



## GENERAL TERMS AND CONDITIONS OF PURCHASE

**1. ACCEPTANCE AND CONTRACT FORMATION.** These General Terms and Conditions of Purchase ("Terms") apply to all written and oral purchase orders and amendments thereto (collectively referred to as "Order") issued by The McPherson Companies or its affiliates ("Purchaser") to Seller. All goods and services related in any way to a sale of goods and/or operations to be provided under an Order are included in the term "Goods". An Order for which written confirmation is requested by Purchaser may be accepted by Seller only by returning a copy of the Order signed by Seller. However, Purchaser may elect to consider Seller's oral quotation or acceptance of an Order, Seller's preparation to provide the Goods, or Seller's delivery of the Goods, as an acceptance of an Order and the terms included therein and of no other terms and, thereafter, enforce an Order. Purchaser objects to any additional or contrary terms in Seller's quotation or acceptance, and Seller agrees that such terms shall not be binding upon the parties. An Order is not a firm offer and may be revoked or changed by Purchaser prior to acceptance by Seller. An Order does not constitute an acceptance by Purchaser of any offer to sell, any quotation, or any proposal. Reference in an Order to any such offer to sell, quotation, or proposal shall in no way constitute a modification of any of the terms and conditions of an Order. A reference in an Order to Seller's quotation does not imply acceptance of any terms and conditions in such quotation. Terms and conditions in an attempted acknowledgement of an order in consistent with or in addition to the terms and conditions of an order and / or contract documents is not binding upon Purchaser unless specifically accepted by Purchaser in writing, and Purchaser objects thereto. No course of performance or conduct by Purchaser shall be construed to waive, modify or otherwise adversely affect Purchaser's rights. No representation, promise or term not set forth herein has been or may be relied on by Seller, and any terms not contained in these Terms are expressly objected to and rejected. Seller acknowledges that these Terms are subject to change from time to time and the parties agree that each Order will be governed by the version of these Terms available online at the time of such Order. Seller's acknowledgment of these Terms, the delivery of Goods or presentation of an invoice by Seller will constitute Seller's acceptance of these Terms.

**2. DELIVERY & PERFORMANCE.** Seller shall obtain, fabricate and/or manufacture materials, equipment, supplies, and other goods described in the contract documents furnished by Purchaser and shall ship and deliver such Goods to FOB Destination unless otherwise stated in an Order or related contract documents, and according to delivery schedule, and any changes or modifications made pursuant thereto. Seller assumes all of Purchaser's responsibility under Purchaser's contract with its customer for furnishing the Goods in accordance with the contract documents. Delivery is not complete until an Order has been accepted by Purchaser. Except for delays caused by Purchaser or a Force Majeure event, TIME IS OF THE ESSENCE WITH RESPECT TO DELIVERY OF ORDER. If delivery is "A.S.A.P." with a date indicated therewith, delivery must be on or before that date. If an Order is a Blanket Order, deliveries are to be made only in quantities and at times specified in the delivery schedule in an Order or by Purchaser in releases. Purchaser shall have no liability for payment of Goods delivered to Purchaser which are in excess of quantities specified in an Order or releases. Purchaser may, from time to time, change delivery schedules or direct temporary suspension of scheduled shipments. Shipping, drayage, demurrage, storage, insurance, packing, and related charges shall be prepaid by Seller, and then billed to Purchaser if Purchaser is responsible for such charges according to an Order. Goods shall be suitably packed, marked and shipped in accordance with the requirements of common carriers in a manner to secure the lowest transportation costs consistent with the requirements hereof. Packing slips identifying the purchase order number, release number and part number must accompany each shipment. When requested by Purchaser, Seller shall furnish satisfactory proof of delivery and evidence to verify compliance with requirements in Order.

