

# Purchase Order for Services

## Terms and Conditions

1. **PURCHASE ORDER AND ACCEPTANCE:** Purchaser's order is binding only when accepted in writing at Seller's offices, and Seller's acceptance of Purchaser's order is conditioned upon Purchaser's agreement with these Terms and Conditions. Upon Seller's acceptance in writing, this Purchase Order is binding and non-cancelable. This Purchase Order, together with any documents specifically referenced herein, represents the entire agreement between the parties. All specifications, drawings and data submitted to Seller by Purchaser in connection with this Purchase Order are hereby incorporated herein and made a part hereof. The terms and conditions set forth herein and on the face side of the Purchase Order constitute the parties' contractual agreement and supersede any previous oral or written representations, including but not limited to provisions in the parties' prior quotations, proposals, acknowledgments or other documents. No course of dealing or usage of trade shall be applicable unless expressly incorporated by this Purchase Order. The terms of this Purchase Order may not be varied or modified in any manner, unless in a subsequent writing signed by an authorized representative of Seller and Purchaser.

2. **CHANGES AND SUBSTITUTIONS:** Purchaser may at any time by written order make changes or additions within the general scope of this Purchase Order in or to drawings, designs, specifications, instructions for work, or time or the specified location for services to be performed. If any such change causes an increase or decrease in the cost of or the time required for performance of this Purchase Order, Seller shall notify Purchaser in writing immediately and an appropriate equitable adjustment will be made in the price or time of performance or both, by written modification within thirty days after Seller's receipt of notice and written acceptance of the change or within such other period as the parties may agree in writing. No substitution or modification of any services may be made without Purchaser's prior written consent.

3. **WARRANTY AND DISCLAIMER:** Seller warrants that the services under this Purchase Order will be performed in a professional and workmanlike manner. This warranty applies for twelve (12) months from the date Seller certifies the services are complete (the "Warranty Period"). Any action or proceeding arising out of Seller's provision of services under this Purchase Contract must be commenced within one year after the cause of action has accrued.

SELLER'S WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. SELLER SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, TO CUSTOMERS OF PURCHASER.

#### 4. PRICE TERMS:

A. The services will be furnished at the price set forth on the face side of the Purchase Order in U.S. dollars. Purchaser shall pay for the services within thirty (30) days following Seller's certification that the services are complete and appropriate invoice. Seller may complete the services in stages or phases, and in such event, Purchaser shall pay for each stage or phase within thirty (30) days after completion of each stage. Seller, in its sole discretion, shall determine completion of services. Prices do not include taxes. Where appropriate, any applicable taxes, will be added to the invoice and paid by Purchaser.

B. Unless Seller has established a credit limit for Purchaser, Seller may require a prepayment, a down payment or a confirmed irrevocable letter of credit acceptable to Seller, at Purchaser's expense, in advance of commencement. If credit is granted, payment is due at the time prescribed on the invoice with the credit term beginning on the date of the invoice, which will not be earlier than the date of delivery.

C. Any amounts not paid when due shall bear interest at the rate of 11/2% per month or at the highest rate permitted by law (whichever is less), from the date due until paid.

5. **WORK DONE AT PURCHASER'S FACILITIES AND DELIVERY.** Purchaser shall take such steps as may be reasonably necessary to prevent personal injury or property damage during any work hereunder that may be performed by any employees, agents or subcontractors of the Seller at Purchaser's facilities. Delivery shall be in accordance with the delivery schedule set out or referred to in this Purchase Order. Seller shall not be liable for delays or defaults due to causes beyond its control, provided, however that if Seller has reason to believe that deliveries will not be made as required, due to such causes, Seller shall give Purchaser notice setting forth the cause of any anticipated delay. Purchaser may change delivery schedules or direct temporary suspension of such scheduled deliveries, but shall reimburse Seller for all costs incurred by such delays or suspensions.

#### 6. TERMINATION AND ASSIGNMENT:

A. Purchaser and Seller agree that neither shall delegate or assign any obligation which each party has under this Purchase Order without the written permission of the other party and any attempted delegation or assignment without written permission shall be wholly void and totally ineffective for all purposes.

