



Highlandsdiversified.com

250 Westinghouse Drive, London, Kentucky 40741

Tel: 606-878-1856 Fax: 606-878-1942

## PURCHASE ORDER TERMS AND CONDITIONS

### 1. SCOPE

These Terms and Conditions (“Terms”) apply to and are incorporated by reference into all orders, offers, and contracts concerning the purchase and sale of goods or services between Highlands Diversified Services, Inc. (“Buyer”) and you (“Seller”), including contracts made pursuant to SPOs, BPO contracts, and BPO Releases, as such terms are defined below. Buyer expressly limits the terms of any order or offer, release, or contract to the terms conveyed, which includes these Terms by reference. Buyer expressly rejects any purported acceptance by Seller that includes any different or additional terms. Seller expressly agrees, including as material consideration for Buyer’s consideration of it as a supplier, that no additional or different terms contained in any acceptance or similar communication by Seller will become part of this or any other contract between Buyer and Seller.

Pursuant to these Terms, Buyer may utilize one or both of the following instruments when engaging with Seller to order products or services:

- (a) **Standard Purchase Order (“SPO”)** – An order documented and issued by the Buyer to the Seller which will specify the ordered goods or services (collectively “products”), price(s), and a fixed quantity(s), with required delivery date(s), or in the case of services commencement and completion date(s), all listed at the time the SPO is created and released to the Seller. Pursuant to these Terms, Buyer may revise the SPO, including to make reasonable changes to quantity, specification, scope, and dates for delivery, commencement, and completion. An SPO is an effective contract when accepted by the Seller pursuant to these Terms. Unless and until Buyer issues an SPO to Seller, Buyer has no obligation to purchase any products at any price from Seller.
- (b) **Blanket Purchase Order (“BPO”)** – A option to purchase documented and issued by the Buyer to the Seller which will specify the product(s) that may be purchased by Buyer, price(s), and an estimated quantity(s). The product(s) and quantity(s) listed on the BPO are an estimate only and do not obligate Buyer to purchase all or any of the product. Buyer may, in addition to the BPO, provide a long-range forecast to the Seller, which Buyer may update periodically. The forecast is for planning purposes only and does not obligate Buyer to purchase all or any of the product. Seller agrees that the BPO constitutes an option by which Buyer may purchase the listed product(s) at the listed price(s). A BPO is an effective option contract when accepted by the Seller pursuant to these terms. Seller agrees to hold the option open to Buyer through the latest date specified in the BPO, including in consideration for Buyer agreeing to consider purchasing the products from

Seller. Buyer and Seller agree that the BPO is not a requirements contract and that Buyer may purchase products from other sellers. To exercise its purchase option, Buyer will transmit a BPO release(s) (“BPO Release”) to the Seller, which will authorize and require Seller to ship the released quantity of product(s) to the Buyer at the price set in the BPO. Seller shall not ship products under a BPO without receipt of a BPO Release. Unauthorized shipments are covered in section 4 of these Terms.

## **2. CHANGES**

As to any SPO, BPO, or BPO Release, Buyer may make changes as to packing, testing, drawings, specifications, descriptions, types, dates, deliveries, destinations, and reasonable changes in quantity by written notice to Seller, without notice to Seller’s sureties or assignees. If any changes in price will result therefrom Seller must give Buyer written notice within ten (10) days of receipt of any such change and an equitable adjustment will be made therefore, provided however, nothing in this clause shall excuse the Seller from proceeding with the work to be performed hereunder as changed.

## **3. VARIATION IN QUANTITY**

No variation by Seller in quantity or specification of any item called for by an SPO or BPO Release will be accepted unless communicated by the Seller to Buyer in writing and approved by the Buyer in signed writing to the Seller.

## **4. INSPECTION, REJECTION AND ACCEPTANCE**

Buyer reserves the right to inspect and test by its own inspectors, customers, or those designated by Buyer, all raw materials, work in process, completed materials, products, items, jigs, fixtures, etc. at Seller’s plant. Seller will provide necessary facilities therefore at its own expense. Final inspection and acceptance or rejection of the items herein will be at Buyer’s facility unless otherwise approved by the Buyer in a signed writing. Physical receipt of delivery or prior payments is not final inspection and acceptance. Returns of defective items, rejects, or unauthorized shipments will be at Seller’s risk and expense. Buyer reserves the right to charge, and Seller is obligated to pay, storage, handling, and/or return fees for shipments that are not authorized for delivery to the Buyer pursuant to an SPO or BPO Release. Inspection, failure to inspect, acceptance, or payment will not affect any warranty or obligation herein. Buyer’s count of items is conclusive.

