



GLOBAL PRODUCT SOURCING

# Purchase Order Terms And Conditions

**INTEGRATION.** Purchases by GPS, LLC are governed by these terms and conditions, unless the parties have entered into a mutually executed written master agreement stating applicable terms and conditions. Seller agrees to sell, and GPS agrees to buy, the goods, articles, materials, or services (“Goods”) described on a GPS Purchase Order (“PO”) for the price, at the time, and on the terms of payment shown on the PO. This PO and the provisions of any drawings, prints, plans, descriptions, specifications, samples, data, and other documents expressly referred to therein and adopted by reference (“Documents”) constitute the entire agreement and supersede all proposals, negotiations, and counterproposals.

**CONTROLLING TERMS.** GPS objects to the inclusion of any different or additional terms by Seller in Seller’s acceptance of this PO. If Seller includes or attaches any different or additional terms in Seller’s purported acceptance, commences performance, or tenders the Goods, a contract of sale will result upon the terms and conditions as stated herein, without inclusion of any different or additional terms and conditions.

**QUALITY.** All Goods furnished must strictly conform to the Documents and must be of the quality specified. No deviation or substitution is permitted without the prior written consent of GPS. In the event no quality is specified, the Goods must be at least equal to the standards of the industry. GPS shall have the right at all times during the performance of this PO to conduct such tests and inspections as it deems necessary to assure Seller’s compliance with this PO. GPS will be supplied, as needed, data, drawings, specifications, test results, approved samples, quality documentation, schedules, and other documents and information.

**PRICE AND DISCOUNTS.** The price set forth on the PO is not subject to escalation unless an escalation formula is expressly provided for on the face of the PO. If a prompt payment discount is provided for on the PO, the discount period begins when the invoices are received, provided the period will be extended for delays caused by errors in invoicing or good faith disputes over the accuracy of the invoice. GPS may, prior to making any payment due under this PO, require Seller to deliver lien waivers from itself and each of its subcontractors and materialmen for Goods previously delivered.

**CHANGES.** Changes may be made by GPS at any time in the character or quantity of Goods to be furnished hereunder by written change order signed by the same authority executing this PO for GPS. The price specified on the PO shall be adjusted pro rata if the change is in quantity, or by mutual agreement if the character or Goods or other terms are changed so as to increase or decrease the cost to Seller. Upon GPS’s request, Seller shall provide satisfactory evidence from which adjustments based on cost can be determined.

**DELAY.** Time is of the essence to this PO. At the outset of any delay from any cause, including Force Majeure, Seller shall immediately notify GPS in writing of the delay or anticipated delay and shall undertake to shorten the delay by all reasonable means. If such delay is caused by Force Majeure, the costs of shortening the delays shall be paid by GPS to the extent such costs are attributed to action authorized by GPS. If the delay is from any other cause, Seller shall be solely responsible for the costs of overcoming delays.

**FORCE MAJEURE.** Neither party shall be liable for any delay or failure to deliver or accept any or all of the Goods where such delay or failure is caused by fire, flood, other act of God, act of war, labor disturbance, or other event beyond such party's control ("Force Majeure"). Where only a portion of Seller's capacity to perform is so impaired, Seller shall make a fair allocation of its remaining production among the various customers then under contract for similar Goods during the period. If this PO is for Goods to be used in the regular production of GPS's facility, GPS may at its option delete the undelivered goods from this PO or appropriately extend the time for performance of this PO.

**INDEMNITY.** Seller agrees to indemnify, defend, and hold harmless GPS, any contractor, agent, or employee of GPS, from and against all claims, demands losses, damages, actions, or liability of any kind, including attorneys' fees, (collectively a "Loss"), where such Loss has resulted from, pertains to, or has arisen out of, Seller's, or those for whom Seller is responsible, performance of the Goods or any on-site activities, including, but not limited to, any negligent acts, omissions to act, or willful misconduct, whether active or passive, on the part of Seller, or those whom Seller is responsible.

