

**TERMS AND CONDITIONS OF PURCHASE OF GOODS AND SERVICES**

**(United States – Not Project Specific)**

1. Acceptance and Agreement. The purchase order, together with these terms and conditions (“Terms”) and any attachments and exhibits, specifications, drawings, notes, instructions, and other information, whether physically attached or incorporated by reference (collectively the "Purchase Order"), constitutes the agreement between the Buyer and Seller for the procurement of equipment, materials, parts, supplies, products, and other goods ("Goods") and/or services (“Services”).
2. Order of Precedence. Notwithstanding anything contained herein, any inconsistencies between the terms and conditions included on the face of the Purchase Order and these Terms shall be resolved in accordance with the following descending order of precedence: (i) face of the Purchase Order, (ii) any exhibit, including supplemental terms and conditions, schedule(s) or addenda to the Purchase Order or these Terms, and (iii) these Terms. Notwithstanding the foregoing, if a master agreement exists between Seller and Buyer covering the Goods and Services, the parties agree that the terms of such master agreement shall prevail over any inconsistent Terms herein.
3. Agreement. Agreement by Seller to furnish the Goods and/or Services, including the products resulting from such Services, or its commencement of such performance, or acceptance of any payment, shall constitute Seller's unqualified acceptance of the Purchase Order. Buyer's submission of the Purchase Order is conditioned on Seller's agreement that any terms different from or in addition to the terms of the Purchase Order, whether communicated orally or contained in any Purchase Order confirmation, invoice, acknowledgment, release, acceptance, or other written correspondence, irrespective of the timing, shall not form a part of the Purchase Order, even if Seller purports to condition its acceptance of the Purchase Order on Buyer's agreement to such different or additional terms.
4. Changes. Buyer shall have the right by written notice to suspend or stop work or to make changes from time to time in the Services and/or the Goods to be furnished by Seller or to the delivery schedule. If such suspension, stoppage, or changes cause an increase or decrease in the cost of performance of this Purchase Order or in the time required for its performance, an equitable adjustment shall be negotiated promptly, and the Purchase Order shall be modified in writing accordingly. Unless otherwise specified in the applicable Purchase Order or any supplemental terms and conditions, any claim by Seller for adjustment under this Section 4 must be asserted in writing within five (5) business days from the date of receipt by Seller of notification of the change or suspension and shall be followed as soon as practicable with the specification of the amount claimed and supporting cost figures. Failure to agree to any such change shall be resolved under Section 19 (Governing Law and Venue). However, nothing herein shall excuse Seller from proceeding with this Purchase Order as changed pending resolution of the claim.
5. Termination and Cancellation. Buyer may terminate the Purchase Order at any time without cause before its completion by sending Seller a written notice of such termination. Upon such termination, Buyer shall pay Seller, in full satisfaction and discharge of all liabilities and obligations owed to Seller, an equitable amount for all Services satisfactorily performed and/or Goods supplied by Seller as of the date of termination. Upon termination as a result of a breach of contract by Seller, Buyer may terminate the Purchase Order in whole or in part without any liability, and to the maximum extent allowed by law, pursue any and all rights and remedies that it may have against Seller under the Purchase Order or at law or in equity.
6. Warranties. Unless otherwise specified on the face of the applicable Purchase Order, in addition to any other express or implied warranties, Seller warrants to Buyer and its customers that the Goods, including the components, parts, assemblies, and other items furnished by Seller, or its vendors, contractors, and subcontractors, shall, as applicable, be (a) free of any lien and encumbrances, or any claim by any third party, (b) new and of good quality, merchantable, and shall be free from defects in manufacturing, design, engineering, materials, construction, and workmanship, and (c) shall conform with this Purchase Order for a period of twelve (12) months from the date of delivery (“Goods Warranty”). At Buyer's direction, Seller shall promptly remove, repair, replace, correct, reinstall, or reimburse the purchase price of nonconforming Goods and/or Services. Repaired, replaced, or corrected Goods and/or Services shall be subject to inspection to the same extent as Goods and/or Services originally delivered under this Purchase Order. Seller warrants that: (i) Services will be performed in a timely, efficient, and professional manner; (ii) all Seller personnel assigned to perform Services will have the necessary skill and training; and (iii) Services will be performed in a manner consistent with the standard of care in the industry (“Services Warranty”). The Services Warranty will survive for a period of twelve (12) months after the date when Services are completed (“Services Warranty Period”). Seller agrees to pass through Buyer and end-user any warranties given by its third-party vendors in connection with the Goods used by Buyer to the extent permitted by the terms and conditions of such warranties.
