

U.S. Standard Purchasing Terms and Conditions

1. NONCONFORMANCE:

The obligations of the Vendor with respect to any services ("Services") and any goods, equipment, and materials to be provided (collectively called the "Goods") shall be performed in a workmanlike manner, free from defects, in accordance with the description which forms part of this Order, and conforming to any plans, specifications, or standards referred to in this Order. The Vendor shall convey to the Buyer title to all Goods free and clear of all liens, charges, and encumbrances.

2. INSPECTION:

The Buyer and Buyer's representatives shall at all times have reasonable access, during normal business hours, to Vendor's and Vendor's suppliers' and subcontractors' places of business at which the Vendor or Vendor's suppliers and subcontractors are performing Vendor's obligations under this Order. The Vendor shall provide Buyer with proper facilities for access, testing, and inspection of the Goods and Services. Buyer shall have the right to test and inspect the Goods at any time during manufacture and prior to shipment. Upon delivery of the Goods to the ultimate destination, Buyer shall have a reasonable period of time for final testing and inspection of the Goods. The Goods shall not be deemed accepted until after said final testing and inspection. In the case of payment against documents, acceptance of the documents does not constitute an acceptance of the Goods or impair any options or remedies of the Buyer for their improper delivery.

3. RESPONSIBILITY FOR PROPERTY:

To the extent that this Order permits or requires property of Buyer to be in the care, custody, and/or control of Vendor, Vendor shall be responsible for all loss and damages to said property, and Vendor shall return said property to Buyer, upon Buyer's request, in at least as good a condition as when said property was received by Vendor. Title to such property shall remain at all times with Buyer. Vendor shall bear the risk of loss of property from the time said property is delivered to Vendor or Vendor's agents, until said property is returned and accepted by Buyer. Vendor hereby agrees to maintain adequate levels of insurance as provided in Section 23.

4. PRICE:

The price reflected in this Order is firm, except to the extent expressly provided in any escalation or adjustment clause appearing on the front of this Order. In the event that this Order fails to specify a price, Buyer and Vendor hereby agree that the Goods and Services shall be billed at the lower of the price last quoted or at the prevailing market price. Any provision in any document which is connected to or related to this Order or in any oral communication between the Buyer and the Vendor which provides for a mechanism or procedure which would result in the price being different than is set out in this Order shall be invalid unless the Buyer and Vendor specifically agree in writing to such change.

5. TITLE AND RISK:

Unless otherwise provided for in this Order title to the Goods shall remain with Vendor until actual delivery to and acceptance by Buyer at Buyer's address for delivery. Vendor assumes all risk of loss or damage to all Goods, products, work in progress, and materials until actual delivery to and acceptance by Buyer, as herein provided, including, but not limited to, the following:

- (i) damage to property owned by or in the care, custody, and/or control of third persons;
- (ii) property received from or held by Vendor or Vendor's suppliers or subcontractors for the account of Buyer; and
- (iii) property rejected by Buyer.

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6. WARRANTIES:

- (a) For the Goods sold hereunder, Vendor warrants as follows:
 - (i) the Goods, as described herein, are of satisfactory and merchantable quality;
 - (ii) the Goods are fit for the particular purpose for which the Goods are being acquired;
 - (iii) the Goods comply with the operating conditions and performance data, if any, specified by Buyer; and
 - (iv) at the time of delivery of the Goods, Buyer will receive clear and unencumbered title to the Goods.

- (b) In the event the Goods, or any portion thereof, do not, in Buyer's sole opinion, comply with any of the warranties set out in Section 6(a) above, or if the Goods, or any portion thereof, are in any way defective, Buyer may, at Vendor's sole risk and expense, upon providing five (5) days written notice to Vendor, elect to:
 - (i) reject or revoke acceptance of the Goods or any portion thereof and receive a full refund for all the Goods so rejected or withhold payments for such Goods if such payments have not been paid; provided that rejection or revocation of only a portion of the Goods shall not invalidate the remaining shipment of Goods, to which the terms of this Order shall apply;
 - (ii) repair or replace the Goods and recover the expense of such repair or replacement from Vendor;
 - (iii) require Vendor to repair or replace Goods;
 - (iv) retain the Goods and assert a right to compensation for breach of contract; or
 - (v) demand adequate assurance of due performance.

