

MCBOECK, LLC - TERMS AND CONDITIONS OF PURCHASE

1. General

These terms and conditions of purchase, unless modified in writing by Buyer, shall govern this transaction and any future transaction between Seller and Buyer (unless Buyer supplies updated terms and conditions), notwithstanding any conflicting term or condition of Seller's acknowledgement or any other document or communication to the contrary. Buyer hereby objects to and rejects any terms or conditions contained in any such document or communication which is contrary to or in addition to these terms and conditions. Any waiver of strict compliance with the terms hereof by Buyer shall not constitute a waiver of Buyer's right to insist upon strict compliance with the terms of this order hereafter.

2. Definitions

The term "Buyer", except otherwise defined herein, means McBoeck, LLC. The term "Supplier" shall mean the person or entity to whom or which this Purchase Order is directed irrespective of whether the Supplier acts in the capacity of seller, buying agent acting on behalf of Buyer, selling agent acting on behalf of a seller, or any other capacity. The term "purchase order" shall be understood to include these terms and conditions, the information on the face hereof and any duly executed change orders and attachments.

3. Acceptance of Purchase Order

No conditions, terms or provisions inserted by Supplier in acknowledging and accepting this Order shall be effective unless the same are accepted in writing by Buyer. The failure of Supplier to acknowledge this Purchase Order in writing within ten (10) days of the date of receipt thereof, or the commencement of performance required by this offer, shall be conclusive evidence of Supplier's approval of and consent to all terms and conditions of purchase herein contained. All commissions to create or contribute a specific work described on the Purchase Order (the "Work") are hereby accepted by Supplier for value received. All material delivered to Buyer or contributed to the Work shall be reproduced and distributed by Buyer. Supplier and Buyer hereby agree that the Work is a "work made for

hire" as that term is defined in the Copyright Law of the United States of America and that Buyer is entitled to claim authorship as defined in the Copyright Law and ownership of the copyright. To the extent not otherwise assigned by operation of law, supplier hereby assigns or agrees to assign to Buyer its entire right, title and interest in the Work, including all copyrights.

4. Terms:

As stated on Purchase Order, but invoice not payable until shipment inspected and accepted by Buyer. In the event Buyer makes payment of invoice within the period allowed for the purpose of obtaining cash discount offered, such payment shall not prejudice the right of Buyer to return articles found defective or which fail inspection and receive credit or reimbursement from Supplier. Individual invoices showing order number and purchase item number must be issued against this Order. Buyer reserves right to return all invoices submitted incorrectly, and Purchase Order terms shall be determined as of date latest correct invoice received. Shipping container must be labeled or marked to identify contents without opening, and contain packing slip's listing contents. Buyer's Purchase Order number must appear on all packing slips, delivery tickets and bills of lading, issued in connection with such order and must be marked "partial" or "complete" for each delivered item.

5. Prices

Invoices showing higher costs than printed on the Order will be subject to a charge-back for difference. Price changes must be approved by the Buyer in writing. Buyer is to receive the benefits of any price decreases up to the specified date of shipment.

6. Inspection & Audit

All articles furnished under this Purchase Order are subject to inspection and acceptance within 30 days of delivery at Buyer's side, notwithstanding any payments or other prior inspection. Lots of articles furnished under this Purchase Order which exceed a 1% defect level or the percentage stated on the applicable Defect Check List, may be 100% inspected by Buyer at Supplier's expense. At Buyer's option, defective articles may be returned at Supplier's expense (including

packaging and shipping) for sorting, correction, replacement or credit as Buyer elects. Supplier agrees that its plant or such parts thereof as may be engaged in the performance of this order shall be subject to inspection by Buyer and its authorized representative during normal business hours.

7. General Warranty and Indemnification:

Supplier expressly warrants that all articles to be delivered under this Purchase Order will be free from defects of material and workmanship and will conform to applicable drawings, specifications, samples or other written descriptions given under this order, whether or not attached hereto, and, to the extent the subject articles are not manufactured pursuant to design originated by Buyer, that same are free of any defect in design. This warranty shall run to Buyer and its successors for the article furnished under this order. In connection with such articles, Supplier shall defend any product liability claim or suit against Buyer or its customers and shall indemnify and save harmless Buyer and its customers from and against any and all damages, expenses and judgments which Buyer or its customers may suffer, incur or sustain as a result thereof.

8. Subcontracts:

Except for articles proprietary to Supplier, no subcontracts hereunder shall be made by Supplier herein with any other party for furnishing any of the completed or substantially completed articles, spare parts or work herein contracted for, without the prior written consent of Buyer.

