

KUNDEL DIRECT, INC PURCHASE ORDER TERMS & CONDITIONS

UPON ACCEPTANCE OF KUNDEL DIRECT, INC.'S ("KUNDEL DIRECT") PURCHASE ORDER BY ISSUANCE OF AN ORDER CONFIRMATION, ACKNOWLEDGEMENT BY VENDOR, OR DELIVERY OF GOODS AND/OR SERVICES BY VENDOR, VENDOR ACKNOWLEDGES AND AGREES TO THE FOLLOWING TERMS & CONDITIONS INCORPORATED INTO THIS PURCHASE TRANSACTION.

ACCEPTANCE OF ORDER: This Purchase Order is an offer by Kundel Direct, Inc. ("Kundel Direct") for the purchase of the goods (the "Goods") or services (the "Services") specified, from the party to whom the Purchase Order is addressed (the "Vendor") in accordance with and subject to these terms and conditions (the "Terms"; together with the terms and conditions on the face of the Purchase Order, the "Order"). This Order will be deemed accepted by the Vendor upon the first of the following to occur: (a) Vendor making, signing, or delivering to Kundel Direct any letter, form, or other writing or instrument acknowledging acceptance; (b) any performance by Vendor under the Order; or (c) the passage of ten (10) days after Vendor's receipt of the Order without written notice to Kundel Direct that Vendor does not accept. This Order, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the Order and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Order, unless a separate overriding written contract has been entered into and signed by both parties. The Order expressly limits Vendor's acceptance to the terms of the Order. These Terms expressly exclude any of Vendor's terms and conditions of sale or any other document issued by Vendor in connection with this Order.

DELIVERY: Vendor shall deliver the Goods and/or perform the Services at the "Deliver To" address shown on the Purchase Order, and on the date(s) specified in this Order (the "Required Date"). If no required date is specified, Vendor shall deliver in full within a reasonable time of receipt of the Order. Timely delivery is of the essence. If Vendor fails to deliver the Goods or Services in full, on the Delivery Date, Kundel Direct may terminate the Order immediately and Vendor shall indemnify Kundel Direct against any losses, damages, and reasonable costs and expenses attributable to Vendor's failure to deliver.

QUALITY: All Goods delivered under this Purchase Order will conform to the requirements of this Order (including all applicable descriptions, specifications and drawings), will be free from defects in material and workmanship and will, to the extent not manufactured pursuant to detailed designs furnished by Kundel Direct, be free from defect in design and fit for the intended purposes, and Vendor's warranties and any more favorable warranties, service policies, or similar undertakings of Vendor, shall be enforceable by Kundel Direct, as well as Kundel Direct's customers and the users of Kundel Direct's goods.

INSPECTION: Kundel Direct reserves the right to inspect the Goods on or after the Delivery Date. Kundel Direct, at its sole option, may reject all or any portion of the Goods if it determines the Goods are defective or nonconforming. No replacement or correction of nonconforming Goods shall be made by Vendor unless agreed to in writing by Kundel Direct. If Kundel Direct requires replacement of the Goods, pursuant to the following Section titled "Cumulative Remedies", Vendor shall promptly replace the nonconforming Goods. If Vendor fails to timely deliver replacement Goods, Kundel Direct may replace them with goods from a third party and charge Vendor the cost thereof and terminate this Order for cause pursuant to the following Section titled "Termination." Any inspection or other action by Kundel Direct

under this Section shall not affect Vendor's obligations under the Order, and Kundel Direct shall have the right to further inspection after Vendor takes remedial action.

CUMULATIVE REMEDIES: The rights and remedies under this Order are cumulative and are in addition to any other rights and remedies available at law or in equity or otherwise. If Vendor is in breach of the warranties set out in the following section titled "Warranties," Vendor will, at its sole cost, replace or repair the Goods or re-perform Services to Kundel Direct's satisfaction.

