

# FIRST QUALITY ("Buyer") PURCHASE ORDER TERMS AND CONDITIONS

## 1. Acceptance

Whether construed as an offer, acceptance or confirmation, these terms and conditions of purchase include all documents and exhibits attached hereto including, without limitation, the purchase order (the "Order"), and all other terms incorporated by reference herein (collectively, the "Terms and Conditions"). These Terms and Conditions shall constitute the final, complete and exclusive statement of this contract and may not be modified or rescinded except by a written change order issued by the Buyer. If these Terms and Conditions constitute an offer by the Buyer to purchase the goods and/or services specified upon the terms and conditions and at the price(s) and with the delivery date(s) specified herein, Seller shall indicate its acceptance of these Terms and Conditions by verbal acceptance communicated to the Buyer, by written acceptance on the face of the Order received by the Buyer, by other written confirmation received by the Buyer, by commencing work on this purchase order in any manner, expressly conditioned on notice of such commencement of work received by the Buyer, or by the delivery of the goods or services within the time for such delivery as stated in the Order. As an offer, these Terms and Conditions expressly limit acceptance of the offer to these Terms and Conditions, and notification of objection to any different or additional terms in any response to this offer from the Seller is hereby given. If these Terms and Conditions are construed as an acceptance of the Seller's offer, this acceptance is expressly conditioned on the offeror's assent to any additional or different terms contained in these Terms and Conditions. If these Terms and Conditions are construed as a confirmation of an existing contract, the parties agree that these Terms and Conditions constitute the final, complete and exclusive terms and conditions of the contract between the parties. If the parties have otherwise completed a signed, written contract, the parties agree that the use of these Terms and Conditions to place orders for goods or services pursuant to such a contract shall be construed to supplement the terms of such written contract only to the extent that the Terms and Conditions are not inconsistent with such written contract. Regardless of its construction as an offer, acceptance, confirmation or an order for goods or services pursuant to an earlier contract these Terms and Conditions incorporate by reference all terms of the Uniform Commercial Code providing any protection for the Buyer, including, without limitation, all express and implied warranty protection and all Buyer's remedies under the Uniform Commercial Code.

## 2. Purchase Price

Purchase prices shall be as stated on the Order, and shall not be subject to increase except as otherwise agreed to in writing by Buyer. Purchase prices are inclusive of all charges, including packing, container, insurance, transportation and taxes unless otherwise specifically provided herein or otherwise agreed to by the parties. All applicable taxes based upon and measured by sale, use or manufacture shall be shown separately on Seller's invoice.

## 3. Shipping/Packing/Marking

Unless otherwise agreed to by the parties, Seller shall pack and mark goods in accordance with Buyer's instructions. Buyer may specify the carrier and method of transportation and Seller will process shipping documents and route shipment of the goods according to Buyer's instructions. An itemized packing slip referencing Buyer's Order number, part number(s), and any special instructions must accompany all shipments. Buyer's count or weight shall be final and conclusive. Seller shall be responsible for the accuracy and completeness of all shipping and other documentation, including certificates of origin and customs documents.

## 4. Delivery

Time of delivery of goods and services hereunder is of the essence. Unless otherwise indicated on the Order, Seller shall ship the goods "FOB Buyer's Facility" and deliver the goods on Buyer's loading dock at the location specified herein no later than the date stated on the Order (the "Delivery Date"). Seller shall provide an itemized invoice, Certificate of Origin and other customs documentation, as requested by Buyer, and a Certificate of Analysis in advance of shipment. Seller must notify Buyer in writing a minimum of seven (7) business days in advance if the Delivery Date will not be met. Upon receiving such notice, Buyer shall have the option to (a) approve a revised Delivery Date; (b) direct Seller to ship the goods on an expedited basis at the earliest possible time; (c) accept substitute goods proposed by Seller, to be shipped by Seller on an expedited basis; (d) in combination with (a), (b) or (c) reduce the quantity of the Order; or (e) cancel the Order. All costs incurred by Buyer in excess of the costs that would have been incurred had Seller met the Delivery Date shall be borne by Seller. In addition, Buyer has the option of imposing on Seller a late charge in the amount of 1% of the price stated on the Order for each day delivery is delayed beyond the Delivery Date. Late charges shall be deducted by Buyer from Seller's invoice. Deliveries made more than three (3) business days in

advance of the Delivery Date are prohibited without Buyer's prior written consent.

## 5. Title and Risk of Loss

Unless the Order specifically provides otherwise, title to goods covered hereby shall pass to Buyer when Buyer has accepted the goods, regardless of when or where Buyer takes physical possession, and risk of loss or damage to goods covered hereby shall pass to Buyer upon acceptance by Buyer at Buyer's facility.

## 6. Delay/Modification/Cancellation

Buyer shall have the right to delay the Delivery Date of some or all of the goods, or the performance of the services, covered hereby upon written notice to Seller. Any such delay shall not increase the purchase price or result in any additional costs to Buyer except as otherwise agreed to in writing by Buyer. Buyer may modify the quantity of goods or services covered hereby, or may cancel the Order in whole or in part without liability.