**3. PRICING.** The prices in an Order shall be complete, and no additional charges of any type shall be added without Purchaser's express written consent, including but not limited to, shipping, packaging, labeling, custom

duties, taxes, premiums, storage, insurance, boxing and crating, except that Purchaser will receive the benefit of any price declines at the time of actual shipping. All cash discounts shall be computed from the date of receipt by Purchaser of a final invoice or receipt of the Goods, whichever occurs later. Seller represents and warrants to Purchaser that Goods are sold to Purchaser at Seller's lowest prices for the same quality order offered for sale or sold to other customers. If Purchaser receives an offer from another seller, including but not limited to an affiliate of Purchaser, to supply any of the same Goods at a total cost (calculated in Purchaser's reasonable sole discretion) below that in effect for Goods under the applicable contract, Purchaser may present evidence of such lower total cost to Seller, and i) Seller will agree to meet such total cost for Goods within ten (10) business days of receipt of such notice for the remaining duration of such contract, or ii) Purchaser shall have the right to purchase the Goods from other Seller. Purchaser shall also have the right to: A) terminate the applicable contract; or B) remove affected Goods from the applicable contract. Purchaser's only liability for exercising such option shall be to pay for 1) Goods already delivered to Purchaser as of the date of termination and 2) Goods ordered prior to termination that are subsequently delivered pursuant to the applicable contract. Liability for Goods that are shipped but not yet delivered above is limited to an Order that is within the applicable firm lead time of notification, not to exceed four (4) weeks, unless otherwise directed by Purchaser in writing.

**4. BLANKET ORDER.** If an Order is identified as a blanket order or in some other manner indicating Purchaser's liability to purchase a specific quantity is limited to those Goods subject to releases or other instructions from Purchaser ("Blanket Order"), the quantities specified and delivery dates listed are estimated quantities and delivery dates. The purchase of the Goods specified is expressly contingent upon the issuance of a release by Purchaser identifying the Goods to be purchased and providing delivery directions. When an Order is identified as a Blanket Order or deliveries are otherwise specified to be in accordance with Purchaser's written releases, Seller shall not fabricate or assemble any Goods nor procure required materials nor ship any Goods except to the extent authorized by such written releases or an Order specifying delivery quantities. Forecasts are not releases and may not be relied upon by Seller. Purchaser may return over-shipments at Seller's expense for handling and transportation costs.

**5. PAYMENT.** Net 60 days apply to all Orders released by Purchaser, unless otherwise agreed by Purchaser in writing. On or before each monthly billing date after a completion of an Order, Seller shall submit to Purchaser, in such form and supported by such data as Purchaser may require the value of the Products delivered and received as verified by Purchaser's acknowledgment on precise packing or delivery documents. Purchaser may deduct, backcharge, set-off or recoup from any amounts otherwise due under Order or any other agreement between the parties (including Seller's agreements with any joint venture or other entity in which Purchaser has an ownership interest) any amounts owed by Seller to Purchaser either under Purchaser's Order or under any other obligation of Seller. If Seller's invoices are subject to cash discount accepted by Purchaser, the discount period will be calculated from the date the invoice is received by Purchaser, unless otherwise agreed by Purchaser in writing.

**6. TAXES.** Any applicable sales, use or federal, state or local taxes shall be shown separately on the invoice. Seller agrees to accept a valid tax exemption certificate or other evidence acceptable to the involved governmental authority in lieu of payment or reimbursement for such taxes. Purchaser is not responsible for any taxes arising from or in connection Seller's business activity, payroll, income or assets. Unless otherwise specified in the applicable Contract, prices for Goods include all applicable duties and taxes. If Purchaser is required to pay any taxes that are Seller's responsibility under the applicable Contract, Seller shall reimburse Purchaser for such taxes within ten (10) business days of notice, and shall indemnify, defend, and hold Purchaser harmless against all claims arising out of Purchaser's payment of any such taxes.