- (c) The warranties set out in Section 6(a) above shall survive until the earlier of:
 - (i) twelve (12) months from the commencement of operation of or use of the Goods; or
 - (ii) twenty-four (24) months from date of shipment of Goods, unless otherwise specified in this Order.

- (d) For the Services supplied hereunder, Vendor warrants:
 - (i) without limiting the provisions of Section 10, that the Services shall be performed with due diligence and in a workmanlike manner in accordance with current standards generally accepted by the industry at the time of performance of the Services; and
 - (ii) that it has the expertise and experience to properly perform the Services and that it will deploy sufficient personnel to perform the Services on time.

- (e) In the event that the Services, or any portion thereof, do not, in Buyer's sole opinion, comply with any of the warranties set out in Section 6(d) above, Buyer may, at Vendor's sole risk and expense, upon providing five (5) days written notice to Vendor, elect to:
 - (i) reject or revoke acceptance of the Services or any portion thereof and receive a full refund for the value of the Services so rejected or withhold payments for such Services if such payments have not been paid; provided that rejection or revocation of only a portion of the Services shall not invalidate the performance of any of the Services that remain to be performed, to which the terms of this Order shall apply;

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- (ii) perform the Services itself or hire a third party to perform such Services and recover the cost of such performance from Vendor;
- (iii) require Vendor to re-perform the Services at Vendor's sole expense; or
- (iv) assert a right to compensation for breach of contract.

The warranties for the Services set out in Section 6(d) above shall survive until twelve (12) months from the completion of Services.

- (f) In the event Vendor's standard warranty provisions are more beneficial to Buyer than the warranties outlined in Sections 6(a) and 6(d) above, the terms and conditions of Vendor's standard warranty provisions shall apply. Notwithstanding any termination of this Order by Buyer, all warranties, whether express or implied, shall continue in full force and effect for the entire term of such warranty. Vendor shall notify Buyer of any manufacturer or subcontractor warranty (ies), and Vendor shall, upon written notice from Buyer, assign to Buyer or enforce for Buyer's benefit, any such warranty (ies) obtained from such manufacturers or subcontractors. No acceptance of or payment for the Goods or Services provided hereunder shall constitute a waiver of the warranty provisions set out in this Section 6, any Vendor standard warranty, or any manufacturer or subcontractor warranty and the rights of the Buyer thereunder. Nothing contained herein shall be construed so as to limit or exclude any other implied warranty or condition that is available to the Buyer.

7. FORCE MAJEURE:

If Vendor or Buyer is prevented from or delayed in its performance under this Order as a result of fire, floods, epidemics, an act of God or of the public enemy, an order of a governmental official body, a labor dispute, the time for performance of that party shall be extended by the length of time it is so prevented or delayed, unless the Goods or Services to be furnished were obtainable from other sources in sufficient time to permit the party in question to meet the required delivery schedule. If any event of force majeure involving Vendor or Vendor's suppliers or subcontractors (i) disrupts, or threatens to disrupt, Buyer's operations; or (ii) if the event of force majeure lasts for more than forty-five (45) days; or (iii) if the event of force majeure results in a total frustration of the contract, Buyer may cancel this Order by written notice, terminating all obligations and liabilities imposed on it by this Order except for the obligation to pay the reasonable costs and expenses incurred by Vendor in the course of its performance of this Order prior to such notice of cancellation. No reimbursement shall be made in favour of the Vendor with respect to any Goods which are Vendor's standard stock. Vendor shall notify Buyer, in writing, as soon as reasonably possible (and in no event later than five (5) days after the beginning of any cause for delay), in the absence of which Vendor waives its right for an excuse for such delay.

