

# STANDARD TERMS AND CONDITIONS OF PURCHASE ORDER

**1. Definitions.** "Buyer" shall mean the Buyer specified on the PO (as defined herein). "Seller" shall mean the Seller specified on the PO. "Party" shall mean Buyer or Seller individually. "Terms" shall mean these terms and conditions. "PO" shall mean the purchase order to which these Terms are attached. "Goods" shall mean any goods (including any part or parts thereof) specified in the PO to be purchased by Buyer from Seller, and shall include any services related thereto. "Services" shall mean any services specified in the PO to be furnished by Seller for Buyer. "Hosted Services" means Services that include software (or software-as-a-service) hosted by or on behalf of Seller that may be accessed by Buyer by way of an Internet connection. "Buyer Content" means any information transmitted to Seller by or on behalf of Buyer in connection with Buyer's use of Hosted Services and all derivative works created by or on behalf of Seller therefrom. "Data Compromise" means (a) any Buyer Content in the possession of Seller is lost, misappropriated, corrupted or modified by any person (excluding modifications by or on behalf of Buyer) or (b) Seller becomes aware of an intrusion or other security breach as to which Seller cannot confirm that no such loss, misappropriation, corruption or modification occurred. "Claims" shall mean liabilities, losses, damages, claims, injury, actions, proceedings, costs and expenses, including but not limited to reasonable attorney's fees and costs of litigation for injuries to persons (including death) or damage to third party property. "Buyer Parties" shall mean Buyer, its successors, assigns and agents, its affiliated, associated, parent and subsidiary companies and its officers, directors, agents and employees. "Specifications" shall mean all specifications, drawings, samples, models, diagrams, bulletins, engineering sheets or other materials provided by one Party to the other Party. "Applicable Laws" shall mean applicable federal, state and local laws, ordinances, codes, regulations, rules and orders. "Purchase Price" shall mean the amount payable by Buyer to Seller in accordance with the terms of the PO. "Workers" shall mean persons employed by Seller, its agents, and subcontractors or under its control.

**2. Acceptance and Limitations.** Shipment, in whole or in part, of Goods (or rendering, in total in part, of services associated therewith), or furnishing, in total or in part, of Services, shall constitute acceptance of this PO and all the Terms.

**3. Packing.** Buyer's PO number must appear on the outside of each package and on all packing slips, invoices, and associated paperwork. A packing slip must be included with each shipment.

**4. Shipping, Delivery and Risk of Loss.** Buyer shall pay reasonable shipping costs in accordance with its instructions, but Seller shall be responsible for packing, shipping, and safe delivery and shall bear all risk of damage or loss until Goods have been delivered to and accepted by Buyer. All shipments on which freight charges are due must be prepaid. Collect shipments will not be accepted.

**5. Title.** Title to all Goods sold by Seller to Buyer shall pass from Seller to Buyer when such Goods are delivered from Seller to Buyer and accepted by Buyer.