## 7. Release Authorization

When deliveries hereunder are specified to be in accordance with Buyer's written releases, Seller shall not fabricate or assemble any goods, nor procure required materials, nor ship any supplies, except to the extent authorized by such written releases or by provisions hereof specifying minimum fabrication or delivery quantities.

## 8. Ownership and Use

All tooling, parts and specifications, and any other property furnished to Seller by Buyer or paid for by Buyer shall be the sole property of Buyer, clearly identified as such, and subject to removal at any time upon Buyer's demand. Seller assumes all liability for such property and Seller shall insure at Seller's expense such property in an amount equal to the replacement cost thereof with loss payable to Buyer. Seller shall retain ownership of any intellectual property it owned prior to the date hereof, except that Buyer shall own any intellectual property jointly developed with Seller pursuant to the Order.

## 9. Documents, Drawings and Work Product

All documents, drawings, specifications, electronic data and information, including but not limited to sketches, electronic files, design drawings and calculations, whether patentable or not, prepared as a result of Seller's performance of its obligations hereunder and which are prepared, provided or procured by Seller, either solely or jointly with others ("Documents"), shall be owned exclusively by Buyer, together with all rights thereto, and shall be delivered to Buyer upon request. Seller hereby assigns the entire right, title and interest to all such Documents to Buyer. All deliverables in connection with the performance of the services ("Work Product") shall be owned exclusively by Buyer and Seller hereby assigns to Buyer its entire right, title and interest to all Work Product, and agrees to do all acts and execute all documents necessary to vest ownership in Buyer of any and all Work Products. It is understood and agreed that the Work Product is being developed for the sole and exclusive use of Buyer, and that Buyer shall be deemed the sole and exclusive owner of all right, title, and interest therein, including, without limitation, all patents, copyright, moral rights, and proprietary rights relating thereto. To the extent permitted by the U.S. Copyright Law, 17 U.S.C. § 101 et seq., work performed by or on behalf of the Seller in connection with the services shall be considered as works for hire (as such is defined under the U.S. Copyright Law) and, as such, shall be owned by and for the benefit of Buyer. In the event that it should be determined that any of the Work Product does not qualify as a work made for hire, the Seller will and hereby does assign to Buyer for no additional consideration, all right, title, and interest that it may possess in such Work Product including, but not limited to all copyright and proprietary rights relating thereto.

## 10. Payment/Discounts

Except as otherwise agreed to, all payment and cash discount periods will be computed either from date of delivery hereof, or date of receipt of correct and proper invoices prepared in accordance with the terms hereof (the "Receipt Date"), whichever date is later. Payment terms shall be as stated on the Order. In the absence of any payment terms on the Order, the payment terms shall be net 45 days from the Receipt Date.

## 11. Invoicing

Seller's invoice must reference this Order number, quantity and part number(s) of the goods, or quantity of the service, covered hereby. Except as otherwise agreed to, bills of lading must accompany each invoice. Delays in receiving an invoice, errors or omissions, or lack of supporting documentation may be cause for delay of payment.

## 12. Warranty

Seller warrants that (a) it has clear title to all goods covered hereby and that the goods are delivered to Buyer free of all liens and encumbrances, (b) the goods or services conform to Buyer's specifications and the requirements hereof, (c) the goods provided are merchantable, fit for Buyer's intended use, and free

from any defects in design, material or workmanship, (d) that neither the goods nor services, nor Buyer's intended use infringe any intellectual property of any third party, (e) the services shall be performed in a good and workmanlike manner and conform to the standards usual and customary in the relevant industry, and (f) that Seller maintains all applicable licenses required for the performance of the services.

### **13. Defective Deliverables**

Any goods or services failing to conform to any of Seller's warranties shall be considered defective ("Defective Deliverables"), and Buyer shall have the right, at its election, to (a) require that Seller promptly deliver to Buyer replacement goods or services at Seller's expense on an expedited basis; (b) set off that portion of the purchase price attributable to the Defective Deliverables against current or future amounts owing to Seller (or, in the absence of any amounts owing to Seller, issue a check for such amount to Buyer); (c) purchase substitute goods or services in place of the Defective Deliverables and recover the total cost thereof from Seller; or (d) or take such other actions as agreed to between Buyer and Seller. Buyer's rights under this Section 13 shall not be deemed to be exclusive, but shall be in addition to Buyer's other rights under this Order or at law or in equity.

### **14. Set-Off**

Buyer shall be entitled at all times to set off any amount owing at any time from Seller to Buyer or from Seller to any Buyer affiliated entity against any amount payable at any time by Buyer hereunder.

### **15. Termination for Convenience**

Buyer may, for any reason and at any time, terminate this Order upon five (5) days written notice to Seller, without penalty, liability or further obligation beyond payment for goods or services already delivered in accordance with the terms hereof.

