41 CFR 60-1.4(b), 41 CFR 60-4.3(a); Section 503 – 41 CFR 60-741.5(a); 41 CFR 61-300.10; Executive Order 13496 – Part 471, Appendix A to Subpart A; for subcontracts in excess of \$10K – 41 CFR 60-4.2(d). Seller shall flow these requirements to any lower tier subcontractors, suppliers or consultants it may employ.

9.4. VIETNAM ERA VETERANS READJUSTMENT ACT The affirmative action clause set forth in 41 C.F.R. Section 60-300.5, Affirmative Action and Nondiscrimination obligations of contractors and subcontractors regarding disabled veterans, recently separated veterans, other protected veterans, and armed forces service medal veterans, is incorporated herein by reference and made a part of this Purchase Order as though fully set forth herein.

# Service Purchase Order General Terms and Conditions

## 10. HEALTH, SAFETY AND ENVIRONMENT

10.1. The Seller shall comply with HSE requirements of all applicable laws and regulations, Government policies and the Health and Safety Program specifically issued for the Work. The Seller shall cooperate with Buyer, Federal and non-Federal agencies having jurisdiction over HSE matters under this Purchase Order.

10.2. Any product supplied by Seller that is required by law to have a Safety Data Sheet (SDS) shall have a new and legible copy of such sheet provided by Seller for each appropriate item upon delivery of goods to Buyer. An SDS shall accompany the goods and be included with the packing slip(s).

## 11. WAIVER

11.1. No waiver by the Buyer of any breach of this Purchase Order shall be held to be a waiver of any other or subsequent breach. All rights and remedies available to the Buyer shall be taken and construed as cumulative, that is, in addition to any other rights and remedies provided herein or by law.

## 12. COMPLIANCE WITH LAWS

12.1. Seller represents that it has and will continue during the performance of this Purchase Order to comply with the provisions of all applicable federal, state and local laws and regulations. Seller agrees to furnish the Buyer upon request, satisfactory evidence of compliance.

## 13. INDEMNIFICATION

13.1. Each party shall hold the other, the Owner, together with their agents, servants, employees, representatives, officers, directors, sureties and attorneys, harmless from and against and shall indemnify the other for all claims, bodily injury, death or damage to real or tangible property, taxes, liability, loss, costs, expenses, or damages to the extent of its negligent acts or omissions in performing under this Purchase Order. Seller warrants that it carries adequate insurance to cover its indemnification obligations hereunder, as specified in the Insurance provisions set forth in this Purchase Order. To the extent of its negligence and/or gross or willful misconduct, the indemnifying party shall reimburse the other for said action at its own expense and shall pay and discharge any judgment that may be rendered in any such action. In the event of an indemnified claim against Buyer by a third person, Buyer reserves the right to choose legal counsel and direct the defense of such claim at Seller's sole cost and expense. Such undertaking of defense shall not be deemed an admission of liability, an agreement to assume liability, or a waiver of any right or remedy which the Buyer may have. This right may only be exercised if the Seller is notified of the claim, the claim is the result of Seller's performance of the work under this Purchase Order, and the Seller either fails or neglects to defend the claim. Seller's indemnity obligations shall remain in full force and effect regardless of whether the claim relates to a claim under Seller's Worker's Compensation Policy. Each party shall protect, indemnify, and hold harmless the other party hereto from and against any and all damages and expenses arising out of a claim of actual or alleged infringement of patent, copyright, trademark or trade name asserted in connection with the use of equipment, tools, or methods of operation furnished pursuant to this Purchase Order. In no event, regardless of the legal theory under which such damages are sought, shall either party be liable to the other for incidental, indirect, or consequential damages, including but not limited to, loss of profits, or revenue, loss of use of equipment or facilities, costs of capital, cost of substitute or underutilization of equipment, facilities or labor, downtime costs, or claims of customers resulting from the performance or nonperformance of obligations of this Purchase Order, even if it has been advised of the possibility of such damages.