**6. Schedule and Cancellation.** Time is of the essence, and delivery of Goods and/or performance of Services must be made in accordance with the schedule set forth in this PO. Buyer may, at its option and without limitation of any of its other rights, cancel all or any unfilled part of this PO if Goods are not delivered, or Services are not performed, within the time promised. Buyer shall have no liability for any damage resulting from such cancellation and reserves the right to charge Seller with any loss or expense sustained as a result of such failure to deliver Goods or furnish Services. If accelerated shipping means are required to meet the delivery schedule for Goods set forth herein, or to minimize the lateness of delivery of Goods, excess shipping charges shall be borne by Seller. Buyer reserves the right to refuse delivery of Goods in installments, and, if Buyer accepts delivery of Goods in installments, to defer payment without interest or penalty until shipment is completed. Without limitation of the foregoing, Seller shall notify Buyer promptly of any delays or threatened delays in the performance of this PO. Buyer may from time to time change schedules or direct temporary suspensions of scheduled shipments of Goods or performance of Services by means of written or telephonic notice to Seller. Buyer shall have no liability to pay for goods delivered which are in excess of quantities specified in delivery schedules. Buyer may forthwith cancel this PO, without obligation, in the event of any of the following: insolvency of Seller; the filing by Seller of a voluntary petition of bankruptcy; the filing of an involuntary petition to have Seller declared bankrupt; the appointment of a receiver or trustee for Seller; the execution by Seller of an assignment for the benefit of creditors; any representation made by Seller to Buyer that is misleading; the failure by Seller to perform under these Terms or the failure by Seller to perform under the terms of any other contract with Buyer. All orders of Goods are booked subject to the approval of the authorities in the country of manufacture and/or shipment of Goods. It is explicitly understood and agreed that Buyer has the option to cancel the quantities of Goods ordered in full or partially if the government in the country of production and/or sale of Goods should impose any new tax of any kind whatsoever appertaining to the production, export and/or import of Goods, if Seller refuses to compensate Buyer for such taxes.

**7. Inspections and Returns.** Goods are subject to Buyer's inspection and approval at destination, although there shall be no affirmative obligation on Buyer to so inspect and approve, and payment therefor by Buyer shall not constitute acceptance. Rejected Goods and Goods that are the subject of any warranty claim will be returned at Seller's risk and all handling and shipping costs from and to Seller's premises shall be borne by Seller. Seller shall promptly reimburse Buyer for all shipping and handling costs paid by Buyer to return such Goods.

**8. Prices and Terms of Payment.** Unless otherwise expressly indicated in writing by Buyer, prices for all Goods are as noted on this PO, and may not be increased without the prior written consent of Buyer. If no price is set forth on the PO or otherwise mutually agreed upon, this PO shall be accepted and filled at the lowest of (i) the price most recently quoted for goods of the same type, (ii) the price at which goods of the same type were last shipped, or (iii) the price at which goods of the same type are generally sold by others in the industry. Unless otherwise mutually agreed, Buyer will pay all invoices from Seller pursuant to this PO within 90 days after receipt of Seller's invoice. No interest charges or other penalties for late payment may be assessed by Seller without the prior written consent of Buyer. Buyer may withhold or offset, from any amounts due to Seller, any amounts claimed to be owed by Seller to Buyer for any reason whatsoever. Discount terms provided for in this PO are based upon the assumption that invoices giving Buyer's correct PO number accompanied by the original bill of lading or express receipt will be in Buyer's hands within three days after date of shipment of Goods or performance of Services; otherwise Buyer will assume that the discount is to be calculated from the date the bill reaches Buyer, allowing three days for transmission.

**9. Quantity.** Quantity of Goods shipped hereunder shall not deviate from the amount specified herein unless otherwise agreed by Buyer.

**10. Changes and Termination.** Buyer shall have the right by written order to make changes in the work. Specifications or quantity of this PO, provided any change in price, delivery or performance caused thereby shall be adjusted equitably by mutual agreement. All such changes shall be at Seller's rates in effect for the original work, unless otherwise mutually agreed. If Seller fails to submit a written request for adjustment in price or delivery within ten days after receipt of such change order, it shall be conclusively presumed that no change in price or delivery is to be made. If Seller breaches any provision hereof, Buyer shall have the right to cancel this PO at any time, without liability. Buyer further has the right to cancel all or part of this PO, for Buyer's own convenience, at any time by written notice, and Buyer shall pay reasonable cancellation costs in accordance with industry practice, provided in no event shall the total charges be in excess of the lesser of the price specified herein or demonstrable costs.

