

PURCHASE ORDER TERMS AND CONDITIONS OF SALE FOR VENDORS

1. **Acceptance of Order.** These terms and conditions shall govern all sales by Vendor of any nature to NCI Group, Inc. and its unincorporated division noted on the reverse side hereof ("Buyer") and shall supersede and apply without exception to any terms contained within any document issued by Vendor, same being of no force or effect. Vendor unconditionally and irrevocably accepts these terms and conditions. Any proposal made by Vendor for additional or different terms and conditions or any attempts by Vendor to vary in any degree any of the terms and conditions of this Purchase Order is hereby rejected. If Vendor is required to enter onto Buyer's property, Buyer's standard Independent Contractor's Agreement shall be incorporated herein by reference for all purposes, a copy of which is available upon written request.
2. **Changes.** Buyer reserves the right, without liability to Vendor or any other party, to make changes at any time in: (a) product, material, labor, work or services (collectively the "Work") to be performed or furnished hereunder, (b) drawings, designs and/or specifications applicable to the Work, (c) methods of shipment and packing, and/or (d) time, delivery and/or place of delivery or performance, including temporary or permanent suspensions of shipments. If any such change causes an increase in the cost of or the time required for performance of the Work, same shall be the responsibility of Vendor. Vendor shall make no changes in the Work called for by this Purchase Order without Buyer's written agreement thereto. Any changes in compensation due pursuant to any change order or addition to this Purchase Order are effective only if agreed to by Buyer's authorized representative in writing.
3. **Completion, Delivery, Delays and Inspection.** Time is of the essence in this Purchase Order, and if delivery of the Work, goods or rendering of the services made the subject hereof is not completed by the date required by Buyer at Buyer's designated shipment destination, in addition to its other rights and remedies hereunder, Buyer shall have the right to terminate this Purchase Order by notice effective when received by Vendor, such termination to be effective as to the Work or goods not yet received by Buyer at Buyer's designated shipment destination or services not yet rendered. Thereafter, Buyer shall have the right to purchase substitute Work, goods or services elsewhere and charge Vendor with any and all loss, cost and expense, including but not limited to reasonable attorneys' fees as well as special, incidental or consequential damages, incurred by Buyer by reason of such termination. Work shall not be delivered until Buyer's authorized representative has requested delivery, and Vendor shall pay all costs and expenses arising out of any unscheduled delivery. The amount of this Purchase Order shall include all costs incurred by Vendor for shipment of all Work, goods or services made the subject hereof. All damages occurring prior to delivery will be charged to Vendor. No charges will be allowed for packing, crating or carriage unless stated in this Purchase Order. If, in order to comply with Buyer's delivery it becomes necessary for Vendor to ship by a more expensive way than specified in this Purchase Order, any such increased transportation costs shall be paid by Vendor. Vendor will be responsible for the costs of inspecting Work rejected. Work not accepted will be deemed incomplete and will be rejected or returned to Vendor at Vendor's expense. Shipments sent C.O.D. without Buyer's advance written consent will not be accepted. All shipments shall be F.O.B. Buyer's designated shipment destination. No insurance charge which increases shipping cost will be allowed unless authorized in writing by Buyer. Vendor will prosecute and/or cure all claims regarding loss or damage during transit. All costs of storage of Work shall be borne solely by Vendor until Work is accepted, in writing, by Vendor.
4. **Payment.** If payment by installments is required at any time by Buyer, Vendor waives any right to accelerate the amount due by reason of a failure by Buyer of whatever duration to pay one or more installments. Any cash discount period will be the date from Buyer's receipt and written acceptance of the Work, or invoice date, whichever is later. Before Vendor shall be entitled to receive final payment, Vendor shall furnish evidence satisfactory to Buyer of the payment of any indebtedness for all materials and equipment used in the performance of this Purchase Order. Vendor shall not permit any lien or charge incurred in the performance of the Work pursuant to this Purchase Order or furnished by Vendor in the performance of the Work pursuant to the Purchase Order to be filed or asserted against any property of Buyer. Vendor shall promptly release and indemnify Buyer for all charges, claims, liability, liens or expenses associated with materials, products or services provided by Vendor in connection with the Work pursuant to this Purchase Order.