PRICE AND PAYMENT: No invoice shall be issued prior to shipment of the Goods or completion of the Services and no payment shall be made prior to receipt of the Goods or completion of the Services and a correct invoice. The price of the Goods or Services is the price stated on the face of this Order (the "Total"). Vendor shall invoice Kundel Direct for the Order within thirty (30) days of delivery. Unless otherwise stated in the Order, Kundel Direct shall pay all properly invoiced amounts due to Vendor within sixty (60) days after receipt of such invoice, except for any amounts disputed by Kundel Direct. The parties shall seek to resolve all such disputes expeditiously and in good faith. Vendor shall continue performing its obligations under the Order notwithstanding any such dispute. Without prejudice to any other right or remedy, Kundel Direct reserves the right to set off any amount owing to it by Vendor against any amount payable by Kundel Direct to Vendor. Payment of an invoice is not evidence or admission that the Goods or Services meet the requirements of the Order.

DECLINE IN PRICE: Kundel Direct shall be protected against declining prices on the undelivered portion of the Order. Vendor may elect to meet price reductions of other vendors or its own lower prices to other purchasers for the same or substantially similar Goods or Services, but if Vendor should refuse to do so, Kundel Direct shall have the right to cancel any or all of the balance due on this Order without cost to Kundel Direct.

HAZARDOUS WASTES: If at any time Vendor brings or generates any hazardous waste(s) on Kundel Direct's property or site, as defined in 40 C.F.R. §261.3, Vendor will immediately notify Kundel Direct and Vendor will comply with Kundel Direct's policies and practices, and any applicable law, regarding storage, remediation and/or management of hazardous wastes.

CHANGES AND DISCREPANCIES: Kundel Direct may, from time to time, initiate changes to this Order by issuing to Vendor written notices (each, a "Revised Order") that alter, add to, or deduct from the Goods or Services, but that are otherwise subject to the Terms of this Order. Vendor will promptly comply with the terms of any Revised Order. Any discrepancies, omissions or lack of clarity in drawings, specifications, Order, or Revised Order must be referred to Kundel Direct in writing before the Order is processed. Kundel Direct shall have the right at any time before completion of the Order, to make changes in quantities, in drawings and specifications, in delivery schedules, and in methods of shipment and packaging. If such changes cause an increase or decrease in price or in the time required for performance, Vendor shall promptly notify Kundel Direct thereof in writing and equitable adjustment shall be made. Changes shall not be binding upon Kundel Direct unless evidenced by a Revised Order, issued and signed by Kundel Direct.

TERMINATION: Kundel Direct may terminate this Order, in whole or in part, for any reason upon prior written notice to Vendor before Kundel Direct's Order is physically processed and/or produced. In addition to any remedies provided herein, Kundel Direct may terminate this Order

KUNDEL DIRECT, INC PURCHASE ORDER TERMS & CONDITIONS

with immediate effect, either before or after acceptance of Goods or Services, if Vendor has breached any of the Terms herein. If the Vendor becomes insolvent, commences or has commenced by it or against it bankruptcy proceedings, receivership, reorganization or assignment for the benefit of creditors, then Kundel Direct may terminate this Order. If Kundel Direct terminates the Order for any reason, Vendor's sole and exclusive remedy is payment for the Goods or Services received and accepted by Kundel Direct prior to the termination.

WARRANTIES: Vendor warrants to Kundel Direct that for a period of eighteen (18) months from the Delivery Date, all Goods, Services or Goods furnished in connection with Services will: (a) be new and free from any defects in workmanship, material and design; (b) conform to applicable specifications; (c) be fit for their intended purpose and operate as intended; (d) be free and clear of all liens, security interests or other encumbrances; and (e) not infringe or misappropriate any third party's intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Kundel Direct's discovery of the noncompliance. If Kundel Direct gives Vendor notice of noncompliance, Vendor shall, at its own cost and expense, promptly replace or repair the nonconforming Goods or Services.