**11. Indemnification.** Seller agrees to protect, indemnify, defend and forever hold the Buyer Parties harmless from and against any and all Claims arising from (a) Seller's design, manufacture, assembly, use, handling, sale, recall or distribution of Goods; (b) the performance of this PO by Seller, its employees or agents, whether on or off Seller's premises; (c) Seller's breach of any representation, warranty or obligation hereunder; (d) the infringement or violation of any third party's patents, intellectual property or other rights arising out of or in connection with Seller's use of Specifications, materials or other items provided to Seller by Buyer and/or (e) Seller's acts or omissions in the performance of its obligations under this PO, except to the extent that any Claim or Claims are caused solely by the gross negligence or willful misconduct of Buyer. Without limiting Buyer's other lawful remedies, if any Goods or Services infringe third party rights, Seller shall, at its expense, promptly procure all rights for Buyer's continued use of such Goods and/or benefit of such Services or replace such Goods and/or Services with equivalent Goods and/or Services which do not infringe upon third party rights.

**12. Insurance.** Seller shall maintain insurance to protect Buyer on a primary and non-contributory basis from all insurable Claims arising from the acts or omissions of Seller from at least AM Best rated A-VIII insurance companies. Seller's insurance policies shall name all of the Buyer Parties as additional insureds to the broadest extent available. Seller's obligations under this provision shall not extend to property damage or personal injury caused solely by the gross negligence or willful misconduct of the Buyer Parties. In addition to and not in substitution for the foregoing provisions, Seller waives all rights of recovery against the Buyer Parties and their insurance carriers for all Claims which are insured against by Seller or covered by any insurance benefiting Seller or which was required to be so insured or covered by Seller as herein provided. Buyer's examination of, or failure to request or demand any evidence of insurance hereunder, shall not constitute a waiver of any requirement and the existence of any insurance shall not limit Seller's obligation under any provision hereof.

**13. Warranties, Indemnities and License.** Seller warrants: (a) all Goods and Services furnished (i) to be free from defects in materials or workmanship, (ii) to be of merchantable quality, (iii) to conform to all Specifications (Seller agrees that in the event of a conflict between Specifications provided by Buyer and Specifications provided by Seller, Specifications provided by Buyer shall control) and (iv) to be fit for the intended purposes (as indicated on the PO, or if it is not so indicated, as indicated by Buyer to Seller by means of any communication, written or oral); (b) all Goods delivered and/or Services performed hereunder, not of Buyer's design, will not infringe any patents. Seller hereby grants Buyer and its customers an irrevocable, non-exclusive, royalty-free license under any patent owned by Seller, or under which Seller has license rights (i) to use and sell any equipment delivered hereunder and (ii) to use and sell any process carried out with the use of such equipment. If the PO specifies Hosted Services, Seller (A) hereby grants to Buyer the worldwide right to have its employees, contractors and agents access and use