5. **Advance Manufacture and Shipments.** Vendor shall not manufacture in advance of Vendor's normal flow time or deliver any Work in advance of the schedule set forth in this order. Buyer reserves the right to return to Buyer's expense any and all Work, goods, materials or services shipped in excess of the quantity designated or any and all Work, goods, materials or services received at Buyer's designated shipment destination in advance of the schedule applicable to this order. All shipping containers shall bear Buyer's name and Buyer's order number. Detailed packing slips are required. Prices set forth in this order include all charges for Vendor's packing, crating, transportation to F.O.B. Buyer's designated shipment destination point and any and all storage. Buyer's records will be accepted as final and conclusive with respect to all shipments that are not accompanied by invoices or shipping documents indicating Buyer's purchase order number.
6. **Warranty.** Vendor expressly warrants that all Work, goods or services furnished under this Purchase Order shall conform to all drawings, specifications and appropriate standards, will be new, and will be free from defects in material and workmanship. Vendor further warrants that all such Work, goods or services will conform to any statements made on the containers or labels or advertisements for such Work, goods or services and that all Work or goods will be properly contained, packaged, marked and labeled. Vendor warrants that all Work, goods and services furnished hereunder will be merchantable, and will be safe and appropriate for the purpose for which the Work, goods and services of that kind are normally used. Vendor warrants that it knows or has reason to know the particular purpose for which Buyer intends to use the Work, goods and services furnished hereunder and warrants that all such Work, goods or services will be fit for such particular purpose. Vendor warrants that all Work, goods and services furnished hereunder will conform in all respects to any samples furnished to Buyer in connection with this Purchase Order. Vendor shall make no substitutions of Work, goods or services furnished hereunder without the written authorization of Buyer. Work, goods or services furnished hereunder shall be subject to inspection and written acceptance by Buyer and any governmental agency or authority having jurisdiction. Inspection, tests, acceptance or use of the Work, goods or services furnished hereunder shall not affect Vendor's obligations under these warranties and such warranties shall survive inspection, tests, acceptance and use of the Work, goods or services made the subject hereof. Vendor's warranties shall run to Buyer, its successors and assigns, and to all future owners of the property. Vendor agrees to promptly correct any defects in any of the Work, goods or services furnished hereunder, without expense to Buyer or, in the alternative, when such correction fails to bring such Work, goods and/or services in conformance with the requirements hereof, to promptly replace such Work, goods or services at Vendor's sole cost. In the event of Vendor's failure to promptly correct any defects in the Work, goods or services furnished hereunder, Buyer, after five (5) days notice to Vendor, shall have the right to make such corrections or to replace such Work, goods or services and charge Vendor for all loss, cost and damages incurred by Buyer in connection with such correction or replacement.
7. **Prices.** In the event that prices in effect at the date of acceptance of this order for Work specified in this order are reduced prior to the date of delivery and written acceptance by Buyer or in the event that Vendor quotes lower prices to other buyers or purchasers before the date of delivery and written acceptance by Buyer of this order, Vendor agrees to afford to Buyer the benefit of said reduction or quotation of lower prices. Except as stated in Paragraph 2 above, in no event and under no circumstances shall the price be increased beyond that stated on the reverse side hereof.
8. **Termination.** Buyer reserves the right, at any time and without liability to Vendor or any other party, to terminate this Purchase Order, any part hereof or any other order with Vendor solely for Buyer's convenience by written telegraphic notice or verbal notice confirmed in writing. Further, Buyer may also terminate this Purchase Order, any part hereof or any other order with Vendor for cause at any time and without liability to Vendor or any other party in the event of any default by the Vendor or if the Vendor fails to comply with any of the terms and conditions of this Purchase Order. Late deliveries or deliveries of Work, goods or services which are defective or which do not conform to the requirements of this Purchase Order, and failure to provide Buyer, upon request, reasonable assurances of future performance or if Vendor becomes insolvent by any test, is voluntarily or involuntarily adjudicated bankrupt, subjected to reorganization or rehabilitation under any applicable law, or appoints or suffers the appointment of a trustee, receiver or assignee for the benefit of creditors shall all be causes for immediate termination of this Purchase Order. In the event of termination for cause, Buyer shall have the right to withhold all payments which have become due to Vendor and all payments which may thereafter become due and to take possession of all drawings, equipment, services, materials and goods belonging to Vendor relating to performance of this Purchase Order, and for such purpose, this Purchase Order shall be construed as an assignment by the Vendor to Buyer of said drawings, equipment, services, materials and goods. Further, in the event of such termination for cause, Vendor shall be liable to Buyer for any and all damages, including, but not limited to, attorneys' fees, incurred by Buyer by reason of Vendor's default and termination.
9. **Resale Certification and Taxes.** If this order is marked "Resale," the Work purchased hereunder is purchased for purposes of resale and taxes shall not be charged to Buyer. Except as otherwise provided herein and unless prohibited by statute, Vendor agrees to pay any federal, state or local sales, use, transportation or excise tax which may be imposed upon the Work ordered or upon its sale, use or delivery thereof.