The Seller shall bear the cost of inspecting rejected products, material, services, or other items hereunder. Defective or non-conforming products, material, or other items will be held at the Seller’s risk, awaiting the Seller’s disposition. Transportation charges and or charges covering any defective products returned, sorted, or reworked shall be at Seller’s expense, and the risk shall be on the Seller.

Seller agrees that all records of inspection shall be kept complete and available to the Buyer during performance of any SPO, BPO, or any BPO Release, and for ten years after completion of the SPO, BPO, or last BPO Release.

## **5. RISK AND RESPONSIBILITY**

Seller assumes all risks for (a) loss or damage until delivery to, and acceptance by, Buyer at the point of designation (as specified by Buyer under the terms of the applicable SPO, BPO contract, or BPO Release), regardless of point

of inspection, unless some other point of delivery is specifically set forth herein, (b) loss or damage to property of, or death or bodily injury of, third parties, (c) loss or damage on returns of excess quantities, premature deliveries, or rejects, and (d) loss or damage to materials, or other property furnished Seller by Buyer.

Seller shall notify Buyer of any hazards known by Seller related to the use, storage, or disposal of products sold under this contract or related to services rendered, including to notify Buyer if any products are explosive, inflammable, toxic, or otherwise of a dangerous nature.

Seller agrees to indemnify, defend, and hold harmless Buyer, its parents, subsidiaries, and affiliates, and their respective officers, directors, employees, successors, and assigns (each a "Buyer Party") from every loss or claim or suit which may be asserted against a Buyer Party, based upon or arising from: (i) any defect or nonconformity in any product sold by or service performed by Seller to Buyer under this contract, regardless of whether or not inspection and/or acceptance has taken place, (ii) any injury or loss during or related to the performance of a service or providing a product, (iii) any undisclosed hazardous product, (iv) the handling or use of any hazardous product until acceptance by the Buyer following completion of unloading at the point of designation (as specified under the terms of the applicable SPO, BPO contract, or BPO Release) or completion of services.

As to any services performed, Seller represents and warrants that it is appropriately licensed to provide such services and will obtain in advance all necessary permits, if any, required to provide such services, and will further indemnify, defend, and hold harmless each Buyer Party from every loss or claim or suit arising out of or related to its violation of this provision or representation.

## **6. PAYMENT, INVOICES AND SHIPPING INSTRUCTIONS**

- (a) The Price set forth on the applicable SPO, BPO contract, or BPO Release is the firm price and Buyer shall not be liable for any price increases of any nature, unless agreed to by Buyer in writing.
- (b) The Seller shall be paid, upon the submission of proper invoices or vouchers, the prices stipulated herein for products delivered and accepted, less deduction, if any, as herein provided. Unless otherwise specified, payment will be made on partial deliveries accepted by the Buyer when the amount due on such deliveries so warrants. Seller shall render invoice or shipping notice within 24 hours after shipment. Buyer's order number, part number, and package number shall appear on the invoice, shipping notice, and Bill of Lading. The Bill of Lading or express receipts must accompany any invoice.
- (c) Each package must contain the following: Buyer's purchase order number, Buyer's part number, item, quantity, and weight. No charges will be allowed for packing and crating.
- (d) If Seller's deliveries are behind the agreed schedule, Buyer may require Seller to ship by express shipments in which instance Seller must assume the increased freight cost regardless of FOB point. Buyer reserves the right to cancel all or any part of this order upon which deliveries have been delayed beyond specified delivery dates. The Seller will assure that proper classification of parts and/or materials is applied to the Bill of Lading at the time of shipment to provide the lowest freight rates practical consistent with meeting contractual delivery requirements.