INDEMNIFICATION:

- a) General Indemnity. Vendor, at its expense, shall indemnify and save Kundel Direct, its subsidiaries, affiliates, successors or assignees and its respective directors, officers, employees, customers and users of Kundel Direct's goods, harmless from any and all loss, injury, death, damage, liability, claim, action, judgment, interest, penalty, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder (collectively, "Losses"), whether well founded or otherwise, including the cost of defending the same, for bodily injury to any person or damage to property, either real or personal, of any person whomsoever in any way arising out of, in the course of, or in connection with the Goods or Services purchased hereunder or the operations of the Vendor in carrying out the provisions and the terms of this Agreement.
- b) Intellectual Property Indemnity. Vendor, at its expense, shall protect, defend and indemnify Kundel Direct, its subsidiaries, affiliates, successors or assignees and its respective directors, officers, employees, customers and users of Kundel Direct's goods, against all claims and proceedings alleging infringement of any United States or foreign intellectual property rights by any Goods delivered under this Order, and Vendor shall hold them harmless from any resulting liabilities and losses, provided Vendor is reasonably notified of such claims and proceedings. Vendor's obligation shall not apply to Goods manufactured pursuant to detailed designs furnished by Kundel Direct nor to any infringement arising from the use or sale of Goods in combination with Goods not delivered by Vendor if such infringement would not have occurred from the use or sale of such goods solely for the purpose for which they were designed or sold to Kundel Direct.

Vendor shall not enter into any settlement without Kundel Direct's prior written consent.

CONFIDENTIAL INFORMATION: All non-public, confidential or proprietary information of Kundel Direct, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, pricing, discounts or rebates, disclosed by Kundel Direct to Vendor, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the Order is confidential, solely for the use of performing the Order and may not be disclosed or copied unless authorized by Kundel Direct in writing. Upon Kundel Direct's request, Vendor shall promptly return all documents and other materials received from Kundel Direct. Kundel Direct shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) rightfully and legally known to the Vendor at the time of disclosure; or (c) rightfully and legally obtained by the Vendor on a non-confidential basis from a third party.

INSURANCE: Vendor shall, at its own expense, maintain, and carry insurance in full force and effect with financially sound and reputable insurers, which includes products liability, completed operations, contractors liability, protective liability, automobile liability insurance, Workmen's Compensation, and employer's liability insurance, in an amount not less than \$1,000,000 combined single limit, per occurrence, and \$2,000,000 aggregate, as will adequately protect Kundel Direct against such damage, liabilities, claims, losses and expenses, including attorney's fees. Upon Kundel Direct's request, Vendor shall provide Kundel Direct with a certificate of insurance evidencing the coverage specified in this Order.

COMPLIANCE WITH LAW: Vendor has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits required by law to carry out its obligations under the Order. Vendor shall comply with all export and import laws of all countries involved in the sale of Goods under this Order. Vendor assumes all responsibility for shipments of Goods requiring any government import clearance. If Vendor fails to comply with the laws, orders, rules, ordinances and regulations and as a result Kundel Direct is fined, Vendor agrees to pay the fine and costs incident thereto or reimburse Kundel Direct for payment.

SHIPPING TERMS: Delivery shall be made in accordance with the Terms of the Order. The Order Number and Job Number (if listed on the Order), must appear on all documents pertaining to the Order, such as invoices, packing lists, correspondence, and all shipping documents. Vendor shall not substitute material or ship more than the quantity ordered. Unless otherwise specified on the Order, Supplier shall be solely responsible for and pay, all costs of delivering the Goods to the "Ship To" address, including, without limitation, all shipping and freight costs and all duties, fees, tariffs or similar analogous taxes on imports/exports of the Goods ("Customs Duties"). Supplier will take all reasonable steps to minimize Customs Duties costs.

TAXES: Unless specified otherwise on the face of the Order, the prices are inclusive of, and Vendor shall be solely responsible for and pay, all federal, state, and local taxes, including, but not limited to, value added tax, goods and services tax, sales, use or consumption tax. No sales or use tax shall be added when a valid tax exemption is indicated on the face of the Order by Kundel Direct.

TITLE AND RISK OF LOSS: Unless otherwise specified in the Order, risk of loss of the Goods remains with Vendor and title will not pass to Kundel Direct until the Goods are delivered to and accepted by Kundel

KUNDEL DIRECT, INC PURCHASE ORDER TERMS & CONDITIONS

Direct at the Delivery Location of Kundel Direct's dock, unless otherwise specified in writing by Kundel Direct.

