

## **Purchase Order Terms**

1. **TERMS AND CONDITIONS:** These terms and conditions control the purchase of goods, software and services set forth in this Purchase Order ("Order") and constitute the full and complete agreement between Buyer and Seller with respect thereto. Any prior offer made by Seller to Buyer regarding the subject matter hereof is rejected. In the event of any conflict between any typed or handwritten provisions that are part of this Order, including any exhibits attached hereto, and the pre-printed terms and conditions set forth herein, the typed or handwritten provisions shall control. These Terms and Conditions may not be waived or modified except in writing by Buyer.
2. **ACKNOWLEDGMENT AND ACCEPTANCE:** The issuance of this Order to Seller constitutes an offer expressly limited to the terms contained herein. Seller's acceptance is expressly made conditional on assent to the terms hereof. Any addition, change or deletion in these terms by Seller in Seller's acknowledgment form or otherwise communicated to Buyer shall be deemed a material alteration and is expressly objected to and rejected by Buyer. Buyer reserves the right to revoke this offer at any time prior to acceptance, which acceptance shall take place only by (i) the return of an executed and unmodified copy of this Order, or (ii) Seller's delivery of conforming goods to Buyer and Buyer's acceptance thereof. Unless Seller accepts this offer within twenty (20) days of issue, Buyer reserves the right to revoke this offer and/or reject any acceptance by Seller.
3. **TECHNICAL INFORMATION AND EQUIPMENT:** All technical specifications, drawings, notes, instructions or information referred to on the face of this Order or contained in attachments or exhibits hereto are deemed to be incorporated by reference. Seller expressly acknowledges that it has received and read said referenced information. All such materials, together with all tools, equipment and parts furnished by Buyer, shall remain the property of Buyer and shall be used only for work performed for Buyer. Seller, at Buyer's request, shall return to Buyer (i) all written materials delivered to Seller, (ii) any copies thereof, (iii) all written materials generated by Seller pursuant to the performance of this Order, and (iv) all tools, equipment and parts furnished by Buyer.
4. **PRICE AND DELIVERY:** Seller shall furnish the goods or services in accordance with the price and delivery terms stated herein. TIME AND RATE OF DELIVERY ARE OF THE ESSENCE. Unless otherwise stated, the price terms contained herein include all costs or charges of any kind that will be paid by Buyer, and Buyer shall not be liable for any other costs or charges, all of which shall be borne by Seller, including, without limitation, charges for inspection, packaging and shipping; all federal, state and municipal sales, use and excise taxes and any customs duties. Buyer may return or store at Seller's expense any goods delivered more than one (1) week in advance of the delivery date. Seller warrants that the prices charged for goods or services covered by this Order will be as low as the lowest prices charged by Seller to customers purchasing goods or services of like kind and quality. Seller shall notify Buyer immediately at such time as Seller has knowledge of any impending material shortage, governmental regulation, labor dispute or other event or impediment which could result in a delay in the delivery.
5. **PACKAGING AND SHIPPING:** Seller shall be responsible for packaging, marking and shipping the goods in accordance with the terms hereof, good commercial practices and all applicable laws. Each package shall be marked with handling instructions, shipping information, Order number and part or item number. An itemized packing list shall accompany each shipment. Buyer reserves the right to reject any shipment not meeting these requirements.
6. **F.O.B., RISK OF LOSS:** F.O.B. point shall be Buyer's location unless otherwise stated in writing by Buyer. Notwithstanding any prior inspection and F.O.B. point, Seller shall bear all risk of loss until final inspection and acceptance of the goods by Buyer at Buyer's location. Seller shall also bear all risk of loss with respect to any goods rejected by Buyer.

