



TERMS & CONDITIONS

The following text shall be automatically added to all purchase orders generated by Company:

“Unless the parties have mutually entered into a definitive contract for the goods or services covered by this Purchase Order, any and all goods or services provided by Vendor under this Purchase Order shall be governed by the standard terms and conditions in effect on the date of this Purchase Order that are published on the website located at <http://www.pscnow.com/vendor/>. Vendor's commencement of work under this Purchase Order constitutes Vendor's acceptance of these terms and conditions.”

The Company's standard terms and conditions as set forth in Exhibit B (“T&Cs”) shall be available for download on Company's corporate website. The Company's General Counsel shall have the sole authority to modify the Company's T&Cs.



EXHIBIT B

TERMS AND CONDITIONS FOR PURCHASE ORDERS

Vendor agrees that the following Terms and Conditions (“Terms and Conditions”) are incorporated into and govern all purchase orders (the “Purchase Order”).

PURCHASE ORDER NUMBERS – Purchase Order numbers must appear on all shipping documents, invoices, quality certifications, packaging sheets, etc.

PRICE, TAXES AND QUANTITY – Vendor shall furnish the goods and/or services called for by the Purchase Order in accordance with the prices and delivery dates stated in the Purchase Order. If prices and/or delivery dates are omitted, Vendor shall offer its lowest prices and best delivery method, both of which shall be subject to written acceptance by Company. Unless otherwise expressly set forth in the Purchase Order or required by applicable law, all prices include all applicable taxes and duties, except U.S. sales taxes which the Company will remit directly to the appropriate state. Vendor warrants that the prices charged for the goods and/or services covered by this Purchase Order shall be as low as the lowest prices charged by the Vendor to any other customers purchasing similar goods and/or services in the same or smaller quantities and under like circumstances.

PAYMENT & INVOICING – Company (as defined below) shall pay Vendor’s invoices (i) within sixty (60) days, of receipt of an accurate invoice unless Company has agreed to other payment terms in writing,; and (ii) upon completion of each item of services described in the Purchase Order or delivery of goods specified on the Purchase Order. Vendor shall set forth on each invoice the following: (a) Purchase Order number; (b) number of cartons in shipment; (c) Vendor’s invoice number; (d) Vendor store number; (e) taxes, if applicable; and (f) make, model number, serial number and type of product or service. The label on each carton of product will reference this Purchase Order number. After Company has approved Vendor’s invoice, Company shall pay Vendor those approved amounts via check, wire-transfer, procurement card (if applicable), or corporate card (if applicable). Until Company receives Vendor’s invoice, no prompt payment time limits shall commence. In no event shall Company be liable to Vendor for interest or other late payment charge. Company shall not be liable for any taxes related to the Purchase Order other than any applicable sales and use taxes.

DELIVERY – Time is of the essence with respect to delivery of products or services listed in the Purchase Order. Vendor must immediately advise Company if any product or service cannot be shipped as ordered by the stated date. Shipments or performance not made on the date or dates specified in the Purchase Order may be cancelled or rejected by Company.

- **Partial Shipment:** At Company’s option, in the event of shipment of less than all products or services ordered, Company may either accept shipment or pay only for the products or services received, pro rata based on the unit price of the item ordered, or reject the entire shipment.
- **Late Shipment:** Company reserves the right to cancel the Purchase Order or any portion thereof if shipment is not made when and as specified and charge Vendor for any loss sustained as a result of such cancellation, including, but not limited to, shipping charges. Further, Company may reject the late delivery without cancellation of the Purchase Order as to other subsequent required shipments. Each shipment required under the Purchase Order is to be considered separately, and Company’s right to reject a late delivery shall not be affected by acceptance of other late deliveries by Vendor. All such cancelled shipments shall be returned to Vendor at Vendor’s expense. Acceptance by Company of a late delivery of either the whole or part of the goods under the Purchase Order shall not constitute a waiver of Company’s claim for any damages resulting from the late delivery.
- **Early Shipment:** Products shipped prior to the date specified, at Company’s option, may be subject to anticipation and warehouse charges, payable by Vendor, or may be returned to Vendor, at Vendor’s expense, to be held until proper shipping date.

