

## TERMS AND CONDITIONS

1. This order constitutes an offer by the entity identified on the first page of this document (the "Buyer") to purchase from Vendor the material or services identified on the preceding page(s), and these Terms and Conditions, together with any exhibits or additional terms Buyer may attach hereto or incorporate by reference, set forth all of the terms and conditions of the purchase by Buyer from Vendor of such material or services (collectively, this "Purchase Order"). Vendor's acknowledgement of this Purchase Order, delivery of any materials ordered, or its commencement of performance hereof shall confirm Vendor's acceptance of these terms and conditions. Buyer hereby objects to and rejects any proposal by Vendor to modify, amend, limit, add to, or delete any of the terms and conditions contained or referenced in this Purchase Order (whether contained in an acknowledgement, invoice, or acceptance form or otherwise), unless specifically agreed to in writing and signed by Buyer. Buyer's performance is expressly made conditional on Vendor's assent to the terms and conditions of this Purchase Order. Except for the delivery terms in section 14 below, which may be altered by an express provision in the preceding page(s) of this Purchase Order, to the extent that any express provisions in the preceding page(s) of this Purchase Order are inconsistent with any of these Terms and Conditions, then these Term and Conditions shall prevail. Notwithstanding the foregoing, if Buyer and Vendor have entered into a separate written agreement governing purchases and sales, including the material or services described herein, then such separate written agreement shall control over any inconsistent provisions of this Purchase Order. Notwithstanding the foregoing, if this Purchase Order is construed as an acceptance by Buyer of an offer by Vendor, such acceptance is expressly conditioned on Vendor's assent to all terms and conditions contained herein. Alternatively, if this Purchase Order is construed as a confirmation of an existing contract, such confirmation is expressly conditioned on Vendor's assent to all terms and conditions contained herein in respect of this Purchase Order.
2. Buyer may cancel, may refuse to accept, or may return at Vendor's risk and expense, any or all materials or services ordered if Vendor fails to deliver or perform within the time specified in this Purchase Order (time being of the essence hereof), or fails to deliver or perform in accordance with its terms. Acceptance of part of the Purchase Order shall not oblige Buyer to accept later shipments, nor affect its right to return materials already accepted.
3. Materials delivered and services performed under this Purchase Order shall be subject to inspection, testing, and rejection by Buyer. All or any part of the order may be destroyed, where required by law, or returned at Vendor's risk and expense if found to be defective, non-conforming, or in excess of the quantity ordered. Inspection or failure to inspect, acceptance of all or part of the materials or services provided hereunder, or payment therefor shall not waive or affect Buyer's right to cancel, destroy, or return all or part of the goods or services, to recover damages, or to recover pursuant to Vendor's indemnity obligations.
4. Cash discount period, if any, shall be computed as commencing upon Buyer's receipt of goods.
5. Buyer will not be responsible for any charges for packing, boxing, crating, freight, insurance, express or other carrier's charges, or cartage, and Vendor shall prepay for all shipping charges, unless otherwise designated on this Purchase Order.
6. Vendor agrees to pay all taxes and duties now or hereafter imposed by law upon or on account of the production, sale, shipment, or use of any materials or performance of any services contracted hereunder and Vendor agrees to indemnify Buyer against and reimburse it for any expenditures it may be required to make on account of Vendor's failure to pay such taxes, duties, and other governmental charges.
7. Vendor represents and warrants to Buyer, its affiliates, and its and their respective customers that: (i) all materials to be delivered hereunder (a) will be free and clear of all liens and encumbrances of any kind, (b) will be of merchantable quality, free from any latent or patent defect, (c) will conform to Buyer's specifications, drawings, and/or samples, and (d) will be safe for their intended use; and (ii) all services to be performed hereunder will be performed: (x) in compliance with all applicable laws, rules, and regulations; (y) in a professional, workmanlike, safe, and environmentally-sound manner, and (z) using a degree of care, skill, and workmanship that would be expected of an experienced, competent, and reputable vendor specializing in the provision of such services.
8. Vendor will indemnify, defend, and hold harmless Buyer, its affiliates, and its and their respective customers, directors, shareholders, officers, employees, agents, and representatives from and against all losses, demands, claims, fines, penalties, expenses (including attorneys' fees), costs, and damages arising from actual or claimed infringement or misappropriation of patent, trademark, copyright, or other rights, any breaches of Vendor's obligations, representations, and warranties contained herein, any death or injury to persons or damage to property caused by Vendor and its employees and agents in the performance of this Purchase Order, and violations of applicable laws, regulations, and rules by Vendor and its employees and agents.