such Hosted Services during the term Services term specified in the PO without limitation upon the number of users, the number of transactions or the amount of storage required, except as expressly set forth in the PO; (B) shall make such Hosted Services available on a 24x7x365 basis except as required for scheduled maintenance (as to which written notice shall be sent to Buyer no fewer than seven (7) days in advance of such maintenance); and (C) shall, in the event of a Data Compromise, at its own expense: (1) notify Buyer as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (2) cooperate with Buyer in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with Applicable Law or as otherwise required by Buyer; (3) perform or take any other actions required to comply with Applicable Law as a result of the occurrence; (4) be responsible for recreating lost Buyer Content in the manner and on the schedule established by Buyer without charge to Buyer; and, (5) provide to Buyer a detailed plan within ten (10) calendar days of the occurrence describing the measures Seller will undertake to prevent a future occurrence. Without limiting the generality of the foregoing, Seller warrants and guarantees that all Goods and ingredients and components thereof are free of all Unsafe Food Additives as defined in the Federal Drug and Cosmetic Acts and all Acts amendatory thereto, under any and all circumstances of use, and if any sanction is limited to prescribed tolerances, Seller shall immediately notify Buyer by registered mail, setting forth the applicable limitations and the citation of the Federal Register where such sanctions and limitations are published. Each representative of Buyer and Seller named on this PO warrant that he/she is authorized to enter into this PO and to hereby bind Buyer and Seller, respectively. All warranties herein: (a) shall survive Buyer's acceptance and payment, (b) shall inure to the benefit of Buyer, its successors, assigns and customers, (c) shall be construed as conditions as well as warranties and (d) shall be in addition to, and not in lieu of, any warranties of Seller arising under Applicable Laws. Without limiting the foregoing and in addition to any other remedy available to Buyer, if three percent (3%) or more of any Goods furnished hereunder is found defective, Buyer may, at its option, reject the entire quantity of Goods or require Seller to replace such entire quantity at no extra cost to Buyer, and in either case Seller shall pay for the reshipment of such Goods to Seller. Without limiting the foregoing and in addition to any other remedy available to Buyer, if Services are performed not in compliance with the warranties herein, Seller shall, at Buyer's option, either (a) subsequently perform the Services in compliance with the warranties herein at no additional cost to Buyer or (b) pay for performance of the Services by a third party of Buyer's choosing. Notice of any Claim or defect may be given at any time within one (1) year after receipt by Buyer. Seller shall promptly pay on Buyer's behalf, or if Buyer pays, shall reimburse Buyer for, any and all damages, costs or expenses, including transportation charges, sustained or incurred by Buyer as a result of breach of warranty. Seller hereby assigns to Buyer all of its rights under warranties made to Seller by any of its suppliers in connection with any Goods or ingredients or components thereof specifically acquired by Seller for use in furnishing the Goods. Seller shall have an obligation to immediately inform Buyer if Seller becomes aware of any material fault in Goods accepted by Buyer. Goods that could have been materially affected by a fault in Seller's related products, or Services that were or may have been performed in compliance with industry best standards. This obligation includes Seller being notified by its suppliers of faulty incorporated supplies, tools or equipment.

**14. Advertising.** Seller agrees not to make reference to Buyer or Buyer's subsidiaries, owners, affiliates, successors or assigns in any advertising material of any kind, without the express written permission of Buyer.

**15. Safety/Site Rules.** All Workers shall be instructed in and familiar with safety rules and regulations applicable to the work being performed. Seller shall have sole responsibility to see that all Workers are so informed and that industry best safety practices are followed. While performing all work, all Workers shall fully comply with all Applicable Laws.

**16. Limitation on Buyer's Liability.** In no event whatsoever shall Buyer have any liability to Seller, arising out of or in connection with the Goods, the Services, the transactions contemplated hereby, or Seller's or Buyer's conduct or actions in relation to any of the same or to each other, in an amount in excess of, and Buyer's liability shall be strictly limited to, the purchase price for the Goods and/or Services which give rise to Buyer's liability.

**17. Taxes and Other Charges.** Except as may be otherwise provided in this PO, the Purchase Price includes all Federal, State, and Local taxes, duties, or other fee imposed by a governmental authority.

**18. Proprietary Information.** Seller agrees for itself, its agents and employees, not to use (except to perform hereunder) or divulge to others any information designated by Buyer as proprietary or confidential. All Specifications as well as this PO are the proprietary and confidential information of Buyer or its customer. Should Seller become aware of any of Buyer's customers, Seller agrees not to approach said customers to circumvent Buyer.

**19. Security Interest of Buyer.** Seller grants to Buyer a security interest, to the extent any advance payment is made by Buyer, in any Goods made or purchased for this PO and agrees, promptly upon request of Buyer, to sign and deliver to Buyer appropriate Uniform Commercial Code ("UCC") forms evidencing such security interest.

**20. Development Orders.** If this PO calls for consultation or the development of equipment, Seller agrees to disclose promptly and to assign to Buyer each invention or discovery made in the course of such development or consultation and to assist Buyer in all reasonable ways to secure worldwide protection of the ownership of such inventions or discoveries.

**21. Permits.** All permits necessary to comply with Applicable Laws will be duly obtained by Seller, unless otherwise specifically agreed in writing by Buyer.