CURE – In the event that the goods delivered under this Purchase Order are less than the amount to be delivered or do not conform to specifications, or in the event Company does not accept the material delivered under this Purchase Order or revokes its acceptance within 30 days of delivery, or if the services purchased under this Purchase Order



are not provided in conformance with the terms herein, Vendor shall, upon notice from Company, take all steps necessary to timely cure any deficiency, including without limitation shipping additional material or providing both transportation of any nonconforming material from Vendor's designated destination and timely transportation of conforming replacement goods to Company's designated destination.

WAIVER – If Company provides Vendor with an opportunity to cure its performance, such shall not be construed as a waiver of any or all of the terms and conditions of this Purchase Order or any other rights or remedies of Company provided by law. Any delay, lack of enforcement, or waiver by Company of any default or other breach of this Purchase Order shall not constitute a waiver of any subsequent default or other breach, and such shall not preclude Company from enforcing any and all of the terms and conditions of this Purchase Order.

SHIPMENT – Shipment shall be made in accordance with the specific instructions from Company set forth in the Purchase Order or as per oral or written instructions provided by the Company. In the absence of specific shipping instructions, Vendor will request such instructions from the Company. If instructions are not provided upon request, shipment shall be routed via the most economical mode of commercially reasonable transportation available. Goods will be classified so that the lowest commodity rate may be obtained. Unless otherwise agreed to in writing by Company, the prices set forth in the Purchase Order include all charges for packing, crating and storage, and Vendor is obligated to suitably pack, mark and ship all goods to prevent damage and to conform to the requirements of common carriers. If the Vendor is responsible for transportation and delivery, Company shall have the right to return all freight damaged merchandise to Vendor and to receive full credit therefore.

INSPECTION AND TESTING – All products and services shall be subject to inspection and approval by Company after delivery. Company reserves the right to reject any products or services that it deems non-conforming, defective, stale, unsafe, unfit or in any other way unsuitable for its purposes. Products not conforming to the Purchase Order shall be held at Vendor's risk and returned to Vendor, freight collect, and Vendor shall be liable for transportation and handling costs. Company reserves the right to require replacement of rejected products or services as well as payment of damages, at Vendor's expense. Rejected products or services in quantities in excess of the required order will be returned at Vendor's expense.

ACCEPTANCE – Company's acceptance is limited to the terms and conditions herein contained. Any additional or different terms heretofore or hereafter proposed by Vendor in any quotation, acknowledgement, sales offer, or otherwise are rejected. Acceptance may be evidenced by Vendor's written notice of acceptance or by commencement of performance. If the latter, Company shall not be bound until it receives the goods or services. Acceptance of the goods or services shall not constitute Company's acceptance of Vendor's terms and conditions. No charges beyond the price specified in the Purchase Order shall be allowed except with the written consent of Company. Acceptance of the goods or services shall not relieve Vendor from any of its obligations and warranties hereunder. In no event shall payment be deemed to constitute acceptance.

CHANGES – Company reserves the right to a) at any time prior to the Vendor beginning the manufacturing process of the goods (for unique goods specifically manufactured for the Company) and b) at any time prior to the shipment of goods (for all other non-unique goods) make changes as to: (i) specifications of any goods; (ii) methods of shipment or packaging; (iii) place of delivery; (iv) schedule of delivery; (v) reduction, increase or cancellation of the quantities ordered. If any such changes cause an increase or decrease in the cost of or the time required for performance of a Purchase Order, an equitable adjustment may, in the Company's sole discretion, be made in the contract price and/or the delivery schedule. Any claim by Vendor for adjustment under this clause shall be deemed waived unless asserted in writing within ten (10) days from receipt by Vendor of the change. If the cost of property made obsolete or excess as a result of such change is paid for by Company, Company shall prescribe the manner of disposition of such property.

CANCELLATION – Company may, after giving written notice to Vendor, cancel the Purchase Order prior to delivery. Upon a default by Vendor of any its obligations hereunder, Company may, in addition to any other rights or remedies it may have, cancel the Purchase Order and seek damages from Vendor. In the event of any cancellation hereunder, Vendor shall cease any work or delivery and observe any instruction from Company as to work in progress.