## 14. DISPUTES

14.1. The Buyer and Seller agree to attempt to resolve any dispute by direct negotiations and in good faith. The Parties agree that this Purchase Order, and the performance or breach thereof, shall be governed and construed in accordance with the substantive and procedural laws of the State of Alaska, United States of America. The pendency of any claim between Buyer and Seller does not entitle Seller to stop performance of the Work. Pending final resolution of any such claim, except as otherwise agreed in writing or provided in this Purchase Order the Seller shall proceed diligently with the performance of this Purchase Order and Buyer shall continue to make payments in accordance with this Purchase Order.

14.2. As to any claims asserted by Seller related to acts or omissions of Owner or its representatives or claims by Owner for which Seller may be responsible, Seller agrees to prosecute or defend such claims in Buyer's name, in accordance with any disputes provisions contained in the project contract documents. Seller shall have full responsibility for presentation or defense of such claims and shall bear the expenses thereof, including attorneys' fees. Seller agrees to be bound by the procedure and final determinations as specified in any such disputes clause, and will not take, or will suspend, any other action or arbitration relating in any way to such claims, pending final determination under such disputes clause. Seller shall not be entitled to receive any greater amount from Buyer than Buyer actually does receive from Owner as full satisfaction and discharge of all claims for or on account of acts or omissions of Owner or its representatives.

14.3. Disputes not controlled by the above, shall be decided by arbitration in Anchorage, Alaska in accordance with the Arbitration Rules of the American Arbitration Association unless Buyer, in its sole discretion, decides to dispense with arbitration; in that case resort shall be to the courts. Buyer may join or consolidate any third party or claim into an arbitration with Seller for final resolution. The award rendered by the arbitrators shall be final, and judgment may be entered upon and in accordance with applicable law.

## 15. TERMINATION

15.1. Buyer may terminate at any time for its convenience or terminate for Seller's breach, all or any part of this Purchase Order. If this Purchase Order is terminated for Seller's breach or if Seller is in breach of this Purchase Order when it is terminated for convenience, Seller shall have no claim against Buyer for any costs incurred or any profit with respect to the terminated or cancelled portion of this Purchase Order. If this Purchase Order is otherwise terminated by Buyer, Seller shall be paid an equitable amount to cover the effort actually expended by Seller plus a reasonable profit thereon; provided, however that no amount shall be paid for any anticipatory profits and the total amount shall not exceed the prices contained within this Purchase Order for the Articles terminated. Also, in addition to Buyer's right to cancel, all or a portion of this Purchase Order may be cancelled upon the happening of Seller, voluntarily or involuntarily, filing petition under the Bankruptcy Laws of the United States, the execution of an assignment for the benefit of creditors, or an application for the appointment of a receiver. The rights and remedies provided herein shall not be exclusive, but are cumulative and in addition to any other rights and remedies provided by law or covered under this Purchase Order.

# Service Purchase Order General Terms and Conditions

15.2. Where the prime contract has been awarded under the Small Business Administration 8(a) program, termination for convenience may be used to reduce Seller's work in whole or in part in order for the Buyer to comply with the Small Business Administration 8(a) self-performance requirements established at FAR 52.219-14.

## 16. DAMAGES

16.1. Seller shall be liable for all damages, costs, and expense, including but not limited to Buyer's actual attorneys' fees, and all other losses resulting from any breach of this Purchase Order. Seller's damages, however, are expressly limited to the purchase price.

16.2. LIQUIDATED DAMAGES: When applicable, as identified on the first page of this Purchase Order, Seller Agrees to reimburse, defend and indemnify Buyer for any and all liquidated or actual damages that may be asserted against, assessed against and/or incurred by Buyer which are attributable to or caused in whole or in part by Seller's failure to perform the work required by this Purchase Order within the time fixed or in the manner provided for herein. Reimbursement of liquidated or actual damages assessed against and/or incurred by the Buyer is not the exclusive remedy of Buyer against Seller for Seller's failure to perform the work required by this Purchase Order within the time fixed or in the manner provided for herein.

