

## PURCHASE ORDER TERMS AND CONDITIONS

Vendors providing goods and/or services to the Spartanburg Water System, a political subdivision of the City of Spartanburg, and/or the Spartanburg Sanitary Sewer District, a special purpose district established by the State of South Carolina (collectively, "Purchaser") acknowledge that by accepting a purchase order from Purchaser, they agree to the following terms and conditions. Should a formal contract be in place between the Purchaser and Vendor, the terms and conditions set forth in that contract shall prevail over those listed here in any case of conflict.

1. **ACCEPTANCE.** Vendor's commencement of work on the goods and/or services or shipment of such goods, whichever occurs first, shall be deemed an acceptance of Purchaser's purchase order. Any acceptance of Purchaser's purchase order is limited to acceptance of the express terms contained on such purchase order and those terms and conditions contained herein. Any additional or different terms and conditions in Vendor's acknowledgement or other response hereto shall be deemed objected to and rejected by Purchaser and shall be of no effect. Purchaser's purchase order, together with these terms and conditions, are hereinafter referred to as the "Order."
2. **INVOICING AND PAYMENT.** Purchaser shall not be responsible for any materials or services furnished without a written and properly authorized purchase order or purchase order number issued by the Purchaser. Invoices are expected to be mailed not later than the day following shipment of goods or completion of services. Regardless, Vendor must submit to Purchaser a correct invoice for ordered goods and services no later than six (6) months after delivery of such goods and completion of such services. Purchaser will not be obligated to pay (a) any invoices received more than six (6) months after the invoiced goods were delivered to Purchaser and the invoiced services were completed, or (b) any invoices containing pricing errors that are not corrected within six (6) months of delivery of the invoiced goods or completion of the invoiced services. Payment terms and any early payment discount shall be as set forth on the face of the Order, or if none are stated on the face of the Order, payment terms shall be 1% 10, Net 60.
3. **DELIVERY.** Unless otherwise set forth on the face of the Order, all goods shall be shipped freight prepaid, F.O.B. destination specified by the Purchaser. Time is of the essence and Vendor shall deliver the goods or perform the services strictly in accordance with the delivery requirements and deadlines set forth in the Order. If Vendor fails to deliver or perform as and when specified, Purchaser reserves the right to cancel the Order or any part thereof without prejudice to its other rights, and Vendor agrees that Purchaser may return for full credit part or all of any shipment so made or services so provided. Goods or services of a quantity greater than that ordered will not be deemed accepted unless authorized in writing by Purchaser, nor shall Purchaser's acceptance of a lesser quantity relieve Vendor of its obligation to deliver the balance of the goods or perform the balance of the services ordered.
4. **TITLE AND RISK OF LOSS.** Title to and risk of loss of or damage to goods and services shall remain with Vendor until delivery to Purchaser at the address specified in the Order. Purchaser shall not be required to assert any claims against common carriers. Subject to Purchaser's right of inspection and rejection or revocation of acceptance of nonconforming goods and services under applicable law, title and risk of loss or damage to such goods and services shall pass to Purchaser upon delivery to the appropriate facility. If goods or services are later found to be defective or nonconforming, then the provisions of the Section entitled "Defective or Non-Conforming Goods and Services" shall apply.
5. **TERMINATION FOR CONVENIENCE.** Purchaser reserves the right to terminate the Order or any part hereof for its sole convenience. In the event of such termination, Vendor shall immediately stop all work. Purchaser's liability to Vendor with respect to such terminated Order shall be limited to: (1) Vendor's purchase price of all finished goods and services ordered by Purchaser and not usable in Vendor's other operations or marketable to Vendor's other customers, plus (2) the actual costs incurred by Vendor in procuring and manufacturing material and performing services for the Order not usable in Vendor's other operations. Purchaser shall be entitled to a refund of any advances or progress payments made in excess of the foregoing measure of Purchaser's liability, and at Purchaser's option, Vendor shall deliver to Purchaser any finished goods or services or work-in-process. Vendor shall not be paid for any work done after receipt of notice of termination, nor for any costs incurred by Vendor's suppliers or subcontractors which Vendor could reasonably have avoided, nor shall Purchaser be liable for any loss of profits on the Order or portion thereof so terminated or suspended, nor for any consequential or incidental loss or damage, nor for any suspension, delay, termination or cancellation charges.
6. **TERMINATION FOR CAUSE.** In the event Vendor breaches any of the terms or conditions contained herein, or fails to perform as specified in the Order, Purchaser reserves the right to terminate the Order, or any part thereof, without penalty. In the event of termination for cause, Purchaser shall not be liable to Vendor for any amount, with the