- (e) 100% On-Time delivery is required on all shipments.
- (f) All shipments to the Buyer require a valid, open SPO or BPO Release with a current delivery date for the specific product identified on the order. Changes in delivery dates or quantity will be communicated to the Seller through a documented process including, but not limited to a new SPO, BPO Release, E-mail, or other documented method. Unauthorized shipments or shipments delivered prior to the specified delivery date will not be accepted, received, or processed by the Buyer. BPO Releases must be communicated and authorized by the Buyer and any shipment purportedly made pursuant to a BPO without a BPO Release will be unauthorized and subject Seller to storage, handling fees, and/or return fees. Receipt of the product from the carrier does not constitute acceptance by the Buyer. Product is considered accepted only after the product received, inspected, and is matched to a valid SPO or BPO Release.
- (g) The responsibility for customs duty and customs brokers' fees (if any) will be determined in accordance with the delivery point and transportation code stated on the applicable SPO, BPO contract, or BPO Release. If Buyer is responsible for customs duties, it will be responsible for normal duties only. Seller will be responsible for any special duties, including but not limited to, marking, anti-dumping and countervailing duties, to the extent permitted under the law of the country of importation. Seller will provide Buyer with all documentation and information required by law or regulation or otherwise necessary to determine admissibility, timely release, customs clearance and entry, and the proper minimum duty to be paid upon the importation of the goods into the destination country. Seller will advise Buyer if the importation of the goods requires an import license and will assist Buyer in obtaining any such license. Seller warrants that the information regarding the import or export of the goods supplied to Buyer is true and correct, and that all sales covered by this contract will be made at not less than fair value under the anti-dumping laws of the countries to which the goods are exported.
- (h) As to services, no payment is due until the services are fully completed to Buyer's satisfaction.

## **7. SUBCONTRACTING AND ASSIGNMENT**

Seller agrees that no part of the work to be performed by it will be subcontracted or otherwise delegated without Buyer's prior written consent. The Seller agrees not to make any assignment or delegation or purported assignment or delegation of this contract or any product or invoices due or to become due hereunder without the prior written consent of the Buyer and should the Seller breach this condition, the Buyer at its option may cancel this contract without any obligation to make any further payments hereunder. Payment to Seller absent receipt of written notice of assignment shall constitute full and complete discharge of Buyer's payment obligations hereunder. Payment to an assignee of Seller's rights hereunder shall be subject to setoff or recoupment for any present or future claim or claims which Buyer may have against Seller. Buyer reserves the right to make direct settlements and/or adjustments in price with Seller under the terms of this contract, notwithstanding any assignment of claims by Seller.

## **8. TAXES**

Seller agrees, unless otherwise indicated herein, the prices include all duties (regular or special), tariffs, import clearances, and all applicable Federal, State, and local taxes (including GST and VAT) from which the Seller, on this transaction, is not exempt. The Seller agrees to use any tax exemption certificates supplied by the Buyer and to make any appropriate application for refund if any exempt tax has been paid. Upon refund, the contract price shall be appropriately adjusted or the refund shall be paid to the Buyer.

## **9. DEFAULT**

The Seller's failure to comply with either the delivery requirements, quantity requirements, product quality requirements or specifications, service description, or with any other provision shall constitute an event of default.

The Buyer may by written or electronic notice of an event of default to the Seller terminate the whole or any part of this contract and any other contract between Buyer and Seller with no liability to Buyer if (a) the Seller fails to make delivery of acceptable materials or render services within the time specified herein, or (b) the Seller fails to perform any of the other provisions of this contract, or (c) the Seller fails to make progress as to endanger performance of the contract in accordance with its terms, or (d) the Seller performs or has performed against it any act of bankruptcy or insolvency, or seeks relief under any Federal, State, or local statute pertaining thereto including, but not limited to, assignment for the benefit of creditors, petition for bankruptcy (voluntary or involuntary), reorganization, receivership, or is unable to pay its bills.

In the event the Buyer terminates this contract in accordance herewith, the Buyer may make such repurchase(s) or take such action as is deemed necessary under the circumstances and the Seller shall be liable to the Buyer for all costs and damages as is provided in law and equity.

## **10. CANCELLATION**

Buyer reserves the right to cancel all or any part of any unshipped portion of an SPO or BPO Release at any time by written or electronic communication. In the event of such termination, Seller shall immediately stop all work hereunder, and shall immediately cause any of its suppliers or subcontractors to cease such work. In the event of cancellation of an order or any part thereof by Buyer without cause, Buyer's liability, if any, will be limited to Seller's costs for labor and material incurred prior to the time of cancellation, less the value of any materials retained or revenue received from sales. Buyer is not responsible to Seller for consequential or incidental damages, including attorneys' fees, related to or arising out of cancellation, termination, or breach of this contract, and Seller waives the right to seek any such remedies.

## **11. INTELLECTUAL PROPERTY INDEMNITY**

Seller represents and warrants that products sold will not infringe any United States or foreign patent and/or any third party intellectual property right. Seller agrees to indemnify, defend, and hold harmless each Buyer Party from every claim, suit, or demand, which may be asserted against a Buyer Party based upon actual or alleged infringement, arising out of or related to any product or service sold by Seller to Buyer or this contract, of any United States or foreign patent, and/or any third party intellectual property right.