7. General Instructions. If applicable, Seller shall (a) include a packing list with each shipment, (b) show the Purchase Order number on each package, the number of packages in shipment and quantity per package, bill of lading, invoice, and all correspondence, and (c) where under the provisions of a common carrier's tariff freight rates depend upon the value of Goods shipped, declare lowest value when releasing Goods to the common carrier and purchase no additional insurance.
8. Inspection and Acceptance. All Goods shipped to Buyer and any Services performed by Seller shall be subject to Buyer's inspection prior to acceptance. Within ten (10) calendar days, Buyer agrees to perform such inspection, and if no defects or nonconformance is revealed, Buyer will accept delivery of the Goods and/or Services (“Acceptance Period”). All Goods delivered and/or Services performed that do not conform to the Purchase Order, may be rejected by Buyer without prejudice to any other rights. Goods rejected shall be returned to Seller, at Seller's sole expense and risk, or held at Seller's risk for Seller's instructions. Seller shall reimburse Buyer for any expenses incurred in unpacking, inspecting, repacking, sorting, and reshipping any Goods so rejected. Payment for Goods and/or Services before inspection shall not constitute acceptance thereof and is without prejudice to all claims Buyer may have against Seller.
9. Infringement. Seller represents and warrants that all Goods (for purposes of this Section 9 hereinafter "Items"), provided by Seller pursuant to the Purchase Order, which is Seller’s design, do not infringe or misappropriate any third-party intellectual property rights and that any use or sale of such Items by Buyer or any of Buyer's customers shall be free from any claims of infringement. Seller shall indemnify and hold Buyer, and its customers harmless from any and all expenses, liability, and loss of any kind (including all costs, expenses, and attorneys' fees) arising out of claims, suits, or actions alleging such infringement, which claims, suits, or actions Seller, hereby, agrees to defend, at Seller's expense, if requested to do so by Buyer. Moreover, Seller may replace or modify infringing Items with comparable Items acceptable to Buyer of substantially the same form, fit, and function to remove the source of infringement, and Seller's obligations under this Purchase Order including those contained in Section 6 (Warranties), and this Section 9 shall apply to the replacement and modified Items. If the use or sale of any of the above Items is enjoined because of such claim, suit, or action, Seller, at no expense to Buyer, shall obtain for Buyer and its customers the right to use and sell said Item.
10. Insurance. All insurance coverage limits shall be set forth on the face of the applicable Purchase unless different requirements are provided in any supplementary terms and conditions. Upon acceptance of the Purchase Order by Seller, Seller shall furnish duly executed certificates of insurance, indicating that policies with respect to the aforementioned insurance have been issued with Buyer as an additional insured, as shall contain coverage for all premises and operations, broad form property damage, and contractual liability.
11. Government Laws and Regulations. Seller agrees to comply with all applicable laws, statutes, regulations, rules, ordinances, codes, executive orders, and standards, including without limitation those governing wages, hours, desegregation, employment discrimination, employment of minors, health and safety, and environmental protection. Seller shall comply with equal opportunity laws and regulations to the extent that they are applicable. Seller hereby certifies that, in connection with the performance of this Purchase Order, it will comply with U.S. export and import control laws and regulations, including but not limited to the International Traffic in Arms Regulations ("ITAR") (22 CFR 120 et seq.), the Export Administration Regulations ("EAR") (15 CFR Part 730-774), and the regulations administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") (31 CFR Part 500-598). If applicable, Seller agrees to comply with the North American Electric Reliability Corporation (“NERC”) and the Federal Energy Regulatory Commission (“FERC”), and all other applicable U.S. Government regulations.