10. **Setoff.** Buyer shall be entitled at all times to setoff any amounts due and owing from Vendor to Buyer or any of Buyer's affiliates, subsidiaries or divisions against any amounts which may be otherwise due and owing to Vendor with respect to this order.
11. **Assignments and Subcontracts.** Vendor shall not assign or transfer this order without the prior written approval of Buyer.
12. **Hazardous Materials and Environmental Compliance.** Vendor shall notify Buyer of every article ordered hereunder which contains materials hazardous or could be injurious to the health or physical safety of persons, even though said hazard or injury may only occur due to mishandling or misuse of said article. In addition, Vendor shall identify the hazardous or injurious material and notify Buyer of the effects of such material on human beings and the physical manifestations that could result for each article as identified. Vendor shall provide Buyer warning labels or instructional material appropriate to warn persons coming in contact therewith of the hazard(s) and its effects. Vendor further agrees that it shall be totally responsible for any and all waste and/or hazardous substances introduced by Vendor and shall perform all clean-up and removal of such substances. In the event Vendor does not perform such clean-up and/or removal, Buyer may perform clean-up and removal of such substances and Vendor shall reimburse Buyer for all costs and expenses thereof, including attorney's fees. **VENDOR SHALL INDEMNIFY, DEFEND AND HOLD BUYER ITS AFFILIATES, PARENTS, OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES HARMLESS FROM ANY AND ALL LOSSES, DAMAGES, CLAIMS, DEMANDS, COSTS, CHARGES, AND OTHER EXPENSES, INCLUDING ATTORNEYS' FEES, AS WELL AS EXPERTS AND CONSULTANT FEES, INCURRED BY BUYER RELATED TO SUCH CLEAN-UP AND/OR REMOVAL, EVEN IF THE LOSSES, DAMAGES, CLAIMS, DEMANDS, COSTS, FEES, AND EXPENSES ARE CAUSED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BUYER.** The indemnities in this paragraph shall be in addition to any other indemnity obligations between Buyer and Vendor, including any other indemnity obligations contained herein.
13. **Non-Disclosure and Buyer's Property.** All drawings, specifications, artwork, patterns or information furnished by Buyer or developed by Vendor in connection with the Work and this order or any other order shall be Buyer's personal property and, if any Work relating to this order is assigned to subcontractors, Vendor shall require a similar agreement from said subcontractors. Unless otherwise agreed in writing, all Work, tooling, tools, pattern equipment or material of every description furnished to Vendor by Buyer or paid for by Buyer, any replacement thereof, and any material affixed or attached thereto shall be personal property of Buyer. Such property shall be plainly marked or otherwise adequately identified by Vendor as Buyer's property, and shall be safely stored separate and apart from Vendor's property. Vendor shall not substitute any property for Buyer's property and shall not use such property except in filing Buyer's orders and shall adequately insure same at its expense for Buyer's protection. Vendor shall assume all liabilities for and maintain and repair such property and return the same to Buyer in its original condition, reasonable wear and tear excepted, when such property is no longer required hereunder. Such property is subject to removal and inspection by Buyer at any time without cost or expense to Buyer and Buyer shall have free access to Vendor's premises for the purpose of inspecting or removing such property. Buyer shall not be obligated to pay any invoices for tooling or Work until the first articles produced therefrom shall have been received and accepted.