**7. WARRANTY.** Seller warrants that it has clear title to all Goods furnished and that they are free of all liens, encumbrances and security interests. Seller expressly warrants that all goods and/or services to be supplied shall be: a)



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new, unless otherwise specified; b) in conformance with contract documents or, if none, any drawings, specifications, samples or other description in Order and/or quotation; c) merchantable for Purchaser's intended use, of good material and workmanship; d) free from manufacturing defect; and e) that goods and services of Seller's design will be free from defect in design. Seller agrees to warrant the goods and/or services for twelve (12) months after products are received by Purchaser. If Seller encounters unknown or latent conditions which could impair the performance or quality of Goods, Seller will give immediate notice of the nature of such condition to Purchaser. Inspection, testing, acceptance or use of the goods furnished hereunder shall not affect Seller's obligation under this warranty, and such warranty shall survive inspection, testing, acceptance and use. This warranty shall run to Purchaser, its successors, assigns and customers and the user of its products. Seller agrees to replace or correct defects (including labor and transportation) in any goods or services not conforming to the foregoing warranty promptly, without expense to Purchaser, when notified of such nonconformity by Purchaser. In the event of failure by Seller to correct defects in or replace non-conforming goods or services promptly, Purchaser, after reasonable notice to Seller, may make such corrections or replace such goods and services and charge Seller for the costs incurred by Purchaser thereby. Costs of correction shall include costs to remove, repair, or replace adjoining work, where necessary to effect the warranty, and all costs (including attorneys' fees and costs and consultant's fees and costs) incurred by Purchaser to enforce this warranty. Seller will obtain from subcontractors and vendors all available warranties and guarantees with respect to design, materials, workmanship, equipment and supplies furnished for Purchaser's benefit. Should a subcontractor or a vendor seek to defend on grounds that Seller committed error, Purchaser may enforce this warranty against Seller and Seller will resolve all such issues with the subcontractor/vendor.

**8. ASSIGNMENT.** Seller shall not assign Purchaser's Order, or any amounts due or to become due hereunder, or subcontract any substantial portion hereof, without the written consent of Purchaser. In the event written consent to an assignment is given by Purchaser, Seller shall not be relieved of its duties and obligations hereunder by any assignment or subcontract and shall remain as fully responsible for the acts and omissions of its assignees and subcontractors, as Seller is for its own acts and omissions and those of its agents, servants and employees. Any attempted assignment, sublet or delegation in contravention of this Section will be void. However, the contract documents and the terms and conditions contained therein (including these Terms) are enforceable against Seller's successors and permitted assigns.

**9. RISK OF LOSS AND TITLE TO GOODS.** (a) All shipments are at the risk of Seller, regardless of the F.O.B. point. If risk of loss is assumed by Purchaser in writing, all risk casualty insurance for the full value of the Goods must be provided by Seller for the benefit of Purchaser. The cost of any insurance must be paid by Seller unless otherwise agreed to in writing by Purchaser. Under no condition will the risk of loss be that of Purchaser unless such insurance is provided. Risk of loss shall not be governed by transfer of title. (b) Title to Goods shall not pass to Purchaser and delivery shall not be deemed to occur until Purchaser has received Goods at Purchaser's receiving facility.

**10. DELAYS.** Seller shall be liable for any damages incurred by Purchaser by reason of delays in Seller's performance hereunder, unless such delays result directly from a force majeure event or the fault or neglect of Purchaser. If Seller for any reason, other than the fault or neglect of Purchaser, fails to perform, or if it becomes reasonably apparent that Seller will fail or be unable to perform, within the time required by these Terms, Purchaser, without limiting its other remedies, may, upon three (3) days written notice to Seller, obtain substituted performance in a commercially reasonable manner, and offset or recover against Seller the cost thereof.

**11. DEFAULT-REMEDIES.** Should Seller (A) fail to prosecute diligently and properly the work required hereunder, (B) fail to perform or observe the promises or conditions of the contract documents, an Order or these Terms, or (C) make a general assignment for the benefit of creditors or appointment of a receiver on account of Seller's insolvency or otherwise be adjudicated as