FORCE MAJEURE: Neither party shall be liable to the other for any delay or failure in performing its obligations under the Order to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party ("Force Majeure Event"). Force Majeure Events include, but are not limited to, acts of God or the public enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, war, invasion, terrorist acts, riots, strike, or embargoes. Vendor's economic hardship or changes in market conditions are not considered Force Majeure Events. Vendor shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized and resume performance under the Order. If a Force Majeure Event prevents Vendor from performance for a continuous period of more than fifteen (15) business days, Kundel Direct may terminate this Order immediately by giving written notice to Vendor. Further, Kundel Direct shall not be obligated to purchase at a later date that portion of the Goods that Vendor is unable to deliver because of any of the aforementioned causes.

WAIVER AND RELEASE OF LIENS: Upon Vendor's receipt of amounts properly invoiced, Vendor waives and releases all rights to, for itself and its subcontractors, and at its sole cost shall obtain prompt removal of any lien fixed against Kundel Direct, for Goods or Services performed under the Order.

RELATIONSHIP OF THE PARTIES: The Vendor is an independent contractor of Kundel Direct. Nothing contained herein shall be construed as creating any agency, partnership, employment or fiduciary relationship. Neither party shall have authority to bind the other party in any manner whatsoever.

GOVERNING LAW AND VENUE: Our Agreement and these Terms shall be governed and construed in all respects in accordance with the laws of the State of Ohio, excluding conflicts of law rules and principles. Further, the Ohio state courts located in Trumbull County and the U.S. District Court of the Northern District of Ohio, Eastern Division, shall have exclusive jurisdiction to determine the validity, construction, breach, and/or performance of our agreement and these Terms, including any dispute arising hereunder or on Vendor's account. Vendor hereby submits to the personal jurisdiction and venue of these Ohio Courts and waives any claim of *forum non conveniens* or rights to transfer to another judicial district outside Trumbull County and the U.S. District Court of the Northern District of Ohio, Eastern Division.

NOTICES: All notices, consents, claims, demands, waivers and communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (return receipt requested, postage prepaid). A Notice is effective only upon receipt of the receiving party, and if the party giving the Notice has complied with the requirements of this Section.

INCONSISTENT TERMS: The terms found on the face of the Order shall govern over the terms and conditions herein. Any separate written overriding agreement signed by both parties subsequent to the

Order and confirming the same as controlling and superseding shall govern over the terms of the Order.

SERVICES: Any Vendor that may perform Services represents itself as qualified and able to perform. Vendor shall perform Services pursuant to the industry standard of care. Works of original authorship created by Vendor in the performance of the Services under the Order shall be works made-for-hire under the Copyright laws and owned by Kundel Direct. If determined, however, not to be a work made –for-hire, Vendor hereby assigns to Kundel Direct all copyrights to the work. Kundel Direct will furnish materials, equipment and machinery only if and to the extent set forth in the Order. Vendor will report immediately to Kundel Direct any event or circumstance which Vendor knows or reasonably suspects is, or results from, a violation of Kundel Direct's policies or law set forth herein. Vendor will, at its sole cost and expense, repair or replace any real or personal property belonging to Kundel Direct that Vendor, its employees or agents may damage, destroy or remove while performing or result from performing this Order.

SURVIVAL: Provisions of the Order which by their nature should apply beyond any termination of this Order will remain in effect for the period expressed within the Section but not longer than a period of two (2) years.

SEVERABILITY: If any term or provision of this Order is found invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term of the Order or invalidate or render unenforceable such term in any other jurisdiction.

WAIVER: The right of Kundel Direct to require strict performance of the Order shall not be affected by any prior waiver or course of performance.

MISCELLANEOUS: Vendor shall not assign, transfer, delegate or subcontract any of its rights or obligations under the Order without Kundel Direct's prior written consent. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment shall relieve the Vendor of any of its obligations hereunder. No modification, alteration or amendment of the Order shall be binding unless agreed to in writing and signed by Kundel Direct. No waiver by any party of any of the provisions of the Order shall be effective unless explicitly set forth in writing and signed by the party so waiving. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Order by Kundel Direct shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or privilege hereunder preclude any other exercise of any additional right, remedy, or privilege.