### **16. Termination for Cause**

Buyer may terminate this Order upon written notice to Seller if Seller is in material breach of any provision hereof, including warranties, and does not cure such default within five (5) business days after receipt of written notice from Buyer specifying such breach. If Seller is in material breach hereof, then regardless of whether Buyer terminates this Order, Buyer may purchase goods or services covered hereby from alternative sources upon such terms and in such manner as Buyer may deem appropriate and Seller shall be liable to Buyer for all costs in excess of what Buyer would have been obligated to pay Seller had Seller fully performed hereunder, plus all damages sustained by Buyer as a result of Seller's default. To the extent permitted by applicable law, Seller's performance hereunder and the Order shall terminate automatically upon (a) Seller's insolvency or the appointment of a receiver to take charge of Seller's property; (b) Seller's making of a general assignment for the benefit of creditors; (c) the filing of any petition for relief under the federal bankruptcy code, unless the same is dismissed within 30 days after its filing; or (d) an admission by Seller of an inability to pay its debts.

### **17. Hazardous Materials**

If any goods covered hereby contain hazardous or toxic chemicals as defined under any applicable law, Seller shall provide to Buyer by the Delivery Date all applicable Material Safety Data Sheets. Failure of Seller to so provide such Material Safety Data Sheets by the Delivery Date shall result in Buyer's withholding payment until received.

### **18. Compliance**

Seller shall comply with all applicable, foreign, federal, state, and local laws, rules, regulations, ordinances and governmental orders applicable to Seller's performance hereunder and with First Quality's Third Party Code of Conduct which can be found at <http://www.firstquality.com/x849.php>. Seller shall be liable for all costs of complying with and obtaining any licenses or approvals required or advisable in connection with Seller's providing the goods or services covered hereby.

### **19. Indemnification**

Seller shall indemnify, defend and hold Buyer, Buyer's affiliates, and their respective shareholders, members, agents, officers, directors and employees harmless from and against any claim, loss, damage, expense or liability (including attorneys' fees and costs) (collectively, "Losses") arising out of or connected with the goods or services covered hereby or Seller's performance hereof, including but not limited to Losses that arise out of bodily injury or death, property damage, breach of warranty, actual or alleged infringement of intellectual property rights, product liability claims, liens and encumbrances on the goods covered hereby, or Seller's failure to comply with these Terms and Conditions or the requirements of any applicable law, rule, regulation, ordinance or governmental order.

### **20. Insurance**

Seller shall maintain commercial general liability insurance with minimum coverage of \$5,000,000 per occurrence, worker's compensation insurance as required by statute, and automobile liability (for non-owned hired vehicles and owned vehicles)

providing coverage for bodily injury and property damage for a minimum of \$1,000,000 each occurrence. The policies shall provide for a thirty (30) calendar days prior written notice to Buyer in the event of termination or a material change. All policies will be primary without right of contribution from any of Buyer's insurance carriers. Seller shall obtain from its insurers for all policies (except workers compensations) a waiver of subrogation in favor of Buyer. All policies (except workers compensation) shall name Buyer and its affiliates as additional insureds, and Seller shall furnish Buyer with copies of Certificate(s) of Insurance.

### **21. Administrative Authority**

All matters pertaining to administration of the Order shall be coordinated with Buyer's Purchasing Department. Correspondence should be directed to the Buyer's Purchasing Department. Payments shall be sent to the "Bill To" address on the Order.

### **22. Confidentiality**

Seller agrees that at all times during and after Seller's performance of the Order, Seller, and its agents, officers directors and employees, will hold in trust, keep strictly confidential, and not disclose to any third party or use or permit the use of any of the Confidential Information of Buyer or its affiliates. For purposes hereof, the term "Confidential Information" means the Order and any and all proprietary information disclosed by Buyer or its affiliates to Seller or learned by Seller as a consequence of the Order or in the course of dealing between the parties. Seller shall take all reasonable measures to protect the confidentiality of, and avoid disclosure or use of, the Confidential Information. Without limiting the foregoing, Seller shall take at least the same measures that Seller takes to protect its own most highly confidential information. Seller shall return all materials supplied by Buyer and all documentation developed by Seller once the Order is fully performed, or upon request by Buyer, whichever is earlier.

### **23. Waiver**

Buyer's failure to insist on strict compliance with any provision hereof in any instance shall not be deemed a waiver of Buyer's right to insist on strict compliance in any other instance.

### **24. Severability**

If any provision hereof is held to be invalid or unenforceable, such provision shall be deemed valid and enforceable to the maximum extent permissible and the remaining provisions hereof shall be given full force and effect.

### **25. Assignment**

The Terms and Conditions (including the Order) are not assignable by Seller without the prior written consent of Buyer and any attempted assignment without such consent shall be void.

### **26. Survival**

Any provision hereof which, by its terms or nature, would reasonably be expected to survive the delivery and acceptance of the goods or services covered hereby shall survive such delivery and acceptance.

### **27. Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the state in which Buyer's facility receiving the goods or services is located, without reference to its conflicts of laws provisions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Order. Seller consents to the exclusive jurisdiction of the federal and state courts located in the state in which Buyer's facility receiving the goods or services is located.

### **28. Entire Agreement**

These Terms and Conditions (including the Order) contain the entire and integrated agreement between the parties with respect to its subject matter, and supersedes any prior or contemporaneous understandings, usages of trade and courses of dealing between the parties, except for any written agreements between the parties, which shall be unaffected by the terms hereof.