7. **PAYMENT:** Seller shall issue invoices only upon delivery of the goods or completion of services ordered by Buyer hereunder. Unless different payment terms are specified on the face hereof, Buyer shall issue payment within forty-five (45) days of its receipt of correct and conforming Seller invoice. Payment by Buyer is contingent upon delivery by Seller of conforming goods or satisfactory completion of services. Payment made for rejected goods or services shall be refunded by Seller to Buyer within five business days of Buyer's request or, at Buyer's option, deducted from any other payments then or thereafter due Seller from Buyer. In no event shall Buyer be obligated to pay interest or penalties on any amounts due. Any attempt by Seller to create a security interest in goods delivered hereunder in its favor is expressly rejected by Buyer and shall be without effect.
8. **SET-OFFS:** Buyer shall have the right at any time to set off any amount owing from Seller to Buyer, or Buyer's subsidiaries, against any amount due and owing to Seller or any of Seller's subsidiaries, pursuant to this Order or any other contractual agreement between Buyer and Seller or their respective subsidiaries or affiliates.
9. **INSPECTION:** Seller shall inspect all goods prior to shipment to Buyer. Nonconforming goods may be rejected by Buyer and returned to Seller at Seller's risk and expense for credit, rebate of paid purchase price, or replacement, at Buyer's option. Payment before inspection shall not be deemed acceptance of nonconforming goods or services.
10. **WARRANTY:** SELLER'S DELIVERY OF GOODS AND PERFORMANCE OF SERVICES HEREUNDER SHALL CONSTITUTE A WARRANTY AT SUCH TIME: (1) THAT ALL GOODS ARE FREE FROM DEFECTS IN DESIGN, MATERIAL AND IN WORKMANSHIP; (2) THAT ALL SERVICES ARE PERFORMED IN A GOOD AND WORKMANLIKE MANNER; (3) THAT SELLER HAS GOOD TITLE TO THE GOODS AND HAS CONVEYED SUCH TITLE TO BUYER FREE AND CLEAR OF ALL LIENS, CHARGES AND ENCUMBRANCES; (4) THAT THE GOODS OR SERVICES CONFORM TO APPLICABLE SPECIFICATIONS, DRAWINGS, SAMPLES OR OTHER DESCRIPTIONS REFERENCED HEREIN; (5) THAT THE GOODS OR SERVICES WILL FUNCTION ACCURATELY AND WITHOUT INTERRUPTION BEFORE, DURING AND AFTER JANUARY 1, 2000, WITHOUT ANY CHANGE ASSOCIATED WITH THE ADVENT OF A NEW CENTURY ; AND (6) THAT THE GOODS ARE MERCHANTABLE AND FIT FOR THE PURPOSES INTENDED . Seller acknowledges that Buyer has previously disclosed to Seller the purposes for which the goods are intended, and that Buyer is relying on Seller to furnish suitable goods. All warranties shall survive any inspection, delivery, acceptance, payment, expiration or earlier termination of this Order and such warranties shall run to Buyer, its successors, assigns, customers or users of its products.
11. **SELLER'S ATTEMPTED LIMITATION OF LIABILITY:** Any attempt by Seller to disclaim any theory or grounds upon which Buyer, or successive purchasers of the goods and services covered hereby (collectively, the "Purchasers"), might recover against Seller is expressly rejected and is ineffective. Any attempt by Seller to limit its liability by means of a "Force Majeure" or similar argument or term is expressly rejected and is ineffective. Any attempt by Seller to disclaim any kind or class of damages which the Purchasers might recover against Seller is expressly rejected and is ineffective. Any attempt by Seller to establish by contract time limitations periods within which the Purchasers are obligated to assert claims against Seller is expressly rejected and is ineffective. Buyer and any successive purchasers of the goods and services covered hereby retain and shall be entitled to assert all rights and claims available to them at law or equity against Seller in respect of the transactions subject to this Order.
12. **INDEMNIFICATION:** Seller shall indemnify, defend and hold Buyer, its affiliates and licensees, and their respective directors, officers, employees and agents (as applicable, the "Indemnitees"), harmless from and against any and all demands, claims, losses, and liabilities of whatever kind or nature, including attorneys' fees and costs, asserted against or suffered by an Indemnatee by reason of, arising out of, or in any way related to, in whole or in part, the goods and services covered by this Order, the preparation, processing, manufacture, construction, completion, delivery and/or use thereof, or Seller's acts, omissions or