9. Patent Protection:

To the extent the subject articles are not manufactured pursuant to design originated by Buyer, Supplier agrees to indemnify Buyer and its customers for all loss and expense arising from claims (by suit or otherwise) of patent and/or trademark infringements resulting from Buyer's or its customer's use or sale of products supplied by Supplier under this order.

10. Engineering Information:

Supplier agrees that all drawings, specifications, samples and/or written disclosures forming a part of this order, either by reference or otherwise, are the property of Buyer and are submitted in confidence with the understanding and agreement by Supplier that

such drawings, specifications, samples, and/or written disclosures so marked shall not be utilized, in whole or in part, by Supplier, either for itself or by it on behalf of any other person, firm or corporation, without written permission of Buyer.

11. Packaging and Shipping:

All items shall be packed by Supplier in suitable containers for protection to permit safe transportation and handling. No charge shall be made by Supplier for packaging unless provided for on reverse side. Absent other terms on the face hereof, all shipments to Buyer shall be made to Buyer's "Ship To" address listed on the face hereof with Seller to bear the risk of loss and cover insurance and transportation costs until delivery to Buyer. Buyer shall not be responsible for any articles not delivered to Buyer's "Ship To" address listed on the purchase order.

12. Toxics in Packaging Reduction Laws:

Vendor guarantees that packaging and packaging components manufactured and/or supplied to Buyer, and delivered to Buyer on or after January 1, 1992, do not contain lead, cadmium, mercury, or hexavalent chromium that has been intentionally introduced during manufacturing or distribution of said package or packaging components. Should incidental levels of lead, cadmium, mercury, or hexavalent chromium be present, these levels conform with allowable limits prescribed by all applicable federal, state, and local laws, statutes, rules, regulations, and ordinances.

13. Assignment:

Supplier may not assign this order without prior written consent of Buyer. Claims for monies due or to become due under this order may be assigned by Supplier provided Supplier shall supply Buyer promptly with two copies of any such assignment. Payment to an assignee of any such claim shall be subject to setoff or recoupment for any present or future claim or claims which Buyer may have against Supplier. Buyer reserves the right to make direct settlements and/or adjustments in price with Supplier under the terms of this order, notwithstanding any assignment of claims for monies due or to become due hereunder and without notice to the assignee.