exception of finished goods and services meeting the requirements of the Order and accepted by Purchaser, and of which Purchaser specifically requests delivery or completion after notice of termination is given, and Vendor shall be liable to Purchaser for any and all damages sustained by reason of the default which gave rise to the termination. If it should be determined that Purchaser has improperly terminated an Order for cause, such termination shall be deemed a termination for the convenience of Purchaser.

7. **TERMINATION BY VENDOR.** Vendor may terminate the Order or any part of it upon written notice to Purchaser in the event of Purchaser's failure to pay any amounts due under such Order, which failure is not cured within thirty (30) days from the receipt of Vendor's written notice.
8. **WARRANTIES.** Vendor warrants that (a) all goods and services shall be free from defects and shall conform to the specifications, samples or other descriptions and requirements set forth, described or referred to in the Order; (b) all goods shall be made of new materials and components unless Purchaser expressly permits otherwise; (c) all goods shall be merchantable and fit for the Purchaser's purpose; (d) all services shall be performed in a timely and workmanlike manner and in accordance with industry standards and shall be performed to the full satisfaction of Purchaser; (e) the manufacture, packaging, labeling and transportation of the goods and the performance of the services comply with any and all applicable federal, regional, provincial, state or local laws, rules, regulations and ordinances; (f) Vendor shall have and convey to Purchaser good title to the goods, free from all liens, encumbrances and claims of third parties; (g) Vendor has no prior agreements with or obligations to others that might conflict with its obligations under the Order; AND (h) Vendor has obtained and maintains in full force and effect all applicable licenses, consents, permits, approvals, authorizations and the like required to lawfully perform Vendor's obligation under the Order, and Vendor (1) shall promptly notify Purchaser if Vendor receives any notice, demand, summons or complaint from any governmental or regulatory authority, agency or other body relating to the subject matter of the Order or Vendor's performance in accordance with the Order, and (2) shall take all steps, at Vendor's expense, to remedy and resolve any issues raised therein as promptly as practicable. These warranties shall survive any delivery, inspection, acceptance or payment by Purchaser. Purchaser shall have the remedies described in the Section entitled "Defective or Non-Conforming Goods and Services" and/or elsewhere in the Order for breach of any warranty with respect to the goods and services. In addition, Vendor shall take whatever action is necessary to remove any lien, encumbrance or claim of any third party against any goods and services.
9. **DEFECTIVE OR NON-CONFORMING GOODS AND SERVICES.** Purchaser shall have the right but not the obligation to inspect all goods and services. If any of the goods or services are defective or otherwise not in conformity with the requirements hereof, Purchaser will notify Vendor accordingly and shall have, in addition to the remedies

described elsewhere herein and available at law or in equity, the right to (a) reject the non-conforming or defective goods or services without obligation or liability and receive a refund from Vendor of all amounts paid by Purchaser for such goods or services, and direct Vendor, at Vendor's sole risk and expense, to properly dispose of such goods or services in accordance with industry standards and all applicable laws, rules and regulations, and to return any of Purchaser's affected equipment to its proper condition; (b) upon notification to Vendor, obtain replacement goods or services from another source and recover from Vendor the difference between the purchase price and the price paid by Purchaser for such replacement goods or services, plus Purchaser's reasonable expenses related to such replacement; and/or (c) recover from Vendor all costs and expenses incurred by Purchaser in connection with the non-conforming or defective goods or services, including, without limitation, for materials, labor, components, machine time, supplies, recalls, recovery, freight, handling and storage. The remedies specified in herein shall be cumulative, nonexclusive and in addition to any other remedies available at law, in equity, in contract or otherwise. Purchaser shall have the right at all times to set off any amounts owing at any time from Vendor to Purchaser (or its subsidiaries or affiliates) against any amount payable at any time by Purchaser (or its subsidiaries or affiliates) to Vendor.