**22. Compliance with Law.** Seller represents and warrants that, in the production, sale and furnishing of Goods and/or Services, it has complied and shall comply with all Applicable Laws.

**23. Amendments.** These Terms may not be amended except by written agreement of Seller and Buyer expressly referring hereto.

**24. Assignment.** This PO and payment rights hereunder are not assignable by Seller and no work called for herein shall be subcontracted without the prior written consent of Buyer.

**25. Waiver.** Buyer shall not be deemed to have waived any provision hereof, or any breach by Seller of any provision hereof, unless such waiver is specifically set forth in writing and executed by an authorized officer of Buyer. No waiver by Buyer of any provision hereof or any breach or event of default by Seller hereunder shall constitute a waiver of such provision on any other occasion or a waiver of any other breach or event of default by Seller or of any other rights or remedies under this PO.

**26. Supplemental Agreements.** Seller agrees to enter into agreements with each employee, agent and supplier that will enable Seller to abide by all of these Terms.

**27. Governing Law; Severability.** This PO, these Terms and the transactions contemplated hereby shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Massachusetts without regard to its conflicts of law rules. Any provision or provisions herein which are found to be invalid shall be deemed inoperative without invalidating or otherwise affecting any other provisions of these Terms. Any action brought by either Party shall be brought in the state or federal courts located in the Commonwealth of Massachusetts, which courts shall have exclusive jurisdiction for all matters arising in connection with this PO, these Terms and all transactions contemplated hereby. The United Nations Convention on Contracts for the International Sale of Goods shall not be applicable to this PO, these Terms or any purchase or sale made hereunder.

**28. Entire Agreement.** These Terms, together with information contained on the PO (and any additions or revisions mutually agreed to in writing by Seller and Buyer), shall constitute the entire agreement and understanding of Seller and Buyer with respect to the purchase of Seller's goods and/or services, superseding all prior oral or written understandings relating thereto, and shall constitute a binding legal agreement. Any course of prior dealings, promise or conditions in connection therewith or usage of trade not incorporated herein shall not be binding upon either Party. If Seller's form contains provisions inconsistent with the provisions hereof, these Terms shall prevail. Seller's failure to object within 10 days to any terms contained herein shall constitute Seller's acceptance of all the Terms. No waiver, alteration or modification of any of the provisions hereof shall be binding unless made in writing and signed by a specifically authorized representative of Buyer in accordance with the terms hereof.

**29. Notice.** Any notice required or permitted to be given by either Party under these Terms shall be in writing and shall be delivered or sent by pre-paid post sent first class addressed to the Party to be served at the address of that Party as indicated on the PO, or such other address as may be notified by that Party, pursuant to these Terms, for this purpose. Any notice which is delivered shall be deemed to be served when handed to the addressee and any notice sent by pre-paid post first class shall be deemed to be served two business days after posting.

**30. Miscellaneous.** The terms of Section 2-615 of the UCC notwithstanding, the occurrence or existence of the following events and circumstances shall not excuse Seller from the performance of any of its obligations hereunder: (i) any adverse change in the cost or availability of raw materials, supplies or semi-processed goods from the date of this PO to the date of delivery of Goods; (ii) fires, floods, explosions, accidents or breakdowns; (iii) riots, strikes, slowdowns or other concerted acts of workmen, whether direct or indirect; and (iv) any other cause similar to any of the foregoing. If Seller breaches any of the terms of this PO, Buyer shall have, in addition to other rights specified in this PO or in any other agreement between Seller and Buyer the terms of which are applicable to this PO, all of the rights provided for under the Massachusetts UCC or any other Applicable Law. All of Buyer's rights shall be cumulative, and none exclusive, to the extent permitted by law. Buyer may, by written notice to seller, offset damages sustained by Buyer as a result of Seller's breach of any term of this PO against the Purchase Price and any other amount owed by Buyer to Seller under this PO or any other agreement.