

## PURCHASE ORDER TERMS AND CONDITIONS

**ACCEPTANCE:** BY DELIVERING THE ORDERED GOODS OR SERVICES, SELLER AGREES TO THE SPECIFICATIONS, TERMS, AND CONDITIONS SPECIFIED ON THE FACE AND REVERSE OF THIS DOCUMENT AND ANY REFERENCED DOCUMENTS (COLLECTIVELY, THE "ORDER"). SELLER'S ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS ARE EXPRESSLY EXCLUDED FROM THIS ORDER AND THE COURT DOES NOT AGREE TO SUCH TERMS OR CONDITIONS. THIS ORDER'S TERMS AND CONDITIONS MAY ONLY BE VARIED BY A WRITING SIGNED BY THE COURT'S DULY AUTHORIZED REPRESENTATIVE. SELLER MAY NOT ALTER, ADD TO, OR OTHERWISE MODIFY THESE TERMS AND CONDITIONS.

**AUDIT RIGHT:** Seller agrees to maintain records relating to performance and billing by Seller under this Order for a period of three years after final payment. During the period of time that Seller is required to retain such records, the Court or its representative may, during normal business hours, inspect and make extracts or copies of such records and other materials for purposes of confirming the accuracy of invoices submitted hereunder.

**CHANGES:** No change or modification in terms, quantities, or specifications may be made without express authorization in writing from the Court.

**DELIVERY AND PACKING SLIPS:** Time is of the essence to delivery and any other performance required of Seller. No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or any other purpose shall be paid by the Court unless it is expressly included on the face of this Order. Unless stated otherwise in this Order, the shipping point for all deliveries under this Order shall be F.O.B. "Destination". Unless otherwise shown on this Order, on "F.O.B. Shipping Point" transactions, Seller shall arrange for lowest-cost transportation, prepay and add freight to its invoice, and furnish supporting freight bills over \$25. If delivery is to be made by a carrier, an itemized delivery ticket must be attached to the outside of the package. Each container must be marked with the Order number, part number and quantity. Any itemized packing slip bearing the Court's Order number as shown thereon must be left with the goods to insure their receipt.

**INDEMNITY:** SELLER SHALL INDEMNIFY AND HOLD HARMLESS THE COURT AND ITS OFFICERS, AGENT AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, LIABILITIES, COSTS AND EXPENSES ARISING OUT OF OR RESULTING IN ANY WAY FROM ANY DEFECT, WHETHER LATENT OR PATENT, IN THE GOODS OR SERVICES PURCHASED HEREUNDER OR FROM ANY ACT OR OMISSION OF SELLER, ITS AGENTS OR EMPLOYEES, INDEPENDENT CONTRACTORS OR SUBCONTRACTORS. THIS INDEMNIFICATION SHALL BE IN ADDITION TO THE WARRANTY OR OTHER OBLIGATIONS OF SELLER AND SHALL APPLY WITHOUT REGARD TO WHETHER THE CLAIM, DAMAGE, LOSS, LIABILITY, COST OR EXPENSES IS BASED ON BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY. THE INDEMNITY SHALL SURVIVE DELIVERY AND ACCEPTANCE OF GOODS OR SERVICES.

**INFRINGEMENT PROTECTION:** Seller shall hold the Court and its officers, agents, and employees harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or uncopyrighted composition, secret process, or patented or unpatented invention, article, or appliance furnished or used in connection with this Order.

**INSPECTION AND ACCEPTANCE:** Notwithstanding any prior inspection or payments, all goods and services delivered hereunder shall be subject to final inspection and acceptance or rejection by the Court at any time within thirty days after delivery to the Court. All items which are not in compliance with the specifications hereof, which are not as warranted or which are shipped late, shipped in excess or insufficient quantities or substituted for items ordered hereunder may be rejected by the Court and returned or held at Seller's expense and risk. Payment shall not constitute an acceptance of the material nor impair the Court's right to inspect or any of its remedies.

**INSURANCE:** Seller agrees, warrants and represents to the Court that Seller shall maintain adequate insurance to cover any liabilities that may occur in the performance of services and delivery of goods under this Order. Seller further warrants and represents to the Court that Seller shall maintain adequate insurance to cover any public liability, property damage and/or automobile liability for any damage incurred with Seller's performance of any work on or about the Court's premises or third-party premises to which the goods and services are to be delivered as indicated on the face of this Order. Seller shall maintain proper Workers' Compensation Insurance covering all employees providing service or performing work under this Order.