negligence. Without limitation, such obligation to indemnify shall exist with respect to claims and demands relating to accidents, occurrences, injuries or losses, including, without limitation, injuries to persons or property and economic losses, by reason of, arising out of, or in any way related to, in whole or in part, the goods and services covered by this Order or the preparation, processing, manufacture, construction, completion, delivery and/or use thereof. Without limitation, such obligation to indemnify shall exist with respect to claims and demands that: (1) any goods; (2) any part of such goods; or (3) any combination of such goods, other hardware, and/or other software wherein such infringement would not occur but for such goods being a part of such combination, infringes on any patent, trademark, copyright, trade secret or other intellectual property right, foreign or domestic. If, as the result of an action as set forth above, the sale or use of any goods, or part thereof, is enjoined by court order, Seller shall, at its expense, (a) procure for Buyer the right to continue selling and/or using the goods, (b) replace or modify the goods with functionally-equivalent, noninfringing goods (subject to Buyer's approval and satisfaction), or (c) return the purchase price of each unit of goods in Buyer's inventory that Buyer is unable to ship due to the injunction. The indemnity set forth in this paragraph shall apply notwithstanding that the goods sold hereunder may have been produced by Seller in compliance with specifications furnished by Buyer unless the goods cannot be furnished in accordance with the specifications without infringing the intellectual property as asserted in the action. Buyer does not have any obligation to hold Seller harmless from any claim against Seller, its directors, officers, employees or agents, arising out of compliance with Buyer's specifications.

13. **CANCELLATION:** Unless otherwise provided, Buyer may cancel this Order in whole or in part upon notice at any time before scheduled shipping date. Notwithstanding any provision to the contrary and in addition to any other remedy, Buyer may cancel this Order in whole or in part upon notice in the event that: (1) Seller fails to make delivery at the time provided; (2) Seller fails to comply with any other term or condition of this Order or any other outstanding Order from Buyer within ten (10) days of demand thereof; (3) a receiver or other similar officer is appointed over any or all of Seller's property or assets; (4) Seller files a voluntary petition in bankruptcy, or an involuntary petition in bankruptcy is filed against Seller; (5) Seller merges with or is acquired by a third party; or (6) Seller assigns, delegates or subcontracts this Order or any of its rights or obligations hereunder without the prior written consent of Buyer. Upon Buyer's cancellation, Seller shall deliver to Buyer such work in process or completed goods as Buyer may request. Buyer shall have no liability to Seller beyond payment of any balance owing for goods or services delivered to and accepted by Buyer prior to Seller's receipt of the notice of termination, and for work in process and completed goods requested by, delivered to, and accepted by, Buyer after Seller's receipt of notice of termination. In no event shall Buyer be liable for consequential or incidental damages. Any attempt by Seller to take an action listed in section (6) hereof shall be void and of no force or effect.
14. **CONFIDENTIAL INFORMATION AND ADVERTISING:** Without prior written consent of Buyer, Seller shall neither disclose to any person outside its employ, nor use for purposes other than performance of this Order, any information pertaining to the existence or terms of this Order including, but not limited to, the identity, price, or volume of the goods or services purchased hereunder, and the drawings, blueprints, descriptions or specifications which are part of or related to this Order. Seller agrees that Buyer shall be entitled to enforce this section against Seller by means of injunctive relief without the necessity of proving irreparable harm.
15. **TECHNOLOGY RIGHTS:** Seller hereby assigns to Buyer all right, title and interest in all inventions, trade secrets, patents, mask works, copyrights, trademarks and other intellectual property developed by Seller pursuant to this Order. Seller shall provide Buyer any assistance required to perfect such rights, including any documents reasonably requested by Buyer.
16. **LICENSE FOR ALL PURPOSES:** In addition to any other licenses, express or implied, in favor of Buyer, Seller's delivery of goods, software or services under this Order confers upon Buyer a license under any intellectual property rights of Seller to use the goods, software or

services for all purposes, whether by combining such goods with any other product available to Buyer (including products purchased from Seller) or otherwise, and to sell the same.