**SITE WORK.** If Seller is to perform any work, including supervision of installation, at the site of construction or at the office or on property of GPS, Seller shall carry at Seller's own expense: (a) Workers' Compensation Insurance as required by statute, (b) Contractor's Comprehensive General Liability Insurance, with limits for bodily injury and property damage of not less than \$2,000,000 per occurrence, which policy shall include premises and operation coverage, blanket contractual coverage, Owner's and Contractor's protective coverage, and completed operations coverage; and (c) Comprehensive Automobile Liability with limits for bodily injury and property damage of not less than \$2,000,000 per occurrence, which policy shall include owned, nonowned, and hired autos. At GPS's request, Seller shall also carry explosion, collapse, and underground coverage under its Comprehensive General Liability policy and Excess Liability in amounts specified by GPS. Seller shall, prior to commencing work, provide GPS with certificates evidencing all such coverages from insurance companies acceptable to GPS. Such certificates shall (a) except for the Workers' Compensation insurance, name GPS, its subsidiaries, affiliates, directors, officers, and employees as additional insureds with respect to liability, or any claims of liability, arising out of the work performed by Seller per standard form endorsement CG 20 10. Such insurance shall provide a waiver of subrogation in favor of the certificate holder and shall be primary and non-contributory. The parties intend this provision to be an express waiver of immunity under any applicable Workers' Compensation laws; (b) provide on its face that the policies it represents will not be terminated, amended, or allowed to expire without 30 days' prior written notice to GPS; and (c) provide on its face that the policies it represents contain severability of interests clause, generally providing, "the insurance afforded applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the company's liability."

Seller hereby warrants and represents that it has inspected the work site and is familiar with all working conditions which exist there, including subsurface conditions, and that it has made due allowance for such conditions in its price calculation and estimate of time for completion. Unless otherwise instructed by GPS, Seller will provide for receipt, unloading, storage, and protection of all materials for the work whether such materials are purchased by Seller or GPS. Seller shall at all times keep the work site reasonably neat and clean and upon completion shall remove and dispose of all rubbish, trash, and refuse. Seller shall be responsible for the proper use and storage of all Hazardous Substances, as defined by 40 C.F.R. 302.3, and all Hazardous Chemicals, as defined by 29 C.F.R. 1910.1200. Seller shall not generate any Hazardous Wastes, as defined by 40 C.F.R. 261.3, on site, without prior written authorization from GPS. In the event Seller generates such Hazardous Waste, Seller must notify GPS of

the type and quantity and arrange with GPS for proper storage and disposal, at Seller's sole expense. Seller shall at all times coordinate its work and cooperate with the forces of other contractors on the work site and GPS's own forces. Seller shall at all times conduct itself in a safe and prudent manner in compliance with all applicable federal, state, and local safety laws, rules, and regulations, and all safety rules of GPS, including GPS's drug and alcohol policy. Seller's relationship to GPS under this PO shall be that of an independent contractor. Seller shall not be deemed to be or hold itself out to be the agent or employee of GPS for any purpose.

**AMERICAN STANDARDS.** Seller warrants that in furnishing the Goods hereunder, all applicable American standards (including, but not limited to, ANSI, ASME, ASTM, and NEMA) have been complied with at the time of delivery. When Goods purchased hereunder are to be manufactured or produced outside the United States or its territories, Seller shall furnish, at GPS's request, documents stating the foreign manufacturers' or producers' names and addresses and containing written assurances of compliance with American standards.

**LAWS.** Seller shall, in its performance of this PO, comply with all applicable federal, state, and local statutes, rules of law, ordinances, regulations, and regulatory orders, including, but not limited to, the Lacey Act, 16 U.S.C. 3371 et seq., the Fair Labor Standards Act of 1938, as amended, Walsh-Healy Act, Robinson-Patman Act, applicable state Workers' Compensation laws, state and federal Occupational Safety and Health Acts, and all rules and regulations passed pursuant thereto, which are incorporated herein by this reference. Seller agrees to be subject to all applicable contract clauses required by federal, state, or local law, rule, or regulation to be included in this PO, including, but not limited to, the following clauses, which are incorporated herein by this reference: Equal Opportunity Clause (41 CFR 60.1.4); Affirmative Action Clause for Disabled Veterans and Veterans of the Vietnam Era (41 CFR 60-250.4); Affirmative Action Clause for Handicapped Workers (41 CFR 60-741.4); and the Certification of Nonsegregated Facilities Clause (41 CFR 60.1.8; 41 CFR 1-12.803.10). In addition, Seller agrees and certifies, if applicable, that it has developed a written affirmative action compliance program (41 CFR 60-1.40(a)) and annually files Standard Form 100 (EEO-1) (41 CFR 60-1.7 (a)).

Seller represents and warrants that in compliance with the Lacey Act, 16 U.S.C. 3371 et seq., all wood, wood fiber, chips, or other plants, plant products or derivatives thereof (collectively, "Plants") comprising all or part of, or an ingredient in, the Goods sold in these Documents were harvested, taken, possessed, transported and sold in compliance with the laws of the countries in which the Plants were harvested, taken, possessed, transported or sold. For Plants sourced in the United States, such laws include all federal, state and other applicable laws.