B. Purchaser's order shall be deemed Purchaser's representation that Purchaser is solvent and able to pay for the services Seller provides. If Purchaser fails to make payments on this or any other Purchase Order when due, or if Purchaser: (i) becomes insolvent or a bankruptcy petition is filed which is not vacated within thirty days from the date of filing; (ii) breaches the terms and conditions of this Purchase Order; (iii) fails upon request to provide Seller with reasonable assurances of future performance; (iv) makes an assignment for the benefit of creditors; (v) commences any receivership or like proceedings relating to assets; or (vi) is a party to a merger, consolidation or other extraordinary corporate transaction in which it is not the surviving entity, Purchaser will be deemed in default and Seller shall have the right to terminate or suspend its obligations without further notice to Purchaser, but such termination or suspension shall not affect Purchaser's obligation to pay for services delivered and work in progress, and Seller shall not be liable to Purchaser for any amount. Purchaser shall be liable to Seller for all damages, direct or indirect, consequential and incidental, sustained by reason of the default which gave rise to the termination, including, without limitation, interest and late charges.

7. **RIGHTS, REMEDIES AND CONSTRUCTION:** A waiver by either party of any right or remedy shall not affect any rights or remedies subsequently arising under the same or similar clauses. The failure of either party to insist upon the performance of any term or condition of this Purchase Order, or to exercise any right hereunder shall not be construed as a waiver of the future performance of any such term or condition or

the exercise in the future of any such right. If any term of this Purchase Order is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term shall be deemed reformed or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions of this Purchase Order shall remain in full force and effect.

8. **CONFIDENTIALITY.** Each party acknowledges that its respective performance of its obligations hereunder may require that it have access to confidential business and proprietary information of the other. Each party agrees on behalf of itself and its officers, directors, employees and agents to use its/their best efforts to prevent either duplication or disclosure of data, plans, specifications, formulae, drawing or any other information whether business or technical, of a confidential nature, which has been furnished directly or in directly, in writing or otherwise to the other.

"Confidential information" shall include such information as would be apparent to a reasonable person, familiar with the disclosing party's business and the industry in which it operates, that such information is of a confidential or proprietary nature and that maintenance of its confidentiality would likely be of commercial value to the disclosing party.

"Confidential information" shall not include information that is in the public domain prior to its disclosure, becomes part of the public domain through no wrongful act of the receiving party, was in the lawful possession of the receiving party prior to its disclosure to the receiving party or was independently developed by the receiving party.

9. **LIMITATION ON SELLER'S LIABILITY:** In no event shall Seller be liable to Purchaser or any other person or entity for anticipated profits or for special, punitive, exemplary, incidental or consequential damages arising out of or in connection with this transaction or any acts or omissions associated therewith or relating to the services provided, whether such claim is based on breach of warranty, contract, tort or other legal theory and regardless of the causes of such loss or demand or whether any other remedy provided herein fails. Seller's liability for a claim of any kind for any loss or damage arising out of or in connection with or resulting from this Purchase Order, or from any breach, shall in no case exceed the total amount paid for services purchased under this Purchase Order.

10. **FORCE MAJEURE:** Neither party shall be liable for defaults due to acts of God or the public enemy, acts or demands of any government or any government agency, strikes, fires, floods, accidents, strikes, freight embargoes, or other unforeseeable causes beyond its control. Each party shall notify the other in writing of the cause of such delay within five (5) days after the beginning thereof.

11. **RELATIONSHIP OF PARTIES:** Seller and Purchaser are independent contracting parties and nothing in this Purchase Order shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other party.

12. **LAW/FORUM:** The rights and obligations of the parties and the terms identified herein and elsewhere in any existing purchase order shall be governed by and construed in accordance with the domestic laws of the State of Colorado, including the Uniform Commercial Code as enacted in Colorado, but without regard to the State of Colorado's conflict of laws rules. Any legal or equitable actions arising out of or relating to any terms identified herein or elsewhere in any purchase order shall be brought only in federal or state court in Colorado. Seller and Purchaser agree that such court shall have personal jurisdiction over the parties.

14. **PROMPTNESS:** Time is of the essence for the performance of the parties' obligations created under any and all purchase orders.

15. **NOTICES.** Notices shall be sent by a nationally recognized overnight courier service to the addresses specified on the face hereof and shall be effective one day after dispatch