8. DELIVERY:

Vendor is expected to strictly comply with any and all time deadlines set out in this Order. Unless otherwise provided in this Order, immediately upon acceptance of this Order, Vendor will commence performance and will continue performance with due diligence until all obligations of Vendor outlined in this Order are completed to Buyer's satisfaction. No change in the scheduled delivery date or performance will be permitted without Buyer's prior written consent. No acceptance of Goods or Services after the scheduled delivery date will waive Buyer's rights with respect to such late delivery, and it shall not be deemed a waiver of future compliance. This Order must be completed within the time stated, or if no time is stated, within a commercially reasonable time. If Vendor ascertains that it cannot deliver the Goods or Services within the time specified in this Order, for any reason other than force majeure, Vendor shall give Buyer immediate notice and advise Buyer of the earliest possible delivery date. Buyer may then require Vendor to expedite delivery at Vendor's expense. Failure of Vendor to complete performance within this time, or to perform with due diligence, will entitle Buyer to cancel this Order without liability or, alternatively, to require performance by Vendor according to the terms and conditions

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of this Order. Exercise of either option shall be without prejudice to Buyer's right to claim from Vendor any loss or damage suffered.

9. CHANGES:

This Order contains the entire agreement between the parties. No oral statements or agreements, and no variations of the terms and conditions of this Order shall be binding on Buyer unless duly approved by Buyer on a duly executed "Change Purchase Order".

10. SECURITY INTEREST:

This Order constitutes a "Security Agreement" under the Uniform Commercial Code of Colorado (the "Code") with respect to the Goods described herein ("the Collateral"). Vendor hereby grants to Buyer a security interest in the Collateral to secure any funds advanced to Vendor as required by this Order prior to actual delivery of the Collateral to Buyer, whether already advanced, or future advances. This security interest is a purchase money security interest because the Goods are being acquired with funds advanced by Buyer. The Collateral is being prepared solely for Buyer, and Vendor shall not sell, transfer, convey, or encumber such Collateral to or for the benefit of any third party. The Collateral shall be adequately safeguarded at Vendor's or Vendor's supplier's or subcontractor's place of business until such time as the Collateral is ready for shipment to Buyer. Vendor will execute and deliver to Buyer such financing statements and other documents in form satisfactory to Buyer and will do all such acts and things as Buyer may at any time, or from time to time, reasonably request, or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral, subject to no adverse liens or encumbrances. This Order constitutes a financing statement under the Code with respect to the Collateral. Vendor is the "Debtor" and Buyer is the "Secured Party" (as those terms are defined and used in the Code) insofar as this Order constitutes a financing statement. Nothing in this paragraph should be construed as a waiver of any right or remedies otherwise available to Buyer as a matter of law.

11. COMPLIANCE:

Vendor agrees that, in performing hereunder, Vendor will comply with all applicable, current requirements contained in government statutes, rules, regulations, and orders including, but not limited to, those governing equal and fair employment practices, environmental, safety, health, and vocational rehabilitation, and affirmative action programs. Vendor agrees to defend, indemnify and hold Buyer harmless from any and all liability, claims, fines, or penalties (including reasonable attorneys' fees, costs, expenses, and settlements) which may arise out of Vendor's failure to comply with such requirements. Specifically, Vendor agrees, in performance under this Order, not to discriminate against any employee or applicant on the basis of race, sex, religion, color, age, national origin, disabilities, or veteran status. Vendor further agrees to acquire and maintain all required permits and certificates of approval and to comply with all dangerous goods legislation and codes governing the safety, handling, packaging, labeling, and transport of the Goods. In addition, Vendor hereby agrees to be responsible for initiating, maintaining and supervising all safety precautions and programs (including any related OSHA site health and safety plan) in connection with the performance of this Order.