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- 14. Changes:** Buyer may, at any time and from time to time, by Purchase Order Amendment issued to Supplier: (a) make changes in shipping and packing instructions; (b) increase or decrease the quantity of products ordered; (c) change the drawings or specifications; (d) issue a suspension of work order; (e) make changes in the delivery schedule. If such changes cause an increase or decrease in the amount of work hereunder or in the cost of performance, or in the time required for performance, an equitable adjustment shall be made in the contract price and/or the delivery schedule and the Purchase Order shall be amended in writing accordingly. Any claims for adjustment under this clause must be asserted within sixty (60) days from the date of the Purchase Order Amendment. Failure of Supplier to make written notice thereof shall, upon expiration of the sixtieth (60) day, be construed as a waiver for any such adjustment. All articles covered hereunder shall be manufactured in accordance with this purchase order unless a change thereto is subsequently authorized by a written Purchase Order Amendment issued by Buyer.
- 15. Termination:** Buyer may terminate work under this Purchase Order in whole or in part at any time by notice to Supplier in writing. Supplier will thereupon immediately stop work on this Purchase Order or the terminated portion thereof and notify its subcontractors to do likewise. Except where such termination is caused by a default or delay of Supplier, Supplier shall be entitled to reimbursement for its actual costs incurred up to and including the date of termination, applicable to the termination and in accordance with the recognized accounting practices. Supplier shall also be entitled to a reasonable profit on the work done prior to such termination at a rate not exceeding the rate used in establishing the original purchase price. The total of such claim shall not exceed the cancelled commitment value of this purchase order.
- Termination claim shall be subject to inspection and Audit provisions of clause 6 above.
- 16. Termination for Default:** Buyer may terminate this Purchase Order, or any part thereof, by written or telegraphic notice of default to Supplier signed by Buyer under any of the following circumstances: A. If Supplier refuses or fails to make deliveries or perform the services within the time specified or extensions thereof agreed to in writing by Buyer. B. If Supplier fails to comply with any of the other provisions of this Purchase Order, or so fails to make progress as to endanger performance of this Purchase Order in accordance with its terms, and does not cure any such failure within a period of ten (10) days (or such longer period as Buyer may authorize by written notice signed by Buyer) after receipt of notice from Buyer specifying such failure. C. If Supplier becomes insolvent or is subject to proceedings under any law relating to bankruptcy, insolvency, or the relief of debtors. In the event of such termination, Buyer shall be free to purchase similar supplies elsewhere or secure the manufacture and delivery of such supplies by contract or otherwise, and Supplier shall be liable to Buyer for any excess cost to Buyer, provided, however, Supplier shall not be liable to Buyer for such excess cost when the default of Supplier is due to causes beyond its control, i.e., Acts of God, strikes, National Emergency, etc., provided further, Supplier shall not be excused from liability unless Supplier has notified Buyer in writing of the existence of such cause within ten (10) days from the beginning thereof.
- 17. Law Governing:** This Purchase Order shall be governed by the laws of the State of Texas (excluding conflicts of law provisions) and the parties agree and consent to the jurisdiction of the courts located in Houston, Texas to resolve any dispute arising out of this transaction. The United Nations Convention on Contracts for the International Sales of Goods shall not be applicable to this Purchase Order.
- 18. Taxes:** Buyer shall not be liable for any federal, state or local taxes unless separately stated on the Purchase Order. Acceptance of this order constitutes certification by Supplier that any advertising allowances and other merchandising payments and services given in connection herewith are being made available on proportionally equal terms to all other customers competing in the distribution of the ordered products or commodities.
- 19. Safety Requirements:** All machinery and equipment must meet the safety standards of the Federal Occupational Safety and Health Act of 1970 (Public Law No. 91-596) and the applicable state safety statutes, which bear labels. If any article is considered to be a hazardous material under federal, state, or local laws or regulations, a Material Safety Data Sheet (MSDS) must be submitted with each shipment of the article.
- 20. Warranty and Compliance:** Seller warrants that the articles, including the trademarks used in connection therewith, as well as the claims and representations made by Seller with respect thereto, and the manufacturing processes and structure of the articles, do not infringe the intellectual property rights of any third party. If articles are, or include any item which may become a part of a product to be consumed or used by humans, Seller warrants that such articles are and shall be fit for human consumption or use, and do not contain any substances or ingredients that may be harmful to a person who consumes or uses them. Supplier shall be required to furnish a certificate that the articles listed on this purchase order were produced in compliance with all applicable requirements of Section 6, 7 and 12 of the Fair Labor Standards Act of 1938 as amended, and of the regulations and orders of the Administrator of the Wage and Hour Division issued under Section 14 thereof. In the event that any articles listed on this Purchase Order are in a misbranded package within the meaning of the Federal Hazardous Substances Act, the Federal Food, Drug and Cosmetic Act, the Federal Insecticide, Fungicide and Rodenticide Act, or the Federal Fair Packaging and Labeling Act, the Poison Prevention Packaging Act of 1970, or any other federal, state or municipal law, ordinance or regulation, the Supplier agrees to pay all costs of relabeling and such other costs as are necessary so that the article will fully comply with the applicable federal, state or municipal laws or regulations. Supplier agrees to furnish buyer an analysis of the contents and/or characteristic of the product sold pursuant to this Purchase Order.
- 21. Exclusive Right of Ownership:** Notwithstanding anything herein to the contrary, Seller agrees that title to and the right of immediate possession of all technical data, intellectual property (including any copyrights, trade secrets, and proprietary blends or formulae as well as trade dress and trademarks developed by or for Buyer or used by Buyer without reference to Seller), drawing, art work, dies, designs, engravings, plans, and any other items or rights or materials furnished to or paid for by Buyer directly or indirectly for use herein shall be and remain in Buyer. Buyer shall retain title at all times to all of such rights on its products labels or marketing materials, Supplier hereby agrees that the products which are the subject of this agreement, approved by Buyer, and which are identified by one or more of Buyer's trade name and trademarks shall be sold only to Buyer and shall not be sold to any other person, firm, or corporation, including any distributor of Buyer's products. All packages or containers in which product sold hereunder is packaged must be marked clearly with the Item and description shown on the first page of this order.
- 22. Advertising and Endorsement:** Supplier shall not, under any circumstances, divulge or release Buyer's name as being a customer of Supplier to any person, association, corporation, or governmental agency without prior written authority from Buyer. Seller shall not advertise, disclose, nor claim or imply any way to any third party nor use any information whatever concerning this purchase order or any attachments without express written permission from Buyer.