10. **PURCHASER'S PROPERTY.** Purchaser has no obligation to furnish Vendor with any tools, equipment or materials for Vendor's performance under an Order, unless expressly provided otherwise on the face of the Order. Any and all tools, equipment, material, artwork, designs, drawings, software, and other tangible or intangible property furnished to Vendor by Purchaser or specially paid for by Purchaser and any replacements thereof or attachments thereto shall be and remain the property of Purchaser ("Purchaser's Property"). Such Purchaser's Property shall be adequately marked by Vendor in such a way so as to clearly identify Purchaser's ownership thereof, and shall be segregated from Vendor's other property. Purchaser's Property while in Vendor's custody or control shall be maintained and repaired as needed by Vendor at Vendor's expense, held at Vendor's risk, kept free of encumbrances, and insured by Vendor, at Vendor's expense, in an amount equal to the full replacement cost, with loss payable to Purchaser. Vendor shall not substitute any other property for Purchaser's Property and shall only use Purchaser's Property for Vendor's performance under this Contract. Purchaser's Property shall be subject to removal at Purchaser's request, in which event Vendor shall prepare same for shipment and shall redeliver Purchaser's Property to Purchaser in the same condition as originally received by Vendor, reasonable wear and tear excepted, all at Vendor's expense. If Vendor or its subcontractors or the employees, representatives, agents or invitees of any of them, make use of any of Purchaser's Property, such Purchaser's Property shall be accepted in "AS-IS, WHERE-IS" condition, and PURCHASER GIVES NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE DESCRIPTION, QUALITY, CONDITION,

MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, TITLE, PRODUCTIVENESS OR ANY OTHER ASPECT OF THE PURCHASER'S PROPERTY. Purchaser shall not be responsible for the maintenance, repair, or the proper use and service of the Purchaser's Property. Vendor shall indemnify and hold harmless Purchaser from and against any and all losses, costs, expenses (including attorney's fees and court costs), claims (including claims of Vendor's employees), damages, demands, liabilities, suits, actions, recoveries and judgments of every nature and description arising out of any failure of the Purchaser's Property to be suitable for its intended purpose or for any damage (including without limitation damage to Purchaser's Property), destruction, injury or death arising from the use of such Purchaser's Property.

11. **INFRINGEMENT.** Vendor represents to Purchaser that the goods and services supplied hereunder do not and shall not infringe upon any existing or pending patents, copyrights, trademarks, trade secrets or other proprietary rights of third parties. Vendor shall indemnify Purchaser against liability, loss, damage, costs or expenses of any kind or nature, including, without limitation, Purchaser's attorney's fees and costs, incurred in connection with any claim, suit or other proceeding for infringement or misappropriation of any patent, copyright, trademark, trade secret or other proprietary right brought against Purchaser or Purchaser's successors or assigns based upon use of goods or services provided by Vendor (each, an "Infringement Claim" and collectively, "Infringement Claims"). If Purchaser is enjoined from using the goods or services because of any Infringement Claim, Vendor shall at its sole expense and in the following sequence: (a) obtain for Purchaser the right to continue using such infringing goods or services; (b) replace such infringing goods or services with non-infringing but equivalent goods or services; or (c) modify the goods or services so that they are non-infringing but equivalent. At Purchaser's option, Vendor shall purchase all infringing goods and services from Purchaser at the total purchase price paid by Purchaser for all such infringing goods and services and pay Purchaser all costs and expenses incurred by Purchaser in the removal of such goods and services. Purchaser shall promptly notify Vendor of any Infringement Claim. At Purchaser's option, Vendor shall defend Purchaser in such Infringement Claim at Vendor's direct cost and expense. Alternatively, Purchaser may defend itself against such Infringement Claim and seek recovery from Vendor as described above. Any settlement made for or against Purchaser or on behalf of Purchaser must be agreed to in writing prior to any final settlement agreement and Vendor shall promptly inform Purchaser about any judgment rendered for or against it regarding any infringement proceeding. The provisions of this Section shall not extend to Infringement Claims resulting solely from Vendor's compliance with Purchaser's specific designs, processes or specifications.

