



Purchase Order Terms and Conditions

Acceptance & Agreement

All Purchase Orders by vXchngE shall be subject to the terms and conditions contained herein (“Terms and Conditions”) and shall override and supersede any other terms or conditions stipulated, incorporated or in any way referred to by Seller (or Vendor, which shall have the same meaning) so that these Terms and Conditions, along with the terms of the Purchase Order itself, which are incorporated herein by reference, are the only terms and conditions upon which Buyer shall purchase the goods or services described in the Purchase Order. Acceptance by Seller shall be limited to these Terms and Conditions and the Purchase Order, which constitute the entire agreement relating to such goods or services. No modification shall be effective unless in writing signed by duly authorized agents of Buyer and Seller. Buyer’s offer to enter into a contract with Seller is expressly made subject to and conditioned upon Seller’s acceptance of all of these Terms and Conditions, without modifications, amendments or additions thereto, and no contract between Buyer and Seller shall be inferred or construed other than according to the Terms and Conditions stated herein, and no others. Seller’s commencement of work on the goods and/or services subject to this Purchase Order or shipment of such goods or services, whichever occurs first shall be deemed an effective mode of acceptance of this Purchase Order.

Termination for Convenience of Purchaser

Purchaser reserves the right to terminate this order or any part hereof for its sole convenience. In the event of such termination, Seller shall immediately stop all work hereunder, and shall immediately cause any of its suppliers or subcontractors to cease such work. Seller shall be paid a reasonable termination charge consisting of a percentage of the order price reflecting the percentage of the work performed prior to the notice of termination, plus actual direct costs resulting from termination. Seller shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred by Seller’s suppliers or subcontractors which Seller could reasonably have avoided.

Termination for Cause

Purchaser may also terminate this order or any part hereof for cause in the event of any default by the Seller, or if the Seller fails to comply with any of the terms and conditions of this offer. Late deliveries, deliveries of goods which are defective or which do not conform to this order, and failure to provide Purchaser, upon request, reasonable assurances of future performance shall all be causes allowing Purchaser to terminate this order for cause. In the event of termination for cause, Purchaser shall not be liable to Seller for any amount, and Seller shall be liable to Purchaser for any and all damages sustained by reason of the default which gave rise to the termination.

Proprietary Information- Confidentiality

Seller shall consider all information furnished by Purchaser to be confidential and shall not disclose any such information to any other person, or use such information itself for any purpose other than performing this contract, unless Seller obtains written permission from Purchaser to do so. This paragraph shall apply to drawings, specifications, or other documents prepared by Seller for Purchaser in connection with this order. Seller shall not advertise or publish the fact that Purchaser has contracted to purchase goods from Seller, nor shall any information relating to the order be disclosed without Purchaser’s written permission. Unless otherwise agreed in writing, no commercial, financial or technical information disclosed in any manner or at any time by Seller to Purchaser shall be deemed secret or confidential and Seller shall have no rights against Purchaser with respect thereto except such rights as may exist under patent laws.

Warranty

Seller expressly warrants that all goods or services furnished under this agreement shall conform to all specifications and appropriate standards, will be new, and will be free from defects in material or workmanship. Seller warrants that all such goods or



services will conform to any statements made on the containers or labels or advertisements for such goods, or services, and that any goods will be adequately contained, packaged, marked and labeled. Seller warrants that all goods or services furnished hereunder will be merchantable, and will be safe and appropriate for the purpose for which goods or services of that kind are normally used. If Seller knows or has reason to know the particular purpose for which Purchaser intends to use the goods or services, Seller warrants that such goods or services will be fit for such particular purpose. Seller warrants that goods or services furnished will conform in all respects to samples. Inspection, test, acceptance or use of the goods or services furnished hereunder shall not affect the Seller's obligation under this warranty, and such warranties shall survive inspection, test, acceptance and use. Seller's warranty shall run to Purchaser, its successors, assigns and customers, and users of goods sold by Purchaser. Seller agrees to replace or correct defects of any goods or services not conforming to the foregoing warranty promptly, without expense to Purchaser, when notified of such nonconformity by Purchaser, provided Purchaser elects to provide Seller with the opportunity to do so. In the event of failure of Seller to correct defects in or replace nonconforming goods or services promptly, Purchaser, after reasonable notice to Seller, may make such corrections or replace such goods and services and charge Seller for the cost incurred by Purchaser in doing so.

Price Warranty

Seller warrants that the prices for the goods sold to Purchaser hereunder are not less favorable than those currently extended to any other customer for the same or similar goods in similar quantities. In the event Seller reduces its price for such goods during the term of this order, Seller agrees to reduce the prices hereof correspondingly. Seller warrants that prices shown on this Purchase Order shall be complete, and no additional charges of any type shall be added without Purchaser's express written consent. Such additional charges include, but are not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing, crating.