bankrupt, Purchaser may, upon three (3) days written notice to Seller, remedy Seller's default or make good Seller's deficiency, and offset or recover against Seller the cost thereof. In addition, Purchaser may, at its option, (i) require Seller to deliver to Purchaser any completed or incomplete items or materials related to Order, (ii) terminate the relationship with Seller and any pending Orders with Seller and obtain a return of all money already paid to Seller for Goods not yet provided or (iii) reject, repair or replace non-conforming Goods with similar Goods from another source, in which case Seller will be liable to Purchaser for any additional costs or expenses incurred by Purchaser. The foregoing remedies shall be considered separate and cumulative and shall be in addition to every other remedy given hereunder or under the Contract Documents, or now or hereafter existing at law or in equity. Except as limited by this Contract or the Contract Documents, Seller shall have the remedies available at law or in equity for a material breach of this Contract by Purchaser. Any default by Purchaser shall be deemed waived unless notice thereof shall have been given within seven (7) days of the occurrence thereof.

**12. LIABILITY, INDEMNITY, AND INSURANCE.** Seller shall indemnify and protect Purchaser to the fullest extent permitted by applicable law against all liabilities, claims, losses, suits, settlement expenses, fees, costs or demands for injuries or damages ("Losses") to any person or property directly or indirectly arising out of (a) the performance of an Order, by Seller, its servants, employees, contractors, agents, or representatives, (b) any breach or violation of any term of the contract documents, including any warranty or guaranty, (c) sickness, disease, death or injury to any person, or (d) injury to property of Purchaser or others arising out of or in any way connected with the Goods. Seller warrants that any Goods purchased pursuant to these Terms, and the sale and use thereof, will not infringe on any U.S. Letter Patent. Seller agrees to indemnify Purchaser from and against any Losses incident to any infringement or claimed infringement of any patent(s) or license(s) arising from use or sale of Goods. Seller shall furnish an insurance certificate showing that Seller has statutory workers compensation insurance and liability insurance, including automobile and completed operations, for injury and damage with an aggregate limit of \$2,000,000, or such other greater amount as reasonably required by Purchaser. Liability coverage shall include completed products and operations coverage. The certificate must certify that the required insurance not be canceled or materially changed until 30 days after written notice to the Purchaser. If Seller's work under an Order involves operations by Seller on the premises of Purchaser or one of its customers, Seller shall take all necessary precautions to prevent the occurrence of any injury to persons or damage to property during the progress of such work, and except to the extent that any such injury or damage is due solely and directly to Purchaser's negligence, as the case may be, shall defend and indemnify Purchaser against any claim which may result in any way from any act or omission of Seller, its agents, or subcontractors. Seller shall indemnify Purchaser for any and all damages and reasonable expenses (including reasonable attorney fees) incurred because of property damages, personal injury, or other claims arising out of the condition, labeling, engineering, use, sale, storage, design, safety, etc. of the Goods whether or not incorporated in another product, if the damages claimed were not caused solely by negligence of Purchaser. Seller waives the application of the doctrine of comparative negligence.

**13. CONFIDENTIAL INFORMATION.** Seller shall keep confidential any technical, process or commercial information derived from drawings, specifications and other data furnished by Purchaser and shall not use or divulge, directly or indirectly, such information for the benefit of any other party without obtaining Purchaser's prior written consent. Upon completion or termination of an Order, Seller shall promptly return to Purchaser all materials incorporating any such information and any copies thereof. Any information which Seller has disclosed or may disclose to Purchaser, which relates to the Goods, is deemed to be acquired by Purchaser.

**14. COMPLIANCE.** Seller shall comply with all statutes, ordinances, rules, regulations and orders of any governmental authority having jurisdiction over the Products or Seller's performance hereunder. Seller will take reasonable



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measures to ensure that who supply components or materials that are incorporated into Goods supplied to Purchaser also comply with such laws and regulations. Seller will obtain, at Seller's sold expense, all necessary permits and licenses prior to commencement of any services and make copies of such permits and licenses available to Purchaser upon request. If services provided by Seller involve or require Seller to transport or dispose of any material or waste, prior to beginning such services, Seller will furnish Purchaser with copies of all applicable or required permits and licenses and notify Purchaser in writing of the final and any interim destination of material or waste, including in such notice verification that the place of disposal is validly authorized and permitted to accept the material or waste.