**INVOICES, PAYMENT AND SETOFF:** The Court shall have no obligation to pay for any item until one original and two copies of a correct, itemized invoice for the item is received at the address shown on the face of this Order. Payment is due thirty days from receipt of a correct, itemized invoice. Each invoice shall be printed on Seller's standard printed bill form, and shall include at a minimum (i) the Order number, (ii) Seller's name and address, (iii) the nature of the invoiced charge, (iv) the total invoiced amount, and (v) such detail as is reasonably necessary to permit the Court to evaluate the goods received and the services performed, if any, including without limitation the number of hours worked and the applicable hourly rate. Amounts owed to the Court due to rejections of goods or services or discrepancies in an invoice shall be, at the Court's option, fully credited against future invoices payable by the Court, or paid by Seller within thirty days from Seller's receipt of a debit memo or other written request for payment by the Court. The Court shall have the right at any time to set off any amount owing from Seller to the Court against any amount payable by the Court pursuant to this Order or any other transaction or occurrence.

**LEGAL COMPLIANCE:** (a) Seller shall observe and comply with all federal, state, city, and local laws, rules, and regulations affecting goods and services under this Order. (b) Seller and its subcontractors, if any, shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40), sex or sexual orientation. Seller shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Seller and its subcontractors, if any, shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (c) Seller shall comply with the Americans with Disabilities Act (ADA) of 1990 (42 USC Sec. 012101 et seq.) which prohibits discrimination on the basis of disability, as well as with all applicable regulations and guidelines issued pursuant to the ADA.

**MATERIAL SAFETY DATA SHEETS:** If some or all of the goods being provided by Seller are on CAL OSHA's "Hazardous Substances List," Seller shall, upon request, forward a completed Material Safety Data Sheet (MSDS) to the Court.

**RISK OF LOSS:** Seller shall bear the risk of loss or damage to the ordered goods until Seller delivers the goods to the Court's place of business unless a different F.O.B. point is indicated on the face of this Order. Notwithstanding such delivery, Seller shall bear the risk of loss or damage to the goods purchased under this Order in the event of and from the time the Court gives notice of rejection or termination of this Order.

**STATUS AS INDEPENDENT CONTRACTOR AND SUBCONTRACTS:** Seller is an independent contractor and while performing work on or off the Court's premises neither it nor any of its agents or employees shall be considered agents or employees of the Court. Seller shall not subcontract or delegate its obligations under this Order without the prior written consent of the Court.

**TERMINATION:** The Court may terminate all or part of this Order for any or no reason at any time by giving notice to Seller. Should Court terminate this Order for convenience, the Court's liability shall be: (a) for standard or off-the-shelf products, a reasonable restocking charge not to exceed ten percent of the purchase price; (b) for custom products, the lesser of (i) a reasonable price for raw materials, components, work in progress, and any finished units on hand, or (ii) the price, set forth in this Order, per finished unit, after giving effect to any discount the Court would otherwise be entitled to. For termination of any separate services specifically ordered, liability shall be the lesser of (a) a reasonable price for the services rendered prior to termination, or (b) the price for the services. If any hourly or other time-based rate for services is specified in this Order, such rate shall be used in determining a reasonable price. Upon receipt of a termination notice, Seller shall, unless otherwise directed, cease work and follow the Court's directions as to work in progress and finished goods.

**WARRANTIES:** Seller warrants that all goods delivered shall (a) be free from defects in workmanship, material, and manufacture (including, without limitation, defects which could create a hazard to life or property); (b) be new, not refurbished or reconditioned, unless stated otherwise in this Order; (c) be of merchantable quality and shall be fit for the purposes intended by the Court to the extent disclosed by Seller; (d) comply with the requirements of this Order; and (e) comply with all applicable laws and regulations. Seller further warrants that all services shall be rendered in a good and workmanlike manner by skilled personnel in compliance with all applicable laws and regulations.

### **ADDITIONAL TERMS/CONDITIONS:**

**Non-IT Goods:** In compliance with the Judicial Branch Contracting Law, procurements for Non-IT Goods incorporate the terms and conditions set forth in the attachment at <http://www.courts.ca.gov/documents/jbcm-attach1po.pdf> entitled "Purchase Order: Judicial Branch Contract Law Attachment" (Attachment), in addition to the terms and conditions set forth above.

**IT-Goods:** In compliance with the Judicial Branch Contracting Law, procurements for IT-Goods incorporate the terms and conditions set forth in the attachment at <http://www.courts.ca.gov/documents/jbcm-attach1po-IT.pdf> entitled "Purchase Order-IT Goods: Judicial Branch Contract Law Attachment" (Attachment), in addition to the terms and conditions set forth above. If there is a conflict between the online Attachment and these terms and conditions, the latter shall prevail.

**No Loss Leaders:** It is unlawful for any person engaged in business within this state to sell or use any article or product as a 'loss leader' as defined in [Section 17030](#) of the Business and Professions Code.