17. **DUTY DRAWBACK:** Upon request of Buyer, Seller shall cooperate with Buyer in seeking any duty drawback available to Buyer in connection with export by Buyer of goods (1) imported by Seller and provided to Buyer under this Order, or (2) incorporating or manufactured by Buyer from such goods. Without limitation, Seller shall (1) provide all the information on the imported goods necessary to complete the drawback claims to be filed by Buyer, including the U.S. Customs Service entry numbers, dates of entry, quantities and description of goods, customs values, and rates and amounts of customs duties paid by Seller, and (2) execute applicable certificates of delivery and other documents as are necessary in connection with Buyer's drawback claims.
18. **COMPLIANCE WITH LAWS:** Seller warrants that in performance of this Order it has complied with or will comply with all applicable federal, state and local laws and ordinances including, but not limited to, the Occupational Safety and Health Act, the Fair Labor Standards Act, as amended, and Executive Order 11246, as amended. In addition, Seller shall secure and maintain adequate workers' compensation coverage. Upon request, Seller shall certify compliance with any laws or regulations deemed applicable by Buyer.
19. **GOVERNMENT CONTRACTS:** Seller warrants that in the performance of this Order it has complied with or will comply with all Federal Acquisition Regulations or their counterpart for other governmental agencies which are applicable to the goods or services purchased hereunder. Seller warrants that it shall, as a minimum, comply with each of the following clauses at all times during its performance of this Order: (a) the Federal Acquisition Regulation ("FAR") clause 52.222-26, "Equal Opportunity" (E.O. 11246); (b) FAR clause 52.222-35, "Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. § 4212(a)); (c) FAR clause 52.222-36, "Affirmative Action for Handicapped Workers" (29 U.S.C. § 793); (d) FAR clause 52.219-8, "Utilization of Small, Small Disadvantaged, and Women-Owned Small Business Concerns;" and (e) FAR clause 52.219-9, "Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan." Upon request, Seller shall certify compliance with any of such laws or regulations deemed applicable by Buyer.
20. **RELATIONSHIP TO OTHER AGREEMENTS:** Notwithstanding anything else contained herein, the terms hereof may be subject to a written agreement between Buyer and Seller which is signed by each of them and expressly provides that the terms of any particular invoice, acknowledgment, Order or transaction shall be subject to the terms of such agreement.
21. **RELATIONSHIP BETWEEN PARTIES:** The transaction entered into between the parties pursuant to this Order does not create any partnership, joint venture, or agency between the Parties, and nothing in this Order shall be construed as creating any such relationship.
22. **CONSENT TO JURISDICTION:** Each party agrees that any dispute between the parties arising out of this Agreement or in any manner relating to the subject matter of this Agreement and having an amount in controversy of one hundred thousand dollars (\$100,000) or less must be submitted by the parties to arbitration in accordance the Commercial Arbitration Rules of the American Arbitration Association and judgment upon the award may be entered in any court having jurisdiction thereof. Any such arbitration will be held in Atlanta, Georgia under the auspices of Resolution Resource Corp. or such other nationally recognized arbitration provider as the parties may agree in writing. Any action filed by either party in any court in violation of this Section should be dismissed pursuant to this Section.
23. **APPLICABLE LAW:** This Order is governed by the laws of the State of Georgia without regard to its conflict of laws provisions.
24. **NOTICES:** All notices shall be in writing and delivered either by hand, facsimile, or certified mail, return receipt requested at the addresses set forth herein. Notice shall be deemed to have been given upon receipt if delivered by hand; upon receipt if given by facsimile but only if such receipt is confirmed by written confirmation produced by the transmitting machine; and upon expiration of seven (7) days after mailing, if given by certified mail.

25. **REMEDIES:** Rights and remedies provided to Buyer herein shall be in addition to, and not exclusive of, any other rights or remedies that Buyer may have at law or equity. Failure by either party to enforce any term will not be deemed a waiver of future enforcement of that or any other term. The terms and conditions stated herein are severable. If any clause herein shall be held unenforceable by any court of competent jurisdiction, such clause shall be deemed reduced in scope to the maximum extent enforceable, and all other clauses herein shall remain binding on the parties.
26. **TITLES:** The section titles herein are used for reference purposes only and shall not be referred to or relied upon in interpreting the meaning of the language contained in such section.
27. **AUDIT COMPLIANCE:** If Buyer purchases more than \$100,000 of Seller's services in any twelve month period, the, for the purpose of facilitating Buyer's compliance with its own internal audit requirements, upon Buyer's request, Seller will either (i) allow Buyer's representatives to review and audit Seller's internal controls, to the extent applicable to the goods or services purchased by Buyer from Seller, or (ii) provide Buyer with a Type II report of Seller's external auditors consistent with SAS 70 sufficient to provide Buyer with reasonable comfort as to the effectiveness of Seller's internal controls (to the extent applicable to the goods or services purchased by Buyer from Seller).