

PURCHASE TERMS AND CONDITIONS (USA)

1. **General:** Company may issue a Purchase Order for Goods or Services. This Purchase Order is incorporated as a term of any contract between the parties and the contract prevails to the extent of any inconsistency.
2. **Contract:** Supplier must confirm the order in writing within seven (7) days of receipt of the Purchase Order, prior to which Company may cancel the Purchase Order. Once confirmed, the Purchase Order shall be binding on the parties. The price, quantity and delivery date specified in the Purchase Order are material terms of this Agreement. If there are delays to the agreed delivery date, Company may cancel the Purchase Order on written notice with no further liability to Supplier.
3. **Payment:** The Supplier may issue an invoice on sixty one-day terms at the end of the month in which delivery of the Goods occurs in accordance with the delivery term or in which the Services are provided or as agreed.
4. **Prices and Charges:** The price for the Goods or Services will be as stated on the Purchase Order and will include all insurance costs, taxes, duties and other imposts.
5. **Packing:** Goods must be appropriately packed and, labelled with the minimum of packaging material to ensure safe delivery, collection, loading and unloading. Environmentally friendly packaging material shall be used where practicable.
6. **Delivery:** Goods must be delivered in accordance with Delivered Duty Paid as agreed by the parties. Company is not bound to accept or pay for Goods exceeding 5% of the quantities specified in the relevant Purchase Order. Supplier shall include a Certificate of Analysis with each delivery.
7. **Quality:** The Goods must strictly conform with the agreed Specification; be free from defects in materials and workmanship; and be of acceptable quality. Company can inspect the Goods and, within 10 days of the date on which Company accepts receipt of the Goods to its premises, may reject the Goods if they do not comply with the Purchase Order or are not accompanied by the required documentation. Company is not liable to pay for rejected Goods, Goods which are damaged nor costs associated with inspection or rejection. If Goods are rejected by Company, the Supplier must, without prejudice to Company's rights, replace or repair, without cost to Company, the rejected Goods or remove them and refund payment of the rejected Goods or, if agreed by Company, issue a credit note to the value of the Goods rejected. The Supplier must immediately notify Company on becoming aware that the Goods cease to comply with Clause 7. On written request, Supplier must promptly provide all necessary documentation to the satisfaction of BWV to substantiate any of the quality claims made in the Specification, and any declarations in the form provided by BWV.
8. **Services:** The Supplier must perform the Services by the date specified in the Purchase Order. The Services must be supplied expeditiously using due care, skill and diligence, in accordance with Standard Operating Procedures and Site Rules, agreed processes, applicable Laws, and otherwise as reasonably required by Company. The Supplier warrants that the personnel engaged by or on its behalf to provide the Services will be suitably qualified with appropriate training, experience and skills; that it will properly supervise such personnel; and that equipment and vehicles used by or on behalf of it in providing the Services will be suitable for the intended purpose and comply with equipment design safety standards and applicable Laws. If the Services supplied do not comply with the Contract the Supplier must re-perform the Services. If the Supplier fails to re-perform the Services promptly Company may engage a third-party to provide the Services at the cost of the Supplier.
9. **Occupation Health & Safety:** Supplier must comply with relevant Occupational Health & Safety legislation and OSHA regulations and Site Rules; ensure the safe system of work is followed by Supplier's employees and agents when providing the Services; ensure Supplier's employees are provided with such information, instruction, training and supervision necessary to enable them to provide the Services in a way that is safe and without risks to health and safety; and immediately notify Company of any Occupational Health & Safety issue, investigation or prosecution involving any equipment or vehicles used by it in providing the services.
10. **Warranties:** All Goods purchased by Company shall fully meet agreed specifications, be fit for purpose, of acceptable quality and be subject to the following warranties and conditions: (a) Goods supplied by the Supplier are warranted against defects for a period of 12 months from the date of supply; (b) Supplier warranty shall include the replacement cost of Goods lost, damaged, destroyed or defective and all reasonable costs associated with their replacement, including reasonable costs relating to the scrapping of finished Goods produced using the defective Goods and rendered defective as a result; (c) costs involved for the removal and or re-supply of any faulty Goods shall be at the expense of the Supplier; (d) freight and transport costs for Goods returned under warranty shall be at the Supplier's expense; and (e) Supplier warrants that it complies with all Laws, regulations, by-laws, orders, standards, industry codes of practice and other requirements relevant to the supply of Goods.
11. **Indemnity:** The Supplier indemnifies Company, its officers, employees and agents against all loss, damage, injury or expense Company may sustain or incur as a result, whether directly or indirectly or from a third-party, of any breach of the Purchase Order, including any action or claim for alleged infringement of any Intellectual Property right, by reason of Company's receipt or enjoyment of the Goods or provision of Services. Supplier agrees to indemnify and hold Company harmless from any loss incurred due to Suppliers negligence, including but not limited to attorneys fees and costs.
12. **Limitation of liability:** Neither party will be liable to the other party whether under contract, tort, statute or in equity, arising out of or in connection with this Purchase Order, for any loss of profits, loss of revenue, loss of any contract value, loss of anticipated profit or damages for lost opportunity, or cost of finance.
13. **Copyright and Intellectual Property:** The Supplier acknowledges and agrees that copyright in all Intellectual Property and other information provided by Company in connection with any Purchase Order, Contract or otherwise, remains with Company.
14. **Confidentiality:** The Supplier must keep all Confidential Information secret and must not use that Confidential Information except as necessary for the purposes of the agreement. Each party must store all Confidential Information in a way that minimizes the risk of unauthorized access, and must return or destroy all confidential information at the termination of the agreement between the parties.
15. **Alterations and Other Agreements:** This Purchase Order and any other terms and conditions of a Purchase Order or of any contract entered into between Company and the Supplier may only be varied, altered or waived by written agreement between Company and the Supplier.
16. **Insurance:** The Supplier must obtain product liability and public liability insurance of not less than \$20 million per event.
17. **Impossibility or Frustration of Purpose:** Neither party shall liable or incur any penalty for delays in payment or cessation of business resulting from acts of war, industrial action, acts of God, Government action, riot, civil commotion, failure by that party to fulfil its commitments in due time, or any other occurrence (whether of the same or different in kind or nature) which was unavoidable or beyond the control of the party.
18. **Assignment:** The Supplier must not, without Company's consent in writing, assign the Supplier's rights under the contract.
19. **Waiver:** A party's failure or delay to exercise a power or right does not operate as a waiver of the power or right. A waiver is not effective unless it is in writing.
20. **Applicable Law:** Unless otherwise agreed in writing by Company, the Contract shall be governed by the applicable law in the State of California.