12. **SOFTWARE.** With respect to any operating system, firmware, software, program, application, source or object code, machine-readable instruction, or similar electronic information that is provided to Purchaser by Vendor in

connection with the goods or services, either in a stand-alone medium or imbedded in the goods or services (the "Software"), Vendor warrants that (a) the Software will perform as specified when installed and used in connection with the goods or services; (b) Vendor has the right to license the Software to Purchaser as provided below; and (c) neither Purchaser's use of the Software in connection with the goods or services nor its exercise of its rights under the license granted below will infringe on any third party intellectual property rights. Vendor hereby grants to Purchaser a non-exclusive, perpetual, royalty-free license to use the Software in connection with the goods and services, and the license is freely transferable by Purchaser in connection with any assignment, sale, or other transfer that it may make of the goods or services. For purposes of all warranties, obligations, rights and remedies provided herein with respect to the goods or services, the Software shall be considered a part of the goods or services covered by the same warranties, obligations, rights and remedies. Vendor agrees to promptly notify Purchaser of any updates to the Software and, if requested by Purchaser, to provide such updates to Purchaser. With respect to cloud-based Software, such updates shall be provided to Purchaser at no additional charge.

13. **VIRUSES.** Vendor shall (i) ensure that no computer virus or other harmful or malicious code or program is introduced into or on to Purchaser's computer equipment or systems as a consequence of the provision of Software, goods or services, and (ii) use its best efforts to ensure that no computer virus or other harmful or malicious code or program is introduced into or on to Purchaser's computer equipment or systems by any act, omission or negligence of Vendor.

14. **INDEMNIFICATION.** Vendor shall protect, defend, indemnify and hold harmless Purchaser and its agents, employees and related companies from any and all losses, costs, expenses (including attorney's fees and court costs), claims (including claims of Vendor's employees), damages, injuries (including death), demands, liabilities, suits, actions, recoveries and judgments of every nature and description arising out of (a) any defective goods and services, (b) Vendor's breach of the Order, negligence or willful misconduct, (c) the presence of Vendor's employees or agents on Purchaser's premises, and (d) any acts or omissions of Vendor, its agents, employees or subcontractors; all except to the extent of Purchaser's gross negligence or willful misconduct. As to any claim made by Purchaser hereunder, Vendor expressly waives any immunity from suit with respect to injuries to Vendor's employees which may extend to Vendor as a result of any payments made by Vendor to such employees or under any applicable workers' compensation statute or similar law or judicial decision.

15. **INSURANCE.** Vendor shall maintain and at minimum keep in force, at its own expense, the following insurance coverage and limits: (a) applicable Workers' Compensation Insurance with statutory limits as required by the laws and regulations applicable to the employees of Vendor who are engaged in the performance of the Order; (b) Employers'

Liability Insurance with a limit of \$1,000,000 per occurrence; (c) Commercial General Liability Insurance covering claims for bodily injury, death, and property damage, including Premises and Operations, Products and Completed Operations, Independent Contractors, Personal Injury, Blanket Contractual and Broadform Property Damage Liability, with a combined single limit of \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The Products and Completed Operations coverage should continue in full force and effect for three (3) years following completion, expiration or termination of the Order; and (d) Comprehensive Auto Liability Insurance covering all owned, non-owned, hired and other vehicles with a combined single limit of \$1,000,000 per occurrence. The insurance policies described above shall be written by insurance companies reasonably satisfactory to Purchaser. Vendor shall not cancel or modify any insurance policies without first giving thirty (30) days' written notice to Purchaser. Any such cancellation or modification shall not affect Vendor's obligation to maintain the insurance coverage set forth above. Vendor shall be responsible for payment of any and all deductibles from insured claims under its policies. The coverage afforded under any insurance policy obtained by Vendor pursuant to this Section shall be primary coverage in all instances regardless of whether or not Purchaser has similar coverage. Except for Workers' Compensation Insurance, Purchaser shall be named as an additional insured on all such policies of insurance. Vendor shall not self-insure any of the insurance coverage required hereunder without the prior written consent of the Purchaser. The minimum limits of coverage required hereunder may be satisfied by a combination of primary and excess or umbrella insurance policies. The maintenance of this insurance shall not in any way operate to limit the liability of Vendor to Purchaser hereunder. In the event of a breach of any of Vendor's insurance obligations described above, Purchaser shall have the right to immediately terminate any outstanding Order upon notice to Vendor.