**15. ETHICAL BUSINESS CONDUCT.** Seller and the employees or agents of Seller performing work associated with the purchase order contract shall not be recognized in any context as employees of the Purchaser. Seller and employees or agents of Seller fully accept that the contract documents do not constitute any offer of employment or employment.

**16. INSPECTION.** Purchaser and its authorized representatives shall have the right, but not the obligation, to inspect the goods to be furnished hereunder at all reasonable times and places before and after delivery. The right to perform such inspections will not be construed as a reservation by Purchaser of the right to control Seller's work. Purchaser reserves the right to reject and refuse any Goods that do not comply with the terms of this contract documents or Purchaser's specifications.

**17. LIENS.** Seller will pay, satisfy and discharge all mechanics', suppliers', materialmens', and other liens and all claims and obligations and liabilities which may be asserted against Purchaser or its property by reason of, as a result of, Seller's acts or omissions relating to furnishing of Goods governed or controlled by the contract documents.

**18. LABOR RELATIONS.** Seller will promptly undertake all reasonable efforts to prevent or resolve any strikes or other labor disputes among its employees or employees of its subcontractors. If such a dispute occurs, Seller will take all reasonable actions to minimize any disruption of performance under the contract documents. Seller will immediately advise Purchaser in writing of any possible labor dispute which may affect performance under the contract documents.

**19. SUBSTITUTIONS.** Substitutions or alternates shall be permitted only in accordance with the terms of the contract documents, Change Order and written approval by Purchaser. Substitutions or alterations may only be based on a timely and adequate written request by Seller.

**20. CHANGES.** (a) Purchaser's Change. Purchaser may at any time, by written Change Order, make changes in the scope of work to be provided hereunder including changes to drawings, specifications, and times for performance, as deemed necessary by Purchaser. If such change will affect the price or delivery date for such services, Purchaser and Seller shall mutually agree in writing upon an equitable adjustment in the price and/or delivery date to reflect the effect of such change. All claims by Seller for adjustment under this paragraph must be asserted within 10 days from the date the change is ordered by Purchaser. Seller shall not suspend performance of Order while Purchaser and Seller are in the process of making such changes and any related adjustments, and upon direction in writing by Purchaser, Seller shall comply with and perform such changes in accordance with the terms of Order during such time. (b) Seller's Change. Changes to the work by Seller shall be made only with the prior written authorization of Purchaser. No other changes, modifications, alterations or waivers of or to the provisions of the contract documents shall be effective unless made or accepted in writing by an authorized representative of Purchaser. For changes resulting from the actions or omissions of Purchaser's customer or deficiencies in the contract documents, Seller's entitlement to an adjustment in the price for additional direct costs, indirect costs, overhead or profit shall be limited to Seller's allocable share of any contract adjustment allowed to Purchaser without a loss. In the event Seller and Purchaser disagree as to whether an Order, act, or other event is a change, Seller shall proceed as directed in writing by Purchaser, subject to the provisions hereof regarding disputes, and subject to

providing notice in writing within ten (10) days after the event that it considers the event to be a change.

**21. DISPUTES; GOVERNING LAW.** Any dispute between Purchaser and Seller arising under or relating to the Goods, an Order or related contract documents shall, at Purchase's sole option, be decided by arbitration in accordance with alternative dispute resolution governed by rules and procedures of the American Arbitration Association. If Purchaser elects to arbitrate, then the arbitration shall be in Birmingham, Alabama. This agreement to arbitrate shall be specifically enforceable in any court of competent jurisdiction. Purchaser shall be entitled to consolidation or joinder of arbitrations involving other parties. The award rendered by the arbitrators shall be final and judgment may be entered upon it in accordance with applicable law in any court of competent jurisdiction. EACH PARTY HEREBY WAIVES ITS RIGHT TO A TRIAL BY JURY. The parties hereto acknowledge that they have read and understood these provisions regarding arbitration and agree this transaction is in interstate commerce as that term is used in the Federal Arbitration Act, 9 U.S.C. § 1, et seq., and the parties contemplate substantial interstate activity in the performance of this Contract. In no event shall any demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. The pendency of a dispute shall not interfere with performance under this Contract by Seller nor limit the right of Purchaser to proceed, in good faith, to remedy an alleged default by Seller. This Contract and all rights and obligations hereunder will be governed by and construed in accordance with the laws of the State of Alabama, without regard to conflict of laws provisions.