12. PATENTS, TRADEMARKS AND OTHER PROPRIETARY RIGHTS:

Vendor warrants that Buyer's purchase, installation, and/or use of the Goods and Services covered hereby will not result in any claim of infringement of any patent, trademark, copyright, franchise, or other intellectual property right. Vendor, in accepting this Order, agrees to defend, at its own expense but in consultation with Buyer, any suit or proceeding arising from claims for infringement of such patent or other proprietary rights, in connection with Buyer's purchase, installation and/or use of the whole or any part of the Goods or Services covered by this Order. Vendor also agrees to pay all damages or awards assessed through such actions, including

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Buyer's reasonable attorneys' fees, costs, expenses, and settlements. In case the Buyer is not permitted to continue use of such Goods or Services, Vendor agrees to remove same at Vendor's expense and refund the whole purchase price or, in the alternative, and at Vendor's expense, provide Buyer with an acceptable replacement. Vendor may, with Buyer's agreement, at Vendor's expense, modify the Goods or Services to eliminate the cause for the infringement claim. Vendor will disclose to Buyer all rights to the manufacturing process, techniques, and trade secrets which are or have been developed by Vendor or by Vendor and Buyer jointly, and which relate to confidential information disclosed by Buyer or discovered as a result of performance relating to this Order.

13. CONFIDENTIALITY:

Vendor and Vendor's employees, agents, and subcontractors shall not divulge to any person, persons, or entity any information gained as a result of or in connection with this Order and performance related to this Order, and Vendor shall ensure that all such information furnished or arising under this Order is treated as confidential.

14. NO WAIVER:

Buyer may, at any time, insist upon strict compliance with the terms and conditions of this Order, notwithstanding any previous custom, practice, or course of dealing to the contrary.

15. ALTERATIONS/TERMINATIONS:

Buyer and Vendor may agree to make any changes, including additions to or deletions from, the quantities originally ordered, or in the scope of the Services, or in the specifications or drawings to this Order with a duly executed "Change Purchase Order". If any such change affects the amount due or the time for performance hereunder, an equitable adjustment shall be made. Buyer may terminate this Order, with or without cause, by written notice to the Vendor, as to all or any portion of the Goods not already shipped or as to all or any portion of the Services not already performed ("Termination Notice"). Upon receipt of such Termination Notice, Vendor shall immediately cease performance under this Order and use its best efforts to reduce loss. The liability of Buyer shall be limited to applicable reasonable costs and expenses incurred by Vendor prior to receipt of such Termination Notice. No reimbursement shall be made in favor of the Vendor with respect to any of the Goods which are Vendor's standard stock.

16. PROPER LAW:

Unless otherwise stated on the face of this Order, this Order shall for all purposes be construed and interpreted according to the laws of the State of Colorado and United States, as applicable. The *International Sale of Goods Act* does not apply to this Order. Headings are for convenience only and shall not affect the construction of this Order. The courts having jurisdiction with respect to the matters relating to or arising out of this Order shall be the courts of that jurisdiction.

17. INDEMNITY AND LIABILITY:

Vendor will hold harmless, indemnify, and defend Buyer, its shareholders, officers, agents, and employees from and against all claims for death or injury to persons or loss or damage to property (including, but not limited to, the parties to this Order, their employees, agents, representatives, subcontractors, and property), for breach of the warranties contained herein, and for the violation of any applicable laws or governmental regulations, and for incidental penalties, damages, losses, and expenses (including attorneys' fees, costs and expenses) in any manner arising out of or resulting from, or related to, the acts or omissions of the Vendor in the course of its performance of its obligations under this Order, whether those claims or demands are made by third parties or persons engaged or employed in connection with Vendor's performance, or from

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products sold, leased or consigned to or Services performed for Buyer, including, without limitation, any failure by Vendor to properly perform its obligations under this Order, or the negligence or misconduct by Vendor or Vendor's officers, employees, agents, representatives or subcontractors except to the extent that such claims are due to the gross negligence or willful misconduct of the Buyer. Vendor shall promptly advise Buyer of any such claims, shall compensate Buyer for any damage done to its property arising out of or in connection with such claims, and agrees to pay Buyer's attorneys' fees, costs, expenses, and incident to defense of such claims. Buyer shall have the option of participating in such defense, without relieving Vendor of any of its obligations hereunder.