16. **INDEPENDENT CONTRACTOR.** Vendor specifically represents that it is an independent contractor, properly licensed and offering goods and services based on its expertise and experience. As such, Vendor shall have and maintain exclusive control and direction over all of its employees, agents, and operations. Except as expressly authorized in writing, neither Vendor nor anyone employed by Vendor shall be, shall hold themselves out as, or shall be deemed to be, Purchaser's agent, representative or employee. Vendor shall replace any personnel deemed unsatisfactory by Purchaser. Vendor assumes full and exclusive responsibility for the payment of all contributions or taxes now or hereafter required by any law or regulation as to all personnel engaged in the performance of the Order.
17. **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.

18. **COMPLIANCE WITH LAWS.** Vendor shall comply with, and Vendor warrants that all goods shipped to Purchaser will be produced in full compliance with, all applicable laws including, but not limited to, the Fair Labor Standards Act. Vendor further agrees that it shall not engage in the employment of child, forced, indentured, involuntary, prison or uncompensated labor. In addition to any other remedies contained herein, Purchaser shall have the right to immediately terminate this agreement and any other agreements with Vendor if it determines that Purchaser is in violation of this section.
19. **DAMAGES.** In no event shall Purchaser be liable for anticipated profits or for incidental or consequential damages. Purchaser's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this agreement or from the performance or breach thereof shall in no case exceed the price allocable to the goods or services or unit thereof which gives rise to the claim. Purchaser shall not be liable for penalties of any description. Any action resulting from any breach on the part of Purchaser as to the goods or services delivered hereunder must be commenced within one year after the cause of action has accrued.
20. **HEALTH AND SAFETY.** Vendor agrees to comply, and to require its employees and agents to comply, with the provisions of the Federal Occupational Safety and Health Act, as amended, and the standards and regulations issued thereunder and warrants that all goods and/or services furnished under the Order will conform to and comply with said standards and regulations. Prior to the delivery of goods, Vendor shall furnish to Purchaser Material Safety Data Sheets ("MSDS") in the format and with the information required by the Occupational Safety and Health Administration for the goods. Such MSDS shall contain all information reasonably necessary to enable Purchaser to comply with any applicable "hazard communication" or "right-to-know" laws. Vendor agrees that at any time that Vendor's employees or agents are performing services in a Purchaser facility or in proximity to Purchaser's employees or are otherwise on Purchaser's property, Vendor shall require its employees or agents to comply with all occupational health and safety rules and regulations promulgated by law and the Purchaser and with all of Purchaser's policies and requirements regarding the presence of Vendor's employees or agents on Purchaser's premises, including passing any applicable background checks. Vendor hereby acknowledges that Purchaser has informed Vendor of its policy that being under the influence of, bringing in, possessing, providing, manufacturing or other production of, buying, selling or using alcoholic beverages, unauthorized drugs or controlled substances, or possessing weapons, on Purchaser's property or in Purchaser's vehicles, is strictly prohibited. Vendor understands and agrees to follow, and cause its employees and other agents to follow, this policy during the performance of the Order. Vendor is solely responsible for

the safety of its employees at all times while on Purchaser's property.