INDEMNIFICATION – Vendor shall indemnify, defend, and hold harmless the Company (as identified on the face of the Purchase Order, the "Company"), all of its affiliates, subsidiaries and parents, and their respective agents,



officers, directors, managers, and employees from and against any and all claims, damages (including, without limitation, court costs, investigative costs and reasonable attorneys' fees), judgments, liabilities, fines, loss of business opportunity, loss of profits, costs and expenses (including, without limitation, legal expenses and claims for personal injury or property damage), indirect, incidental, consequential, special or exemplary damages as a result of (i) [the failure of goods or services purchased from Vendor to conform to the warranties contained herein](#); (ii) [the breach by Vendor of any of the terms hereof or representations contained herein](#); (iii) [the performance of any labor or services preformed hereunder by the Vendor, its employees or subcontractors](#); (iv) [any other act or omission of Vendor](#); (v) any claim or action arising out of any actual or alleged death or injury to any person, or any damage or destruction of property attributable to Vendor's product; or (vi) willful misconduct or negligence of Vendor or an authorized Vendor representative/dealer. Such indemnification obligations shall survive the termination or expiration of the Purchase Order.

INSURANCE - If insurance requirements are not specified in the Purchase Order, Vendor represents that as of the date of the Purchase Order, Vendor maintains:

- a) Comprehensive general liability insurance in an amount not less than \$1,000,000 combined single limit;
- b) If the accomplishment of this Purchase Order requires the performance of services or labor in the plants or on the premises of the Company, worker's compensation insurance as required by law; and
- c) Automobile liability insurance for all vehicles to be used by Vendor in the performance of services or delivery of products under the Purchase Order.

Upon request, Vendor shall provide proof of such insurance coverage naming the Company certificate holder and additionally insured in respect to their operation and representatives. Company reserves the right to increase the mandatory insurance limits.

Upon written request of Company, Vendor shall promptly provide certificate(s) from its insurers indicating (i) the amount of insurance coverage; (ii) the nature of such coverage; (iii) name Company, its directors, officers, and employees as additional insured; (iv) state that the insurance provided is primary as respect to any and all claims arising out of the provision of services; and (iv) expirations date(s) of each applicable policy.

PREMISES – Vendor must comply with all reasonable regulations and policies communicated by Company to Vendor concerning Vendor's conduct on such Company's premises, if applicable.

LIMITATION OF LIABILITY – UNDER NO CIRCUMSTANCES WHATSOEVER WILL COMPANY BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR LOSSES RESULTING FROM BUSINESS INTERRUPTION, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES. NO LIMITATION ON LIABILITY OR ON DAMAGES FOR BREACH OF WARRANTY, BREACH OF CONTRACT, TORT OR OTHER LIABILITY SHALL APPLY TO THE SELLER, EXCEPT TO THE EXTENT AND IN THE MANNER AGREED UPON BY COMPANY IN A SEPARATE AGREEMENT SPECIFICALLY DESIGNATING SUCH LIMITATION AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF COMPANY.

CONFIDENTIALITY – Vendor acknowledges that it is, may be or will be privy to Confidential Information (as defined below). Vendor agrees it will use the Confidential Information only in furtherance of this agreement and shall not transfer or otherwise disclose the Confidential Information to any third party except as provided for herein. Vendor shall: (i) give access to such Confidential Information solely to those of its employees with a need to have access thereto in furtherance of or in connection with this agreement [, or as required by applicable law](#); and (ii) take the same security precautions to protect against disclosure or unauthorized use of such Confidential Information that Vendor takes with its own confidential information but, in no event, shall Vendor apply less than a reasonable standard of care to prevent such disclosure or unauthorized use.

As used herein, "Confidential Information" means any and all information relating to Company, and any of its respective affiliates that may be received by or be provided to Vendor from time to time, including, without limitation, equipment and business specifications, business records or data, trade secrets, and confidential planning or policy matters, business strategies, internal policies, and procedures, matters subject to attorney-client privilege, and any



financial or accounting information, the existence of this or any other agreements or communications between Vendor and Company, and the terms of any such agreement, and all data, reports, interpretations, forecasts and records containing or otherwise reflecting information concerning any such person or entity, together with analysis, compilations, studies or other documents, whether prepared by Vendor or Company, which contain or otherwise reflect such information.