Seller shall, and Seller shall require its subcontractors to, abide by the requirements of 41 C.F.R. 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

**FINAL ACCEPTANCE.** On completion of this PO, Seller shall cooperate in carrying out any tests GPS deems necessary to determine the proper functioning and general performance of the Goods and, at its own cost, shall make any adjustments and changes required to the end that an efficient and fully operative project will result. Final acceptance by GPS will be conditional upon fulfillment of this requirement.

**TERMINATION FOR CAUSE OR CONVENIENCE.** In the event of default, bankruptcy, insolvency, or failure or inability of Seller to perform, GPS may terminate this PO for cause, and in the event of such

termination, GPS shall pay Seller (a) the unit price for each item of Goods properly furnished and accepted prior to cancellation, plus (b) the salvage value of Goods in process of manufacture, including unused materials, which are identified to and being manufactured or fabricated specifically for this PO which shall be promptly delivered to GPS, but in no event shall the amount payable exceed the contract price, less the cost to GPS of completion or procurement of substitute conforming Goods, less other damages, and less any payments previously made.

Additionally, this PO is subject to cancellation at the option of GPS. Where the PO is canceled for the convenience of GPS, Seller shall be paid (a) the unit price for each item of Goods properly furnished and accepted prior to cancellation, plus (b) the cost of Goods in process of manufacture, including unused materials, which are identified as being manufactured or fabricated specially for this PO which shall be promptly delivered to GPS, plus (c) overhead and profit allocable to specialized Goods in process of manufacture, but in no event shall the amount payable exceed the contract price, less any payments previously made.

**CONFIDENTIALITY.** Seller, on behalf of itself and its employees, agrees that any ideas, know-how, concepts, information, or processes received from GPS or created by Seller in connection with the performance of this PO shall be the property of GPS and shall be preserved in strictest confidence by Seller and shall not be used or disclosed by Seller to third persons except to the extent that such use or disclosure is necessary for the proper performance of this PO. If disclosure to third persons is necessary, Seller shall insure that such third persons hold such information in strictest confidence.

**ASSIGNMENT.** This PO and money due hereunder may not be assigned without prior written consent of GPS. Any attempted assignment without GPS's consent shall be void.

**GOVERNING LAW.** Except where inconsistent with the terms and conditions contained herein, this PO shall be governed by the Uniform Commercial Code provisions applicable to transactions in goods ("UCC"), regardless of whether this PO is characterized as a transaction in goods or a transaction in services. This PO shall be interpreted and enforced under the laws of the state in which this PO is issued, provided that Idaho law shall apply if issued in a state which has not adopted the UCC.

**MASTER CONTRACT.** If this PO is issued as shipping instructions (and/or release document) pursuant to the terms of an existing contract between GPS and seller, this PO shall be governed exclusively by the terms of such existing contract.

**HAZARD COMMUNICATION STANDARD.** If the Goods sold hereunder are subject to the OSHA Hazard Communication Standard, 20 CFR Part 1910, or to such other state hazard communications laws, regulations, or standards as OSHA may have approved (the "Standard"), Seller shall provide GPS with a complete and accurate Material Safety Data Sheet for each of the Goods sold hereunder and shall label each of the Goods as required by the Standard. Seller's failure to supply such Sheet or to so label the Goods shall be deemed to constitute Seller's warranty, representation, and covenant that each of the Goods sold hereunder is exempt from the Standard.

**PROPOSITION 65.** Seller warrants that all Goods sold hereunder will not, under normal conditions of shipment, storage, or use, cause any person to be exposed to a chemical which is a carcinogen or a reproductive toxin listed under the California Safe Drinking Water and Toxic Enforcement Act of 1986 in quantities which would require that a warning be given prior to such exposure under the Act.

**MODIFICATIONS AND AMENDMENTS.** No waivers, amendments, or modifications of any of the terms or conditions of the PO shall be valid unless reduced to writing and signed by both parties. The terms

and conditions of this PO shall not be amended or modified by the course of performance or course of dealing between the parties.

**MUTUALITY.** All debts and obligations of GPS and Seller to each other are mutual and subject to setoff. For purposes of this paragraph, "GPS" and "Seller" shall be deemed to include each party's respective subsidiaries and affiliates which directly or indirectly control or are controlled by that party through 100% equity ownership.

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