12. Taxes. Unless otherwise provided in the Purchase Order, Seller shall be responsible for and shall hold Buyer harmless from the assessment or imposition of employment taxes, any excise, value-added, use, or other tax (however designated) upon the production, sale, delivery, or use of Goods delivered under the Purchase Order to the extent such assessments or impositions are required or not forbidden by law to be borne by Seller.
13. Price and Delivery Terms. Time is of the essence. Unless otherwise provided in any supplemental terms and conditions, the Goods will be furnished at a price and delivery schedule outlined in the Purchase Order. Acceptance of late deliveries shall not constitute a waiver of this provision.
14. Title and Risk of Loss. Title to and all risk of loss of or damage to Goods to be delivered hereunder shall remain with Seller until such Goods are delivered to Buyer at the destination specified on the face of this Purchase Order and inspected by Buyer. Seller shall bear all risk of loss or damage to Goods rejected by Buyer after notice of rejection until such Goods are redelivered to Buyer. The passing of title upon delivery shall not constitute acceptance of the Goods by Buyer.
15. Buyer's Access to Records and Facilities. Seller shall maintain general records relating to this Purchase Order for a minimum of five (5) years after completion of this Purchase Order or for such longer period as required by law. In order to assess Seller's work quality and compliance with this Purchase Order, Buyer or its authorized agents and representatives shall have the right during normal business hours and with adequate notice to inspect all relevant records, materials, tooling, and furnished property.
16. Independent Contractor. All Goods and/or Services described in the Purchase Order shall be performed by Seller as an independent contractor and not as the agent or employee of Buyer and/or Buyer's customers. All persons furnished by Seller shall be for all purposes solely the Seller's employees or agents and shall not be deemed to be employees of Buyer and/or Buyer's customers for any purpose whatsoever. Seller shall furnish, employ, and have exclusive control of all persons engaged in performing Services under this Purchase Order and shall prescribe and control the means and methods of performing such Services by providing adequate and proper supervision. Seller shall not subcontract any Services to be performed by third parties without Buyer's written permission.
17. Buyer's Information. All specifications, information, data, drawings, software, and other Items which are (a) supplied to Seller by Buyer or (b) obtained or developed by Seller in the performance of this Purchase Order or paid for by Buyer shall be proprietary to Buyer, shall be used only for purposes of providing Goods and/or Services to Buyer according to this Purchase Order, and shall not be disclosed to any third party without Buyer's express written consent. All such Items supplied by Buyer or obtained by Seller in the performance of this Purchase Order or paid for by Buyer shall be promptly provided to Buyer on written request or upon completion of the Purchase Order.
18. Force Majeure. Neither party shall be liable for delays due to unforeseeable causes beyond the reasonable control and without the fault or negligence of the party seeking to be excused for the timely performance of its obligations, including without limitation acts of God, fire, accident, war, or civil disturbance, terrorist attacks, or actions or inaction of the government. Seller's time of performance will be extended by a period equal to the length of the delay plus any consequences of the delay. The party which experiences a Force Majeure event shall notify the other party within a reasonable time after becoming aware of any such delay. Both parties agree to exercise commercially reasonable efforts to resume the performance of their respective obligations promptly and otherwise to mitigate the potential impact of any such delay.
19. Governing Law and Venue. This Purchase Order and any action related thereto will be governed and interpreted by and under the laws of the State of New Jersey, without giving effect to any conflicts of laws principles that require the application of the law of a different state. Seller hereby expressly consents to personal jurisdiction and venue in the state and federal courts for Essex County for any lawsuit that arises from or relates to this Purchase Order.