## **12. WARRANTY**

- (a) In addition to all other warranties express or implied in law, the Seller warrants that the items delivered or services performed hereunder will conform to all specifications, drawings, samples, symbols, or other descriptions furnished by Buyer, and will be merchantable, of good material workmanship, and free from defect. In case any such item shall be defective or otherwise not in conformity herewith, Seller shall at Buyer's option and in addition to all other remedies of Buyer, credit Buyer for such nonconformity or defects or at Seller's expense, replace, repair, or correct any such article. Seller agrees to make all corrective actions to the satisfaction of Buyer.
- (b) Should it become necessary because of Buyer's commitments or requirements to accept items which do not conform to all specifications required by this contract, payment will be made at an equitable reduction in price.
- (c) Seller's warranties shall survive acceptance and shall inure to the benefit of Buyer, its successors, assigns, customers, and users of its products.
- (d) All suppliers should have a goal to seek and attain, at a minimum, certification of the ISO9001:2015 STANDARD. Certification to IATF 16949:2016 is highly recommended with section 1 of IATF 16949:2016 forming the fundamental quality system requirement.

## **13. BUYER-OWNED PROPERTY**

All materials, tools, jigs, fixtures, specification, methods, processes, data, designs, drawings, and other property owned or paid for by Buyer (the "Property") shall remain the property of Buyer subject to removal at any time. All such Property shall be identified and marked as Buyer's property used only for Buyer's contract(s) and shall be covered by Seller by adequate liability, damage, and fire insurance (including extended coverage) for the fair and reasonable value of the Property, such policy to list Buyer as the beneficiary. Seller shall assume full liability for and maintain and repair the Property and return the Property to Buyer in good condition, reasonable wear and tear accepted, following the expiration of the contract between Buyer and Seller or on demand by Buyer. Seller shall provide Buyer with inventories thereof as Buyer may request and certify to Buyer that all use of the Property is expended on the Buyer's order or orders.

Seller acknowledges and agrees that the Property is (and at all times will be) unencumbered by any liens, claims or other interests (whether statutory, contractual, equitable or judicial) that Seller or its lenders, creditors, or any other third party may claim now or in the future in the Property. Upon the oral or written direction of the Buyer at any time, Seller shall surrender possession of the Property to the Buyer for removal and return. Seller agrees not to prevent or hinder Buyer from using and taking possession of or any portion of such Property, and further agrees not to assert or enforce any liens or other interests that it or its principals or affiliates may have or assert over the Property. Further, the Seller hereby consents to any order of a court granted on an emergency basis permitting Buyer to exercise its rights hereunder with respect to the Property, including, but not limited to an order for replevin or a relief from any automatic stay. If the Buyer is forced to commence legal or other

proceedings in order to recover possession of the Property, Seller will be responsible for (and will reimburse the Buyer for) all costs and expenses associated with the same (including without limitation reasonable attorneys' fees). Seller acknowledges that any material interruption in the production of Buyer's products would cause Buyer serious and irreparable harm, and that the foregoing rights and remedies have been agreed to in an effort to mitigate such harm. The covenants and obligations are in addition to such covenants and obligations as may be contained in any bailment or similar agreement that may be in place between the parties from time to time.

Seller shall not use, reproduce, or disclose the contents of any designs, data, information, drawings, etc. delivered hereunder except as is necessary for the performance of this contract.

#### **14. COMPLIANCE WITH LAW**

Seller must comply with all applicable laws, governmental orders, and regulations in performing this contract. Seller guarantees that all products and materials delivered hereunder and every part and ingredient thereof were produced under terms and conditions of employment which satisfy all requirements of the U.S. Fair Labor Standards Act of 1938 as amended.

All purchased products and materials must satisfy current governmental laws, regulations, and safety constraints on restricted, toxic, and hazardous materials; as well as environmental, electrical and electromagnetic considerations *including, but not limited to RHOS, Conflict Minerals, and IMDS reporting requirements* applicable to the country of manufacture and/or sale.