In no event shall Buyer be liable to Vendor pursuant to this Order for indirect, special, consequential, incidental, punitive or exemplary losses, damages, or expenses or for lost profits, loss of anticipated profits, lost savings or any other economic loss of any kind.

18. CONSTRUCTION OF ORDER:

Unless otherwise stated on the face of this Order, this Order shall for all purposes be construed and interpreted according to the laws of the State of Colorado. The *International Sale of Goods Act* does not apply to this Order.

19. ASSIGNMENT/SUBCONTRACTORS:

Vendor shall not, without the prior written consent of Buyer, which shall not be unreasonably withheld, assign or subcontract any of Vendor's obligations under this Order, and no such approved assignment or subcontract shall relieve Vendor of its obligations under this Order.

20. UNAUTHORIZED USE OF NAME:

Vendor shall not, without the prior written approval of Buyer, make any statement or publish or release to any other person any photograph, advertisement, testimonial, letter of commendation or approval, or any other document or written matter which might imply the Buyer's approval of the products, actions, or performance of Vendor.

21. TERMINATION FOR DEFAULT:

If Vendor becomes insolvent, enters into involuntary bankruptcy or receivership proceedings, makes an assignment for the benefit of its creditors, or otherwise defaults on its obligations under this Order, Buyer shall have the right, without limiting any other rights or remedies which Buyer may have hereunder or by operation of law, to terminate this Order pursuant to Section 15. In the event of such termination, Buyer shall be relieved of all further obligations hereunder except to pay a reasonable value of Vendor's prior performance, as determined by Buyer and which shall not exceed the price agreed upon herein. Vendor shall be liable to Buyer for all costs in excess of the price specified herein and incurred by Buyer in completing or procuring the completion of the Goods and/or Services under this Order.

22. TAXES:

Vendor agrees to pay any and all federal, state and local taxes imposed by law upon, or on account of the manufacture, sale, or delivery of, the Goods or Services, unless otherwise agreed.

23. INSURANCE:

During the entire period of Vendor's performance under this Order, Vendor shall procure and maintain at its cost and shall require its subcontractors to procure and maintain at their costs, the following minimum insurance:

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- (a) Comprehensive General Liability insurance coverage covering products and completed operations, contingent employer's liability where such employee is not covered by Workers' Compensation as required in the jurisdiction in which the Services are being performed, and contractual liability, with a combined single limit of (U.S..) Five Million Dollars (\$5,000,000) for each occurrence involving bodily injury, death or property damage. This policy of insurance shall be endorsed to include the Buyer as an additional insured, but only with respect to the operations of the insured.
- (b) Automobile Liability Insurance - covering all vehicles either owned or non-owned by Vendor used in connection with Vendor's performance under this Order. The insurance to be provided shall include coverage for bodily injury, passenger hazard and property damage in an amount of not less than (U.S.) One Million Dollars (\$1,000,000) inclusive any one occurrence.
- (c) Property Insurance - covering all loss of or damage to Vendor's property (whether owned or leased) used or held in course of Vendor's performance under this Order or in any way brought on to the premises of the Buyer. Vendor agrees that such insurance shall include adequate insurance for fire, theft or other damage to such items. For any items owned or under lease by Buyer and held by Vendor, Vendor agrees to maintain adequate insurance for fire, theft or other damage on such items until they are returned to Buyer's possession.
- (d) Insurance Required by Law - any other insurance which is required by law to carry in connection with Vendor's performance under this Order, including but not necessarily limited to Workers' Compensation insurance pursuant to relevant Workers' Compensation Acts and Unemployment Insurance.
- (e) Vendor's insurers shall waive their right of subrogation against the Buyer in connection with the insurance carried by the Vendor.
- (f) The policies of insurance evidenced in (a), (b), and (c) shall be endorsed to provide the Buyer with 30 (thirty) days' notice of cancellation or material change in coverage.
- (g) At any time during the period of the Vendor's performance under this Order, Vendor shall, at the request of the Buyer, provide the Buyer with a certificate of insurance evidencing the aforementioned insurance coverage.