20. Dispute Resolution. If any dispute arises between the parties, the parties agree to negotiate in good faith to resolve such dispute, the parties shall try to settle those conflicts amicably between themselves at the executive level. If the parties cannot reach a resolution, they will submit to non-binding mediation. Any mediation shall occur in Newark, New Jersey, utilizing a neutral, unbiased mediator. If the mediation does not result in resolution, any controversy or claim arising out of or relating to this Purchase Order, or the default or breach thereof, will be finally settled under the commercial arbitration rules of the American Arbitration Association (except any rules requiring the use of American Arbitration Association as the arbitration service), by a single arbitrator. Judgment upon the award rendered by such arbitrator may be entered in any court having jurisdiction thereof. Such arbitration shall be held in Newark, New Jersey, or such other location as mutually agreed by the parties. In the event of adjudication of any dispute, whether by arbitration or judicially, the prevailing party will be entitled to reasonable costs, attorneys’ fees, and collection costs, including any appeals, as may be set by the adjudicator in such proceeding. Notwithstanding the foregoing, either party may seek and obtain temporary injunctive relief from any court of competent jurisdiction against any improper disclosure of confidential information or violation of intellectual property rights.
21. Indemnification. Seller agrees to indemnify and hold harmless Purchaser from and against any liabilities, damages, and costs arising out of the death or bodily injury to any person or the destruction or damage to any property, to the extent caused, during Seller’s performance under this Agreement, by the negligent acts, errors and omissions of Seller or anyone for whom Seller is legally responsible. Seller shall, on request, pay or reimburse Purchaser or any other party entitled to indemnification hereunder for all costs and expenses, including reasonable attorneys' fees, as incurred by Purchaser or such other party in connection with any such claim, demand, litigation, proceeding, loss, or damage. In addition, for infringement claims, Seller will, at its own expense and at Purchaser’s option, either procure for Purchaser the right to continue using the allegedly infringing item, replace it with a non-infringing equivalent, or remove it and refund the purchase price and the transportation and installation costs thereof.
22. **LIMITATION OF LIABILITY. EXCEPT FOR THIRD-PARTY CLAIMS COVERED UNDER THE INDEMNIFICATION PROVISIONS OF THIS AGREEMENT, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY LOSS OF PROFIT, LOSS OF USE, OR BUSINESS INTERRUPTION, BASED ON ANY CLAIM UNDER THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, EXCEPT WHEN SUCH DAMAGES ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PARTY, ITS EMPLOYEES, AGENTS, OR SUBCONTRACTORS.**
23. Notices. Any notice, request, demand, or other communication required or permitted hereunder shall be in writing, shall reference this Purchase Order, and shall be deemed to be properly given: ( a) when delivered personally; (b) when sent by e-mail, followed by written notice sent by courier service; (c) five (5) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) two (2) business days after deposit with an express courier, with written confirmation of receipt. All notices shall be sent to the address set forth on the signature page of the applicable Purchase Order and to the notice of the person executing this Purchase Order (or to such other address or person as may be designated by a party by giving written notice to the other party).
24. Flow Down Requirements. Seller is fully responsible for any Goods and/or Services subcontracted to a lower-tier subcontractor or supplier and such subcontracting shall not be construed as relieving Seller of any obligations under this Purchase Order or imposing any liability on Buyer. Seller shall preserve and protect the rights of Buyer under this Purchase Order with respect to Goods to be provided and/or Services to be performed and shall incorporate the terms and conditions specified on the face of the Purchase Order, and these Terms insofar as they are applicable into all contracts or written agreements with any lower-tier subcontractors or suppliers. Seller shall not assign this Purchase Order or any portion thereof without the prior written consent of Buyer.