MARKETING MATERIALS - Vendor shall not use and shall keep its employee(s), agent(s) and/or subcontractor(s) from using Company's name, its respective subsidiaries, or affiliates, in any sales or marketing publication or advertisement, without the prior written consent of Company.

NONDISCLOSURE – Vendor shall not, without the prior written consent of Company, in any manner advertise or publish the existence of this Purchase Order or the fact that it has furnished or contracted to furnish Buyer the goods and/or services set forth in this Purchase Order. Goods and/or services made or developed to Buyer's design shall not be supplied to anyone else without the prior written consent of Buyer. Seller shall not reveal any specifications, designs or other information supplied to it by Buyer nor disclose to third parties any of the details of this Purchase Order without the prior written consent of Buyer.

VENDOR REPRESENTATIONS AND WARRANTIES – Vendor represents and warrants that: (a) Vendor owns all rights, title and interests in the products and services and has the legal authority to sell, license or otherwise transfer the right to use or sell such items to Company; (b) the products and services covered under the Purchase Order are of good and merchantable quality and free from defects in design, material, and workmanship, are safe and conform to applicable specifications, drawings, samples, descriptions, and associated documentation provided to Company in writing; (c) any consumable products are fresh and suitable for human consumption; (d) the products and services, and the production and sale thereof, and all warranties, guarantees, representations by Vendor made or authorized to be made in connection therewith are in all respects in compliance with all applicable international (including applicable import and export regulations), federal, state, local laws, statutes, rules, and regulations; (e) the goods are fit for the use intended; (f) in the case of a purchase of services, Vendor shall provide all work in a safe, proper and workmanlike manner, and any equipment used in the performance of services shall be in good and safe working condition, and shall be fit for its intended use with respect to the Company; and (g) neither the products and/or services, nor their sale or use will infringe any United States or foreign letters patents, trademarks, copyrights, trade secrets, or similar intellectual property rights of any third party. The foregoing warranties shall survive inspection and acceptance by Company. Vendor shall, at Company's option, either (i) promptly repair or replace the defective goods at the Vendor's cost, or (ii) issue a full refund (including shipping and any other expenses incurred by Company). If Vendor does not replace rejected goods or services within a reasonable time, Company may purchase substitute goods or services elsewhere. If the cost of purchasing such substitute goods or services exceeds the price stated in the order, then Vendor shall pay the difference to Company. This payment shall not prejudice any other rights Company may have against Vendor. **NONE OF THE REMEDIES AVAILABLE TO COMPANY FOR THE BREACH OF ANY OF THE WARRANTIES SET FORTH HEREIN MAY BE LIMITED EXCEPT TO THE EXTENT AND IN THE MANNER AGREED UPON BY COMPANY IN A SEPARATE AGREEMENT SPECIFICALLY DESIGNATING SUCH LIMITATION AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF COMPANY.**

Vendor must provide Material Safety Data Sheets (MSDS) for products as required by law. All provisions and remedies of the Uniform Commercial Code relating to both implied and expressed warranties are herewith referred to and made a part of this Purchase Order.

Vendor may not negate, exclude, limit or modify and warranty otherwise available to Company under this section. Any attempts to do so are ineffective and shall not in any way bind Company.

ASSIGNMENT AND SUCCESSORS - Vendor shall not assign rights or delegate duties under the Purchase Order or these Terms and Condition, or subcontract any part of the performance required under the Purchase Order, without the express written consent of Company. No such consent shall be deemed to relieve Vendor of its obligations to comply fully with the requirements of the Purchase Order. Subject to the foregoing, the Purchase Order and these Terms and Conditions shall insure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.



COMPLIANCE WITH LAWS - In its performance of the Purchase Order, Vendor shall comply with all applicable Federal, state and local laws, rules, codes and regulations, including, without limitation, all applicable United States import/export laws and regulations and any requirements for packaging, labeling, crating and registering the goods for transportation. **VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS COMPANY, ITS CUSTOMERS AND AGENTS, FOR ANY LOSS, DAMAGE, EXPENSE OR AWARD (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES) INCURRED AS A RESULT OF VENDOR'S NON-COMPLIANCE WITH THIS SECTION.**

GOVERNING LAW; SEVERABILITY - The Purchase Order and these Terms and Conditions shall be governed by and construed in accordance with the laws of the State of New York, without regard to its conflicts of laws provisions. In the event of a dispute hereunder, the parties agree to submit to the exclusive jurisdiction of the state courts of, and federal courts sitting in, the State of New York. Vendor expressly consents to the exclusive venue and jurisdiction of said courts. The invalidity of any provision of the Purchase Order or these Terms and Conditions, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof, which will otherwise remain in full force and effect.