#### **15. JURISDICTION, VENUE AND GOVERNING LAWS**

This contract shall be construed pursuant to the laws of the Commonwealth of Kentucky, without regard to its choice of law provisions. As permitted by Article 6 of the Convention on Contracts for the International Sale of Goods, Buyer and Seller agree that this contract is not governed by the Convention on Contracts for the International Sale of Goods. Any and all suits arising out of or relating to this contract must be instituted and maintained in a court of competent jurisdiction in Laurel County Kentucky, except that Buyer may also commence any suit arising out of or relating to its Property in any jurisdiction in which the Property or Seller is located. Seller waives all challenges to personal jurisdiction, improper venue, or inconvenient forum as to any suit brought pursuant to this paragraph. In the event that Seller believes Buyer has failed to perform any obligation under this contract, including the payment of money due, Seller shall provide written notice setting forth the alleged failure to Buyer. Seller shall not take any adverse action (including but not limited to cessation of performance or commencement of litigation against Buyer) until and unless Buyer fails to cure or remedy the alleged failure within 30 days' of notice. Seller shall make no negative or adverse reports regarding non-payment or late payment by Buyer to any credit reporting or similar agency until and unless Seller obtains a final, non-appealable judgment confirming that payment was not made when due.

#### **16. ACKNOWLEDGEMENTS, AMENDMENTS, EXCEPTIONS**

(a) Any SPO, BPO, or BPO Release shall be an enforceable contract on the Terms stated in the SPO, BPO, or BPO Release and as stated herein upon the earliest of the following events:

- (1) Buyer's receipt of an acknowledgement of the Seller's accepting the SPO or BPO;
  - (2) Seller's receipt of a BPO Release issued by Buyer pursuant to a BPO; or
  - (3) The acceptance by the Buyer of goods or services pursuant to an SPO or BPO Release.
- (b) No modifications or amendment of these Terms or of any SPO, BPO, or BPO Release shall be binding unless made in writing and signed by both parties or otherwise made pursuant to these Terms. Notwithstanding the foregoing, if Buyer tenders to Seller a written modification or amendment it shall be deemed accepted unless rejected in writing within twenty days from date of such written modification or amendment.

## **17. LIENS**

All items to be delivered hereunder, and all property to be returned to Buyer, shall be free and clear of any and all liens and encumbrances whatsoever.

## **18. Miscellaneous.**

- (a) Entire Agreement. As to an SPO, the terms of the SPO, which include these Terms by reference, constitute the entire and only agreement between the Buyer and Seller as to the sale of specific products addressed by the SPO and supersede all prior agreements and understanding between the Buyer and Seller as to such sale. As to a BPO, the terms of the BPO, which include these Terms by reference, constitute the entire and only agreement between the Buyer and Seller as to Buyer's option to purchase the specific products addressed by the BPO and supersede all prior agreements and understanding between the Buyer and Seller as to such an option. As to a BPO Release, the terms of the BPO Release and the terms of the BPO, which include these Terms by reference, constitute the entire and only agreement between the Buyer and Seller as to the sale of specific products addressed by the BPO Release and supersede all prior agreements and understanding between the Buyer and Seller as to such sale. In the event of any conflict in the terms of any BPO and a BPO Release, the terms of the BPO Release shall take precedence. The Seller represents and warrants that in entering this contract, it has not relied on any promise or representation not contained within this contract.
- (b) Interpretation. This contract shall be interpreted without regard to any presumption or rule requiring construction against the party causing the contract to be drafted. Seller acknowledges that it has entered this contract freely, at arm's length, and after opportunity to propose modifications to these Terms. All section headings in this contract are for convenience only and shall not affect the interpretation of the contract.
- (c) Enforcement; Severability. Buyer's failure to enforce any provisions of this contract or any other right or option available to it will not be construed as a waiver of such provisions, rights, or options or in any way to affect the validity of this contract. In the event that any one or more of the provisions of this contract are for any reason held invalid or unenforceable in any respect, that does not affect any other provision of this contract and the remaining provisions will remain in full force and effect.
- (d) Relationship. Buyer and Seller acknowledge and agree that they are independent parties. Neither party shall be deemed to be the agent, employee, representative, partner, joint venturer, or associate of the other.

- (e) Time is of the Essence. Seller acknowledges that time is of the essence as to its obligations under this contract and that timely delivery is essential to Buyer.
- (f) Remedies; Waiver. The rights and remedies of Buyer under this contract are cumulative and in addition to any other or future rights and remedies available at law or in equity. No waiver by Buyer of any breach of any provision of this contract will constitute a waiver of any other breach or a waiver of such provision.
- (g) Binding Effect. This contract shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the Buyer and Seller. There are no intended third-party beneficiaries to this contract.