21. **TOXIC SUBSTANCES.** Vendor expressly represents and warrants that each and every chemical, chemical substance, and in the case of mixtures, every chemical substance ingredient, sold or otherwise furnished hereunder is, at the time of such sale and delivery to Purchaser, listed in the Toxic Substances Control Act Chemical Substance inventory compiled and published by the U.S. Environmental Protection Agency pursuant to the Toxic Substances Control Act, as amended, and is otherwise manufactured, sold, furnished and/or delivered in compliance with all applicable provisions of said Act. Vendor expressly represents and warrants that the products and/or goods sold or otherwise furnished hereunder are not and/or do not contain chemicals or other substances whose use of any kind, or presence in consumer goods has been banned, or whose use has been restricted or limited in any manner without such restriction or limitation being clearly identified with respect to each such chemical or other substance and the components thereof on the labeling of each said products or goods.
22. **ENVIRONMENTAL.** In its performance of the Order, Vendor shall comply with all applicable environmental laws and will provide Purchaser promptly with copies of all notices of violation, information requests and warning letters issued by any local, state or federal environmental health or safety agency in connection with the Goods or any facility related to the Goods.
23. **GOVERNING LAW AND JURISDICTION.** The Order shall be interpreted and governed in all respects by the laws of the State of South Carolina without reference to the conflicts of law principles thereof. It is specifically agreed that the Order will not be covered by nor construed in accordance with the terms of the United Nations Convention on Contracts for the International Sale of Goods. Any judicial proceeding arising out of or related to the Order shall be instituted and maintained in the federal or state courts for Spartanburg County, South Carolina and each party submits to the exclusive jurisdiction of such courts. Each party further agrees to comply with all requirements necessary to give such courts in personam jurisdiction and agrees that service of process may be accomplished by, in addition to any other lawful means, certified mail, return receipt requested, to each party at such party's address set forth herein or any new address of which each such party has been notified in writing. Each party hereto hereby agrees that it shall not have a remedy of punitive or exemplary damages against the other in any dispute and hereby waives any right or claim to punitive or exemplary damages they have now or which may arise in the future in connection with any dispute. The procedures specified in this Section shall be the sole and exclusive procedures for the resolution of disputes between the parties arising out of or relating to the Order.
24. **CONFIDENTIALITY.** Vendor shall not at any time, either prior to or after the termination of the Order, without Purchaser's express written permission, make use of (except for Purchaser's direct benefit as authorized herein), disclose or allow to be disclosed to others any confidential information or trade secret regarding Purchaser's business, customers, processes, techniques or operations learned by Vendor incident to its performance hereunder. All specifications, documents, drawings and other data delivered by Purchaser to Vendor in connection with any Order shall be subject to this confidentiality obligation. Vendor's confidentiality obligation will not extend to information that is generally published or lawfully available from other sources, that was known to Vendor prior to disclosure thereof by Purchaser, or to the extent such information is required to be disclosed under applicable law or a decree or order issued by a court or regulatory agency with jurisdiction over the matter.
25. **EQUAL OPPORTUNITY. To the extent applicable, Vendor and any subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a), and 60-741.5(a). These regulations prohibit discrimination against qualified veterans based on their status as protected veterans or individuals with disabilities, prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin, and prohibit discharge of or discrimination against any employee or applicant because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.**
26. **ASSIGNMENT AND SUBCONTRACTING.** Vendor shall not delegate any duties or liabilities nor assign any rights or claims under the Order without the prior written consent of Purchaser. Any such attempted delegation or assignment shall be void. Vendor shall not use any subcontractors for any portion of Vendor's performance hereunder without first notifying Purchaser and obtaining Purchaser's prior written approval of any proposed subcontractors. Except as provided in this Section, the Order shall be binding upon and inure to the benefit of the assignees, successors and assigns of the parties.
27. **FORCE MAJEURE.** A "Force Majeure Event" shall be defined as any event of force majeure, including without limitation, acts of God, labor disputes or strikes, war or civil disturbance, or any other cause beyond the affected person or entity's control and not due to such person or entity's fault or negligence and which such person or entity could not reasonably anticipate and avoid. Vendor will maintain commercially reasonable disaster recovery measures to prevent or promptly cure any Force Majeure Event. Purchaser shall have the right to review and approve such measures. If Vendor is delayed in the manufacture, shipment or delivery of the goods or performance of the services due to any Force Majeure Event, then the date of delivery or performance shall be automatically extended for

a period of time equal to the duration of the Force Majeure Event; provided, however, that no such extension shall apply unless Vendor gives written notice of delay to Purchaser within three (3) days after Vendor first has knowledge of the Force Majeure Event causing such delay. During any delay caused by such a Force Majeure Event, Vendor agrees to continuously supply Purchaser with the affected goods and services in volumes that at least equal the portion of Vendor's affected volume supplied to Purchaser immediately before the Force Majeure Event, relative to Vendor's affected volume supplied to other customers immediately before and during the delay. Purchaser shall have the right to cancel all or part of the Order or any pending shipment or performance, and purchase replacement goods and services from another supplier if Vendor is delayed for reasons set forth above. If Purchaser is unable to use or receive the goods or services due to any Force Majeure Event affecting Purchaser, then Purchaser may, at its option, (a) extend the date of delivery or performance for a period of time equal to the duration of the Force Majeure Event, or (b) cancel all or part of the Order or pending shipments or performance. Purchaser shall not be liable to Vendor for any amount, with the exception of accepted deliveries of finished goods and accepted performance of finished services, if Purchaser terminates all or part of the Order pursuant to this Section.