Force Majeure

Purchaser may delay delivery or acceptance occasioned by causes beyond its control. Seller shall hold such goods at the direction of the Purchaser and shall deliver them when the cause affecting the delay has been removed. Purchaser shall be responsible only for Seller's direct additional costs in holding the goods or delaying performance of this agreement at Purchaser's request. Causes beyond Purchaser's control shall include governmental action or failure of the government to act where such action is required, strike or other labor trouble, fire, or unusually severe weather.

Intellectual Property

1. Any copyrightable works, ideas, discoveries, inventions, patents, goods, or other information (collectively "Intellectual Property") developed in whole or in part by or on behalf of Seller in connection with or relating to the goods shall be the exclusive property of Purchaser. Upon request, Seller shall sign all documents and otherwise cooperate with Purchaser as necessary to assign, confirm and perfect the exclusive ownership of all Intellectual Property rights in the goods to Purchaser.
2. Seller agrees upon receipt of notification to promptly assume full responsibility for defense of any suit or proceeding which may be brought against Purchaser or its agents, customers, or other vendors for alleged patent infringement, as well as for any alleged unfair competition resulting from similarity in design, trademark or appearance of goods or services furnished hereunder, and Seller further agrees to indemnify Purchaser, its agents and customers against any and all expenses, losses, royalties, profits and damages including court costs and attorney's fees resulting from any such suit or proceeding, including any settlement. Purchaser may be represented by and actively participate through its own counsel in any such suit or proceeding if it so desires, and the costs of such representation shall be paid by Seller.

Insurance

In the event that Seller's obligations hereunder require or contemplate performance of services by Seller's employees, or persons under contract to Seller, to be done on Purchaser's property, or property of Purchaser's customers, the Seller agrees that all such work shall be done as an independent contractor and that the persons doing such work shall not be considered employees of the



Purchaser. Seller shall maintain all necessary insurance coverages, including public liability and Workman's Compensation insurance. Seller shall indemnify and save harmless and defend Purchaser from any and all claims or liabilities arising out of the work covered by this paragraph.

Indemnification

Seller shall defend, indemnify and hold harmless Purchaser against all damages, claims or liabilities and expenses (including attorney's fees) arising out of or resulting in any way from any defect in the goods or services purchased hereunder, any breach of the terms and conditions of this order, or from any act or omission of Seller, its agents, employees or subcontractors. This indemnification shall be in addition to the warranty obligations of Seller.

Changes

Purchaser shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation. If any such changes cause an increase or decrease in the cost, or the time required for the performance, an equitable adjustment shall be made and this agreement shall be modified in writing accordingly. Seller agrees to accept any such changes subject to this paragraph.

Inspection

Payment for the goods delivered hereunder shall not constitute acceptance thereof. Purchaser shall have the right to inspect such goods and to reject any or all of said goods that are in Purchaser's judgment defective or nonconforming. Goods rejected and goods supplied in excess of quantities called for herein may be returned to Seller at its expense and, in addition to Purchaser's other rights, Purchaser may charge Seller all expenses of unpacking, examining, repacking, and reshipping such goods. In the event Purchaser receives goods whose defects or nonconformity is not apparent on examination, Purchaser reserves the right to require replacement, as well as payment of damages. Nothing contained in this Purchase Order shall relieve in any way the Seller from the obligation of testing, inspection and quality control.

Audit Right

Where appropriate, Purchaser shall have the right to audit product quality at Seller's premises.

Entire Agreement

This Purchase Order and any documents referred to on the face hereof, constitute the entire agreement between the parties.

Assignments and Subcontracting

No part of this order may be assigned or subcontracted without the prior written approval of Purchaser.

Shipment

If in order to comply with Purchaser's required delivery date it becomes necessary for Seller to ship by a more expensive way than specified in this Purchase Order, any increased transportation costs resulting therefrom shall be paid for by Seller unless the necessity for such rerouting or expedited handling has been caused by Purchaser.



Waiver

Purchaser's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or Purchaser's waiver of any breach hereunder shall not thereafter waive any other terms, conditions or privileges whether of the same or similar type.

Delivery

Time is of the essence of this contract and if delivery of goods or rendering of services is not completed by the time promised, Purchaser reserves the right, without liability in addition to its other rights and remedies, to terminate this contract by notice effective when received by Seller as to goods not yet shipped or services not yet rendered and to purchase substitute goods or services elsewhere and charge Seller with any loss incurred.

Compliance with Laws

Seller agrees that all goods shipped to the Purchaser under this agreement will be produced in full compliance with all applicable laws including, but not limited to, the Fair Labor Standards Act. Seller further agrees that it shall not engage in the employment of child, forced, indentured, involuntary, prison or uncompensated labor. Purchaser may, upon notice, inspect Seller's plant and facilities at reasonable times to determine compliance with the provisions set forth herein. In addition to any other remedies contained herein, Purchaser shall have the right to immediately terminate this agreement and any other agreements with Seller if it determines that Seller is in violation of this section.

Choice of Law

This Purchase Order and any contract formed hereunder, shall be governed by, and construed under the internal laws of the State of Florida.

Clarification

For clarification or other questions regarding vXchnge's Purchase Order Terms and Conditions, please contact purchasing@vXchnge.com.