24. LIENS:

Vendor, for itself and on behalf of its subcontractors, suppliers, agents and assigns, agrees to keep the property and premises of Buyer free and clear of all liens, charges and encumbrances arising by reason of having provided labor, materials and equipment relating to the Services performed hereunder and shall not cause or allow to be filed any mechanic's liens, materialmen's liens or other liens or encumbrances arising by reason of having provided labor, materials and equipment relating to the Services performed hereunder. Vendor shall defend, indemnify and hold Buyer harmless from and against any and all such liens and encumbrances.

Vendor warrants that upon submittal of an invoice for which payment has been received from Buyer, the invoice shall, to the best of Vendor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of Vendor, subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Services performed hereunder.

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25. SHIPPING DOCUMENTS:

All cases, packages, bundles, etc. shall be marked with the Order number. The Vendor shall enclose with each box, package, or container, a shipping notice showing contents, together with the name of Vendor and Order number.

26. PACKING:

Unless otherwise provided herein, Vendor shall not charge an additional fee for boxing, packing, crating, or for cases, packages, pallets, or boxes.

27. SHIPPING:

If this Order specifies a method of shipping, carrier, or route, no deviation from those terms may be made without a duly executed Change Purchase Order. Vendor shall be responsible for any loss or damage resulting from an unauthorized deviation in method, carrier, or route. Buyer reserves the right to reject C.O.D. shipments.

28. DOCUMENTS (FOREIGN SHIPPERS):

Vendor(s) of items to be shipped from outside of United States shall mail (by Air Mail) four copies of a properly executed United States Customs Pro Forma Invoice to the attention of the Buyer's representative who has signed this Order, or as otherwise specified hereon.

29. INVOICES:

Vendor shall send invoices with a copy of the bill of lading to the address noted on the face of this Order. Vendor shall include on the invoice the Order number, the items invoiced and a statement regarding whether the invoice is for a partial or complete Order.

The following items must be listed separately:

- (i) price escalation fees;
- (ii) sales, use, and excise taxes;
- (iii) duties;
- (iv) brokerage fees;
- (v) any special charges for packing and boxing or crating; and
- (vi) any packaging materials.

In the event freight is not included in the Order price, and is prepaid by Vendor, such freight charges must be invoiced separately with receipted copies of freight bill attached. Unit prices must agree with the prices shown on this Order.

30. TERMS OF PAYMENT:

Buyer shall pay Vendor within 30 days of the Vendor's invoice date, unless otherwise noted on the face of this Order.

31. SET OFF:

Buyer shall have the right to apply any monies due from Vendor hereunder toward the payment of any sums which Vendor or any affiliated entity may otherwise now or hereafter owe to Buyer or to any affiliated entity. In addition, in the event that Vendor defaults in any other contract between the Vendor or any of its affiliated entities and the Buyer or any of its affiliated entities, Buyer shall have the right to withhold any unpaid sums due on all such contracts with Vendor or such entities.

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32. CONFLICT OF INTEREST:

Vendor shall not use any funds received under this Order for illegal or otherwise "improper" purposes related to the purchase agreement, nor pay any commissions, fees, or rebates to any employee of Buyer, nor favor any employee of Buyer with significant gifts or entertainment.

33. CONTROLLING TERMS:

Except as otherwise stated in Section 6(f), the terms and conditions contained herein shall be controlling over any other terms or conditions which conflict with or change the obligations of either party in any other documents, including, but not limited to, invoices, provided, however, that in the case of a conflict or inconsistency between these terms and conditions and the provisions contained in the main body of this Order or in the main body of any other agreement to which these terms and conditions are attached, unless otherwise stated, the provisions of the main body of this Order or in the main body of such other agreement shall govern and prevail.