28. LIEN RELEASES. Neither the final payment nor any part of the retained percentage shall become due until Vendor shall deliver to Purchaser, on forms satisfactory to Purchaser, an affidavit(s) of complete release and waiver of all claims and liens arising out of all services, materials, equipment or labor furnished under the Order. In addition, at the request of Purchaser, Vendor shall also deliver to Purchaser, on forms satisfactory to Purchaser, periodic partial lien waivers from Vendor and/or Vendor's subcontractors as any progress payments are made by Purchaser for services, materials, equipment or labor furnished under the Order. Vendor agrees to indemnify, hold harmless and defend Purchaser from and against any and all claims, demands, causes of action, or suits of whatever nature, and all liens and claims of lien which may arise out of services, labor, and materials furnished by Vendor or its subcontractors and suppliers or their employees, agents or materialmen hereunder; and Vendor shall, upon request, furnish a bond, satisfactory to Purchaser, to indemnify it against all such liens and claims. Vendor will not suffer or permit any lien, attachment, claim or other encumbrance to be put or remain on any services provided hereunder, any portion thereof, or the site of such services, and Vendor agrees to obtain promptly at its own expense the release and discharge of all such liens, attachments, claims and encumbrances which may be filed and shall keep the services and the site free and clear of all such liens, attachments, claims and encumbrances arising from the performance of the Order by Vendor and its subcontractors and suppliers.

29. AUDIT AND INSPECTION. Vendor shall maintain and retain for a period of at least six (6) years from the date of manufacture of the goods or completion of the services (or

longer if required by applicable law), complete and accurate books and records relating to the costs, production, packaging, storage and shipment of goods and/or the costs and performance of services. Vendor shall also maintain and retain any other records required to be maintained under the Order or required to be kept by any applicable governmental laws, rules, regulations and guidelines. Upon reasonable notice and during normal business hours, Purchaser, or its representatives, will have the right to inspect Vendor's facilities and processes, and audit Vendor's books, records, documents, reports and other materials related to the Order or Vendor's current regulatory compliance status. Purchaser's audit rights hereunder shall expressly include the right to examine Vendor's internal and external costs for any materials, components, supplies, labor, services, or other costs related to the Order. If an audit indicates that Vendor has not complied with the terms of the Order, Vendor will promptly reimburse Purchaser for the costs of the audit and implement any reasonable corrective actions requested by Purchaser. Purchaser will also determine an appropriate credit or refund for any overcharges, which may be used as a set-off as determined by Purchaser. Vendor will, upon request by Purchaser, furnish Purchaser with copies of Vendor's audited financial statements and with copies of any books or records required to be maintained by Vendor hereunder. If audited financial statements are not available, Vendor shall furnish to Purchaser any other information reasonably requested by Purchaser regarding the financial condition of Vendor.

30. MISCELLANEOUS. The waiver by Purchaser of any breach of any term, condition or provision of the Order shall not be construed as a waiver of any other term, condition or provision of the Order, nor shall such waiver be deemed a waiver of any subsequent breach of the same or any other term, condition or provision of the Order. In the event that any provision of the Order shall become invalid or illegal, this shall not render the Order void or invalid as a whole and in such event, such provision shall then be changed and interpreted so as best to accomplish the objective of such questionable provision. Except for any existing confidentiality agreement between the parties, all prior and contemporaneous proposals, negotiations, representations and agreements with respect to the goods and services are merged into the Order and no course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in the Order. Except as otherwise expressly provided herein, the Order may not be altered, modified, superseded or amended and no additional or different terms shall become a part of the Order, except pursuant to a writing specifically referencing the Order which is signed by both parties to the Order.