## 17. DELIVERY AND FORCE MAJEURE

17.1. Time is of the essence in the fulfillment of all the terms of this Purchase Order. The whole of the material and work shall be fully delivered and/or otherwise completed by the date or dates specified on this Purchase Order. However, Buyer expressly reserves the right to have Seller postpone delivery of goods covered by this for a reasonable period of time, without additional compensation being paid by Buyer to Seller. Seller shall be responsible for any delays associated with untimely delivery. Seller must notify Buyer in writing if delivery schedule will not be met.

17.2. The term Force Majeure, as employed herein, shall mean acts of God, strikes, lockouts, acts of public enemy, orders of any kind of the governments of the United States or any civil authority, riots, civil disturbances, explosions, blockades or embargoes, fires, floods, or other causes not reasonably within control of the party claiming such inability. If, by any reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligation under this Purchase Order, then such party shall give notice and full particulars of such Force Majeure in writing to the other party as soon as possible after such occurrence of the event or cause relied upon. Any Party asserting Force Majeure as an excuse to performance shall have the burden of proving proximate cause, and that reasonable steps were taken to minimize the delay and damages caused by such events, when known, except hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

## 18. INSURANCE

18.1. Seller must submit a certificate of insurance naming Buyer as the certificate holder, reflecting its general liability, umbrella, workers' compensation, automobile, equipment, and professional coverages when required on the Project. Seller shall furnish the Buyer an insurance certificate reflecting such coverage prior to the commencement of work under this Purchase Order, and shall maintain such coverage throughout the period of performance of this Purchase Order and all warranty periods applicable to the Work being performed by Seller. Seller shall, in addition to and without limitation of the requirements established herein, cause the insurance policies described herein to include Buyer, its parent, subsidiaries and affiliated companies or of any named working interest owners or joint ventures, and all of their officers, directors and employees as additional insureds. Seller must notify Buyer immediately in the event any insurance coverage required by this Purchase Order has or will become ineffective for any reason. The notice shall provide the date(s) and identify the specific coverage(s) that has or will become ineffective AND a certificate of replacement or continued insurance showing evidence of coverage as required by this Purchase Order OR a request for Buyer to obtain replacement insurance coverage at Seller's expense. If Seller's insurance coverage becomes ineffective and the Seller has failed to provide the above required notice, the Seller shall indemnify Buyer against any claim resulting from Seller's liability arising out of Seller's operations, completed or otherwise, under this Purchase Order that is not covered by Seller's insurance. Seller's insurance will be primary, and Buyer's and Client's insurances will be secondary and non-contributing at all times. All lower-tier subcontractors (if any) must also maintain the required insurance for the duration of the Purchase Order. Seller shall be responsible for any liability arising directly or indirectly out of the work performed by each of its lower-tier subcontractors that is not otherwise covered by such Seller's insurance. Seller's failure to provide insurance as required by this Purchase Order may result in withholding of payment.

## 19. SEVERABILITY AND INTERPRETATION

19.1. If one or more of the provisions contained herein shall be held for any reason to be invalid, illegal, or unenforceable in any respect, such provision shall not affect any other provision herein, and this Purchase Order shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. Any ambiguity in the Purchase Order will not be construed against the drafter.

## 20. SURVIVABILITY

20.1. If this Purchase Order expires, is completed or is terminated, Seller shall not be relieved of the obligations in the following provisions: (a) Compliance with Laws; Warranties; Indemnification; Confidentiality; Disputes; (b) Those U.S. Government flowdown provisions incorporated into this Purchase Order that by their nature should survive.

## 21. NOTICES

21.1. Any notice to be given under this Purchase Order issued under the Terms and Conditions hereunder must be in writing. Notices may be sent via certified or registered mail; via fax with a conforming copy; or via electronic means provided an electronic signature confirms its authenticity, in a manner agreed to in advance. Notice will be deemed to have been given when received. All notices from Seller to Buyer should be mailed to the address, and attention of the Buyer's POC, identified on the Purchase Order.

## 22. TITLE AND RISK OF LOSS

22.1. The terms of this agreement are "no arrival, nonconforming, no sale". Title and risk of loss of any goods subject to this Purchase Order shall pass to Buyer only when Buyer actually receives or takes possession of the goods at the place(s) specified for delivery on the face of this Purchase Order, unless otherwise mutually agreed to in writing.