14. **Indemnity.** **TO THE FULLEST EXTENT PERMITTED BY LAW, VENDOR SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND BUYER AND ALL OF ITS AFFILIATES, PARENTS, OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSS AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM OR ASSOCIATED WITH WORK, MATERIALS, PRODUCTS OR SERVICES PROVIDED BY VENDOR PURSUANT TO THIS PURCHASE ORDER, PROVIDED THAT ANY SUCH CLAIM, DAMAGE, LOSS OR EXPENSE (A) IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR PATENT INFRINGEMENT, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY INCLUDING LOSS OF USE RESULTING THEREFROM, AND (B) IS CAUSED IN WHOLE OR IN PART BY ANY ACT OR OMISSION OF VENDOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY IT OR ANYONE FOR WHOSE ACTS IT MAY BE LIABLE, OR IS CAUSED BY OR ARISES OUT OF THE USE OF ANY WORK, PRODUCTS, MATERIAL, OR EQUIPMENT FURNISHED BY VENDOR, REGARDLESS OF WHETHER IT IS CAUSED IN PART BY THE NEGLIGENCE ACT OR OMISSION OF BUYER OR ANY OF ITS OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES, OR THE STRICT LIABILITY OF BUYER OR ANY OF ITS OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES. CONCERNING ANY AND ALL CLAIMS AGAINST BUYER OR ANY OF ITS AFFILIATES, PARENTS, OFFICERS, DIRECTORS, AGENTS OR EMPLOYEES BY ANY EMPLOYEE OF VENDOR, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY VENDOR, OR ANYONE FOR WHOSE ACTS VENDOR MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER THIS PARAGRAPH SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. VENDOR AGREES TO INDEMNIFY, DEFEND AND HOLD BUYER HARMLESS FROM AND AGAINST ANY LOSSES ON ACCOUNT OF, RELATED TO OR ARISING FROM THE PRESENCE OF ANY HAZARDOUS/TOXIC WASTE OR SUBSTANCE, KNOWN OR UNKNOWN, INTRODUCED BY VENDOR IN OR AROUND BUYER'S PROPERTY. VENDOR AGREES AND ACKNOWLEDGES THAT BUYER SHALL BEAR NO LIABILITY FOR WORK PERFORMED BY ANY SUBCONTRACTOR SECURED AT VENDOR'S REQUEST OR FOR THE VENDOR'S BENEFIT AND FURTHER AGREES TO INDEMNIFY, DEFEND AND HOLD BUYER HARMLESS FROM ANY LIABILITY FOR ANY LOSSES (WHETHER CAUSED IN WHOLE OR IN PART BY BUYER'S NEGLIGENCE CAUSED DIRECTLY OR INDIRECTLY BY SUCH SUBCONTRACTOR. THE FOREGOING INDEMNITIES SET FORTH IN THIS AGREEMENT ARE INTENDED TO BE ENFORCEABLE AGAINST THE PARTIES HERETO IN ACCORDANCE WITH THE EXPRESS TERMS AND SCOPE HEREOF NOTWITHSTANDING TEXAS' EXPRESS NEGLIGENCE RULE OR ANY SIMILAR DIRECTIVE OF ANY OTHER STATE THAT WOULD PROHIBIT OR OTHERWISE LIMIT INDEMNITIES BECAUSE OF THE NEGLIGENCE (WHETHER CONCURRENT, ACTIVE OR PASSIVE) OR OTHER FAULT OR STRICT LIABILITY OF BUYER. IT IS AGREED WITH RESPECT TO ANY LEGAL LIMITATIONS NOW OR HEREAFTER IN EFFECT AND AFFECTING THE VALIDITY OR ENFORCEABILITY OF THE INDEMNIFICATION OBLIGATION UNDER THIS PARAGRAPH, SUCH LEGAL LIMITATIONS ARE MADE A PART OF THE INDEMNIFICATION OBLIGATION AND SHALL OPERATE TO AMEND THE INDEMNIFICATION OBLIGATION TO BRING THE PROVISION INTO CONFORMITY WITH THE REQUIREMENTS OF SUCH LIMITATIONS, AND AS SO MODIFIED, THE INDEMNIFICATION OBLIGATION SHALL CONTINUE IN FULL FORCE AND EFFECT. VENDOR AND BUYER EXPRESSLY AGREE THAT, TO THE EXTENT REQUIRED BY APPLICABLE LAW TO BE EFFECTIVE, THE INDEMNITIES CONTAINED HEREIN ARE "CONSPICUOUS." VENDOR FURTHER AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS BUYER AND ITS AFFILIATES, PARENTS, OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES AS WELL AS ITS REPRESENTATIVES, AND THE EMPLOYEES, AGENTS, INVITEES AND LICENSEES THEREOF, IN RESPECT OF ANY SUCH MATTERS, INCLUDING ANY CLAIMS FOR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT OR INDUSTRIAL DESIGN COVERING THE WORK AND/OR FOR ANY FAILURE BY VENDOR TO COMPLY WITH ANY APPLICABLE LAWS AND/OR REGULATIONS, OR ANY OTHER LOSSES OF CLAIMS THAT BUYER MAY SUSTAIN OR BECOME POTENTIALLY LIABLE FOR, WHETHER IN WHOLE OR IN PART, WHETHER BASED ON CONTRACT, STATUTE OR TORT, INCLUDING STRICT LIABILITY, AND AGREES TO DEFEND ANY SUCH CLAIM OR SUIT OR ACTION BROUGHT AGAINST BUYER, BUYER'S REPRESENTATIVE, AND THE EMPLOYEES, AGENTS, INVITEES AND LICENSEES THEREOF.**
15. **Insurance.** Vendor shall, at its sole expense, maintain insurance during the performance of the Work covered by this Agreement and thereafter, including General Liability Insurance with a per occurrence limit of not less than \$2,000,000 covering Buyer with respect to any involvement in the performance and/or services covered by this order or any other order. This insurance will include products liability and completed operations liability coverages, which will extend for three (3) years after the completion of the Work. Vendor agrees that its insurance coverages as required by this Agreement shall be primary to and not concurrent with any insurance coverages maintained by Buyer and that any such coverages maintained by Buyer shall in no way be implicated unless and until all available coverages required by this Agreement shall have been fully exhausted. In addition, Vendor hereby waives any and all rights of subrogation as against Buyer and agrees that it shall provide Buyer with Waivers of Subrogation by endorsement on its insurance policies with respect to the insurance coverages described herein.