25. Payment. In consideration of the Goods and/or Services to be rendered pursuant to this Purchase Order, Seller shall be paid as set forth in the applicable Purchase Order. Unless otherwise agreed by the parties, payment for Goods and/or Services, if reasonably satisfactory to Buyer, shall be due forty-five thirty (45) days from receipt by Buyer of Seller’s acceptable invoice, therefore. Payment shall be made in US dollars. Unless agreed to in writing by the parties, no price increases will be permitted, including but not limited to price increases to cover increases in the cost of raw materials, parts, components, fuel, energy, labor, supplies, overhead, or transportation. All invoices shall include the applicable Purchase Order number. As a condition precedent for the first payment under each applicable Purchase Order, Seller shall provide to Buyer (a) any required performance or payment bonds; (b) certificates of insurance, and (c) an executed lien waiver. Seller is required to supply Buyer with an Interim Conditional Lien Waiver along with the first invoice and each one thereafter until the last or final invoice for the final payment, which will then require the Final Unconditional Lien and Claim Waiver. The form of the Interim Conditional Lien Waiver and Final Unconditional Lien and Claim Waiver will be provided to Seller upon request. The Seller shall protect, defend, and indemnify Buyer from any of Seller’s subcontractors or supplier’s claims for unpaid labor and/or materials.
26. Liquidated Damages. This Section applies only if liquidated damages are specified on the face of the applicable Purchase Order. If Seller fails to complete the Services or meet the delivery schedule, or any portion thereof, within the time specified in the applicable Purchase Order, the damages to Buyer as a result of such delay shall be substantial. However, the amount of such damage is difficult and impractical to determine and, as such, the parties agree that the amount set forth as liquidated damages in the Purchase Order is a reasonable estimate of Buyer’s damages for such delay. The amount of any liquidated damages may be withheld from any payments due to Seller or shall be paid by Seller, or its sureties, if any, to Buyer. If liquidated damages are withheld during performance and Seller subsequently remedies its delay, such liquidated damages shall be refunded.
27. Supply Chain Diversity. Buyer is committed to a diverse workforce and a diverse supply chain. Within the United States, our suppliers and subcontractors must assist Small, Disadvantaged, Women-Owned, Veteran-Owned, Service-Disabled Veteran-Owned, and HUB Zone Business concerns to obtain business opportunities by identifying and encouraging not just within their own company but also the lower-tier supplier and subcontractor companies to participate to the greatest extent possible, consistent with their qualifications, quality of work, and obligations as may be required by 48 CFR 52.219-9 (subcontracting plan regarding small business concerns). For all Services, regardless of location, Seller must strive to identify, source, develop, and otherwise assist local suppliers and subcontractors in performing any Services.
28. Waiver. The waiver by either party of a breach of or a default under any provision of this Purchase Order shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Purchase Order, nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any such right or remedy.
29. Severability. The remedies provided for herein shall be cumulative and in addition to any other rights or remedies at law or in equity. No waiver of a breach of any provision of the Purchase Order shall constitute a waiver of any other breach of such provision. If any provision of this Purchase Order or the application thereof is found invalid, illegal, or unenforceable by law, the remainder of this Purchase Order will remain valid, enforceable, and in full force and effect, and the parties will negotiate in good faith to substitute a provision of like economic intent and effect.
30. Entire Agreement. This Purchase Order (including the Exhibits attached hereto, which are incorporated herein by reference) is the final, complete, and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior or contemporaneous proposals, discussions, negotiations, understandings, promises, representations, conditions, communications, and agreements, whether written or oral, between the parties with respect to the subject matter and all past courses of dealing or industry custom.
31. Electronic Signatures. The parties agree that the Purchase Order and any other documents to be delivered in connection herewith may be electronically signed and that any electronic signatures appearing on the Purchase Order or other documents are the same as handwritten signatures for the purposes of validity, enforcement, and admissibility.

**SIGNATURE PAGE TO US TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS/SERVICES AGREEMENT**

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| WITNESS:  …………………………………………………  Print Name……..……………………………………  WITNESS:  …………………………………………………  Print Name……..…………………………………… | …………………………………………………………….  (Subcontractor)  By…………………………………………………………  Print Name……………………………………………………  Print Title………………………………………………………  …………………………………………………………….  RCM Technologies, Inc.  By…………………………………………………………  Print Name……………………………………………………  Print Title……………………………………………………… |