**22. EARLY TERMINATION.** Purchaser may at any time terminate Seller's right to proceed under the contract documents in whole or in part for its convenience upon written notice to Seller in which event Seller shall be entitled to reasonable termination charges consisting of a percentage of the order price reflecting the percentage of the work performed prior to termination plus actual direct costs resulting from termination. IN NO EVENT SHALL SELLER BE ENTITLED TO CONSEQUENTIAL DAMAGES, LOST OPPORTUNITY COSTS, UNABSORBED OVERHEAD OR ANTICIPATED PROFITS AS A RESULT OF SUCH TERMINATION AND IN NO EVENT SHALL SAID TERMINATION COSTS, IN COMBINATION WITH PAYMENTS MADE OR EARNED HEREUNDER, EXCEED THE AMOUNT OF THE ORDER. Seller may terminate Purchaser's right to proceed under the contract documents in whole or in part for its convenience upon six (6) months written notice to Purchaser.

**23. TERMINATION BY SELLER.** Seller may terminate any Order (in whole or in part), only for non-payment by Purchaser of the purchase price for goods in accordance with such Order, and then only if: a) the amounts are material and more than sixty (60) days past due; and b) Seller first provides Purchasing written notice specifying: i) the amounts past due (including, without limitation, relevant Order and invoice numbers and dates), and ii) Supplier's intent to terminate if the past due amounts is not paid, and iii) Purchaser, within thirty (30) days of Seller's notice, does not either: 1) pay the past due amounts, or 2) notify Seller that the amounts claimed to be unpaid are disputed by Purchaser. Provided the foregoing conditions are met, Seller may terminate the Order by delivering a termination notice to Purchaser. Seller may not terminate or cancel any Order (in whole or in part) for any reason except as permitted under this section. Seller may not suspend any performance under any Order for any reason.

**24. EXIT PLAN.** In case of termination or expiration of any contracts, in whole or in part, both Seller and Purchaser agree to work together in good faith to promptly develop an exit plan under the terms of such Contract. At Purchaser's request, Seller agrees to provide Goods and / or Services under the terms hereof, including, without limitation, price, to support Purchaser's requirements for a transition period not to exceed six (6) months from the applicable termination date.

### **25. MISCELLANEOUS.**

(a) Notices. All written notices provided for in the Order or in the contract documents shall be deemed given if delivered personally to a responsible



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representative of the party or if sent by e-mail (with written confirmation copy following) or by regular mail to the party at its address specified herein. Either party may from time to time, by notice to the other as herein provided, designate a different address to which notices to it should be sent.

(b) Severability. If any provision or part or a provision contained in the Contract Documents or these Terms is held by a court of competent jurisdiction to be contrary to law or public policy, the remaining provisions of the same will remain in full force and effect.

(c) Relationship of Parties. Seller will at all times be an independent contractor with respect to the Goods and not an agent or employee of Purchaser. Any services provided by Seller will be carried on by Seller according to its own methods subject only to specifications and agreements outlined in the contract documents (including these Terms) or pursuant to an applicable Order. Seller will have full and exclusive control of its employees engaged in the manufacture and delivery of the Goods or in performance of services related thereto.

(d) Force Majeure. Other than set forth herein, neither party will be liable for delays in performance caused by acts of God, strikes or labor disturbances or other delays in performance due to any contingency beyond the party's control. In the event of any such occurrence, the period for the party's performance affected thereby will be extended for such period as reasonably required under the circumstances.

(e) Construction. No provision of these Terms may be construed against Purchaser as the drafting party.