16. **Governing Law, Jurisdiction and Waiver of Jury Trial.** This Agreement and each purchase order shall be governed by and construed in accordance with the laws of the State of TEXAS. Vendor, acting for itself and its successors and assigns, hereby expressly and irrevocably consents to the exclusive jurisdiction of the State and Federal courts located in HOUSTON, HARRIS COUNTY, TEXAS, for any litigation which may arise out of or be related to this order or any other order. Vendor waives any objection based on forum non-conveniens or any objection to venue of any such action. **VENDOR HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND FULLY WAIVES ANY RIGHT TO TRIAL BY JURY TO THE EXTENT THAT ANY SUCH RIGHT NOW OR HEREAFTER EXISTS WITH RESPECT TO THIS AGREEMENT OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION HERewith OR THEREWITH. VENDOR ACKNOWLEDGES AND AGREES THAT THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY SUCH PARTY AND IS INTENDED TO ENCOMPASS EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO TRIAL BY JURY WOULD OTHERWISE ACCRUE. BUYER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS IRREVOCABLE WAIVER.**
17. **Modification of Agreement and Miscellaneous Provisions.** This Agreement and the items and details on the reverse side hereof contain all of the agreements between the parties and no course of dealing or usage of trade shall be applicable. None of the terms and conditions contained on this page may be added to, modified, superseded or otherwise altered except by Buyer's President or Executive Vice President and an authorized representative of Buyer. No act or omission of Buyer, including its acceptance or payment for any shipment from Vendor, or any similar act, shall constitute an acceptance of additional or different terms in any of Vendor's documents or forms. Furthermore, no delay or omission by Buyer to exercise any of its rights or remedies with respect to this Agreement shall impair any such right or be construed as a waiver by Buyer. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable in whole or in part, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction, provided, however, if such invalid or unenforceable provision may be modified so as to be valid and enforceable as a matter of law, such provision shall be deemed to have been modified so as to be valid and enforceable to the maximum extent permitted by law. All rights and remedies granted herein to Buyer are in addition to those available at law or equity. The terms of this Agreement are intended by the parties as a final expression of their agreement containing all oral and written understandings between the parties relative to the performance of the Work or service or shipment of the goods ordered under this Agreement.
18. **Attorneys' Fees and Expenses.** In the event Buyer prevails in the prosecution or defense of any claims in litigation or arbitration between the parties hereto, Vendor agrees to pay all attorneys' fees, expert and consultant costs, and all other reasonable and necessary expenses incurred by Buyer in such litigation or arbitration.
19. **Force Majeure.** Except for the obligations of indemnity, confidentiality and nonuse by Vendor contained herein, each party shall be absolved from the obligations under this Purchase Order, when and to the extent that performance is delayed or prevented by reason of acts of God, flood, fire, explosion, war, riots, strikes, labor disputes, embargo, or governmental laws, order or regulations, or other conditions beyond the reasonable control of the affected party. The affected party shall, however, exhibit its best efforts to avoid or remove the cause or causes of its nonperformance as expeditiously as possible.
20. **Compliance with Laws.** Vendor expressly agrees to comply with and abide by, all of the laws of the United States and of the State of Texas or other applicable state law, including, but not limited to, OSHA, EPA and all rules and regulations now existing or that may be hereafter promulgated under and in accordance with any such law or laws, and hereby agrees to indemnify, defend and hold Buyer harmless from any and all claims, demands, or damages incurred by Buyer arising from Vendor's failure to comply with all laws and governmental regulations. The indemnities in this paragraph shall be in addition to any other indemnity obligations between Buyer and Vendor, including any other indemnity obligations contained herein.