TERMINATION - If Vendor is unable to make shipments by the date required as specified in the Purchase Order, Company reserves the right to modify or cancel this order. Company may terminate the Purchase Order if Vendor materially breaches this agreement or so fails to perform its obligations hereunder as to endanger its performance in accordance with the terms within the time allowed. Company may terminate this Purchase Order if Vendor is insolvent, a petition is filed for reorganization of Vendor or for its adjudication as a bankrupt, Vendor makes an assignment for the benefit of its creditors, or a receiver or trustee is appointed for any of Vendor's assets or any other type of insolvency proceeding or formal or informal proceeding for dissolution, liquidation or winding down of the affairs of the Vendor is commenced. In the event of any such termination, in addition to any other rights Company may have in law or in equity, Company shall have the following rights: (i) to refuse to accept delivery of the goods or performance of the services; (ii) within one (1) year of delivery of the goods, to return to Vendor at Vendor's expense any goods already delivered and, at Company's option, either recover all payments made therefore and expenses incident thereto or, at Vendor's expense, to receive replacement therefore, except that the rights set forth in this subsection (ii) shall not be available upon cancellation by Company because of the occurrence, alone, of any of the events set forth in the preceding sentence above; (iii) to recover any advance payments to Vendor for undelivered or returned goods and/or services not fully performed; and (iv) to purchase replacement goods and/or services elsewhere and charge Vendor with any loss incurred as a result thereof. Company's right to return goods is not affected by any assignment by Vendor of monies due or to become due hereunder.

ENTIRE AGREEMENT - Absent the existence of an executed master agreement between Company and Vendor that includes the products on the Purchase Order, the Purchase Order and these Terms and Conditions constitute the entire and exclusive agreement and understanding between the parties with respect to the subject matter contained in the Purchase Order and these Terms and Conditions, and Company shall not be bound by any other terms, including, without limitation, any terms that may be contained in any acknowledgement, contract, proposals, invoice form, Vendor's website or correspondence, or other act of Vendor and notwithstanding Company's purchasing department's act of accepting or paying for any shipment or similar act of the purchasing department, even if entered into after the date of the Purchase Order. In the instance of any conflict between the terms of a master agreement or these Terms & Conditions, the terms of such master agreement shall be controlling. This Purchase order may only be amended in writing signed by an authorized representative of the Company.

NO REQUIREMENT OF PURCHASE – Company and Vendor agree that notwithstanding any other term or provision of this agreement, Company is not required to purchase any product or service hereunder and Company retains all power and rights to pursue to purchase any product or service from any source of supply at any time in its sole and absolute discretion.

SURVIVAL OF REPRESENTATIONS – All representations, warranties and guarantees of Seller hereunder shall survive the delivery of the goods to the Company, the inspection and acceptance of the good by the Company and the payment of the purchase price thereof by the Company.

DELAYS – If, by reason of fire, earthquake, flood, explosion, accident, insurrection, riot, civil commotion, dispute with or inability to secure laborers, shortages of energy or raw materials, equipment, labor or transportation, production



shutdown or curtailment, lack of facilities, act of God, act of war or of any public enemy, governmental action or regulation, or other cause beyond the immediate and direct control of the Company, whether or not of the kind or nature herein specified, Company shall be delayed in whole or in part in taking any delivery or deliveries of goods and or accepting the rendering of services as herein specified, Company may, by giving written notice to Vendor and at Company's sole discretion:

- a. Cancel this Purchase Order in whole or in part as to any undelivered portion of such goods and/or unrendered portion of such services; or
- b. Suspend, in whole or in part, deliveries of goods and/or the rendering of services during the continuance of and to the extent of such cause.

COMPLIANCE CERTIFICATE – Vendor agrees to execute and deliver upon request a certificate of compliance with confirmation of Vendor's full compliance with each and every requirement imposed upon Vendor by this Purchase Order and by applicable industry standards.