34. SEVERABILITY:

In case any provision in this Order or the application thereof, shall be held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

35. DISPUTE RESOLUTION:

All disputes, controversies or claims arising out of or relating to this Order, including without limitation any dispute as to the validity, construction, enforceability or breach of this Order shall be handled in the following manner:

- (a) The parties agree to use best efforts to resolve any disputes relating to this Order as efficiently and cost effectively as possible. The parties will make best efforts to resolve all disputes by amicable negotiations and each party will ensure that its representatives will meet with the other party's representatives to negotiate in good faith and try to resolve without legal action any dispute arising from this Order. Should the parties fail to resolve the matter within fifteen (15) calendar days, persons holding senior management positions with each of the parties shall meet and in good faith attempt to resolve the matter.
- (b) If the respective officers fail to resolve the matter within fifteen (15) calendar days either party may submit the dispute for mediation to be conducted in Denver, Colorado. That party may, on notice to the other party, request that mediation take place and the parties shall select a mediator whose qualifications are appropriate to the matter to be mediated. The mediator shall designate a place for a meeting of the mediator with representatives of the parties. The parties will equally share the cost of the mediator. Any mediation that takes place will be strictly confidential. Neither party may use any proposal or concession made by the other party in the course of mediation in any subsequent proceedings. Neither party may call the mediator as a witness in any subsequent proceedings.
- (c) Should the parties fail to agree on the appointment of a mediator or should mediation fail to result in a resolution of the dispute between the parties within fifteen (15) days after the parties initially attempt to mediate the dispute, either party may submit the dispute to final and binding arbitration conducted in Denver, Colorado in accordance with the then current commercial rules of the American Arbitration Association. The arbitration shall be conducted by a panel of three arbitrators not associated with either party. Each party will select a single arbitrator. These arbitrators will then select a third arbitrator. The costs and expenses of arbitration will be borne as determined by the arbitration panel. The

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decision of the arbitration will be enforceable in any court of competent jurisdiction. Either party may request injunctive relief from the arbitration panel to maintain the status quo until such time as the arbitration award is rendered or the dispute is otherwise resolved.

- (d) The parties shall continue to perform their respective obligations during the resolution of any dispute or disagreement, including during any period of mediation and arbitration, unless and until this Order is lawfully terminated according to its terms, or unless an arbitrator issues an interim determination to the contrary.

36. RECORDS AND AUDIT RIGHTS

Vendor shall maintain true and correct records ("Records") in connection with performance of this Order which Records shall include but not be limited to records, books, documents, agreements, orders, contracts, correspondence, instructions, notes, daily diaries, drawings, receipts, vouchers, memoranda and any other supporting evidence deemed necessary by Buyer to substantiate charges related to the Order. Such Records shall be retained for a period of ten (10) years from the date of creation.

During the period of performance of this Order and for a period of two (2) years after final payment or longer if required by law, Buyer or its authorized representative shall be afforded access to all the Vendor's Records to the extent necessary to adequately permit evaluation and verification of any invoices, change orders, payments or claims submitted by the Vendor. As well, Buyer shall have the right to audit the Records to ensure compliance with applicable requirements of government statutes, rules, regulations, and orders including, but not limited to, those governing equal and fair employment practices, environmental, safety, health, and vocational rehabilitation, and affirmative action programs.

If there is any revision to invoiced amounts or other charges as a result of an audit, within thirty (30) days of the audit, Vendor shall pay to Buyer the full amount of any credit or Buyer shall pay to Vendor the full amount of any shortfall, as the case may be. If any audit determines that Vendor has materially breached a term or condition of this Agreement or submitted an invoice for a sum that is more than five percent (5%) greater than the correct amount, then the reasonable costs of such audit shall be borne by Vendor.

Vendor shall require all subcontractors to comply with the provisions of this section by insertion of the requirements hereof in a written agreement between the Vendor and subcontractor and shall provide copies of the documents set out above as such apply to the subcontractor, upon the request of Buyer.

The provisions of this Section shall survive the termination of this Order.