9. Vendor represents and warrants that all materials delivered and services performed pursuant hereto will have been produced, sold, delivered, and performed in compliance with all applicable laws, codes, rules, orders, and regulations. If the Federal Food, Drug and Cosmetic Act is applicable to any materials furnished under this Purchase Order, then for the purpose of Section 303(c) of said Act, Vendor hereby guarantees that the materials comprising each shipment or other delivery to Buyer as of the date of such shipment or delivery, will not be adulterated or misbranded within the meaning of said Act, or within the meaning of any applicable state or local law in which the definition of "adulteration" and "misbranding" are substantially the same as those contained in said Federal Food, Drug, and Cosmetic Act, as such laws are constituted and effective at the time of such shipment or delivery, and will not be material that may not under the provisions of said Federal Act be introduced into Interstate Commerce.
10. Vendor represents and warrants that, to the extent applicable to materials delivered pursuant to this Purchase Order, such materials have been or will be produced in accordance with the Federal Insecticide Fungicide and Rodenticide Act, Fair Labor Standards Act of 1938, as amended: Title VII of the Civil Rights Act of 1964, as amended: Executive Order 11246 of September 24, 1965, as amended: Section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974, as amended: Section 503 of the Rehabilitation Act of 1973, as amended: the Occupational Safety and Health Act of 1970, as amended: Executive Order 11738 of September 10, 1973: The Toxic Substances Control Act, as amended.
11. If either party is prevented or delayed from performing hereunder by fire, flood, strikes, lock-out, epidemic, or other causes beyond the reasonable control of the parties, the time of performance of that party shall be extended during the period required to remove such cause. Vendor shall allocate its available supply of material among purchasers and Vendor's divisions, departments, and affiliates, on such basis that Buyer's percentage reduction in total quantity of material is proportionate to its relative purchases prior to any such reduction. Any delivery or performance prevented or delayed under this paragraph may be canceled by Buyer without liability, and the order quantity shall be reduced by the quantities so omitted; provided, however, Buyer may at its option, extend the term of this Purchase Order to permit partial or total delivery or performance of material or services not delivered or performed because of such contingency.
12. To the extent that Vendor's obligations hereunder require Vendor's or its agents' entry onto, or the performance of services on, Buyer's property or on property under Buyer's control, Vendor agrees to accept full responsibility for performing all such services in a safe manner, so as not to jeopardize the safety of personnel or property, or members of the general public, and to comply with and enforce all Buyer safety and fire protection regulations and all applicable federal, state, and municipal safety regulations, building codes or ordinances.
13. IN NO EVENT SHALL BUYER BE LIABLE FOR CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES RELATING TO OR ARISING OUT OF THIS PURCHASE ORDER, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR VENDOR WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
14. Title shall pass with risk of loss from Vendor to Buyer DDP, unless otherwise expressly provided for on the preceding page(s) of this Purchase Order. Incoterms 2010 shall apply to this Purchase Order.
15. If Buyer is located in the United States, this Purchase Order and performance hereunder shall for all purposes be construed and interpreted according to the laws of the State of Colorado and the federal laws of the United States applicable therein, excluding reference to conflicts of laws principles. Any dispute relating to this Agreement shall be resolved by the state courts of Colorado located in the city of Denver and those competent to hear appeals therefrom. If Buyer is located in Canada, this Purchase Order and performance hereunder shall for all purposes be construed and interpreted according to the laws of the Province of Alberta and the federal laws of Canada applicable therein, excluding reference to conflicts of laws principles. Any dispute relating to this Agreement shall be resolved by the courts of Alberta located in the city of Calgary and those competent to hear appeals therefrom. The United Nations Convention for the International Sale of Goods shall not apply to this Purchase Order.
16. This Purchase Order may not be assigned or subcontracted by Vendor without the prior written consent of Buyer. If any provision of this Purchase Order shall be held invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall in no way be impaired thereby. The parties acknowledge that Vendor is an independent contractor, not an employee of Buyer.
17. The parties agree that these conditions and any documents ancillary thereto shall be drafted in English only. Les parties conviennent que ces termes et tout accessoire de documents s'y rapportant doivent être rédigés en anglais seulement.